

PANAMA CANAL AUTHORITY	VARIATION	PAGE 1 OF 11
1. REQUEST FOR PROPOSAL No.:  RFP-76161	2. CONTRACT No.:  CMC-221427	3. DATE: June 28, 2013
		4. VARIATION No.: 070

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)  Bernardo Gonzalez 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: 28/06/2013
	15. PANAMA CANAL AUTHORITY   (Employer's Representative/Contracting Officer's signature)
	16. DATE: 28/VI/2013

**This Variation Agreement Number 070, is dated as of the 28th day of June 2013 and made**

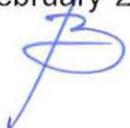
**Between:** Autoridad del Canal de Panama, Building 740, Corozal, Panama, Republic of Panama (hereinafter called the "**Employer**") on the one part,

**and**

Grupo Unidos por el Canal, S.A., of Building 22B, Brujas Road, Cocoli, Panama, Republic of Panama, a corporation 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 (hereinafter called the "**Contractor**" and together with 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) Pursuant to Sub-Clause 14.2A [*Advance Payment for Mobilisation*] the Contractor has provided to the Employer the Advance Payment for Mobilisation Security and the APM Security Amendment required under Variation Agreement No. 045 dated August 10, 2012 and the Employer has made the Advance Payment for Mobilisation to the Contractor. In addition, pursuant to Sub-Clause 14.2B [*Advance Payment for Plant*] the Contractor has provided to the Employer the Advance Payment for Plant Security and the Employer has made the Advance Payment for Plant to the Contractor. Further, pursuant to Variation Agreement No. 049 dated August 29, 2012, the Employer granted an Advance Payment for Key Suppliers subject to the conditions stated therein. Further, pursuant to Variation Agreement No. 058 dated December 24, 2012, the Employer granted an Advance Payment for Specified Suppliers subject to the conditions stated therein.
- c) The Contractor, by letter dated November 9, 2012 (Reference GUPC-IAE-1545), informed the Employer of very serious financial problems which it contends that it is facing, that the situation was now "extremely critical" and therein requested financial support in the short to medium term from the Employer, including in general terms and without specific conditions the payment in respect of certain main suppliers for the Project, which issues are considered in the subsequent correspondence of the Employer, including the Employer's letter of November 20, 2012, December 24, 2012 and Letter IAE-GUPC-1374 dated January 9, 2013, and the Contractor's letter of December 21, 2012, GUPC-IAE-1716 of February 8, 2013, GUPC-IAE-1755 of February 27, 2013 and IAE-UPC-1441 of February 27, 2013.





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- d) The Contractor then requested through RFV No 196, dated June 26, 2013 that the Employer make an advance payment to the Contractor of USD 19,131,685.60 so that the Contractor could make payment to Cimolai S.p.A, the Lock Gates Fabricator, as set out in the RFV.
- e) In support of RFV No 196 and the Contractor's request for the further advance payment, the Contractor has provided to the Employer a letter dated June 27, 2013 from Zurich, the surety provider in relation to the Plant and Material Security, that confirms it is willing to consider a modification to the Plant and Material Security to include this new advance payment under the existing Plant and Material Security subject to its review of the terms of this Variation Agreement No. 070.
- f) In reliance on the Contractor's representations and assertions regarding its financial condition and cash flow difficulties, which the Parties agree that the Employer is not able to independently verify and in consideration of the Contractor's compliance with the terms of Variation Agreement No. 070, the Employer considers that unless it agrees to a further advance payment (in addition to the various other measures already agreed such as but not limited to those provided for in Variation Agreements No. 042, No. 043, No. 045, No. 047, No. 048, No. 049, No. 051, No. 052, No. 055, No. 056, No. 058, No. 059, No. 060, No. 063, No. 065, No. 066 and No. 067) there could be serious risk to the completion of the Project and therefore the Employer's agreement to the terms hereof is in the best interests of the Project.
- g) Therefore, subject to the terms of this Variation Agreement No. 070, and based upon the representations and statements made by the Contractor concerning its financial position and ability to obtain funding, in order to assist the cash flow of the Contractor and for no other reason, the Parties have agreed to a variation to the Contract as hereinafter stated, but not further or otherwise.
- h) The Employer wishes to appoint, a Certified Public Accountant ("CPA"), who shall be an employee of the Autoridad del Canal de Panama, and who may assist in the Employer's review of the various information, certifications and documentation required to be provided by the Contractor in relation to the matters set out in this Variation Agreement No. 070.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

