

Subcontract Agreement

This Subcontract Agreement (hereinafter called "Agreement"), is made effective on **11th of July 2023** (hereinafter called "Effective Date"), by and between

TRISTAR ENGINEERING & CONSTRUCTION L.L.C., Commercial License No. 1036991 issued by Department of Economic Development, Abu Dhabi of P.O. Box: 918 Abu Dhabi, United Arab Emirates. (hereinafter referred to as **Contractor**)

AND

NAFFCO ELECTROMECHANICAL CO.LLC, P.O. Box: 4192, Abu Dhabi, United Arab Emirates. (hereinafter referred to as **Subcontractor**)

for the performance of the work as more fully described herein in exchange for payment as more fully described herein. Both entities may be hereinafter referred to singularly as the "Party" or collectively as the "Parties".

From the table below, the titles in the left column shall be used in this Agreement to refer to the information in the right column

Project Name (hereinafter called the Project)	LOCAL SERVICE CENTER AT AL RAHBA
Employer/Client (hereinafter called Employer or Client)	DEPARTMENT OF URBAN PLANNING AND MUNICIPALITIES
Consultant/Engineer (hereinafter called Engineer or Consultant)	AL AIN CONSULTING ENGINEERS LLC
Authorities	ABU DHABI CIVIL DEFENCE
Agreement Title	Supply & Installation for Pump, Firefighting System, Addressable Fire Alarm System & Self-Contained Monitored Emergency Lighting System as per ADCD requirements.
Agreement Type	Subcontract Agreement [Lump-sum]
Accepted Agreement Value	AED 540,000.00 [VAT Exclusive]
Scope of Works	Refer to Exhibit I ["Schedule of Works and Performance Terms"]
Agreement Documents (hereinafter called SA Documents)	(1) Subcontract Agreement (2) Exhibit I: Schedule of Works and Particular Terms (3) Exhibit II: Schedule of Rates and Payment Terms (4) Exhibit III: General Terms and Conditions (5) Annexure 1: Specimen of Advance Bank Guarantee

All exhibits, attachments, and schedules annexed hereto are expressly made a part of this Agreement as though fully set forth herein.

AGREEMENT AND EXECUTION

IN WITNESS WHEREOF: By their authorized signatures below, the Parties hereto agree to execute and fulfill all obligations imposed on them by this Agreement as of the effective date of this Agreement.

This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

Subcontractor's performance of any portion of the Scope of Supply after executing this Agreement shall be construed to be unconditional acceptance of all the terms and conditions of this Agreement.

Any handwritten modifications made to this typewritten agreement shall be initialed and stamped by both Parties to be valid. Such modifications shall have of no force and effect without such initials.

Contractor	Subcontractor
Represented by:	Represented by:
Naji Al Harthi, Chariman & General Manager	
Signature and Stamp:	Signature:

EXHIBIT I: Schedule of Works and Particular Terms

1- Scope of Works:

- a. The Subcontractor shall carryout the Supply & Installation for Pump, Firefighting System, Addressable Fire Alarm System & Self-Contained Monitored Emergency Lighting System in strict compliance with the Specifications and the relevant local Authorities' latest Specifications and requirements.
- b. Performance of the Works shall be carried out in accordance with best industry practices and manufacturer's recommendations.
- c. Works shall be carried out diligently, efficiently, in a timely manner with reasonable care and skill to be expected of a reputable Subcontractor experienced in the type of works to be carried out under this Agreement;
- d. Perform the works in a safe and secure manner, with active regard to safety and in accordance with all applicable work safety, health, fire and security regulations imposed by law, by the Contractor, Related Parties, or its authorized representative.

