

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 5
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: <b>18 MAR 2011</b> 4. VARIATION No.: 014

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. Cocolí, Bruja Street No.18R85, Arraijan Panama, Republic of Panama	7. CONTRACTOR'S TELEPHONE NUMBER:  507-316-9900 8. CONTRACTOR'S FACSIMILE NUMBER:  507-317-6736
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9. VARIATION:

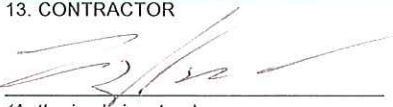
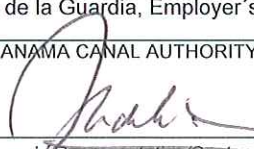
- ☒ The contract referred to in item No. 2 is hereby varied as set forth in item 10, entitled "DESCRIPTION OF VARIATION".  
☒ YES. ☐ NO. The contractor shall send a copy, duly signed, of this Variation to the Employer's Representative/Contracting Officer.

	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 attached**

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)  Antonio Maria Zaffaroni 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: <b>18/MAR/11</b>
15. PANAMA CANAL AUTHORITY  (Employer's Representative/Contracting Officer's signature)	16. DATE: <b>18/MAR/2011</b>

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### VARIATION AGREEMENT

This Variation No. 14, is dated as of 18 day of [MAR] 2011 and made

**Between:** Autoridad del Canal de Panama, Building 739, Corozal Panama, Republic of Panama (hereinafter called the "**Employer**") on the one part,

**and** Grupo Unidos por el Canal, S.A., a corporation organized 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, with offices at Cocolí, Bruja Street No.18R85, Arraijan, Republic of Panama (hereinafter called the "**Contractor**") on the other part,

### BACKGROUND

- (A) The Employer and the Contractor entered into a contract for the design and construction of a third set of locks dated the 11<sup>th</sup> day of August 2009 (as amended, modified or supplemented, "**Contract**") whereby the Contractor covenanted to design, execute and complete certain works in relation to the Panama Canal expansion project in accordance with the Contract.
- (B) Pursuant to sub-clause 4.4.1.1B of the Contract, the Parties agreed that if the fabrication and supply of the lock gates was to be sub-contracted by the Contractor it shall only be subcontracted to the Lock Gates Fabricator, as it was then defined in the Contract.
- (C) Further, the definition of "Lock Gates Fabricator" in the Contract provides that this shall be the Subcontractor (if any) named by the Contractor in relation to, inter alia, the fabrication and supply of the lock gates in the Contractor's response to the RFQ. That Subcontractor was named in the Contractor's response to the RFQ as being **Heerema Fabrication Group B.V. ("Heerema")**.
- (D) The Contractor has informed the Employer that it has terminated its arrangements with Heerema and is not willing or able to subcontract the fabrication and supply of the lock gates to Heerema. Rather, the Contractor has proposed CIMOLAI S.p.A [Via Ungaresca, 38 33170, Pordenone, Italy] as an alternative to Heerema and has now requested the Employer's agreement that, notwithstanding the provisions of sub-clause 4. 4.1.1B of the Contract, the Contractor be permitted to subcontract the fabrication and supply of the lock gates to CIMOLAI S.p.A .
- (E) The Employer, having visited CIMOLAI S.p.A's plants in Italy and having concluded that CIMOLAI S.p.A has complied with the evaluation criteria



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established in the RFQ as it related to the proposed Lock Gates Fabricator (see sub-paragraph 17.13 of the RFQ), and having concluded that CIMOLAI S.p.A has obtained the maximum additional points available (100 points), and the Employer having had the opportunity to review CIMOLAI S.p.A's financial statements, has agreed to permit the Contractor to subcontract the fabrication and supply of the lock gates to CIMOLAI S.p.A;

- (F) Further, given the foregoing matters as set out in Recital D, the Contractor has also failed to provide the Subcontractor Warranty in favour of the Employer within 28 days of the Commencement Date, as it is required to do pursuant to sub-clause 4.1.8 of the Contract. The Contractor wishes this requirement to be changed accordingly so that the Subcontractor Warranty (which shall now be duly executed by CIMOLAI S.p.A as opposed to Heerema) shall be provided by no later than the date upon which the Contractor enters into a Subcontract for the fabrication and supply of the lock gates with CIMOLAI S.p.A (the "CIMOLAI Subcontract");
- (G) The Parties wish to now enter into this Variation Agreement to provide that the Contractor may subcontract the fabrication and supply of the lock gates to CIMOLAI S.p.A on terms as agreed and set out below and that the Subcontractor Warranty shall be provided by the Contractor and executed by CIMOLAI S.p.A rather than Heerema.
- (H) This Variation Agreement is supplemental and collateral to the Contract and both Parties acknowledge and agree is not intended to create and does not create any additional liability of any nature to the Employer.
- (I) It is agreed in making this variation to the requirements of the Contract that this Variation Agreement is approved and dated in writing by the authorised 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.

The Employer and Contractor hereby agree as follows:

1. In this Variation Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract, save as amended below or as expressly stated.
2. Clause 1.1.2.16 of the Contract shall be varied so that the definition of Lock Gates Fabricator shall mean CIMOLAI S.p.A, provided that:
  - 2.1 such variation and the consent for CIMOLAI S.p.A is without prejudice to and shall in no way affect the obligations of any issuer under or of, or the validity of, any Contractor Security Instrument;
  - 2.2 such variation and the consent for CIMOLAI S.p.A shall result in no liability to the Employer or any adverse impact to the Project;



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- 2.3 in addition to complying with all the other terms and conditions of the Contract as regards subcontracting, the Contractor shall include a provision in the proposed CIMOLAI Subcontract to the effect that CIMOLAI S.p.A shall only manufacture, fabricate and assemble the lock gates in their plants in Italy and shall ensure that CIMOLAI S.p.A complies fully with such provision."
3. Clauses 4.1.8 and 4.4.6 of the Contract shall both be varied by deleting the words "*within 28 days of the Commencement Date*" and replacing with "*by no later than the date of execution of the CIMOLAI Subcontract*".
4. In consideration of the above variations to the Contract, the Contractor agrees to indemnify and save harmless the Employer from any claims, losses or expenses that may be incurred by the Employer in relation to such variations whether arising directly or indirectly out of or in any way in connection with such variations to the Contract and whether such damages, losses or expenses are as a result of claims made directly or indirectly against the Employer by any third party including, but not limited to, the Lock Gates Fabricator as named in the Contractor's response to the RFQ (namely Heerema), or any other third parties.
5. The Parties agree that the Contractor shall have no claims for additional time or money or any other relief or entitlement of any kind as a consequence of this Variation Agreement or arising out of it or in any way in connection with it, including but not limited to any period of time taken by the Employer in considering whether or not to agree to this Variation Agreement and whether or not to permit the subcontracting of the supply and fabrication of the lock gates to CIMOLAI S.p.A. .
6. Further, and entirely without prejudice to clause 5 above, the Parties specifically acknowledge that the Contractor hereby withdraws the claim which it notified by reason of its letter dated 19 May 2010 (GUPC-IAE-255) Lock Gates – Fatigue Design and the Parties hereby agree that the Contractor shall have no entitlement to claim and shall not make any claim of any nature and the Contractor fully waives all and any rights to do so in relation to and arising out of or in any way in connection with such letter and also in relation to and arising out of or in any way in connection with the design, fabrication, transportation, installation or storage of the lock gates both up to date of this Variation Agreement and in the future, save only for Force Majeure (as defined in the Contract) or should the Employer instruct in the future a change in the Employer's Requirements in that regard, in which case such Force Majeure or change would be dealt with fully in accordance with the provisions and terms of the Contract.
7. Further, the Contractor's obligations to complete the Works and comply with the Contract remain in all respects unaffected and nothing within this Variation Agreement is intended to be a waiver or relaxation of the Contractor's obligations under the Contract save only as expressly stated herein and the Contract shall



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remain fully effective as varied herein and the Contract shall have effect as though the provisions contained in this Variation Agreement had been originally contained in the Contract.

8. This Variation Agreement shall be governed by the Laws of the Republic of Panama and is deemed to be incorporated into and form part of the Contract.

**IN WITNESS** whereof the parties hereto have caused this Variation Agreement to be executed the day and year first before written by their duly authorised representatives.

**The Employer:**

**SIGNED by:**

**Name:** Jorge de la Guardia  
**Address:** Panama Canal Authority,  
Building 739, Corozal,  
Panama, Republic of Panama

**Date:** 18/III/2011

for and on behalf of the Employer in the  
presence of

**Witness:** Jorge L. Quijano

**Address:** Panama Canal Authority,  
Building 739, Corozal,  
Panama, Republic of Panama

**Date:** 18/III/2011

**The Contractor:**

**SIGNED by:**

**Name:** Antonio M. Zaffaroni  
**Address:** Cocoli, Bruja Road St. 18R85,  
Panama, Republic of Panama

**Date:** 18/MAR/11

for and on behalf of the Employer in the  
presence of

**Witness:** Carlos J. Fabrega

**Address:** Cocoli, Bruja Road St 18R85  
Panama, Republic of Panama

**Date:** 18/MAR/11