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

1. In this Variation Agreement No. 070, 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. 070 and the modifications contained herein are approved and dated in writing by the authorized representatives of the





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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. Notwithstanding and without prejudice to the merits of any claims that either Party may have against the other relating to the Contract (as to which both Parties' positions are fully reserved) the Contractor acknowledges and agrees that the Employer is not responsible for the Contractor's financial position and its need to request financial assistance. The Contractor agrees and acknowledges that it shall not make any claims against the Employer arising out of or in connection with this Variation Agreement No. 070 or in any way argue or use the fact or the terms of this Variation Agreement No. 070 in a prejudicial way against the Employer or in support of any claims or future actions. The Contractor further agrees and acknowledges that the Employer's agreement to this Variation Agreement No. 070 and the accommodation to the Contractor provided herein is not and shall not be deemed to be an agreement to grant or otherwise provide any similar or other financial accommodation as may be requested by the Contractor on or before the date hereof or in the future.
4. 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 No. 070 or arising out of it or in any way in connection with it.
5. 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 No. 070 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 remain fully effective as varied herein and the Contract shall have effect as though the provisions contained in this Variation Agreement No. 070 had been originally contained in the Contract. Any ambiguity or uncertainty in the meaning and effect of this Variation Agreement No. 070 shall be resolved in favour of the Employer.
6. This Variation Agreement No. 070 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):

**"Advance Payment for Lock Gates"** has the meaning provided in Sub-Clause 14.2H [*Advance Payment for Lock Gates*].





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**"Lock Gates Payment Certification No.1"** has the meaning provided in Sub-Clause 14.2H [*Advance Payment for Lock Gates*].

**"Lock Gates Payment Certification No.2"** has the meaning provided in Sub-Clause 14.2H [*Advance Payment for Lock Gates*].

**"Variation Agreement No. 070"** means Variation Agreement Number 070, dated as of the 28<sup>th</sup> day of June 2013, between the Employer and the Contractor.

**"VO No. 070 Bond Issuer Confirmation"** means a written confirmation (or rider, amendment or modification), each in the form set out in Appendix 5 to Variation Agreement No. 070 and otherwise acceptable to the Employer, from each of (i) the issuer of the Performance Bond, (ii) the issuer of the Payment Bond, in each case as to the continuing validity of such bond notwithstanding the modifications to the Contract regarding the Advance Payment for Lock Gates made pursuant to the terms of Variation Agreement No. 070.

**"VO 070 Plant and Material Security Modification"** means in relation to the Plant and Material Security a modification to such Plant and Material Security required to be provided pursuant to Variation Agreement No. 070 or an amendment or re-issuance of the Plant and Material Security providing for the same affect, in either such case, in a form acceptable to the Employer in its sole and absolute discretion,.

The Parties agree to amend the following definitions in Sub-Clause 1.1 [*Definitions*] of the Contract as follows:

**"CPA"** shall be amended to read as follows:

**"CPA"** means a Certified Public Accountant, who shall be an employee of the Autoridad del Canal de Panama, who may be appointed to assist in the Employer's review of the various information, certifications and documentation required to be provided by the Contractor in relation to the matters set out in Variation Agreement No. 058 and No. 070.