2- Exclusions to the Scope of Works:

- a) Fire pump room, fire water tank with accessories, tank filling pipeline, flexible couplings, puddle flanges.
- b) Water circulation pump for fire water tank.
- c) Site stories for material storage; fire stop materials required for closing of openings.
- d) Fire rated enclosure for recessed type of fire hose cabinets.
- e) All Civil works
- f) Pipe sleeves for wall crossings.
- g) Aluminum Scaffolding during execution.
- h) Sprinkler guards.
- i) Special coatings, Corrosion resistant sprinklers.
- j) Design and installation of Seismic bracings is NOT included in our proposal irrespective of its requirements in tender documents, It will be provided as a Separate offer in case it is required in future by contractor/ consultant/ client to be included under NAFFCO Scope of work
- k) PVC/ GI conduits in fire extinguishing systems.
- l) Drop curtains, Motor operated dampers, Door holders and any other shutdowns required for the proposed Gas suppression/foam systems.
- m) Discharge test, Pressure relief/ Room venting system for the proposed Gas suppression/foam systems.
- n) Any extra requirements in future by civil defense due to amendments of current UAE code shall be considered as variation.
- o) Temporary firefighting system for the project during execution.
- p) House of expert fees/civil defense fees.
- q) Any kind of VAT or other taxes levied by government of UAE is excluded in our offer and same shall be paid by Client.

3- Submission and preparation of method statements, and other technical details, as may be applicable or required by Related Parties, are part of Subcontractor obligations under this Agreement, and shall be furnished by Subcontractor at no additional cost whatsoever.

4- Warranty: As per Suppliers/Manufacturer standard warranty. One year from the date of Testing and Commissioning. Warranty covers only limited to changing or replacing defected parts free of charge and does not cover misuse or mishandling of equipment. Warranty does not cover damage to fire pump set due to dry run.

5- Program of Works: The Parties shall abide by the mutually agreed upon time schedule prior to the commencement of the Works. Completion Date of the works will be on 31 December 2023.

6- Special Provisions:

- a. The total cost of this Supply Agreement includes any item requires to comply with Civil Defense requirements.

*****END OF EXHIBIT I*****

EXHIBIT II: Schedule of Rates and Payment Terms

- 1- The Contractor shall pay the Subcontractor for the Works and for the obligations specified herein, as full and complete consideration thereof, in accordance with the rates described in this Exhibit.
- 2- The price set forth herein is not subject to any escalation whatsoever.
- 3- All stipulated rates and prices under this Agreement are **VAT exclusive**.
- 4- **Payment Terms:**
 - 20% Advance payment against Advance Payment Bank Guarantee as per the attached Specimen in Annexure 1
 - 100% Progress Payments for work completed shall be payable within 60 days from the date of invoice receipt by Contractor against approved payment certificate.
 - 10% retention, 5% to be released on the successful Testing & Commissioning and release of documents for CD Inspection request and against 5% Bank Guarantee valid for one year from CD inspection.
- 5- If Contractor suffers any costs, including those under the Main Contract for liquidated damages, or other damages for delays, caused by Subcontractor, then Contractor may recover such costs and damages from Subcontractor in proportion to Subcontractor's responsibility for such delay and damages, provided that the liability of Subcontractor to Contractor for damages shall be limited to a maximum percentage of 10% (ten percent) of the Total Subcontract Amount and deducted at a specified rate as mutually agreed.
- 6- If Subcontractor fails to maintain the required rate of progress or productivity, he shall without prejudice to any other right or remedy available under the law, pay compensation the amount indicated in item 5 above
- 7- **Payment Instructions:**
 - The Subcontractor shall present his original invoices and supporting documents to the Contractor's Head Office in Mussafah, Abu Dhabi to the attention of Mr. Youssef El Khoury, Finance Manager once a month and no later than the 21st day of the month.
 - Subcontractor's tax invoice must be compliant with all regulatory requirements for VAT purposes.
- 8- **Schedule of Rates:** refer to the attached Schedule of Requirements ["Bill of Quantities"]