**"Payment Certificate Deductions"** shall be amended to read as follows:

**"Payment Certificate Deductions"** means the deductions to be made from the amount of any Payment Certificates in respect of any of (i) the Advance Payment for Plant (including the Deferred Repayment for Plant), (ii) the Advance Payment for Mobilisation (including the Late Repayment and Deferred Repayment), (iii) the Advance Payment for Key Suppliers (including the Deferred Repayment for Key Suppliers), (iv) the Advance Payment for Specified Suppliers, (v) the Advance Payment for Lock Gates, and (vi) the retention pursuant to sub-paragraph (c) of Sub-Clause 14.3.3 [*Application for Interim Payment Certificates*] of the Contract.



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8. The Parties agree to amend the Contract by adding the following new Sub-Clause 14.2H [*Advance Payment for Lock Gates*]:

**14.2H [*Advance Payment for Lock Gates*]**

- (a) Subject to sub-paragraphs (b) and (c) of this Sub-Clause 14.2H [*Advance Payment for Lock Gates*], the Employer shall make a further advance payment of part of the Contract Price up to a maximum of USD 19,131,685.60 to be made and repaid in accordance with this Sub-Clause 14.2H in respect of sums which are to be made to the Lock Gates Fabricator as set out in Appendix 1 to Variation Agreement No. 070 or such other sums as may be certified for payment by the Employer's Representative pursuant to the terms of this Sub-Clause 14.2H (the "**Advance Payment for Lock Gates**").
- (b) As a precondition to payment by the Employer to the Contractor of any amount of the Advance Payment for Lock Gates, the Contractor shall furnish to the Employer Appendix 1 to Variation Agreement No. 070 with columns A, B and F duly completed, and signed by the Contractor's Representative.
- (c) No later than 20 days after receipt by the Contractor of the amount of the Advance Payment for Lock Gates made by the Employer, the Contractor shall obtain, at its own cost, and furnish to the Employer:
- (i) the VO 070 Plant and Material Security Modification; and
  - (ii) the VO No. 070 Bond Issuer Confirmation, duly executed by the parties thereto in the form included in Appendix 5 to Variation Agreement No. 070.
- (d) If the Contractor fails to comply with sub-paragraph (c)(i) and/or (c)(ii) above within the time period specified therein, then the whole of the balance of the Advance Payment for Lock Gates shall immediately become due and payable by the Contractor to the Employer and the Employer shall be entitled, at its sole and absolute discretion, to:
- (i) deduct the full amount of the Advance Payment for Lock Gates paid by the Employer to the Contractor in the next Interim Payment Certificate; and/or
  - (ii) require payment of the full amount of the Advance Payment for Lock Gates paid by the Employer to the Contractor (or any part thereof not deducted in accordance with sub-paragraph (d)(i) above) from the Contractor, in which case the Contractor shall within 21 days of written request from the Employer make payment of such amount to the Employer and/or the Employer may recover such amount as a debt due from the Contractor to the Employer. Payment of any amount due from





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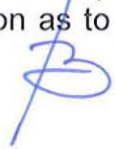
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the Contractor to the Employer pursuant to this sub-paragraph (d)(ii) shall be made by electronic transfer of funds to the bank account nominated by the Employer.

For the avoidance of any doubt, Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*] shall not apply to any deduction and/or payment from the Contractor to the Employer pursuant to this Sub-Clause 14.2H.

- (e) Subject to the terms of this Sub-Clause 14.2H [*Advance Payment for Lock Gates*] the Contractor shall be entitled to apply for payment of the Advance Payment for Lock Gates as follows:

*Alternative 1*

- (i) Subject to satisfaction of the condition set out sub-paragraph (b) and in all cases subject to the terms of this Sub-Clause 14.2H, the Contractor may include the amount of the Advance Payment for Lock Gates in the Contractor's application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] in the month following the date of the execution of Variation Agreement No. 070.
- (ii) Where the Contractor wishes to include in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] the amount of the Advance Payment for Lock Gates, the Contractor shall submit with its application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [*Application for Interim Payment Certificates*] and as a precondition to payment of the amount of the Advance Payment for Lock Gates, a certification from the Contractor in the form set out in Appendix 2 to Variation Agreement No. 070, duly completed in accordance with the required information set out therein (the "**Lock Gates Payment Certification No.1**"), together with the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 070, which documentation listed in such Appendix shall be sent through DTCS. Provided that the Lock Gates Payment Certification No.1 is duly completed, and both it and the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 070 are in accordance with the terms of this Sub-Clause 14.2H and are to the Employer's Representative's satisfaction, then the Employer's Representative may include in the next Interim Payment Certificate to which the application relates the amount of the Advance Payment for Lock Gates, or such other sum as the Employer's Representative may certify in its sole and absolute discretion. For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether the amount of the Advance
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Payment for Lock Gates included in the Interim Payment Certificate shall be accepted by the Employer's Representative and therefore, paid by the Employer.

*Alternative 2*

- (iii) Alternatively, subject to the satisfaction of the condition set out subparagraph (b) and in all cases subject to the terms of this Sub-Clause 14.2H, the Contractor may separately apply for the amount of the Advance Payment for Lock Gates by providing to the Employer the Lock Gates Payment Certification No.1, duly completed in accordance with the requirements set out therein (the "**Lock Gates Extraordinary Application**"), together with the documentation required to be provided in accordance with Appendix 3 to Variation Agreement No. 070, which documentation listed in such Appendix shall be sent through DTCS.
- (iv) Provided that the Lock Gates Payment Certification No.1 is duly completed, and both it and the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 070 are in accordance with the terms of this Sub-Clause 14.2H and are to the Employer's Representative's satisfaction, then the Employer may pay to the Contractor the amount of the Advance Payment for Lock Gates, or such other sum as the Employer's Representative may decide in its sole and absolute discretion. For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether the amount of the Advance Payment for Lock Gates included in a Lock Gates Extraordinary Application is certified for payment by the Employer's Representative and therefore paid by the Employer to the Contractor.
- (f) For the avoidance of doubt, under no circumstances whatsoever shall the Contractor be entitled to payment of the Advance Payment for Lock Gates in excess of the sum of USD 19,131,685.60.
- (g) The Contractor shall use the Advance Payment for Lock Gates solely for the purposes of making payment to the Lock Gates Fabricator in accordance with the terms of this Sub-Clause 14.2H and shall make such payments to the Lock Gates Fabricator so that the amount of the Advance Payment for Lock Gates that the Contractor will pay to the Lock Gates Fabricator shall be as per the amounts, and in respect of the Works, goods, services and/or materials, set out in Appendix 1 to Variation No. 070 or as otherwise certified by the Employer's Representative. Payments to the Lock Gates Fabricator shall be made within 5 Business Days of receipt by the Contractor of the Advance Payment for Lock Gates made by the Employer. In no event shall the Contractor use or apply any portion of the Advance Payment for Lock Gates for any other purpose than such payment as aforesaid, including



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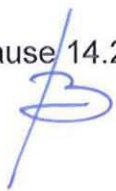
without limitation for its own corporate or cash flow purposes (other than in respect of such payments) or to make payment to any other supplier, subcontractor or person for any part of the Works, Plant and/or Materials, or otherwise.

- (h) For the avoidance of doubt, the Advance Payment for Lock Gates shall be paid by the Contractor to the Lock Gates Fabricator only, and under no circumstances whatsoever shall such amounts be paid to any third party who has been assigned the right to receive payment in respect of such amounts.
- (i) Within 5 Business Days of the Contractor making any payment to the Lock Gates Fabricator in accordance with this Sub-Clause 14.2H, the Contractor shall provide to the Employer certification in the form set out in Appendix 4 to Variation Agreement No. 070, duly completed in accordance with the requirements set out therein (the "**Lock Gates Payment Certification No.2**"), together with the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 070, which documentation listed in such Appendix shall be sent through DTCS.
- (j) Without prejudice to the foregoing, the Employer's Representative shall at any time be entitled to audit the Contractor's books and records (including any electronic data and records) to verify that any payment by the Contractor to the Lock Gates Fabricator has been made, or is to be made, in accordance with the terms of this Sub-Clause 14.2H, and to make copies and take extracts thereof in relation thereto, and to conduct a review or investigation of the payments made, or to be made, by the Contractor to the Lock Gates Fabricator.
- (k) In the event that any payments have been made, or are to be made, by the Contractor to the Lock Gates Fabricator otherwise than in accordance with the requirements of this Sub-Clause 14.2H, or where any payments have been made but the audit rights set out in sub-paragraph (j) above have not been afforded to the Employer's Representative, or where the Contractor fails to provide to the Employer the "**Lock Gates Payment Certification No.2**", together with all the documentation required to be provided as set out in Appendix 3 to Variation Agreement No. 070, or where the Contractor uses or applies any portion of the Advance Payment for Lock Gates for any other purpose than payment to the Lock Gates Fabricator in accordance with the terms of Sub-Clause 14.2H, the Employer's Representative may, in any subsequent Interim Payment Certificate, make any correction, modification or adjustment as it deems necessary including deducting the value of any such payment, or, at the sole discretion of the Employer's Representative, the value of all such payments made to the Lock Gates Fabricator from any subsequent Interim Payment Certificate. Further, the Employer's Representative may request that the CPA undertakes a review of any information, certifications and documentation that may be provided by the Contractor pursuant to this Sub-Clause 14.2H.





- (l) The Advance Payment for Lock Gates shall be repaid in full by the Contractor by way of equal instalment deductions (or in the case of the final such deduction, such amount as is then necessary to make such repayment in full) in each monthly Payment Certificate commencing with the Payment Certificate of December 2013 issued in January 2014 up to and including the Payment Certificate of May 2014 issued in June 2014. The Parties acknowledge and agree that the Advance Payment for Lock Gates will be repaid in accordance with the terms of this Sub-Clause 14.2H so that the same is repaid in full by the Contractor by the Payment Certificate of May 2014 issued in June 2014.
  - (m) The whole of the balance of the Advance Payment for Lock Gates outstanding shall immediately become due and payable by the Contractor to the Employer and the Employer shall be entitled to make a claim for the entire outstanding balance under the Plant and Material Security, if:
    - (i) the Advance Payment for Lock Gates has not been repaid in full prior to June 2014 or prior to a termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be);
    - (ii) the Employer is entitled to terminate the Contractor's right to complete the Contract under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given;
    - (iii) the Contractor fails to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [*Employer's Claims*] or Sub-Clause 20 [*Claims, Disputes and Arbitration*] within 42 days of its agreement or determination; and/or
    - (iv) the Contractor fails to remedy a default within the time stated in the Employer's notice requiring the default to be remedied.
9. The Parties agree to amend Sub-Clause 14.2 [*General Provisions*] as follows:
- (a) in sub-paragraph (a) of Sub-Clause 14.2, in the third line delete "and Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*]" and insert ", Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*] and Sub-Clause 14.2H [*Advance Payment for Lock Gates*]";
  - (b) in sub-paragraph (b) of Sub-Clause 14.2, in the penultimate line delete "and Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*]" and insert ", Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*] and Sub-Clause 14.2H [*Advance Payment for Lock Gates*]";
  - (c) in sub-paragraph (d) of Sub-Clause 14.2:





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- (i) in the third line delete "and Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*]" and insert ", Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*] and Sub-Clause 14.2H [*Advance Payment for Lock Gates*]";
  - (ii) in the sixth line delete "and/or Advance Payment for Specified Suppliers" and insert ", Advance Payment for Specified Suppliers and/or Advance Payment for Lock Gates"; and
  - (iii) in the penultimate line of the last paragraph delete "and/or Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*]" and insert ", Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*] and/or Sub-Clause 14.2H [*Advance Payment for Lock Gates*]".
10. The Parties agree to delete sub-paragraph (a) of the final paragraph of Sub-Clause 14.2F [*Advance Payment for Specified Suppliers*] and replace with the following:
- "(a) the Advance Payment for Specified Suppliers has not been repaid in full prior to July 2014 or prior to a termination under Clause 15 [*Termination by Employer*], Clause 16 [*Suspension and Termination by Contractor*] or Clause 19 [*Force Majeure*] (as the case may be);"
11. The Contractor 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) as the Employer shall from time to time require to give full effect to this Variation Agreement No. 070 and secure to the Employer the full benefit of the rights, powers and remedies conferred upon it in this Variation Agreement No. 070. Notwithstanding the generality of the foregoing, the Contractor shall (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), including but not limited to any further variation to the Contract or Plant and Material Security, as the Employer shall from time to time require arising out of or in connection with the proposed VO 070 Plant and Material Security Modification and the security arrangements for the Advance Payment for Lock Gates generally.

**In Witness whereof** the Parties hereto have caused this Variation Agreement No. 070 to be executed on the 28 day of June 2013, by their duly authorized representatives.

For ACP



Jorge de la Guardia  
Employer's Representative

For GUPCSA



Bernardo Gonzalez  
Contractor's Representative

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## APPENDIX 1 LOCK GATES FABRICATOR LIST

	A	B	C	D	E = B - C	F = C - D	G
No.	Amount paid to Lock Gates Fabricator	Subcontract Price	Subcontract Price Invoiced to Date	Subcontract Price Paid to Date	Remaining Subcontract Price	Balance to Pay	Verified by ACP (for ACP use only)
1							
2							
3							
4							
5							
6							
7							
8							
	<b>TOTALS</b>						

Signed for and on behalf of the Contractor

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## APPENDIX 2 LOCK GATES PAYMENT CERTIFICATION NO. 1

	A	B	C	D	E = B - C	F = C - D	G
No.	Amount paid to Lock Gates Fabricator	Subcontract Price	Subcontract Price Invoiced to Date	Subcontract Price Paid to Date	Remaining Subcontract Price	Balance to Pay	Verified by ACP (for ACP use only)
1							
2							
3							
4							
5							
6							
7							
8							
	TOTALS						

Signed for and on behalf of the Contractor

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### Appendix 3

As part of the Contractor's application for any amount of the *Advance Payment for Lock Gates* the Contractor must comply with the requirements of Requirement A-and Requirements B whichever are applicable.

#### **Requirement A - Pre-audit to validate the due amounts to be paid in respect to Advance Payment for Lock Gates**

Where, subject to the terms of Sub-Clause 14.2H of the Contract, the Contractor includes an amount of the Advance Payment for Lock Gates in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or makes a Lock Gates Extraordinary Application, the Contractor shall provide to the Employer with the **Lock Gates Payment Certification No.1** the following:

- a) A copy of the application for Interim Payment Certificate/Lock Gates Extraordinary Application (as applicable) as required under Sub-Clause 14.2H of the Contract, uploaded in the DTCS;
- b) A copy of the Lock Gates Payment Certification No.1 as required under Sub-Clause 14.2H of the Contract;
- c) Spreadsheets detailing the payments to be made by the Contractor to the Lock Gates Fabricator, including the name of the Lock Gates Fabricator; the relevant subcontract or purchase order number; subcontract or purchase order amount; invoice number; invoice dates; invoice amount number;
- d) A copy of the signed Contract between the Contractor and the Lock Gates Fabricator that contains the Conditions, prices, and details of the goods or services rendered and any variations and modifications thereto;
- e) Invoices (no photocopies) of the relevant material or service referenced to the Contract;
- f) Such other evidence or substantiation that may be required by the Employer's Representative in order to validate the amounts due; and
- g) Electronic funds transfer form completed and signed by the Lock Gates Fabricator showing the bank account details where the funds will be transferred.

The Contractor should note that all invoices must comply with Panamanian fiscal laws.

It shall be a precondition to payment that all invoices be immediately available for inspection upon receipt of the Application for Interim Payment Certificate or Lock Gates Extraordinary Application and that the Employer Representative's validation is completed.