*****END OF EXHIBIT II*****



BILL OF QUANTITIES

Sn	Material Description	Unit	Qty.	Rate (AED)	Amount (AED)
SUPPLY & INSTALLATION OF FIRE PROTECTION & DETECTION SYSTEM EQUIPMENTS					
1	NAFFCO UAE UL LISTED / FM APPROVED VERTICAL TURBINE FIRE PUMP SET FLOW: 300 GPM @ 6BAR [1E+1D+1J] SERVICE BLOCK	LS	1.00	227,500.00	227,500.00
2	EXTERNAL PIPE SYSTEM - SITE PLAN	LS	1.00	10,868.00	10,868.00
3	SPRINKLER SYSTEM @ RETAIL	LS	1.00	53,024.00	53,024.00
4	SPRINKLER SYSTEM @ RETAIL BUILDING SHOPS	LS	1.00	41,167.00	41,167.00
5	SPRINKLER SYSTEM @ STAFF ACCOMODATION, CARWASH & WORKSHOP , SERVICE BLOCK	LS	1.00	53,138.00	53,138.00
6	FIRE FIGHTING SYSTEM - RETAIL	LS	1.00	23,759.00	23,759.00
7	FIRE FIGHTING SYSTEM - RETAIL BUILDING SHOPS	LS	1.00	30,795.00	30,795.00
8	FIRE FIGHTING SYSTEM - STAFF ACCOMODATION, CARWASH & WORKSHOP, SERVICE BLOCK	LS	1.00	25,665.00	25,665.00
9	INERT GAS FIRE SUPPRESSION SYSTEM - CONVENTIONAL LV ROOM @ SUBSTATION - Volume: 95.4 m3	LS	1.00	41,670.00	41,670.00
10	INERT GAS FIRE SUPPRESSION SYSTEM - CONVENTIONAL HV ROOM @ SUBSTATION - Volume: 49.4 m3	LS	1.00	33,324.00	33,324.00
11	HIGH VELOCITY WATER SPRAY SYSTEM - TRANSFORMER ROOM @ SUBSTATION	LS	1.00	29,858.00	29,858.00
12	ADDRESSABLE FIRE ALARM SYSTEM - (AS PER REQUIREMENTS)	LS	1.00	93,930.00	93,930.00
13	SELF-CONTAINED MONITORED EMERGENCY LIGHTING SYSTEM - AS PER REQUIREMENTS	LS	1.00	45,320.00	45,320.00
14	SPRINKLER SYSTEM ABOVE FALSE CEILING SPRINKLER @ RETAIL (OPTIONAL OFFER)	LS	-	4,110.00	Rate Only
15	DISCOUNT				-170,018.00
	TOTAL AMOUNT (AED)				540,000.00
	5% VAT (AED)				27,000.00
	TOTAL NET AMOUNT (AED)				567,000.00

End of BOQ

EXHIBIT III: GENERAL TERMS AND CONDITIONS

1. Definitions

- a. This **Subcontract Agreement** (hereinafter may be referred to as "SA") is made subject to the following terms and conditions, in addition to those stated or referenced on the SA, which may include any drawings, specifications, submittals, method statements, schedules, exhibits, annexures, or other writings incorporated herein (hereinafter may be referred to as "**SA Documents**"), forming an integral part of SA.
- b. "**Article(s)**" means all articles, products, materials, services, works, equipment or manpower described in this SA and, in particular, Exhibit I ["Schedule of Works and Particular Terms"].
- c. "**Related Parties**" means Employer, Consultant, and Authorities having competent authority over the acceptance of Articles.
- d. "**Contractor's Directions**" means all reviews, comments, requirements, instructions, directions or approvals issued by Contractor and Related Parties to Subcontractor for the performance of this Agreement.

2. General Provision

- a. The terms and conditions of the Exhibits referenced in the SA documents delete, amend or add to the clauses in the General Terms and Conditions of the Agreement (Exhibit III).
- b. In the event of an inconsistency, the terms and conditions of the Exhibits referenced in the SA documents shall take precedence over the General Terms and Conditions of the Agreement (Exhibit III) to the extent of that inconsistency.
- c. The Subcontract Agreement is subject and conditional to obtaining the required and necessary approvals on the materials and submittals of the Subcontractor from the related Authority and Parties.

3. Scope of Subcontract Agreement and Obligations

- a. The Subcontractor shall complete the execution and delivery of the Articles, as particularly described in **Exhibit I ["Schedule of Works and Particular Terms"]**, in accordance with and subject to the provisions of the SA Documents.
- b. Any of the following acts constitutes Subcontractor's acceptance of the terms and conditions of this SA:
 - a. Execution of the SA by Subcontractor's representative;
 - b. Subcontractor's initiation of performance under this SA; or
 - c. Subcontractor's acceptance of any payment by Contractor hereunder.
- c. The Subcontractor shall be responsible for identifying / notifying the Contractor in writing of any and all deviations, discrepancies, non-conformities, and/or any other anomalies that are based on Subcontractor knowledge and experience deem the materials being ordered are not compliant with the latest valid requirements and specifications.
- d. Should contradiction, inconsistency, discrepancy, or conflict occur in or between referenced specifications and requirements as inferred by the SA documents, the Subcontractor is deemed to comply with the most stringent requirement.
- e. Subcontractor shall not, without the consent in writing from Contractor, assign or transfer this Agreement or any part thereof to any third party.

4. Modifications and Changes

- a. Contractor may request modifications and changes from Subcontractor, and Subcontractor shall accommodate these modifications and changes. Should these modifications and changes entail any cost implications (positive or negative), Subcontractor shall submit its quotation to Contractor for formal approval in writing prior to supplying the modified or changed material.
- b. Subcontractor shall promptly provide to Contractor documentation relating to such changes in such form and detail as Contractor may direct.
- c. Any modifications and changes sought by either of the parties and agreed to between the parties shall be (i) in writing; (ii) concluded by a duly approved Variation Order to this Agreement; and (iii) shall be governed by the clauses of Section 5 of this Exhibit.

5. Amendments and Variation Orders

- a. Contractor reserves the right, at any time, in relation to the Articles to make a Revision to the SA to correct any errors or to make any changes, as agreed by the Parties, including scope, quantities, delivery schedule, terms and conditions. A Revision shall be made through the issuance of a Variation Order (designated "1", "2" and so on) to signify the chronological order of issue of the respective Variation Orders.
- b. Variation Orders shall be executed in writing accordingly and signed by the Parties' authorized representatives.
- c. Nothing contained in this Section shall relieve or excuse Subcontractor from proceeding without delay in performing the SA as changed.

6. Inspections

- a. Contractor, Related Parties, Contractor's higher tier subcontractors, and Contractor's Third Party Inspectors shall have the right to inspect and test all material and workmanship at all reasonable times and places including, when practicable, during manufacture/fabrication and before shipment/delivery/handover. Subcontractor shall provide all information, facilities, access to work sites and assistance necessary for safe and convenient inspection and test without additional charge.

- b. Contractor's final inspection and acceptance shall be at destination in accordance with Contractor's AND Related Parties' procedures.
- c. Contractor's failure to exercise its right to inspect goods or workmanship shall not relieve Subcontractor of its obligation to furnish all Articles in strict conformance with the SA terms and conditions.

7. Acceptance of Articles

- a. Contractor's acceptance of Articles is conditional and is subject to unconditional approval of Related Parties.
- b. All Articles delivered/rendered to Contractor shall be subject to Contractor's inspection and acceptance. Subcontractor shall be liable to replace/repair any defective Article at its own expense.
- c. Rejected Articles due to non-compliance or rejection by Related Parties shall be entirely the responsibility of Subcontractor, and must be replaced/repaid within a reasonable, but expeditious period of time, from date of their rejection at no additional cost to Contractor.
- d. All rejected Articles shall be held at Subcontractor's risk and expense subject to Subcontractor's prompt advice of disposition. If replacements, additional work or rework on nonconforming Articles is required by Subcontractor to make such Articles acceptable to Contractor, Subcontractor agrees that payment will be delayed until such time as the Articles have been replaced/reworked and accepted.
- e. For Fixed Quantities Agreements, Articles shipped/executed in excess of quantities ordered will be held at Subcontractor's risk and may be returned/rejected at Subcontractor's expense. If Contractor so returns/rejects Articles, Subcontractor's account will be debited for the total amount of any invoice (including shipping expenses and taxes, reinstatement, etc. as applicable) paid thereon.
- f. Payment by Contractor for any Article shall not be deemed acceptance. However, acceptance of any Article shall not relieve Subcontractor from any of its obligations, representations or warranties hereunder or pursuant hereto.

8. Shipping/Delivery/Performance

- a. The Subcontractor shall bear the performance risk until acceptance of the Contractor or his agent at the specified locations of the Works, to which the Articles shall be executed in accordance with the provisions of this Agreement.
- b. Subcontractor shall preserve, package, handle, pack and protect the Articles from loss or damage, in conformance with good commercial practices till the passing of title or handing over the executed portions of the Articles to the Contractor.
- c. Subcontractor shall deliver/performance the Articles in compliance with the requirements of this SA, industry standards, applicable codes, local governments, and Related Parties having competent authority over the performance of this SA.
- d. For Fixed Quantities Agreement, execution of Articles shall be in strict accordance with the schedule set out or referred to in this SA and its provisions, and in the exact quantities ordered except where quantity variances have been agreed upon by the Contractor.
- e. If completion dates cannot be met, Subcontractor shall inform Contractor in writing of Subcontractor's best possible time for Contractor's approval. If the alternate dates do not meet with Contractor's convenience, Contractor shall have the right to cancel this SA without further liability, source elsewhere and hold Subcontractor accountable for all direct damages resulting from Subcontractor's failure to meet the original completion dates.
- f. Any loss or damage to an Article prior to the passing of title shall be for the account and risk of Subcontractor. By loss or damage to an Article after the passing of title shall be at the account and risk of Contractor.
- g. Unless instructed otherwise by Contractor, Subcontractor shall (i) ensure that all subordinate documents bear Contractor's SA number; (ii) enclose delivery notes/inspection forms/clearance forms with each payment certificate; (iii) render separate invoices for each payment certificate (iv) If applicable, make available the bill of lading, certificate of origin and/or insurance certificates upon request.
- h. The Subcontractor shall be liable for any direct costs or penalties, including delay damages, incurred by the Contractor as a result of the Subcontractor's failure to meet the delivery schedule.

9. Warranties and Guarantees

- a. Subcontractor expressly warrants that all Articles furnished under the SA: (i) shall conform to the provisions and requirements of the SA Documents, will be new, unless otherwise stated in the SA, and will be free from defects in material and workmanship as applicable. (ii) shall be merchantable, safe and appropriate for Contractor's purpose. Any works shall be performed in a professional and workmanlike manner in compliance with all applicable industry standards, laws, rules, and regulations without limiting any requirement to comply with higher standards as required under the SA.
- b. Inspection, test, acceptance, or use of, or the payment for, the scope furnished under the SA shall not affect the Subcontractor's obligation under these warranties. Subcontractor shall advise Contractor in the event that any of the particulars of the scope of this SA has experienced any failure in works or is the subject of any safety warning or recall.
- c. Subcontractor's warranties shall run to Contractor, its successors, assigns, customers, and users of products sold by Contractor.
- d. Upon Contractor's request, Subcontractor shall forthwith submit transferable guarantee/warranty letter(s) and documentation for the Articles in compliance with the requirements of the SA.

10. Invoices and Payment

- a. The Parties agree to be bound by the payment terms and conditions stipulated in Exhibit II ["Schedule of Rates and Payment Terms"].

- b. An invoice for Articles, along with evidence of shipment, delivery, inspection, or completion of works duly signed by Contractor's representative, if applicable, shall be submitted to Contractor's Head Office address for each shipment/delivery or performance of works.
- c. Subcontractor reserves the right to invoice for partial shipment/delivery/completion of multiple unit orders.
- d. Subcontractor shall submit invoices to the address indicated in this Agreement.
- e. Payment shall be made in accordance with the stipulated payment terms of this Agreement.
- f. Errors or omissions on invoices or delay in the receipt of invoices shall entitle Contractor to withhold payment without penalty or loss of any discount.
- g. Except as otherwise provided herein, payment for Articles covered by this SA shall be made only (i) upon fulfillment of stipulated delivery terms of goods or after completion of works; (ii) after Contractor's or Related Parties' inspection and acceptance of goods and workmanship; (iii) after receipt of the appropriate and correct invoices; and (iv) as final payment is concerned, after Subcontractor has complied with all of its obligations to Contractor.

11. Breach

- a. Payment for shortages, Articles not conforming to the provisions of this SA, or portions of any invoice in dispute, may be withheld by Contractor until such problem has been resolved.
- b. Any delays in delivery/completion of Articles by Subcontractor is construed as a material breach of this SA and entitles Contractor to cancel this SA, apply penalties, seek compensation or recover damages resulting thereof as Contractor deems necessary from time to time.

12. Dispute Resolution

- a. In the event of any dispute of difference arising out of or in connection to this Agreement or the breach thereof including any question regarding its existence, validity or termination, the Parties shall use their best endeavors to settle such disputes or differences through amicable discussions. To this effect, they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, to reach an amicable and equitable solution satisfactory to both Parties.
- b. If the Parties are unable to reach any amicable solution within a period of thirty (30) days after the commencement of the negotiation, then the disputes or differences shall be referred to and finally resolved by arbitration in accordance with the Rules of Commercial Conciliation & Arbitration Center of the Emirate where the performance of Articles takes place.
- c. The commencement of any arbitration proceedings under this Clause shall in no way affect the continual performance of the obligations of the Parties under this Agreement, except insofar as such obligations relate to the subject matter of such proceedings.

13. Termination

- a. Contractor may, after providing Subcontractor with ten (10) calendar days written notice, and upon Subcontractor's failure to cure such default in that ten (10) day period ("Cure Period"), terminate the SA in whole or in part at any time by notice in writing for (i) breach of any one or more of its terms, (ii) failure to deliver/performance within the time specified by the SA or any written extension, (iii) failure to make progress so as to endanger performance of the SA, or (iv) failure to provide adequate assurance of future performance; provided, however, there shall be no Cure Period for default related to failure to meet the delivery schedule or defaults incapable of cure. In the event of partial termination, Subcontractor is not excused from performance of the non-terminated balance of Articles under the SA.
- b. Contractor may at any time terminate or suspend all or any part of undelivered Articles or quantities on any outstanding SA for convenience. Subcontractor agrees that any termination charges made in consequence shall be limited to costs of materials and labor incurred on Articles canceled prior to knowledge of their cancellations. Subcontractor further agrees to take all steps reasonably possible to mitigate such charges.

14. Disclosure & Confidentiality

- a. Subcontractor, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from Contractor or created by Subcontractor in connection with the performance of this SA shall be the property of Contractor, preserved in strictest confidence by Subcontractor, and shall not be used or disclosed by Subcontractor to third persons, except to the extent that such use or disclosure is necessary for the proper performance of this SA, without express written permission of Contractor.
- b. Upon Contractor's request, Subcontractor shall promptly return to Contractor all confidential information in tangible and/or intangible forms, including drawings, samples, specifications or other documents provided by Contractor or prepared by Subcontractor for Contractor.
- c. Neither Subcontractor nor Contractor shall use the name of the other in any advertising or publicity releases without securing the prior written approval of the other.
- d. The Subcontract Agreement shall be treated as confidential and shall not be disclosed nor used for any reason whatsoever, except by (i) Subcontractor to comply with its obligations under the Subcontract Agreement and by (ii) Contractor in connection with the Project.
"Confidential Information" shall mean any and all information, data (including but not limited to the SA documents), etc. relating to the Subcontract Agreement which are disclosed to the Subcontractor, directly or indirectly, in writing, in drawings, in electronic form or in any other way by the Contractor, including data and information derived therefrom, except such information which the Subcontractor can demonstrate

- 1. were in the possession of the Subcontractor prior to the Contractor's disclosures of the same to it and were not

- acquired from the Contractor, or
 2. are acquired by the Subcontractor from others who have no direct or indirect confidential commitment to the Contractor with respect to same, or
 3. are, at the time of disclosure, or become without the fault or participation of the Subcontractor a part of the public domain by publication or otherwise.
- e. Specific Confidential Information disclosed to the Subcontractor shall not be deemed to come under the above exceptions merely because it is embraced by more general information which is or becomes public knowledge or was in the prior possession of the Subcontractor. Confidential Information shall also include all the terms and conditions of any agreement (in draft or final form) provided to or under discussion with the Subcontractor in relation to the Project.
- In particular, the Subcontractor undertakes and agrees:
1. to receive the Confidential Information in strict confidence, not to disclose them to any third party and to use it only in connection with its activity for the Subcontract Agreement;
 2. to restrict the disclosure of the Confidential Information to those of its employees who have a need to know the same for the Subcontract Agreement and ensures that they are under obligation to be bound by the terms of this clause at least to the same extent as provided herein;
 3. not to disclose to any third party the existence of the Subcontract Agreement or any other agreement between the Contractor and the Subcontractor, unless otherwise previously authorized in writing by the Contractor;
 4. to return to the Contractor all drawings, written descriptions, and other writings or copies and delete any data stored in a computer or electronic retrieval system containing the Confidential Information, upon Contractor's request;
 5. not to apply for patents or to claim patents and/or other industrial property rights for inventions based on or derived from directly and/or indirectly any information or data included in the Confidential Information;
 6. that all the Confidential Information, including any copies or summaries which contain such Confidential Information regardless of the media in which the Confidential Information is contained shall remain the sole and exclusive property of the Contractor.
- e. If any part of Confidential Information is subpoenaed or otherwise required to be disclosed to a third party by order of a court or by any other regulatory order, the Subcontractor shall promptly notify the Contractor in writing and in consultation with the Contractor to seek to obtain suitable protective orders to maintain the confidentiality of Confidential Information provided, however, in the event such protective order or other remedy is not obtained, the Contractor agrees to furnish only that portion of Confidential Information which the Subcontractor is advised by the written opinion of counsel is legally required and to exercise best efforts to obtain assurance that confidential treatment will be afforded to such portion of Confidential Information disclosed.
- f. The provisions of this Clause shall survive indefinitely any expiration or termination of the Agreement.

15. Indemnity

- a. Subcontractor agrees to indemnify, defend, and hold harmless Contractor, Related Parties, and any contractor, agent, or employee of Contractor from and against all claims, suits, demands, losses, damages, actions or liability of any kind, including attorney's fees, arising from the negligence or other breach of duty or violation of this SA by Subcontractor, or those for whom Subcontractor is responsible, in connection with this SA.
- b. Subcontractor is not liable hereunder to the extent any injury or damage is judicially determined to have been proximately caused by the sole negligence of Contractor. However, Subcontractor must obtain adequate insurance to cover such liability under each SA.
- c. Subcontractor shall indemnify Contractor and keep Contractor indemnified against any damage claim made and any action or other proceedings brought against Contractor arising out of or in connection with any liability for the payment of any taxes, excise duty or duties, or other government fees in respect of the Articles or any damage to or loss of the Articles (for whatever reason the same may occur) whilst in the possession or under the control of Subcontractor, prior to delivery/handover.

16. Health, Safety & Environment (HSE)

- a. The Subcontractor shall at all times comply with all HSE requirements of all applicable laws and regulations.
- b. Any personnel, related to the performance of SA, present in Contractor's sites must wear appropriate personal protective equipment (PPE) including safety footwear, high visibility vests, and hard hats (for unloading suspended loads), and comply with Contractor's safety policies and procedures for any portions of the SA where the performance is on Contractor's work sites.
- c. Any personnel carrying out work in performance of this SA on the premises of the Contractor shall observe the applicable safety and environmental protection regulations. Any liability for accidents that happen to these persons on the Contractor's premises shall be excluded, unless these have been caused by intentional wrongdoing or gross negligence on the part of the legal representatives or vicarious agents of the Contractor.

17. Independent Contractor

- a. It is expressly agreed that the Subcontractor is acting as an independent contractor and not as an employee in performing the Articles under this Agreement.
- b. The Contractor and the Subcontractor acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for work.

18. Force Majeure

- a. No Party shall be considered in default in the performance of the obligations herewith where such performance is delayed, prevented or hindered as a result of absolute necessity, that is, any event that is beyond the Parties' control, that the Parties could not foresee or prevent and that rendered the performance of the obligation herewith absolutely impossible.

19. Severability

- a. If any court or legal authority finds that any portion of this Agreement is unenforceable, then only that portion shall be excluded from this Agreement and the remaining balance of the Agreement shall remain intact.

20. Governing Law and Jurisdiction

- a. This Agreement shall be governed by the laws of the United Arab Emirates as interpreted by the civil courts in the Emirate where the jurisdiction in which any action or special proceeding may be instituted.

END OF EXHIBIT III

DRAFT

Annexure 1: Advance Payment Bank Guarantee Specimen

Tristar Engineering & Construction LLC
PO Box 918,
Abu Dhabi, United Arab Emirates.

Date: <insert date>
Subject: Advance Payment Guarantee
No: <insert reference number of Bank Guarantee>
Applicant: <insert Company Name>
Amount: <insert amount in words> **U.A.E. Dirhams - [AED <insert amount in figures>]**

Dear Sirs,

WHEREAS, TRISTAR ENGINEERING & CONSTRUCTION LLC ("**Contractor**") has issued Letter of Acceptance and Notice to Commence letter Ref.<insert reference> dated <insert date> for <insert title of subcontract> as further described in the Sub-Contract Documents (the "**Sub-Contract**") to our client, <insert sub-contractor name> **P.O. Box: <insert P.O.Box number>, Abu Dhabi, United Arab Emirates ("Sub-Contractor")**; and

In consideration of the above, we the <insert name of bank> hereby irrevocably and unconditionally guarantee to pay immediately your first written demand, on one or more occasions and notwithstanding any objection made by the **Subcontractor**, any amount up to and not exceeding (when aggregated with such amounts previously so paid) UAE Dirham <insert amount in figures> [UAE Dirhams <insert amount in words>] upon receipt of your written statement that in your sole opinion the **Subcontractor** failed to fulfil his obligations under the Subcontract at the time and in the manner foreseen therein.

This Guarantee become operative and in force automatically and without recourse to <insert sub-contractor name> when the relative fund are credited to <insert sub-contractor name> account No. <insert sub-contractor's account number> with us.

Claim under this Guarantee should be presented to us in writing during the validity period of this Guarantee. The amount of this Guarantee will diminish by payments, if any, effected by us. This Guarantee shall remain valid until the full recovery of the Advance Payment Amount made to the **Subcontractor** by the **Contractor** and upon such recovery, the original Guarantee should be returned to us. Such release shall be without prejudice to any liability under this Guarantee which arose prior to such date.

Any payment by us hereunder shall be immediately available and freely transferable in United Arab Emirates Dirhams free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, fees, set off, counterclaims, deductions or withholdings of any nature.

Our obligations hereunder constitute direct primary, irrevocable and unconditional, shall not require any previous notice to or claim against the **Subcontractor** or any other person and shall not be discharged or otherwise prejudiced or adversely affected by:

- Any time, indulgence, waiver, concession or forbearance which you may grant to the **Subcontractor** or any negligence by you in enforcing any right of action or remedy you may have against the **Subcontractor** under the Subcontract.
- Any amendment, modification or extension which may be made to the **Contractor** or the works performed thereunder or any suspension of such works;
- Any intermediate payment or other satisfaction made by us;
- Any change in the constitution or organization of the **Subcontractor**;
- Any termination of the Subcontract or of the employment of the **Subcontractor**;
- Any other bond, security or guarantee held or obtained by you for any of the obligations of the **Subcontractor** under the Subcontract or any release waiver thereof;
- Any act or omission of the **Subcontractor** pursuant to any other arrangement with ourselves; or
- Any other matter or thing which in the absence of this provision would or might have effect except a discharge or amendment hereof expressly made or agreed to by you in writing.

This Guarantee shall be governed and construed in accordance with the federal laws of the United Arab Emirates and the laws and regulations in force in the Emirates of Abu Dhabi.

Yours faithfully,

.....
Authorized Signature
Name:
Title:

Stamp of Bank