For the avoidance of doubt, and notwithstanding any other provision of the Contract, the Employer's Representative shall have the sole and absolute discretion as to whether an application for any amount of the Advance Payment for Lock Gates shall be accepted by the Employer's Representative and therefore certified in any Interim Payment Certificate/paid by the Employer pursuant to a Lock Gates Extraordinary Application.

### **Requirement B - Post-audit to validate - the paid amounts to the Lock Gates Fabricator – referred to in item A**

Where, subject to the terms of Sub-Clause 14.2H of the Contract, the Contractor has included an amount of the Advance Payment for Lock Gates in an application for an Interim Payment Certificate pursuant to Sub-Clause 14.3 [Application for Interim Payment Certificates] or has made a Lock Gates Extraordinary Application in accordance with Requirement B, the Contractor shall provide to the Employer with the **Lock Gates Payment Certification No.2** the following:

- a) Proof of payment by the Contractor to the Lock Gates Fabricator such as the bank wire transfer or bank debit note referring to the invoices submitted, which shall be sent to the Employer directly by the bank institute that received the wire transfer.
- b) Original paid invoices according to the Panamanian Fiscal Law.
- c) Confirmation of the payment from the Lock Gates Fabricator such as: receipt, certification from the Lock Gates Fabricator, bank certification of the transfer being credited to the Lock Gates Fabricator's account; and
- d) Such other evidence or substantiation that may be reasonably required by the Employer's Representative in order to validate the invoices and payment of the same.



#### Appendix 4

[TO BE PROVIDED ON YOUR HEADED NOTEPAPER]

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

Autoridad de Canal de Panama  
Building 740, Corozal  
Panama  
Republic of Panama

28<sup>th</sup> day of June 2013

Dear Sirs

#### **Lock Gates Payment Certification No.2**

We hereby provide Lock Gates Payment Certification No.2 in respect of Cimolai S.p.A. **the Lock Gates Fabricator** and in accordance with Variation Agreement No. 070 of June 28, 2013, entered into in relation to Contract CMC-221427 for the Design and Construction of the Third Set of Locks dated August 11, 2009.

We enclose with this Lock Gates Payment Certification No.2 a payment receipt from the Lock Gates Fabricator for the amount of \$*[insert sum]* which we confirm is the amount payable to the Lock Gates Fabricator as certified/informed by the Employer's Representative in respect of the application for Interim Payment Certificate/Lock Gates Extraordinary Application *[insert details]*.

We hereby certify that the contents of this Lock Gates Payment Certification No. 2 are true and accurate in all respects.

[GUPCSA]





[Letterhead of Zurich]

\_\_\_\_\_, 2013

Autoridad del Canal de Panama  
Centro de Capacitacion Ascanio Arosemena  
Edificio 705, Ala Gerencial, Balboa  
Panama, Republica of Panama

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

Confirmation regarding Advance Payment for Lock Gates

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 #7616 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 Aug. 7, 2009 in an amount of USD 400,000,000.00, issued in the Owner's favor in respect of the Contract (the "Performance Bond"); and (iii) the payment bond, Bond no. 08960193, dated Aug. 7, 2009, in an amount of USD 50,000,000.00, issued in the Owner's favor in respect of the Contract (the "Payment Bond" and, together with the Performance 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. 0XX, dated \_\_\_\_\_ ("Variation Agreement No. 0XX") to the Contract, executed by the Owner and the Contractor, which provides for certain amendments to the Contract relating to the making of the Advance Payment for Lock Gates (as defined therein) by the Owner to the Contractor.

The undersigned, as Surety under and as defined in the Bonds, hereby confirms to you, as Owner and beneficiary under the Bonds, the continued validity of each of the Bonds in the respective amounts originally stated therein, notwithstanding the making of the Advance Payment for Lock Gates under the Contract.



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

ZURICH AMERICAN INSURANCE  
COMPANY, as Surety under each of the  
aforementioned 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:

