

**GENERAL TERMS AND CONDITIONS**

**FOR**

**CONSTRUCTION SUBCONTRACTS**

**PACKAGE 1 (PROCESS UNITS) OF THE  
DUQM REFINERY PROJECT IN THE  
SULTANATE OF OMAN**

## **INDEX**

1.	PREAMBLE.....
2.	DEFINITIONS.....
3.	OBJECT OF THE SUBCONTRACT.....
4.	APPLICABLE TERMS AND CONDITIONS.....
5.	LANGUAGES.....
6.	EFFECTIVE DATE.....
7.	SUBCONTRACTOR GENERAL OBLIGATIONS.....
8.	SUBCONTRACTOR PERSONNEL.....
9.	SUBCONTRACTOR WORK SITE RESPONSIBILITY.....
10.	LOCAL CONDITIONS.....
11.	SCHEDULING.....
12.	WORK COMMENCEMENT, PROSECUTION AND COMPLETION.....
13.	ACCEPTANCE OF THE WORK.....
14.	SUBCONTRACT PERFORMANCE BOND.....
15.	CHANGES.....
16.	MATERIALS, EQUIPMENT AND DOCUMENTS.....
17.	TITLE TO DESIGNS AND PATENTS.....
18.	SUBCONTRACTS.....
19.	TAXES AND ASSESSMENTS.....
20.	PERMITS, AUTHORIZATIONS AND LICENSES.....
21.	SAFETY, HEALTH AND ENVIRONMENTAL IMPACT.....
22.	INSURANCE.....
23.	TRANSFER OF TITLE .....
24.	RISK OF LOSS.....
25.	SUBCONTRACT PRICE AND PAYMENTS.....
26.	CONFLICT OF INTEREST.....
27.	OPERATING CONDITIONS AT THE WORK SITE.....
28.	GENERAL PROVISIONS.....
29.	SUSPENSION AND TERMINATION.....
30.	FORCE MAJEURE.....
31.	APPLICABLE LAW AND ARBITRATION.....
32.	DEED OF INDEMNITY.....

## **1. PREAMBLE.**

Whereas OWNER has awarded a contract to CONTRACTOR to carry out the engineering, procurement, construction, testing, commissioning, performance testing and completion of the Contract Package 1 (Process Units) of the Duqm Refinery Project in the Sultanate of Oman (hereinafter the Project).

Whereas CONTRACTOR wishes to subcontract certain works and services under the MAIN CONTRACT relating to (Scope of WORKS..... *(to be defined)*).

Whereas..... (SUBCONTRACTOR) desires to perform such works and services under the terms and conditions hereinafter set forth.

NOW THEREFORE,

IN CONSIDERATION FOR THE MUTUAL PROMISES AND COVENANTS  
HEREINAFTER SET FORTH THE PARTIES AGREE AS FOLLOWS:

## **2. DEFINITIONS.**

In this SUBCONTRACT, the following terms and expressions shall have the meaning herebelow indicated, unless the context otherwise requires or unless a different meaning is inferred from the specific provisions of this SUBCONTRACT.

- 2.1. **AFFILIATE** means in respect of a body corporate, a body corporate which its subsidiary or holding company, or a company which is a subsidiary of that holding company, and each such company.
- 2.2. **CONTRACTOR** means the TECNICAS REUNIDAS DAEWOO LLC.
- 2.3. **CONFIDENTIAL INFORMATION** means any information or data of a scientific, technical and/or commercial nature (whether oral, written, electronic or otherwise and whether or not protectable by copyright) conveyed or communicated directly by CONTRACTOR or through any of its AFFILIATES to the SUBCONTRACTOR related to the SUBCONTRACT.
- 2.4. **CONSTRUCTION EQUIPMENT** means all the equipment, machinery, vehicles, complements, tools, consumables and other materials and elements to be supplied by the SUBCONTRACTOR, which are required in or for the construction and completion of the WORK, with the exclusion of materials or other elements intended to form part of the FACILITIES.

- 2.5. **DAY** means calendar day unless otherwise stated.
- 2.6. **DRAWINGS** means:
- 2.6.1. Drawings submitted by CONTRACTOR during the progress of the WORK.
- 2.6.2. Engineering data and drawings submitted by SUBCONTRACTOR during the progress of the WORK provided such drawings are approved by CONTRACTOR.
- Any modifications to the above documents approved by CONTRACTOR.
- 2.7. **EXISTING FACILITIES** means the plant, equipment, installations and other facilities at, near or adjacent to the SITE and owned or operated by OWNER or its AFFILIATES (whether existing or under construction and development).
- 2.8. **FACILITIES** mean the structures or items being constructed by SUBCONTRACTOR pursuant to this SUBCONTRACT.
- 2.9. **FINAL ACCEPTANCE** means the moment at which CONTRACTOR issues to SUBCONTRACTOR the Final Acceptance Certificate signifying the full discharge and compliance of SUBCONTRACTOR with the obligations assumed under the SUBCONTRACT.
- 2.10. **GOOD INDUSTRY PRACTICE** means that degree of skill, care, diligence, prudence, efficiency and foresight which would reasonably be expected to be observed by a world class subcontractor appropriately skilled and experienced acting with due and professional care engaged in carrying out activities the same as or similar to those of the WORKS under the same or similar circumstances for the lawful, safe, reliable and efficient delivery of the WORKS.
- 2.11. **LAWS** means treaties, statutes, statutory instructions, laws, by-laws, decrees, ordinances, directives, regulations, rules, circulars, judgments, injunctions, decisions, orders and the like of any national, regional or local government or agency having jurisdiction with regard to the WORK or any part thereof or with whose systems the same are or will be connected and any other applicable rules having the force of law.
- 2.12. **MAIN CONTRACT** means the contract entered into by and between OWNER and CONTRACTOR for the execution of the Project.
- 2.13. **MAIN CONTRACT INITIAL ACCEPTANCE CERTIFICATE** means the certificate issued by OWNER to CONTRACTOR pursuant to MAIN CONTRACT and which shall state that the CONTRACTOR has achieved

Initial acceptance in accordance with the requirements of the MAIN CONTRACT.

- 2.14. **MATERIALS** means all equipment, machinery, materials and other elements incorporated or to be incorporated finally in the FACILITIES to be supplied by the SUBCONTRACTOR.
- 2.15. **PROVISIONAL ACCEPTANCE** means the moment at which the CONTRACTOR issues to SUBCONTRACTOR SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE confirming the Provisional Acceptance of the WORKS.
- 2.16. **OWNER** means DUQM REFINERY AND PETROCHEMICAL INDUSTRIES COMPANY LLC, and any of their authorized representatives or designees.
- 2.17. **PARTIES** mean both CONTRACTOR and SUBCONTRACTOR.
- 2.18. **PARTY** means CONTRACTOR or SUBCONTRACTOR, as the context requires.
- 2.19. **PERMIT** means any permit, license, approval, consent or other governmental authorization.
- 2.20. **PLANT** means all Plant Units, offsite and utilities facilities to be designed, provided and constructed by the CONTRACTOR
- 2.21. **SPECIFICATIONS** means the technical specifications and design criteria in the SUBCONTRACT, the engineering design specifications and design criteria or any modification thereof, or addition thereto as may be developed for the WORK and approved by the CONTRACTOR pursuant to the SUBCONTRACT.
- 2.22. **SUBCONTRACTOR** means the Company to whom the SUBCONTRACT is awarded by the CONTRACTOR.
- 2.23. **SUBCONTRACT** means the agreement and all Schedules and Appendices attached thereto that establish the relationship between CONTRACTOR and SUBCONTRACTOR for the performance of the WORK and which comprise the following documents:
  - 2.23.1. Order or Purchase Order;
  - 2.23.2. Requisition with its attachments (DRAWINGS, specifications, etc.) comprising: Requisition I (Particular Conditions), and Requisition II. (Work Units, Measurements and Applicable Prices).

2.23.3. These Terms and Conditions.

In case of any discrepancy which could arise among the above SUBCONTRACT documents the order of precedence shall be as listed above. For any discrepancy which could arise among the documents incorporated in the Requisition (as defined above), the CONTRACTOR decision will be final.

2.24. **SUBCONTRACT PRICE** means either:

- 2.24.1. Lump Sum. The total lump sum price of this SUBCONTRACT to be paid by CONTRACTOR in consideration for the WORK as identified in Requisition II and in accordance with the provisions of this SUBCONTRACT, and/or
  - 2.24.2. Unit prices. The price to be paid by CONTRACTOR to SUBCONTRACTOR in consideration for the WORK, resulting from applying unit prices identified in Requisition II to the number of WORK units performed by SUBCONTRACTOR for completion of the WORK as stated in the Purchase Order or in the Requisitions.
- 2.25. **SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE** means the certificate issued by CONTRACTOR which shall state that the WORK fully complies with the SUBCONTRACT requirements and the tests if applicable have been successfully completed to the CONTRACTOR's satisfaction.
- 2.26. **SUBCONTRACTOR REPRESENTATIVE**, means the person appointed by the SUBCONTRACTOR as his representative for the duration of the WORK, who organizes the performance of the WORK and interprets and executes the orders received from the CONTRACTOR.
- 2.27. **TEMPORARY FACILITIES** means all the work of any type that, with a provisional character are required for performance of the WORK.
- 2.28. **TIME (S) FOR COMPLETION** means the overall or partial periods of time within which the WORK is to be completed in accordance with the provisions of the SUBCONTRACT, as specified in Requisition I or such extended time as may be allowed by the CONTRACTOR.
- 2.29. **WARRANTY PERIOD** means the period starting from the date of PROVISIONAL ACCEPTANCE and expiring after twelve (12) consecutive months from the date of the MAIN CONTRACT INITIAL ACCEPTANCE CERTIFICATE as such period may be extended in accordance with SUBCONTRACT. During the WARRANTY PERIOD, SUBCONTRACTOR shall be responsible for carrying out any remedial works or repairs as required under Clause 13.3.

- 2.30. **WORK** means all the work and services required to be performed by SUBCONTRACTOR under the SUBCONTRACT, with the scope specified in the document "Requisition" including the supply of services, direct and indirect labor, organization, MATERIALS, CONSTRUCTION EQUIPMENT, TEMPORARY FACILITIES, etc., whether expressly identified or reasonably implied, necessary for achieving the SUBCONTRACT object.
- 2.31. **WORK SITE, SITE** means the place where the construction WORK is performed.
- 2.32. **WORK COMPLETION** shall be achieved when the WORK has been fully completed or corrected by SUBCONTRACTOR.

### **3. OBJECT OF THE SUBCONTRACT.**

The object of the SUBCONTRACT is the performance by SUBCONTRACTOR of all the works, services and activities set forth in the SUBCONTRACT and the SUBCONTRACT documents, in accordance with the terms and conditions herein contained.

In particular, such works and services shall include but not be limited to:

The construction and guarantee of the WORK including the supply of all MATERIALS, labour, CONSTRUCTION EQUIPMENT, TEMPORARY FACILITIES, and whatever is needed, either temporarily or permanently, in and for such construction until its completion and FINAL ACCEPTANCE.

The WORK shall include all works and services as specified in or as may reasonably be inferred from the SUBCONTRACT, as well as from regulations of the OWNER or other applicable LAWS or regulations in force or subsequent revisions thereto.

Any other work which is not specifically mentioned in the SUBCONTRACT including DRAWINGS and SPECIFICATIONS, but in accordance with good engineering and construction practices may be inferred therefrom or from regulations of the OWNER as made known to the SUBCONTRACTOR or other applicable Law or regulations in force or subsequent revisions thereto is also included in the WORK.

### **4. APPLICABLE TERMS AND CONDITIONS.**

The relationship between the CONTRACTOR and the SUBCONTRACTOR will be governed by the terms and conditions set forth in the SUBCONTRACT.

The terms and conditions of the MAIN CONTRACT shall further apply *mutatis mutandis* to this SUBCONTRACT in respect of the SUBCONTRACTOR's scope of

work as defined in clause 3 above, to the extent necessary to allow the CONTRACTOR to fulfil and comply with any and all obligations assumed under the MAIN CONTRACT and the SUBCONTRACTOR shall be deemed to have full knowledge of the provisions of the MAIN CONTRACT.

Save where the provisions of the SUBCONTRACT require, the SUBCONTRACTOR shall so execute, complete and maintain the WORK such that no act or omission of his in relation thereto shall constitute, cause or contribute to any breach by the CONTRACTOR of any of its obligations under the MAIN CONTRACT and the SUBCONTRACTOR shall, save as aforesaid, assume and perform hereunder all the obligations and liabilities of the CONTRACTOR under the MAIN CONTRACT in relation to the WORK.

The SUBCONTRACTOR shall, therefore, under his contractual obligations be deemed to have himself concluded the MAIN CONTRACT with the OWNER as far as it is relevant and applies to the SUBCONTRACT WORKS.

In the event that the provisions of the MAIN CONTRACT are contradictory to or inconsistent with these General Terms and Conditions or the Technical Requisition, then the provisions of the General Terms and Conditions or the Technical Requisition will prevail.

The SUBCONTRACTOR hereby acknowledges that any breach by it of the SUBCONTRACT may result in the CONTRACTOR's committing breaches of and becoming liable in damages under the MAIN CONTRACT and other contracts made by it in connection therewith and all such damages loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by the SUBCONTRACTOR.

The SUBCONTRACTOR will enforce, comply and observe, and will cause his subcontractors to enforce, observe and comply with all the applicable statutes, ordinances, Laws, regulations, codes, standards and provisions of any governmental or other authority having jurisdiction in connection with the WORK.

## **5. LANGUAGES.**

All SUBCONTRACT documents and all correspondence and communications to be given and all other documentation to be prepared and furnished under the SUBCONTRACT shall be in English and the SUBCONTRACT shall be construed and interpreted in accordance with the said language.

If any of the SUBCONTRACT documents are prepared in any language other than the governing language the governing language shall prevail unless otherwise specified herein.

## **6. EFFECTIVE DATE.**

The SUBCONTRACT shall enter into full force and effect on the date of signature of the SUBCONTRACT and SUBCONTRACT documents by the authorized representatives of the CONTRACTOR and the SUBCONTRACTOR.

## **7. SUBCONTRACTOR GENERAL OBLIGATIONS.**

The SUBCONTRACTOR undertakes to supply and render all services and MATERIALS required for the performance and completion of the WORK included in the scope of the SUBCONTRACT. Any costs related thereto are included in the SUBCONTRACT PRICE. The obligation of the SUBCONTRACTOR shall include but are not limited to:

- a) In case of a conflict within the SPECIFICATIONS or standards or within the DRAWINGS, the SUBCONTRACTOR shall comply with CONTRACTOR's determination without additional compensation.
- b) **Construct and conduct final testing, inspection , checkout, pre-comissioning, commissioning and all other activities to achieve the PROVISIONAL ACCEPTANCE for the WOKRS.**
- c) Provide and transport the CONSTRUCTION EQUIPMENT, MATERIALS and spare parts.
- d) Perform quality management and inspection activities in design, engineering and construction in accordance with the MAIN CONTRACT.
- e) Provide all of the labour and supervision required to perform the WORK.
- f) Hire, select, maintain and keep at the WORK SITE all the personnel required for complying with any commitments resulting from the SUBCONTRACT, as well as assuming responsibility of any type related to organization of the work and discipline, safety measures and health at work, personnel classification, payment of salaries, of social charges and lawful bonuses of all his personnel and the determination and payment of any incentives and bonuses for work that the SUBCONTRACTOR considers necessary in order to achieve the TIME (S) FOR COMPLETION and the proper performance of the WORK.
- g) Obtain, when appropriate, renew all Permits, licenses and other governmental authorizations, which are necessary or useful for the performance of the WORK unless such licences, Permits and authorizations are expressly stated in the SUBCONTRACT as being a responsibility of the OWNER or the CONTRACTOR. For the avoidance of doubt, the SUBCONTRACTOR shall

perform the WORK and its obligations under the ORDER in compliance with all applicable Laws and all Permits in force from time to time, and the SUBCONTRACTOR shall give all notices and furnish any bonds, deposits and securities required by official authorities to permit the performance of the WORK. The WORK shall indemnify the CONTRACTOR from all fines and liquidated damages resulting from SUBCONTRACTOR's failure to comply with all applicable Laws and all Permits.

- h) Provide proper security at the WORK SITE and for the CONSTRUCTION EQUIPMENT, MATERIALS and installations under the SUBCONTRACTOR'S responsibility, custody and yard acceptable to the CONTRACTOR and the OWNER.
- i) Provide "as built" DRAWINGS and project record books, all in the English language, to facilitate operation and maintenance of the FACILITIES.
- j) Participate in regular WORK progress meetings to be scheduled by the CONTRACTOR.
- k) Appoint one or more SUBCONTRACTOR REPRESENTATIVES for the duration of the WORK, acceptable to CONTRACTOR and whose identity shall be confirmed in writing to CONTRACTOR. At least one or more SUBCONTRACTOR REPRESENTATIVE shall be fully knowledgeable in all aspects of the SUBCONTRACT and the WORK, shall have full charge of all operations of CONTRACTOR in respect of the WORK and full authority to represent SUBCONTRACTOR in all matters related to the performance of the SUBCONTRACT and SUBCONTRACTOR REPRESENTATIVE'S instructions, requests and decisions shall be binding on SUBCONTRACTOR as to all matters pertaining to this SUBCONTRACT. The SUBCONTRACTOR REPRESENTATIVE, shall have full authority (unless otherwise specified by notice to CONTRACTOR) to receive and provide communications under this SUBCONTRACT and all such communications shall be binding on SUBCONTRACTOR. The SUBCONTRACTOR REPRESENTATIVE shall be able to speak, read and write English and able to read and interpret DRAWINGS and specifications. The SUBCONTRACTOR REPRESENTATIVE shall be present at the principal location(s) where the WORK is being performed. CONTRACTOR may consult with SUBCONTRACTOR REPRESENTATIVE at all reasonable times.
- l) Perform all other obligations, work and services and furnish all other things which are required by the terms of this SUBCONTRACT or/and the MAIN CONTRACT or which can be inferred from the terms of this SUBCONTRACT or/and the MAIN CONTRACT as being necessary for the successful and timely completion of the WORK.

- m) Ensure that it does not cause or contribute to a breach of any or all of the engineering agreements, guarantee agreements and technology license agreements, without prejudice to the generality of the foregoing, ensure that the FACILITIES comply with the same.
- n) Supply of machinery and auxiliary installations necessary for the performance of the WORK, as well as the tools and auxiliary means.
- o) The erection, dismantling, maintenance, repair, fuel and remaining operating expenses, of the machinery previously mentioned, as well as those for construction of auxiliary installations.
- p) The construction of warehouses, shops, offices and installations for his own organization, with the necessary personnel for their operation, and the respective drainage networks.
- q) The conservation of any roads, highways and public areas, used by the SUBCONTRACTOR, and cleaning of the place where the WORK is being performed, removing all the litter and garbage from the WORK SITE, as well as tools, scaffolding and surplus materials. The degree and frequency of cleaning will be determined by CONTRACTOR.
- r) SUBCONTRACTOR shall be responsible for obtaining all necessary approvals from relevant Law for transportation of all MATERIALS, and CONSTRUCTION EQUIPMENT, machinery and/or pre-constructed units to and from the SITE. SUBCONTRACTOR shall conduct its operations, and ensure that those of its SUBCONTRACTORS are so conducted, as not to damage, or without prior permission of the owners thereof or from all authorities lawfully empowered to grant same, close or obstruct any utility, installation, highway, bridge, roads, cables, pipelines or other property. If such facilities must be closed, obstructed, damaged or rendered unsafe by SUBCONTRACTOR'S operations, SUBCONTRACTOR shall immediately, at its expense, make such repairs, and provide such temporary guards, lights and other signals as are appropriate for safety.
- s) SUBCONTRACTOR shall defend, protect, indemnify and hold harmless CONTRACTOR and/or OWNER from and against any and all costs, expenses, liabilities and/or losses, claims, suits and/or proceedings of any kind resulting from or arising out of any use and/or damage to utility installations, highways, bridges, roads, cables, pipelines or any other properties which may be caused by the transport of the MATERIALS, CONSTRUCTION EQUIPMENT, machinery and/ or pre-constructed units to or from the SITE.
- t) Should it be necessary for SUBCONTRACTOR to move one or more loads of MATERIALS, CONSTRUCTION EQUIPMENT, machinery or pre-constructed units or parts of units of WORK over or near part of a highway or bridge, where

the moving thereof is likely to damage such highway or bridge unless special protection or strengthening is carried out, then SUBCONTRACTOR shall before moving the load give sufficient advance notice to CONTRACTOR and to concerned authorities of weight and other particulars of the load to be moved and SUBCONTRACTOR'S proposal for protection or strengthening the said highway or bridge including design data for the loading distribution on the structure, calculations and DRAWINGS for the temporary supports to be provided for such cases. Following approval by the concerned authorities of the said proposals, SUBCONTRACTOR shall implement the proposals at its own cost and expense and shall not be entitled to any time or other relief.

- u) SUBCONTRACTOR, subject to prior notification and approval, may use existing roads on SITE, to the extent necessary for the WORK and shall restrict its vehicular and equipment traffic to such roads as may be necessary for the proper performance of the WORK. SUBCONTRACTOR shall ensure that no obstruction will occur when using existing roads. SUBCONTRACTOR shall submit a layout of all proposed access requirements additional to existing roads on the SITE. The layout shall show widths of any proposed roads, direction of traffic, curves, grades and related information in sufficient detail for review by CONTRACTOR. Roads constructed on OWNER'S land or rights of way shall be subject to prior approval and at SUBCONTRACTOR'S own cost and expense.
- v) SUBCONTRACTOR shall submit a layout of all proposed access requirements additional to existing roads on the SITE. The layout shall show widths of any proposed roads, direction of traffic, curves, grades and related information in sufficient detail for review by CONTRACTOR. Proposed roads on CONTRACTOR'S land or right of way shall require prior approval of CONTRACTOR and shall be at SUBCONTRACTOR'S expense.
- w) Unless otherwise specifically provided for in the SUBCONTRACT, SUBCONTRACTOR shall not disrupt or otherwise interfere with the operations of any pipeline, telephone, electric transmission line, ditch or other structure, nor enter upon lands in their natural state, without all necessary prior third party and CONTRACTOR approvals. Following receipt of such approvals and before beginning such work, SUBCONTRACTOR shall promptly give due notice to CONTRACTOR of its intention to start such work.
- x) SUBCONTRACTOR shall not be entitled to any extension of time or any extra compensation on account of any postponement, interference or delay caused by any such line, ditch or structure being on or adjacent to the SITE.

Temporary connection or replacement shall be carried out at CSUBCONTRACTOR'S expense after obtaining CONTRACTOR'S, or applicable authority's approval.

- y) SUBCONTRACTOR shall protect any reference points, triangulation points, bench marks and other surveyors boundary marks which shall not be removed from their positions without permission, nor shall work be carried out so near to them that risk of disturbance may arise. CONTRACTOR instructions must be followed by the SUBCONTRACTOR and the replacing of disturbed or temporarily removed points or marks must be effected without delay and at SUBCONTRACTOR cost and expense.
  - z) The design, installation and maintenance of the power supply and water installations to the areas where the WORK is performed, as well as other auxiliary installations which may be necessary for the performance of the WORK, from the connecting points shown by the CONTRACTOR and with the routing and conditions of installation approved by the CONTRACTOR. Such installations must comply with the codes and regulations in force and their DRAWINGS must clearly show the overhead and underground parts, the connection elements and the installation performed at the WORK SITE must be perfectly identified, with signals and legalized as required.
- aa) The demolition and reconstruction, at his expense, of the defective WORK parts and of any unit or element not complying with the SUBCONTRACT documents.
  - bb) Underwriting insurance policies in the manner established in the SUBCONTRACT.
  - cc) Any required topographic work.
  - dd) Payment of all taxes, charges and assessments for which SUBCONTRACTOR is responsible in accordance with the SUBCONTRACT.
  - ee) Custody, conservation and maintenance of the WORK, including all equipment and materials which the CONTRACTOR has delivered to the SUBCONTRACTOR, as well as those that he has supplied, including during any period of FORCE MAJEURE.
  - ff) At CONTRACTOR's request, submit a notification to the CONTRACTOR containing the following information: i) If the SUBCONTRACTOR is a sole proprietorship or partnership, the name (s) and address (es) of the proprietor or all members of the partnership, as the case may be; ii) If the SUBCONTRACTOR is a corporation, the place of its incorporation or formation and its corporate headquarters; iii) the name and address of the SUBCONTRACTOR's principal bank and a copy of the

SUBCONTRACTOR's latest audited financial statement and iv) evidence acceptable to the CONTRACTOR and the OWNER of the SUBCONTRACTOR's technical qualifications to perform the WORK.

gg) Protection of the EXISTING FACILITIES

SUBCONTRACTOR shall from the effective date up to the issuance of the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE protect the EXISTING FACILITIES and production therefrom from any disturbances of whatever kind originating from SUBCONTRACTOR'S activities.

SUBCONTRACTOR shall by suitable temporary installation and selection of work methods, minimise the probability for disturbances.

CONTRACTOR may inform SUBCONTRACTOR where special precautions are needed to be made like exploratory excavation. The cost and expense for such activities shall be borne by SUBCONTRACTOR and shall not relieve the SUBCONTRACTOR from any of its obligations and responsibilities under the SUBCONTRACT.

Throughout the whole period of the exposure of existing services (including electrical power, control cables, telephone lines), SUBCONTRACTOR shall protect the utility services and shall ensure that, on and after backfilling or building in, the said services are adequately supported with concrete blocks or other satisfactory means so that no damage will be caused to them on or after such backfilling or building-in.

Any foundations of existing buildings or roads in or alongside the excavations shall be supported by suitable braces, props or other means throughout SUBCONTRACTOR'S operations and before backfilling, shall be permanently braced in such a manner that they will not be affected by the settlement of backfill.

- hh) SUBCONTRACTOR shall take all necessary precautions to avoid causing damage to services, including service lines such as cables, pipelines and the like buried or otherwise and shall be liable to the owners of such utility service for any damage thereto and shall be liable to the owners of such utility services for any damage thereto and shall defend, protect, indemnify and hold harmless CONTRACTOR and/or OWNER from and against any and all costs, expenses, liabilities and/or losses, claims, suits and/or proceedings of any kind arising out of or for any damage to such utility services arising out of or in relation with the performance of WORK by SUBCONTRACTOR, its employees, agents or its SUBCONTRACTORS or their employees or agents.
- ii) SUBCONTRACTOR shall repair or replace all such damaged part(s) as directed by CONTRACTOR at the earliest possible time, at its own cost and

expense, otherwise CONTRACTOR shall have the right to carry out same and the cost and expense shall be borne by SUBCONTRACTOR.

- jj) CONTRACTOR may inform SUBCONTRACTOR of those areas where exploratory excavation may be necessary for verifying the location of suspected existing utility services. The provision of this information by CONTRACTOR or absence thereof shall not relieve SUBCONTRACTOR of its obligations under the SUBCONTRACT.

Should any dispute arise between the CONTRACTOR and the SUBCONTRACTOR during the SUBCONTRACTOR'S performance of the SUBCONTRACT, the SUBCONTRACTOR shall, unless the CONTRACTOR directs otherwise, continue to perform the SUBCONTRACT and any additional work which the CONTRACTOR may direct the SUBCONTRACTOR to perform. Any violation of this provision shall constitute a substantial breach of the SUBCONTRACT which, without prejudice to the CONTRACTOR'S right to enforce any other remedy provided by law, shall give rise to the application of the same liquidated damages defined in the SUBCONTRACT for the failure to comply with the overall TIME FOR COMPLETION.

- kk) SUBCONTRACTOR shall at its own cost and expense perform the WORK (and shall ensure that its SUBCONTRACTORS do the same) so as not to introduce or discharge into the ground, sea, any surface or sub-surface water bearing strata or reservoirs or other body of water, of any substances or materials which may pollute the environment or be deleterious to life.
- ll) SUBCONTRACTOR shall perform the WORK (and shall ensure that its SUBCONTRACTORS do the same) so as not to introduce or discharge into the atmosphere, from any source whatsoever, smoke, dust, or other pollutant or contaminant in violation of Health safety and environmental regulations or any Law.
- mm) SUBCONTRACTOR shall protect, defend, indemnify and hold harmless CONTRACTOR and/or OWNER from and against any and all costs, expenses (including legal costs), liabilities, damages and/or losses, claims, suits and/or proceedings of any kind arising from pollution or a breach of provisions above and resultant penalties pursuant to the Law and in respect of any clean-up and/or remedial costs and expenses wheresoever incurred as a result of the performance of the WORK.
- nn) SUBCONTRACTOR shall not enter into negotiations with any governmental authority or agency to develop variances or revisions to LAW without CONTRACTOR'S prior approval. SUBCONTRACTOR shall cause its subcontractors to comply with this requirement.

- oo) SUBCONTRACTOR and its subcontractors', vendors', agents' and consultants' employees working at WORK SITE must stay within prescribed boundaries on the way to and from the WORK SITE and must comply with all of CONTRACTOR and/or OWNER's regulations and requirements.
- pp) If the SUBCONTRACTOR is an Omani registered companies it shall be registered with the JSRS web based database as produced and managed by Business Gateways International ([www.businessgateways.com](http://www.businessgateways.com)) "Joint Supply Registration System" on or before one month after the EFFECTIVE DATE.
- qq) Subject to Clause rr, the SUBCONTRACTOR shall use reasonable endeavours, to the extent practicable and in compliance with applicable Laws and the ICV Requirements, to:
  - i. procure Goods from manufacturers or suppliers within the Sultanate of Oman;
  - ii. procure that if any Goods are required to be transported by commercial sea freight, such transportation services shall be provided by Omani ships and vessels; and
  - iii. procure that the following services, to the extent they are required to be provided by the SUBCONTRACTOR, shall be provided by Omani persons or entities:
    - (A)services for the transportation within the Sultanate of Oman of Goods and EPC Contractor's Personnel on Site (without prejudice to Clause pp (ii));
    - (B) services for the purchase of, or rental of, land or buildings within the Sultanate of Oman; and
    - (C)catering and food importation services.
- rr) The SUBCONTRACTOR's obligations under Clause qq shall only apply to the extent that:
  - (i) the relevant Goods or services are the required quality, available at the required times and manufactured or provided (as appropriate) by persons with the requisite qualifications, experience and availability;
  - (ii) the prices offered or costs to be charged (as appropriate) by the persons specified in Clause qq for the relevant Goods or services do not exceed the prices offered or costs to be charged by other persons outside of the Sultanate of Oman providing equivalent Goods or services.
- ss) The SUBCONTRACTOR shall no later than forty five (45) days after the Effective Date submit the draft ICV Plan to the CONTRACTOR for approval.

If the draft ICV plan so fails to comply with the SUBCONTRACTY it shall be rectified and re-submitted by the SUBCONTRACTOR within fourteen (14) days of receipt of such notice from the CONTRACTOR, at its own cost, for approval again by the CONTRACTOR until such time as the CONTRACTOR approves the draft ICV Plan which will then become final (the ICV Plan).

The CONTRACTOR may at any time audit the SUBCONTRACTOR's compliance with the ICV Plan and the ICV Requirements which shall include inspections of the SUBCONTRACTOR's and any relevant Subcontractor's premises within the Sultanate of Oman.

THE SUBCONTRACTOR shall provide and maintain appropriately indexed and cross referenced records in accordance with the ICV Requirements, which shall be made available to the CONTRACTOR for review and approval in accordance with the ICV Requirements and in respect of any audits carried out by the CONTRACTOR.

During any audit and/or inspection by the CONTRACTOR the SUBCONTRACTOR shall make available to the Company all Key Personnel responsible for the SUBCONTRACTOR's implementation and compliance with the ICV Requirements.

## **8. SUBCONTRACTOR PERSONNEL.**

### **8.1. SUBCONTRACTOR PERSONNEL.**

SUBCONTRACTOR warrants that it has sufficient competent, experienced and fully qualified personnel to execute the WORK in the manner and within the time required by this SUBCONTRACT.

The SUBCONTRACTOR and any subcontractor of the SUBCONTRACTOR shall provide and employ on the Site: (a) only such technical assistants as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper supervision and who are sufficiently fluent in the English language so as to be able to communicate with the CONTRACTOR or any representative of the OWNER; and (b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution, completion and maintenance of the WORK, which persons in each case possess at least the same degree of skill and experience (including in respect of safety training and awareness issues) required by OWNER of contractor personnel on projects performed directly for OWNER as project owner, in accordance with OWNER's own contractor testing and certification standards for skilled and unskilled workers.

SUBCONTRACTOR's expatriate personnel shall obtain the required passports, visas, and permits necessary to gain entrance into and to exit from Oman.

SUBCONTRACTOR shall not, during the course of the WORK, offer employment to any employee of the OWNER or the CONTRACTOR, without OWNER's or CONTRACTOR's prior written consent.

All of SUBCONTRACTOR's personnel and its subcontractors' personnel shall have in their possession all required and properly validated licenses or certificates prescribed by any appropriate government, the OWNER or the CONTRACTOR as being necessary for the performance of those aspects of the WORK to which they are assigned. The SUBCONTRACTOR shall comply with all the relevant labour Laws applicable to the SUBCONTRACTOR's Personnel, including Laws relating to their employment, health, safety, welfare and shall allow them all their legal rights.

SUBCONTRACTOR's personnel and the personnel of its subcontractors shall comply with all applicable rules and instructions issued by the CONTRACTOR and with generally acceptable standards of conduct for expatriate personnel living and working in Oman. Upon CONTRACTOR's written request, SUBCONTRACTOR shall, at its own expense, immediately remove from involvement with or performance of the WORK and replace at its own cost and expense with a competent substitute any SUBCONTRACTOR's personnel or the personnel of its subcontractors who fail to comply with the foregoing rules and instructions or standards of conduct.

If not accomplished before the effective date of this SUBCONTRACT, within fifteen (15) days thereafter, SUBCONTRACTOR shall submit to the CONTRACTOR an organization chart for the WORK. Key personnel as designated in the chart shall be assigned to the WORK and shall not be removed or reassigned without CONTRACTOR's prior written permission.

Upon CONTRACTOR's written request, SUBCONTRACTOR shall immediately remove from involvement with or performance of the WORK and replace at its own cost and expense with a competent substitute any SUBCONTRACTOR personnel or its subcontractors determined to be unsuitable by the CONTRACTOR or the OWNER.

SUBCONTRACTOR agrees to defend, indemnify, and hold the CONTRACTOR and the OWNER harmless from any expense, loss, damage, fine or penalty incurred by, assessed against or demanded from the CONTRACTOR or the OWNER as a result of SUBCONTRACTOR's or any of its subcontractors's failure to fulfill the obligations set forth in this SUBCONTRACT.

The SUBCONTRACTOR's REPRESENTATIVE will be responsible for the discipline of SUBCONTRACTOR personnel and of his subcontractors at the WORK SITE. CONTRACTOR declines all responsibility, in an explicit manner, in case thefts, fights or abuses of any type are produced among SUBCONTRACTOR's personnel.

SUBCONTRACTOR's personnel will subject itself to the rules and instructions of the OWNER and the CONTRACTOR at the WORK SITE, regarding discipline, safety and

security. In particular, the SUBCONTRACTOR shall provide and maintain at its own expense all lighting, fencing and security measures when and where necessary for the proper performance and protection of the WORK or for the safety of the CONTRACTOR's or OWNER's property and the public.

SUBCONTRACTOR shall be an independent contractor with respect to the WORK under this Contract. Neither SUBCONTRACTOR, any its subcontractor or vendor nor the personnel of any of them shall be deemed to be the servants, agents or employees of CONTRACTOR. SUBCONTRACTOR shall perform all obligations and duties under the CONTRACT at its own cost, risk and responsibility, in due compliance with the WORK Schedule and with the provisions of the CONTRACT. SUBCONTRACTOR's failure to perform any obligations shall always be at its sole cost and risk. SUBCONTRACTOR shall not represent OWNER or CONTRACTOR or act for or on behalf of OWNER or CONTRACTOR or in its name without OWNER or CONTRACTOR's prior written consent, as applicable, and then only as and when mutually agreed by the Parties.

SUBCONTRACTOR shall submit a letter with each invoice to the CONTRACTOR certifying either (a) that all of the due and payable salaries and benefits for SUBCONTRACTOR's employees have been paid and that all SUBCONTRACTOR's due and payable invoices including but not limited to invoices from its subcontractors and suppliers related to this SUBCONTRACT have been paid or (b) that any unpaid or delayed payments by SUBCONTRACTOR of amounts due and owing to employees, subcontractors, and suppliers or other invoices for more than forty-five (45) consecutive calendar days shall be listed on the required letter with clear indication of reasons for the delay and actions taken for payment.

If the SUBCONTRACTOR fails to submit the completed certification letter referenced above, CONTRACTOR will notify the SUBCONTRACTOR. Upon receipt of the notice from CONTRACTOR, SUBCONTRACTOR shall promptly perform or arrange for the performance of the corrective action required to comply with the requirements of this clause 8.1 within ten (10) days from the receipt of the notice.

Failure of SUBCONTRACTOR to comply with the requirements of Paragraph 8.1 will be considered a material breach of SUBCONTRACT. CONTRACTOR shall, in addition to any other remedies available under this SUBCONTRACT or at law, retain all amounts that are due and owing to SUBCONTRACTOR under this SUBCONTRACT between the parties until the breach of SUBCONTRACT has been remedied.

## 8.2. PERSONNEL CONTRACTING.

The SUBCONTRACTOR undertakes to fully comply with any and all labour obligations in force regarding contracting and employment of his personnel. The SUBCONTRACTOR shall further comply with the regulations in force regarding

Social Security, work accidents and Safety and Health. The CONTRACTOR may request the SUBCONTRACTOR to provide any documentation evidencing compliance with these obligations.

The SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR and the OWNER from and against any liability, damages, costs, expenses or claims arising out of SUBCONTRACTOR's failure to comply with any of the obligations detailed above. In the event CONTRACTOR is held to be responsible for any such obligations and incurs in any expenses or costs as a result thereof, the CONTRACTOR may deduct the amount of any such costs or expenses incurred from any payments due to SUBCONTRACTOR under the SUBCONTRACT or recover such amount against the Performance Bond submitted by SUBCONTRACTOR.

SUBCONTRACTOR shall protect, indemnify and hold CONTRACTOR and OWNER harmless from and against any and all liabilities, demands, costs, expenses, claims, fines, penalties and the like, for the discharge of any lien claimed against CONTRACTOR and/or OWNER property if created or caused (by any act, omission or negligence) by SUBCONTRACTOR or by any its Subcontractors or Vendor, or their respective employees and agents.

SUBCONTRACTOR shall release, hold harmless and indemnify CONTRACTOR and OWNER, OWNER and/or CONTRACTOR's other contractors, their subcontractors, and the employees or agents of any of them from any liability resulting from loss of, damage or destruction to SUBCONTRACTOR's or its Subcontractors and Vendors' tools and/or equipment and/or temporary facilities, whether owned or rented, and wherever located, which are used or intended for use in performing the WORK even if such loss, damage or destruction results from OWNER and/or CONTRACTOR 's negligence, or the negligence of CONTRACTOR 's other contractors, their subcontractors, or the employees or agents of any of them.

### 8.3 COLLABORATION WITH OTHER SUBCONTRACTORS.

CONTRACTOR will have the right to use other subcontractors in the execution of any activity related to the WORK and the SUBCONTRACT.

CONTRACTOR reserves the right to request the SUBCONTRACTOR to schedule the SUBCONTRACT of execution of WORK in such a manner as to avoid or reduce any possible disruption or interference with the work of other subcontractors or contractors.

The SUBCONTRACTOR shall not be entitled to any extension in the TIME(S) FOR COMPLETION nor to any increase in the SUBCONTRACT PRICE regarding any new working schedule resulting from the above.

Failure by the SUBCONTRACTOR to perform any portion of the WORK for which it is responsible in accordance with the terms of the SUBCONTRACT within the reasonable period specified by CONTRACTOR therefor, shall entitle the

CONTRACTOR to use the services of another SUBCONTRACTOR to perform such portion of the WORK, and all costs and expenses related thereto shall be backcharged to the SUBCONTRACTOR.

It is understood that the CONTRACTOR or the OWNER may themselves perform work at or near the WORK SITE, or have such work performed by others. SUBCONTRACTOR agrees to cooperate fully with the CONTRACTOR and the OWNER or any other subcontractor or contractor performing such work, and not to interfere with the performance of such work.

In connection with the performance of operations related to the WORK, SUBCONTRACTOR shall also, at CONTRACTOR's request, allow CONTRACTOR's personnel and/or CONTRACTOR's other contractors and their subcontractors, together with their equipment, free access to WORK Sites and workshops during working hours, provided however that such CONTRACTOR's Personnel, contractors and subcontractors comply with OWNER's safety regulations as notified by OWNER.

## **9. SUBCONTRACTOR WORK SITE RESPONSIBILITY.**

The SUBCONTRACTOR shall comply with OWNER site regulations as well as CONTRACTOR's complementary regulations as approved by OWNER. Furthermore the SUBCONTRACTOR shall ensure that all of its employees, agents, subcontractors will comply with the foregoing mentioned regulations.

When the WORK requires attendance and/or intervention by the SUBCONTRACTOR at the SITE where the WORK will be located, the SUBCONTRACTOR acknowledges that it has thoroughly investigated, or has had the opportunity to do so, and satisfied itself as to all general and local conditions affecting the WORK and the SITE where the FACILITIES will be constructed, including, but not limited to:

- i. the concomitant presence of other suppliers and contractors at SITE,
- ii. local climatic conditions,
- iii. the health and safety rules, the information in respect of any potential hazard and regulations of the OWNER and the CONTRACTOR,
- iv. SITE access conditions,
- v. the position, dimensions and suitability of the SITE.

SUBCONTRACTOR shall advise CONTRACTOR in writing if the SITE (or any part thereof) or any such previous work is out of position, wrongly dimensioned or in any other way unsuitable, so as to minimise any interruption or interference caused thereby.

SUBCONTRACTOR confirms that it has inspected the SITE and all previous work executed at or adjoining the SITE prior to the date of this SUBCONTRACT.

On all locations where WORK is performed by the SUBCONTRACTOR, SUBCONTRACTOR shall be responsible for:

- ensuring at its own cost the health, safety and welfare of all personnel involved in the performance and/or inspection of the WORK, including personnel of OWNER, CONTRACTOR and designated third parties,
- Providing appropriate safety equipment, gear and protective clothing,
- Taking adequate safety, prevention, health and fire-fighting measures.

The OWNER or the CONTRACTOR may instruct the SUBCONTRACTOR to execute any work or any corrective action to comply with any safety requirements under this SUBCONTRACT or the MAIN CONTRACT.

The establishment or construction by SUBCONTRACTOR of all WORK-related storage areas and temporary structures on or adjacent to CONTRACTOR or OWNER premises must be authorized in advance by the OWNER or the CONTRACTOR and shall be confined to areas specified by the OWNER or the CONTRACTOR. Authorized temporary structures shall be provided by SUBCONTRACTOR at its own expense. If not accomplished prior to the effective date of this SUBCONTRACT, promptly thereafter, SUBCONTRACTOR shall submit to the CONTRACTOR for review, a plan for proposed ancillary site facilities required by SUBCONTRACTOR during performance of the WORK. This plan shall include, but not be limited to, MATERIALS and CONSTRUCTION EQUIPMENT and any other material and equipment storage facilities, site offices, sanitary facilities, vehicle parking areas, temporary electrical and water supply locations and trash collection areas, including proposed locations for each.

SUBCONTRACTOR shall preserve and protect the environment at and adjacent to the WORK SITE.

Except as may be otherwise provided in this SUBCONTRACT, SUBCONTRACTOR shall protect from damage all existing structures, improvements or utilities at or near the WORK SITE, and shall repair and restore any damage thereto resulting from SUBCONTRACTOR's failure to exercise reasonable care in protecting the same during SUBCONTRACTOR's performance of the WORK.

If SUBCONTRACTOR fails or refuses to promptly repair any such damage, the CONTRACTOR may perform such repairs, or have them performed by others.

SUBCONTRACTOR shall provide and maintain for its personnel ample toilet facilities at the WORK SITE in accordance with applicable OWNER standards and

specifications and current Omani Government regulations. Sanitary facilities shall be operational at all times while there are personnel on the WORK SITE.

Where applicable, all of SUBCONTRACTOR's personnel and those of its visitors, agents and subcontractors shall wear an identification card issued by the OWNER on their outer garments whenever on the WORK SITE. Such identification cards remain the property of the OWNER and SUBCONTRACTOR shall return them to the CONTRACTOR upon WORK COMPLETION, or upon demand by the CONTRACTOR or the OWNER.

SUBCONTRACTOR shall at all times keep the WORK SITE neat, clean and free of waste material and rubbish. SUBCONTRACTOR shall, at the direction of the CONTRACTOR, promptly remove from the WORK SITE any surplus equipment and materials not required for the WORK. Before completion of the WORK and before final payment is made, SUBCONTRACTOR shall, unless otherwise provided in this SUBCONTRACT, at CONTRACTOR's direction, remove from the WORK SITE at SUBCONTRACTOR's expense all equipment, temporary structures, rubbish, unused materials and other such items. In the event of SUBCONTRACTOR's failure to discharge the foregoing obligation, the CONTRACTOR may accomplish the same or have it accomplished by others, all at SUBCONTRACTOR's expense.

SUBCONTRACTOR shall satisfy itself in adequate time before commencing any part of the WORK as to the position, dimensions and suitability of the WORK SITE and any other work carried out by another contractor or subcontractor at or adjoining the WORK SITE insofar as the same may in any way affect or impinge on the execution and completion of the WORK and shall advise the CONTRACTOR in writing if the WORK SITE (or any part thereof) or any such previous work is out of position, wrongly dimensioned or in any other way unsuitable, so as to minimise any interruption or interference caused thereby.

SUBCONTRACTOR confirms that it has inspected the WORK SITE and all previous work executed at or adjoining the WORK SITE prior to the date of this SUBCONTRACT. Notwithstanding any other provision of this SUBCONTRACT no Change shall arise nor shall SUBCONTRACTOR be entitled to any extension of time and/or any additional compensation in relation to any instruction issued by CONTRACTOR necessitated by the WORK SITE (or any part thereof) or previous work being out of position, wrongly dimensioned or in any other way unsuitable where the same could reasonably have been found or foreseen by reasonable visual inspection by a SUBCONTRACTOR exercising the skill, care and diligence required by this SUBCONTRACT and all claims in respect thereof are irrevocably waived by SUBCONTRACTOR.

At all times during working hours and during all phases of the WORK, in order to allow OWNER or CONTRACTOR to inspect the quality and progress of the WORK in all respects and to ascertain compliance with the requirements under the SUBCONTRACT, SUBCONTRACTOR shall allow OWNER or CONTRACTOR, or

his delegates, free and full access to SUBCONTRACTOR WORK Sites and premises, including workshops and shall ensure similar access to premises of subcontractors where any WORK is being or shall be performed.

SUBCONTRACTOR shall, at all times during all phases of the WORK, allow OWNER or CONTRACTOR, or his delegates or procure they are allowed, free and full access during working hours to all the computer programmes and models utilised for the performance of the WORK.

SUBCONTRACTOR shall release, hold harmless and indemnify CONTRACTOR and OWNER, OWNER and/or CONTRACTOR's other contractors, their subcontractors, and the employees or agents of any of them from cost or liability resulting from loss of, damage or destruction to SUBCONTRACTOR supplied materials for incorporation into the FACILITIES and things in transit to the Site (but excluding any materials or equipment covered by the OWNER's cargo insurances referred in the MAIN CONTRACT) until the time that safe unloading at the site is completed by SUBCONTRACTOR and its Subcontractors and Vendors for that purpose even if such loss, damage or destruction results from OWNER and/or CONTRACTOR's negligence, or the negligence of OWNER and/or CONTRACTOR's other contractors, their subcontractors, or the employees or agents of any of them.

## **10. LOCAL CONDITIONS.**

SUBCONTRACTOR acknowledges that it has thoroughly investigated, or has had the opportunity to do so, and satisfied itself as to all general and local conditions affecting the WORK, including, but not limited to: transportation and access to the WORK SITE, including the availability and conditions of roads; topography and ground surface conditions at the WORK SITE, including the nature and quantity of surface and subsurface conditions, materials or obstacles to be encountered; disposal, handling and storage of materials; availability and quality of labor, water, electric power and other utilities, climatic conditions, tides and ground water; and equipment, machinery and materials required by SUBCONTRACTOR prior to and during performance of the WORK; applicable LAWS and regulations, local customs; fiscal and social legislation and practices; import/export regulations and the like; and generally, all and any other local conditions and/or other conditions of the WORK SITE that affect or may affect SUBCONTRACTOR's performance of the WORK and SUBCONTRACTOR's obligations under the SUBCONTRACT. The failure of SUBCONTRACTOR to acquaint itself with these conditions will not entitle SUBCONTRACTOR to any additional compensation and will not relieve it from the responsibility for meeting the TIME (S) FOR COMPLETION.

SUBCONTRACTOR shall not and shall not be entitled to rely upon any survey, report or other document prepared by or on behalf of CONTRACTOR or the OWNER regarding any matter as is referred to in paragraph above and CONTRACTOR makes no representation or warranty as to the accuracy or completeness of any such survey,

report or document. CONTRACTOR shall have no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligent or otherwise therein contained, and notwithstanding any other provision of this SUBCONTRACT no change shall arise nor shall SUBCONTRACTOR be entitled to any extension of time and/or any additional compensation in relation thereto and all claims in respect thereof are irrevocably waived by SUBCONTRACTOR.

SUBCONTRACTOR acknowledges that it has visited the WORK SITE and that the SUBCONTRACT PRICE includes compensation for any additional cost the SUBCONTRACTOR may incur as a result of the available means of access to the WORK SITE being used by others. SUBCONTRACTOR agrees that additional costs and delays resulting from SUBCONTRACTOR's use or inability to use the available access road shall not entitle SUBCONTRACTOR to any additional compensation and shall not relieve SUBCONTRACTOR from the responsibility for meeting the TIME (S) FOR COMPLETION.

SUBCONTRACTOR shall bear the risk of all events, actions and circumstances, whether natural or caused by man, which may affect the performance by SUBCONTRACTOR of its obligations under this SUBCONTRACT, subject only to those express provisions of this SUBCONTRACT which relieve SUBCONTRACTOR of any such risk. SUBCONTRACTOR hereby warrants that, prior to entering into this SUBCONTRACT, it has made such enquiries as it considered necessary to assess the risks to be borne by it hereunder or otherwise in the performance of the WORK. SUBCONTRACTOR shall bear such risks notwithstanding that they could not have been discovered by it in the course of such enquires. The risks which shall be borne by SUBCONTRACTOR include those which may arise from:

- a) the nature and location of the SITE and surroundings and any other working areas and their surroundings, whether on land or at sea, including their geological characteristics and surface and subsurface conditions;
- b) the characteristics and behaviour of any sea, ocean, lake or river, and the beds thereof, in, under or near which the WORK may be situated and/or conducted;
- c) weather conditions affecting any part of the SUBCONTRACTOR'S activities including the transportation of MATERIALS;
- d) the CONSTRUCTION EQUIPMENT and other resources which will be necessary for the performance of SUBCONTRACTOR'S obligations under this SUBCONTRACT;
- e) the availability of labour, equipment, parts, consumables, procurement items, fuel, water, electric power and other utilities and the like;

- f) the availability of construction camp facilities and/or resources, whether new or provided by a third party;
- g) the Laws and the need for any permits, approvals, licences and/or other applicable authorisations;
- h) local customs and practice, including the customs and practices of the local labour force and of any Law;
- i) crime, including theft and vandalism;
- j) all taxes, imposts, duties, withholding taxes, tariffs, levies, charges or other duties or assessments; and
- k) delays by Law in issuing permits, licenses and/or authorisations required by SUBCONTRACTOR for the WORK.

The occurrence or effects of any risk borne by SUBCONTRACTOR pursuant to this SUBCONTRACT shall not relieve it of any liability, duty, obligation or responsibility under this SUBCONTRACT and SUBCONTRACTOR shall not by reason thereof become entitled to any cost, WORK SCHEDULE or other relief under this SUBCONTRACT. Without prejudice to the generality of this clause, upon the discovery of any archaeological relics at WORK SITE, SUBCONTRACTOR shall: (i) immediately notify CONTRACTOR and the relevant Law in writing; (ii) cease the WORK in the vicinity of such archaeological relics; act in relation to such archaeological relics in accordance with Law; and (iii) shall not resume the WORK so affected without the express written authorisation of the relevant governmental authority.

SUBCONTRACTOR acknowledges that has included within any rates and prices within the SUBCONTRACT PRICE all technical, commercial and financial effects of conforming with the requirements of all other local regulatory bodies having an impact whatsoever on the performance of this SUBCONTRACT and these effects are SUBCONTRACTOR'S entire and sole responsibility.

## **11. SCHEDULING.**

### **11.1 WORK SCHEDULE AND PROGRESS REPORTS.**

Time is of the essence of the performance of the SUBCONTRACTOR's obligations under the SUBCONTRACT. The SUBCONTRACTOR undertakes to perform the WORK within the partial and overall TIME (S) FOR COMPLETION set out in the time schedule included in the Requisition I.

The SUBCONTRACTOR shall plan, schedule and report WORK progress using the Critical Path Method (CPM) and automated scheduling system reviewed and agreed to by the CONTRACTOR and in accordance with Requisition I. Within seven days (7) days after this SUBCONTRACT's effective date, SUBCONTRACTOR shall submit for CONTRACTOR's review a detailed schedule defining SUBCONTRACTOR's planned activities to be accomplished during the first ninety (90) days after the SUBCONTRACT's effective date. This schedule shall be updated at least weekly until acceptance of the WORK Schedule by the CONTRACTOR.

The WORK Schedule shall be updated at least monthly and SUBCONTRACTOR shall submit both hard copy and electronic files of the following interrelated documents:

- A detailed level CPM network logic diagram in precedence diagram (PDM) format and bargraphs describing all the significant activities to be accomplished to perform the WORK and their restraints and dependencies, and with the critical path (zero float) highlighted. Number of activities and activity durations should be sufficient to ensure that the scope of work is covered in the WORK Schedule to the satisfaction of the CONTRACTOR. SUBCONTRACTOR shall separately list and submit to CONTRACTOR for review all activities with duration of more than twenty-five (25) work days. CONTRACTOR may, at its sole discretion, require SUBCONTRACTOR to break down activities with durations longer than twenty-five (25) work days into their component elements of WORK.
- Tabulated lists of WORK Schedule activities containing for each activity its number, description, discipline, FACILITIES area, duration (original and remaining) in work days, early and late start and finish dates, total float, percent complete, required man-hours and other resources, predecessors and successors; such lists shall be compiled, sorted and presented as required by CONTRACTOR;
- A summary level CPM time scaled network logic diagram and bar graphs summarizing the detailed level CPM diagram including restraints and dependencies and showing the Critical Milestone Dates and the TIME(S) FOR COMPLETION;
- A milestone schedule in the form of a bar graph which indicates the original, revised, and forecasted Critical Milestone Dates and TIME (S)FOR COMPLETION, and their current ahead or behind schedule conditions noted as plus (+) or minus (-) work days:-
  - a) "original" means Critical Milestone Dates and the TIME(S) FOR COMPLETION as of the date of this Contract.
  - b) "revised" means Critical Milestone Dates and the TIME(S) FOR COMPLETION as modified by Amendment, Change Order or any adjustment pursuant to Relevant Event (as defined in the MAIN CONTRACT).

- c) "forecasted" means Critical Milestone Dates and the TIME(S) FOR COMPLETION as projected by SUBCONTRACTOR in status reports.
- Resources requirement forecasts in the form of a series of graphic displays depicting manpower requirements (original and remaining) by discipline and type and in the aggregate, in man-hours of effort by month and equipment requirements (original and remaining) by month.
- A narrative report in a format acceptable to CONTRACTOR, summarizing each month's progress, areas of concern, delays and solutions to the delays and WORK scheduled to be accomplished in the next month.

Upon CONTRACTOR's request, SUBCONTRACTOR shall provide to CONTRACTOR all of SUBCONTRACTOR's calculations and documents supporting the WORK Schedule and any other related schedules, reports, and forecasts.

SUBCONTRACTOR shall respond to, and when applicable incorporate, CONTRACTOR comments on initial and revised WORK Schedule submittals and resubmit for review the modified WORK Schedule within seven (7) days of receipt of CONTRACTOR comments.

SUBCONTRACTOR's failure to submit and update the WORK Schedule as required in this clause shall entitle CONTRACTOR to withhold progress payments otherwise due SUBCONTRACTOR until SUBCONTRACTOR complies with this requirement.

The SUBCONTRACTOR shall schedule and perform the WORK taking into account all the circumstances and working conditions which may affect the performance such as the working hours established at the WORK SITE as well as the collective labor agreements in force, absences, accidents, labor conflicts, weather conditions, interference, vacations, holidays, statistically probable delays, gap periods, etc., and any interference and low performance in having to perform works in areas where at the same time other subcontractors are working in construction and/or erection.

Approved revisions of the schedules do not release the SUBCONTRACTOR from its obligation of performing the WORK within the TIME (S) FOR COMPLETION, and do not waive the CONTRACTOR's right to apply liquidated damages for delay. All the revisions of the schedules must be approved by the CONTRACTOR. The CONTRACTOR will have the right to introduce as many modifications as may be required, provided the TIME (S) FOR COMPLETION are not altered by reason thereof.

Based on the latest CONTRACTOR approved WORK Schedule and throughout the duration of the WORK, SUBCONTRACTOR shall develop, maintain and update a Forecast Schedule ("FCST Schedule") to ensure that at all times the forecast plan supports SUBCONTRACTOR'S ability to comply with the WORK Schedule and to complete any milestone.

If SUBCONTRACTOR falls behind the approved WORK Schedule for reasons due to SUBCONTRACTOR, SUBCONTRACTOR shall take such steps as may be necessary to regain the WORK Schedule. The CONTRACTOR may require SUBCONTRACTOR to increase the number of shifts, or overtime operative days of work per week, manpower loading or equipment loading, or all of the foregoing and to submit for approval such recovery schedule as may be deemed necessary to demonstrate the manner in which the WORK Schedule will be regained, all without additional cost to CONTRACTOR.

If, in the sole opinion of CONTRACTOR, SUBCONTRACTOR fails to recover the approved WORK Schedule CONTRACTOR may, at its option, hire additional labour and equipment to augment SUBCONTRACTOR'S construction force, for which the costs will be back charged to SUBCONTRACTOR. SUBCONTRACTOR shall accept and use additional labour and equipment in the most expedient manner, maximizing its use in an effort to comply with the WORK Schedule and complete the WORK in accordance with the instructions given by the CONTRACTOR. If the SUBCONTRACTOR fails to comply with such actions within the time period instructed by the CONTRACTOR, the CONTRACTOR may carry out such actions or cause such actions to be carried out by a third party, and any costs and expenses incurred in connection therewith shall be duly back charged to the SUBCONTRACTOR or deducted from any payments due under the SUBCONTRACT, without prejudice to any of CONTRACTOR'S rights and remedies in case of SUBCONTRACTOR'S delay including termination of SUBCONTRACT as per clause 29.

The obligations and liabilities of SUBCONTRACTOR under this SUBCONTRACT shall not be released, diminished or in any other way affected by any enquiry, direction, inspection, comment, consent, sanction, acknowledgement, confirmation, Approval or advice made or given by or on behalf of CONTRACTOR, CONTRACTOR Representative or any their respective employees, servants or agents or any failure to enquire, direct, inspect, comment, consent, sanction, acknowledge, confirm, approve or advise whether or not such act or omission might give rise to an independent liability of any such person.

Should SUBCONTRACTOR be obstructed, hindered, disrupted or delayed in the commencement, prosecution or completion of the WORK without fault on its part, and by reason of causes which would entitle the CONTRACTOR to an extension of time under the MAIN CONTRACT, then SUBCONTRACTOR shall be entitled to an extension of time only to perform the WORK which shall not exceed the extension of time to which the CONTRACTOR shall be entitled and granted by the OWNER.

SUBCONTRACTOR expressly agrees not to make, and hereby waives, any claim for damages or payment or compensation of any kind, including those resulting from increased labour or material costs, on account of any delay, obstruction, disruption or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated, including, but not limited to, causes that would entitle the CONTRACTOR to an extension of time under the MAIN CONTRACT, and agrees that the sole right and

remedy thereof shall be an extension of time in accordance with the preceding paragraph. The foregoing waiver shall not apply however to unreasonable delays, obstructions, disruptions or hindrances without fault on the part of SUBCONTRACTOR which are solely attributable to the CONTRACTOR' gross negligence, wilful misconduct or abandonment of the MAIN CONTRACT.

Without prejudice to any of CONTRACTOR'S rights and remedies in case of SUBCONTRACTOR'S delay, SUBCONTRACTOR shall promptly notify CONTRACTOR in writing of any factor which is likely to have an effect on the ability of SUBCONTRACTOR to complete any milestone or the overall TIME FOR COMPLETION.

Such SUBCONTRACTOR notice shall provide:

- a) detailed particulars of the delay or potential delay;
- b) the estimate of the extent (if any) of the expected delay in completion of the milestone beyond the TIME(S) FOR COMPLETION.
- c) the proposals that SUBCONTRACTOR anticipates implementing so as to comply with the WORK Schedule and complete the milestone.
- d) SUBCONTRACTOR shall give such further written notices to CONTRACTOR as may be reasonably necessary for keeping up to date the particulars and estimate referred to in Paragraph 2 above.
- e) upon CONTRACTOR'S request, SUBCONTRACTOR shall promptly provide to CONTRACTOR all of SUBCONTRACTOR'S calculations and documents supporting the WORK Schedule and any other related schedules, reports, and forecasts.

SUBCONTRACTOR shall use its best endeavours to prevent or minimize delay in the progress of the WORK, howsoever caused, and to prevent the completion of the milestone and/or the achievement of TIME FOR COMPLETION.

## 11.2 LIQUIDATED DAMAGES.

In the event the SUBCONTRACTOR fails to complete the WORK within the partial or overall TIME(S) FOR COMPLETION set forth in the WORK Schedule included in Requisition I, the CONTRACTOR shall be entitled to impose liquidated damages for delay in accordance with the following:

- a) Delays in compliance with partial TIMES FOR COMPLETION.

If the SUBCONTRACTOR fails to perform the WORK within the partial TIME(S) FOR COMPLETION dates set out in the WORK Schedule other than for reasons of Force Majeure, the SUBCONTRACTOR shall pay liquidated

damages for delay in an amount of [...] ([...])% of the price of the WORK so delayed for each week elapsed between the scheduled TIME(S) FOR COMPLETION date and the actual date of completion, unless otherwise stated in the SUBCONTRACT.

b) Non-compliance with the overall TIME FOR COMPLETION.

If the SUBCONTRACTOR fails to complete the WORK and achieve the PROVISIONAL ACCEPTANCE within the final TIME FOR COMPLETION date set out in the WORK Schedule other than for reasons of Force Majeure, the SUBCONTRACTOR shall pay penalties for delay in an amount of [...] ([...])% of the total SUBCONTRACT PRICE for each week elapsed between the scheduled overall TIME FOR COMPLETION date and the actual date of PROVISIONAL ACCEPTANCE, unless otherwise stated in the Purchase SUBCONTRACT.

In no case shall the liquidated damages paid by SUBCONTRACTOR under (a) and (b) above exceed in aggregate [...] ([...])% of the total SUBCONTRACT PRICE, unless otherwise stated in the SUBCONTRACT. Upon expiry of any delay period which would entitle the CONTRACTOR to apply such maximum liquidated damages, the CONTRACTOR shall be entitled to terminate this SUBCONTRACT forthwith in accordance with clause 29.3.

Any liquidated damages assessed under (a) and/or (b) above may be deducted by CONTRACTOR from any sums payable to SUBCONTRACTOR or in the event such payments are not sufficient to cover the full amount of the accrued liquidated damages such amount may be satisfied against the Performance Bond submitted by the SUBCONTRACTOR.

The payment or deduction of such liquidated damages shall not relieve the SUBCONTRACTOR from his obligation to complete the WORK or from any other of his obligations and liabilities under the SUBCONTRACT and in no case shall they affect or impair any other rights to which the CONTRACTOR is entitled under the SUBCONTRACT or the Law.

It is understood and agreed by the Parties that the amounts of liquidated damages payable hereunder are a genuine pre-estimate of the loss that CONTRACTOR will sustain as a result of SUBCONTRACTOR'S failure to achieve the partial TIMES FOR COMPLETION and/or the overall TIME FOR COMPLETION by the relevant completion dates. These amounts are agreed upon and fixed because of the difficulty of ascertaining the exact amount of loss that CONTRACTOR suffers in such circumstances and shall be applicable regardless of the actual loss that CONTRACTOR may be deemed to sustain. The Parties acknowledge that any liquidated damages payable pursuant to this SUBCONTRACT shall not constitute or be construed as excluded loss under Clause 28.14.

If SUBCONTRACTOR'S obligation to pay liquidated damages hereunder is determined to be unenforceable (by any tribunal, arbitrator, court or other judicial authority) for any reason whatsoever, SUBCONTRACTOR shall, nevertheless be liable to pay unliquidated damages in respect of the losses suffered or incurred by CONTRACTOR due to late completion of the partial TIMES FOR COMPLETION and/or the overall TIME FOR COMPLETION by the relevant completion dates set forth in the SUBCONTRACT.

Notwithstanding the foregoing above mentioned, should the delay in the WORK exceed five weeks from the partial or overall TIME(S) FOR COMPLETION, other than for reasons attributable to CONTRACTOR or Force Majeure, the latter shall likewise be entitled to terminate forthwith the SUBCONTRACT, in whole or in part, in accordance with clause 29.3.

## **12. WORK COMMENCEMENT, PROSECUTION AND COMPLETION**

SUBCONTRACTOR shall not carry out any WORK at SITE until the construction work plan required by this SUBCONTRACT and the appointment of each Subcontractor who is to carry out the relevant work at SITE has been approved by CONTRACTOR in accordance with this SUBCONTRACT.

Except for WORK directly related to the actual physical installation of the FACILITIES, SUBCONTRACTOR shall commence the WORK promptly upon the effective date of this SUBCONTRACT. SUBCONTRACTOR shall commence the remaining WORK promptly upon the receipt of a written "Notice to Proceed" from the CONTRACTOR. SUBCONTRACTOR shall prosecute the performance of the WORK with diligence and dispatch so that the TIME (S) FOR COMPLETION is met.

SUBCONTRACTOR's failure to comply with the above paragraph shall, unless otherwise excused pursuant to this SUBCONTRACT, constitute a substantial breach of this SUBCONTRACT.

## **13.- ACCEPTANCE OF THE WORK.**

### **13.1 PROVISIONAL ACCEPTANCE.**

The SUBCONTRACTOR shall notify in writing the CONTRACTOR twenty (20) days in advance, the date in which the WORK shall be fully completed in compliance with all SUBCONTRACT requirements, in order to determine the date for PROVISIONAL ACCEPTANCE of the WORK.

On the date established by the CONTRACTOR for PROVISIONAL ACCEPTANCE, which shall take place in the presence of the SUBCONTRACTOR's REPRESENTATIVE the condition of the WORK will be examined and the CONTRACTOR shall verify by whatever means it may deem appropriate including execution of tests, if applicable, that the WORK complies in all respects with the

technical requirements and SPECIFICATIONS set forth in the SUBCONTRACT. The PROVISIONAL ACCEPTANCE shall occur only after all the specified tests have been successfully completed, the SUBCONTRACTOR has submitted all document required by the SUBCONTRACT and the WORK is deemed by the CONTRACTOR to fully comply with the SUBCONTRACT requirements.

If the WORK is deemed by the CONTRACTOR to fully comply with the SUBCONTRACT requirements and the tests, if applicable, have been successfully completed to the CONTRACTOR's satisfaction, the CONTRACTOR shall within fifteen (15) days following any such event issue in duplicate the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE which shall be duly countersigned by the SUBCONTRACTOR.

Should the WORK performed, following examination thereof, not be deemed by the CONTRACTOR to meet the SUBCONTRACT requirements, or else if the established tests have not been successful, the CONTRACTOR shall so notify the SUBCONTRACTOR in writing specifying any defects observed and SUBCONTRACTOR must immediately reperform, repair or replace any defective WORK until it fully meets the acceptance criteria and the requirements of the SUBCONTRACT as evidenced by the new examination in accordance with the above provisions.

The procedure set forth above shall be repeated as many times as may be necessary until the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE is issued by the CONTRACTOR.

Any time periods granted to the SUBCONTRACTOR due to failure to comply with the PROVISIONAL ACCEPTANCE criteria, shall in no case be deemed as an extension to the TIME (S) FOR COMPLETION and the SUBCONTRACTOR shall therefore be liable for payment of penalties for delay in accordance with clause 11.2. in connection therewith.

In the event the SUBCONTRACTOR does not agree with any technical aspect related with the PROVISIONAL ACCEPTANCE, he shall state such discrepancies in the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE issued by CONTRACTOR specifying the reasons therefor and signing the document. In case the parties do not reach an agreement, the non-conformity will be settled under the dispute resolution procedure set forth in clause 31.

The SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE shall be issued only for the whole of the WORK following completion thereof in accordance with the above provisions, it being fully understood and agreed that, neither the taking over by the OWNER and/or the CONTRACTOR of certain areas or elements of the WORK nor the payment thereof shall be deemed to be the commencement date of the guarantee period.

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Prior to the issuing of the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE by the CONTRACTOR, and notwithstanding compliance of his obligations in accordance with the terms of the warranties under clause 13.3. the SUBCONTRACTOR shall submit the following documents:

- “Final Certificate”.
- Proof satisfactory to CONTRACTOR and to the OWNER that all costs incurred by the SUBCONTRACTOR in the performance of the WORK have been satisfied and paid by the SUBCONTRACTOR, that there are no unsatisfied claims or injuries to persons or property and that the WORK is free of liens, encumbrances or charges of any nature whatsoever arising out of or in connection with possible claims or retention from third parties (or, if such claims exist, then in lieu of the foregoing, the SUBCONTRACTOR may provide the CONTRACTOR and the OWNER with appropriate information and covenants sufficient to indemnify and hold the CONTRACTOR and the OWNER harmless from any liability connected with said claims) and that no other indebtedness exists in connection with the WORK for which the SUBCONTRACTOR is responsible; and
- Any and every document, receipt, statement of account, affidavit, record, or assurance which the CONTRACTOR and the OWNER require as necessary or appropriated to ensure immunity to the CONTRACTOR and the OWNER for any and all liens or claims for which the CONTRACTOR and the OWNER might be or become liable.
- The Quality Control Dossier including Quality certificates all of materials provided by SUBCONTRACTOR and certificates of all non destructive and destructive test and examinations required in the SUBCONTRACT documents.
- All DRAWINGS to be furnished by SUBCONTRACTOR under the SUBCONTRACT documents, including “As built” DRAWINGS as indicated in clause 7 i).

In the event that the CONTRACTOR is entitled to reject the WORK in whole or in part on the grounds that it is non compliant with any of the requirements of the SUBCONTRACT, but agrees to accept such part or all of the WORK subject to a deviation or waiver, then the CONTRACTOR shall be entitled to an appropriate price reduction which is fully representative of the deficiency.

In the event that the WORK is accepted in whole or in part subject to a deviation or waiver, but thereby necessitates a change to any other works connected with the SUBCONTRACT, then the SUBCONTRACTOR shall be liable for all costs associated with the introduction of any such additional changes.

The OWNER and the CONTRACTOR shall have the right to take possession of, and use for any purpose, any part of the FACILITIES at any time prior to PROVISIONAL ACCEPTANCE after so notifying SUBCONTRACTOR. Such taking possession or use shall not be deemed to be CONTRACTOR's acknowledgement of PROVISIONAL ACCEPTANCE and shall in no way limit or waive SUBCONTRACTOR's obligations.

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Issuance of SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE shall not release SUBCONTRACTOR from any of its responsibilities or liabilities under the SUBCONTRACT.

### 13.2 FINAL ACCEPTANCE.

Twenty (20) days prior to the expiry of the WARRANTY PERIOD set forth in clause 13.3. hereunder, the SUBCONTRACTOR shall notify the CONTRACTOR of the completion of such period, requesting the FINAL ACCEPTANCE of the WORK. In view of such request, the CONTRACTOR shall notify the SUBCONTRACTOR on the date established for the FINAL ACCEPTANCE.

On the date so established by the CONTRACTOR to carry out the FINAL ACCEPTANCE, the CONTRACTOR reserves the right to carry out an inspection in the presence of the SUBCONTRACTOR on the status of the WORK in order to verify it meets with the requirements and specifications set forth in the SUBCONTRACT and any appropriate tests shall be performed.

In the event such inspection and tests performed are successful the CONTRACTOR shall issue the Final Acceptance Certificate in duplicate which shall be duly countersigned by the SUBCONTRACTOR. The Final Acceptance Certificate will signify the full discharge and compliance of the SUBCONTRACTOR with the obligations assumed under the SUBCONTRACT.

When the Final Acceptance Certificate does not indicate conformity of the CONTRACTOR, any observed defects must be specified therein together with the period granted for correction. In the event the SUBCONTRACTOR fails to correct such defects within the period granted therefor, the SUBCONTRACTOR shall indemnify and reimburse the CONTRACTOR for any costs or expenses incurred in connection therewith and the CONTRACTOR may further execute the Performance Bond in the amount of any such costs or expenses incurred.

If the SUBCONTRACTOR, in spite of having been notified in advance should not attend the FINAL ACCEPTANCE, the FINAL ACCEPTANCE shall be deemed to have been carried out for all purposes in the presence of the SUBCONTRACTOR and the Certificate issued by the CONTRACTOR will have the same effects as if it had been signed by the SUBCONTRACTOR.

Within fifteen (15) days from the date in which the Final Acceptance Certificate is issued, the CONTRACTOR will proceed to return to the SUBCONTRACTOR the Performance Bond of the SUBCONTRACT.

FINAL ACCEPTANCE of the FACILITIES shall not release SUBCONTRACTOR from the obligations resulting from the SUBCONTRACT or the applicable LAWS

which expressly or by their nature extend beyond and survive such FINAL ACCEPTANCE.

### 13.3 REPRESENTATIONS, WARRANTIES AND REMEDY OF DEFECTS.

The SUBCONTRACTOR hereby guarantees that the WORK or any part thereof executed under the SUBCONTRACT:

- i. conforms in all respects to the requirements and SPECIFICATIONS set forth in the SUBCONTRACT as may be modified by any subsequent amendments thereto.
- ii. is fabricated and constructed in accordance with all applicable designs, DRAWINGS and SPECIFICATIONS and good and efficient fabrication, construction and craft practices.
- iii. is free from any defects in design, engineering, MATERIALS and workmanship.
- iv. is fit for the purposes for which it is intended as set out in, or reasonably to be inferred from, this SUBCONTRACT,

The WARRANTY PERIOD shall run from PROVISIONAL ACCEPTANCE OF THE work, or part thereof, until the date twelve (12) months after the issue of the MAIN CONTRACT INITIAL ACCEPTANCE CERTIFICATE, except that the WARRANTY PERIOD shall be extended if and to the extent that the Facility or a major item of the Facility cannot be used for the purposes for which they are intended by reason of a Defect.

If, in the course of making good any Defect, the SUBCONTRACTOR arranges the replacement or renewal of any portion of the Works, then the SUBCONTRACTOR warrants that the portion of the Works so replaced or renewed shall be free from Defects and the WARRANTY PERIOD in respect of such portion of the Works shall remain in full force and effect until the date that is three hundred and sixty five (365) days from the date of such replacement or renewal (even if such date falls outside the initial three hundred and sixty five (365) day Defects Notification Period).

Irrespective of any extensions to the WARRANTY PERIOD pursuant to this Clause 13.3, the WARRANTY PERIOD shall expire on the date that is twenty-four (24) months from the date on which the MAIN CONTRACT INITIAL ACCEPTANCE CERTIFICATE is issued..

If, during the WARRANTY PERIOD, any defect or damage to the WORKS, por part thereof (regardless of cause), the SUBCONTRACTOR shall, if instructed by the CONTRACTOR, investigate and repair, replace or make good the same. Where and to the extent that the SUBCONTRACTOR is responsible for the said defect or damage in accordance with this sub-Clause, the SUBCONTRACTOR shall indemnify the CONTRACTOR in respect of any loss or damage caused to the WORK and shall carry out all works of repair, replacement or making good at its cost (including as to insurance deductibles and excesses. Where pursuant to this sub-Clause, the

SUBCONTRACTOR is not responsible for the defect or damage, such works of repair, replacement or making good shall be treated as a Change. The SUBCONTRACTOR shall for the purposes of this Clause 13.0 be deemed responsible for any defect or damage to the extent arising from:

- a) any failure of the WORK to comply with the warranties contained in the subcontract;
- b) any other breach of the SUBCONTRACT or neglect or default of the SUBCONTRACTOR or its Subcontractors; or
- c) improper operation or maintenance caused by defects in or omission from training, as built data or operation and maintenance manuals provided by the SUBCONTRACTOR.

Defects or damage arising from other causes shall be repaired, replaced or made good as instructed by the Company and as Changes, including where arising from:

- a) Improper operation or maintenance of the FACILITIES by the OWNER, judged by reference to the operation and maintenance manuals provided by the SUBCONTRACTOR; or
- b) Normal wear and tear.

The SUBCONTRACTOR's obligations under this sub-Clause shall not apply to any materials which are normally consumed in operation or which have a normal life shorter than the WARRANTY PERIOD stated herein (save that, in each case, the SUBCONTRACTOR's obligations under this sub-Clause shall apply to the extent of any consumption in excess of or life shorter than such normal consumption or life).

The CONTRACTOR shall to the extent reasonable possible afford all reasonable opportunity for the SUBCONTRACTOR to inspect any such defect.

The CONTRACTOR shall allow the SUBCONTRACTOR reasonable access to the FACILITIES and the SITE to enable the SUBCONTRACTOR to perform its obligations under this sub-Clause.

The SUBCONTRACTOR, during such access, shall co-ordinate, communicate and liaise with the operator and shall act to minimize any outage by performing minor repairs during scheduled down times.

The SUBCONTRACTOR may with the consent of the CONTRACTOR remove from the SITE any material or any part of the WORK that are defective if the nature of the defect and/or any damage to the FACILITIES caused by the defect is such that repairs cannot be expeditiously carried out at the SITE.

If the SUBCONTRACTOR fails to remedy any defect or any damage to the FACILITIES within a reasonable time, the CONTRACTOR may proceed to do such work or procure a third party to do such work at the SUBCONTRACTOR's risk, and the reasonable costs incurred by the CONTRACTOR in connection therewith shall be paid to the CONTRACTOR by the SUBCONTRACTOR forthwith or otherwise be recoverable by the CONTRACTOR from the SUBCONTRACTOR as a debt due.

The warranty granted by the SUBCONTRACTOR hereunder shall not in any way restrict or affect and shall be in addition to any other guarantee for which SUBCONTRACTOR may be liable in accordance with the applicable local Laws and Regulations in the performance of the WORK, and in particular:

**DECENNIAL STRUCTURE WARRANTY.** SUBCONTRACTOR warrants the safety, soundness and stability of the WORK or any part thereof and its liability therefore, shall, without limitation, be subject to the mandatory provisions of the laws of Oman.

**Laws Warranty.** Subject to any limitations in this SUBCONTRACT, SUBCONTRACTOR warrants that the WORK shall be executed in accordance with Laws and that, when completed, the WORK shall comply with Laws.

**PAINTING & COATING WORK WARRANTY.** SUBCONTRACTOR warrants that the paint and coatings used on the WORK and/or any part thereof shall be free from defects, fit for the purpose and its preparation and application shall be carried out in conformity with SPECIFICATIONS in a professional and workmanlike manner by certified personnel.

The warranty for construction and permanent works as per the Omani Law requiring that the SUBCONTRACTOR be responsible for the collapse or partial collapse of any civil works included in the WORK for a period of ten (10) years after MECHANICAL COMPLETION CERTIFICATE.

The SUBCONTRACTOR and the CONTRACTOR understand that the CONTRACTOR is contracting with the SUBCONTRACTOR for the purchase of goods hereunder for ultimate transfer to, and use by, the OWNER in Oman. Therefore, the SUBCONTRACTOR agrees that, in any event, all rights of the CONTRACTOR for any failure to meet SPECIFICATIONS, or for any other breach of warranty shall run to the benefit of and be fully enforceable by the OWNER.

#### **14. SUBCONTRACT PERFORMANCE BOND.**

The SUBCONTRACTOR shall provide an irrevocable unconditional first demand Bank Guarantee in the form attached as Appendix III by a bank having its main headquarters, or a significant branch, in Spain acceptable to CONTRACTOR in an

amount of ten percent (10%) of the SUBCONTRACT PRICE, unless otherwise stated in the SUBCONTRACT, in order to guarantee performance of all the obligations assumed by SUBCONTRACTOR under the SUBCONTRACT. In addition, the issuing bank shall have a minimum rating acceptable to the CONTRACTOR, as represented by the following criteria:

Standard & Poor's or Fitch: equivalent to, or above, "BBB minus".  
Moody's: equivalent to, or above, "Baa3".

Such Bank Guarantee must be submitted upon signature of the SUBCONTRACT as a condition precedent for the effectiveness of the SUBCONTRACT and shall remain valid until the issuance by the OWNER to the CONTRACTOR of the FINAL ACCEPTANCE in accordance with clause 13.2 including painting work. In the event the Final Acceptance Certificate has not been issued by the OWNER to the CONTRACTOR at least ten (10) calendar days in advance of the expiry date specified in the Bank Guarantee submitted by the SUBCONTRACTOR (other than for reasons directly attributable to the CONTRACTOR), the SUBCONTRACTOR shall automatically extend the validity of the Bank Guarantee until such time as the Final Acceptance Certificate is issued by the OWNER to the CONTRACTOR, failing which extension the CONTRACTOR shall be entitled to forfeit the Bank Guarantee forthwith by so notifying the SUBCONTRACTOR. If the Performance Bond will, according to its terms, expire before the expiry date set out in this clause then CONTRACTOR may draw down the full value of the Performance Bond and retain such proceeds until a replacement Bank Guarantee satisfactory to CONTRACTOR is provided.

In case of its full or partial forfeiture the bond shall be immediately reissued up to the initial established amount.

Should the SUBCONTRACT PRICE be increased under the provisions of the SUBCONTRACT the Performance Bond amount shall be consequently increased by the SUBCONTRACTOR to reflect the revised SUBCONTRACT PRICE.

#### PARENT COMPANY GUARANTEE

On or about, but with effect from the effective date and in any case before any payment is made to SUBCONTRACTOR under this SUBCONTRACT, SUBCONTRACTOR shall provide to CONTRACTOR in its favour a guarantee in the form set out in Appendix V from the ultimate parent or parents, if more than one, of SUBCONTRACTOR guaranteeing the obligations of SUBCONTRACTOR under the SUBCONTRACT.

SUBCONTRACTOR shall inform CONTRACTOR promptly of any changes in the entity or entities providing the guarantee referred to in clause above including: change in legal status; dissolution; amalgamation; merger; demerger; receiverships; liquidations; winding-up petitions; major legal claims and suits; and any other matter or circumstance that could reasonably be deemed to be of concern to CONTRACTOR.

CONTRACTOR reserves the right to require the procurement of another guarantee should any of the circumstances set out in clause above and CONTRACTOR shall immediately procure such alternate guarantee from another entity, whether or not a parent of SUBCONTRACTOR, reasonably acceptable to CONTRACTOR.

## **15. CHANGES.**

A CHANGE shall not invalidate the SUBCONTRACT but shall adjust the SUBCONTRACT PRICE and/or SCHEDULE as appropriate.

The following may constitute a CHANGE under this SUBCONTRACT:

- a) Any instruction by CONTRACTOR as listed below
- b) Suspension by CONTRACTOR in accordance with Clause 29.1.

Provided that any of the aforementioned are not due to the act or omission of SUBCONTRACTOR.

### **15.1 EXTENSIONS AND MODIFICATIONS BY CONTRACTOR.**

The CONTRACTOR may, at any time during the performance of the WORK, request any changes in the quality or quantity of the scope of WORK which he may deem necessary for the fulfillment of SUBCONTRACTOR's obligations under the SUBCONTRACT. For such purpose the CONTRACTOR shall notify the SUBCONTRACTOR identifying any or all of the following items:

- a) Increase or reduction in the quantity of any part of the WORK.
- b) Omit any of the parts of the WORK.
- c) Change the nature, quality or composition of any of the parts of the WORK.
- d) Change dimensions, alignments and position of any part of the WORK.
- e) Execute or diminish additional works of any type, necessary to complete the WORK.

In this event a Field Extra Work Order ("FEWO") will be issued by the CONTRACTOR as set forth in clause 15.2.

#### **A) FOR LUMP SUM SUBCONTRACTS:**

Those changes, that may or not be included in DRAWINGS or other SUBCONTRACT documents, will require a FEWO to be issued in accordance with clause 15.2.

## B) FOR UNIT PRICES SUBCONTRACTS:

No written orders will be required for the changes related to increases or decreases which result from any deviation between the bid documents and the Approved for Construction DRAWINGS.

The quantities shown for each unit of WORK which appear in Requisition II are an estimate and may increase or decrease during the performance of the WORK. Any such increases or reductions shall not entitle the SUBCONTRACTOR to any additional compensation other than payment or allowance for the price specified in Requisition II of any units so increased or decreased.

The changes not included in revised DRAWINGS or other SUBCONTRACT documents and/or further modifications to work already carried out will require a FEWO to be issued as indicated in clause 15.2.

Notwithstanding the foregoing provisions for either Lump Sum or Unit Price Subcontracts as the case may be, in the event a change in the WORK is necessary for the proper carrying out of the WORK and the due performance of the SUBCONTRACT, SUBCONTRACTOR shall duly perform any such WORK and services as if they had been expressly specified in the SUBCONTRACT, without any request for cost change.

### 15.2. "FIELD EXTRA WORK ORDER" (FEWO).

"Extra Work" shall be deemed to be all extensions and modifications set forth in clause 15.1.

When the need arises to carry out any Extra Work, the SUBCONTRACTOR shall complete and submit a FEWO form where the scope of WORK to be done is clearly and precisely described in order to facilitate its identification, time schedule of execution, terms of payment and amount (estimated or fixed) are established.

Subject to clause 15.1 the SUBCONTRACTOR will not start any WORK regarding a FEWO until such FEWO has been approved in writing by the CONTRACTOR in accordance with Requisition II and the following:

The corresponding amount of the WORK relating to the approved FEWO will be included in the monthly invoices. Such amount will be calculated applying any of the following criteria, previously agreed between the CONTRACTOR and the SUBCONTRACTOR:

- a) Established unit prices or negotiated contradictory prices, as defined in Technical Requisition I, previously approved by the CONTRACTOR.
- b) A lump sum price for the WORK as a whole.

- c) SUBCONTRACT PRICES on a material and man-hour basis for personnel and machinery and for materials according to the invoice price of the supplier in case the unit prices for such materials are not included in the SUBCONTRACT.

Whenever possible, unit prices should be used to value FEWO.

In addition to the scope of WORK and the price, all FEWO shall include the reason for the Extra Work.

Any modification in the terms of the original approved FEWO (scope, price, time schedule) shall be carried out by means of a supplement to such FEWO. A supplement shall also be necessary to fix the amounts of those non-Lump Sum FEWO (rates or unit prices).

If CONTRACTOR and SUBCONTRACTOR cannot agree on any specific conditions contained in the FEWO, SUBCONTRACTOR shall if so requested by CONTRACTOR proceed to perform the WORK included in such FEWO pending resolution of such disagreement.

### 15.3 UNAUTHORIZED MODIFICATIONS BY THE SUBCONTRACTOR.

If the SUBCONTRACTOR carries out any changes in the WORK without CONTRACTOR's express authorization therefor in accordance with the procedure detailed in clause 15.2 above, CONTRACTOR may request the demolition of the affected WORK and its reconstruction according to the SUBCONTRACT requirements, at SUBCONTRACTOR's exclusive charge.

Where (i) the replacement or reconstruction is not possible in accordance with the SUBCONTRACT requirements, or (ii) if the SUBCONTRACTOR fails to perform such activities to the satisfaction of the CONTRACTOR, CONTRACTOR may terminate the SUBCONTRACT forthwith in accordance with clause 29.3. Notwithstanding the above-mentioned, for the event described in the paragraph (ii), the CONTRACTOR shall be entitled to terminate the SUBCONTRACT or may carry out such actions or cause such actions to be carried out by a third party, and any costs and expenses incurred in connection therewith shall be duly back charged to the SUBCONTRACTOR or deducted from any payments due under the SUBCONTRACT.

SUBCONTRACTOR shall notify CONTRACTOR in writing of any event that it considers constitutes a CHANGE under the SUBCONTRACT. Such notice shall be made within five (5) days of such event becoming apparent to SUBCONTRACTOR. The burden of demonstrating that such event constitutes a CHANGE shall be upon SUBCONTRACTOR. If SUBCONTRACTOR fails to notify the CONTRACTOR within such period then SUBCONTRACTOR shall not be entitled to any cost or schedule relief in respect of any such event. SUBCONTRACTOR shall be entitled to an extension of time or compensation in cost pursuant to this CONTRACT provided that:

- SUBCONTRACTOR has given notice in accordance with paragraph above. Failure by SUBCONTRACTOR to give such written notice shall be deemed conclusively to be a waiver of all SUBCONTRACTOR's rights in relation to obtaining an extension of time or compensation in cost.
- SUBCONTRACTOR has/shall use its best endeavours (without incurring substantial additional expenditure) to prevent or minimize delay in the progress of the Work, howsoever caused.
- Any Time(s) for Completion shall not be adjusted for delay if the affected activity is not on the critical path and the duration does not exceed the activity's total float as reflected in the latest reviewed Work Schedule

Notwithstanding any other provision of the SUBCONTRACT SUBCONTRACTOR shall not be entitled to any extension of time where and to the extent that such delay results from any negligence, default or breach of the SUBCONTRACT on the part of SUBCONTRACTOR, its employees, agents, subcontractors or vendors or their respective employees or agents.

## **16. MATERIALS, CONSTRUCTION EQUIPMENT AND DOCUMENTS**

### **16.1 MATERIALS AND CONSTRUCTION EQUIPMENT SUPPLIED BY THE SUBCONTRACTOR.**

SUBCONTRACTOR shall supply the MATERIALS specified in the Requisition I. It is the SUBCONTRACTOR's responsibility to calculate on the basis of the documentation supplied by the CONTRACTOR, the quantities of each one of the types of MATERIALS which SUBCONTRACTOR must supply, as well as to order them in sufficient advance to prevent delays in the performance of WORK caused by the lack of MATERIALS.

The SUBCONTRACTOR will specifically indicate in his second tier subcontracts with third parties that the MATERIALS to be delivered thereunder shall not be subject to any reserve of title or ownership, nor seizure or confiscation or other liens, attachments and encumbrances which may affect the OWNER and/or the CONTRACTOR, who shall acquire full ownership of the mentioned MATERIALS.

In compliance with the above provisions, the SUBCONTRACTOR shall take all necessary actions to provide OWNER and/or CONTRACTOR a safe position towards third parties including but not limited to registration of title whenever required by Law.

The SUBCONTRACTOR shall provide, upon CONTRACTOR's request, samples of certain MATERIALS before proceeding to their purchase.

The SUBCONTRACTOR will provide upon CONTRACTOR's request a certified list of the MATERIALS, as well as the name and address of the vendors or suppliers and their delivery date to the WORK SITE.

The MATERIALS supplied by the SUBCONTRACTOR must comply with the quality requirements set forth in the DRAWINGS and SPECIFICATIONS and SUBCONTRACTOR shall furnish to the CONTRACTOR the respective quality certificates without which the CONTRACTOR will not accept the WORK.

Upon termination of the SUBCONTRACT for whatever reason, SUBCONTRACTOR shall furnish formal conveyance to CONTRACTOR of title to and interest in all MATERIALS, CONSTRUCTION EQUIPMENT, construction aides, tools, supplies and any movable property furnished by the SUBCONTRACTOR hereunder for incorporation into the WORK.

The SUBCONTRACTOR shall provide at its own expense the CONSTRUCTION EQUIPMENT deemed necessary for the proper performance of the WORK. The CONSTRUCTION EQUIPMENT provided by the SUBCONTRACTOR will be allocated to the WORK during the period of performance and until WORK COMPLETION, it being understood that, without the specific agreement of the CONTRACTOR, no machinery or auxiliary means may be removed from the SITE.

All of SUBCONTRACTOR's, MATERIALS, CONSTRUCTION EQUIPMENT and the equipment of its subcontractors shall be suitable for the safe and efficient performance of the WORK and must be in a perfect state of use. All such equipment shall be subject to inspection from time to time by the CONTRACTOR or the OWNER. Any such equipment which is found to be in an unsafe condition shall be promptly removed from the WORK by SUBCONTRACTOR and replaced or repaired without additional compensation for the SUBCONTRACTOR and without delay in the TIME (S) FOR COMPLETION.

Promptly after the SUBCONTRACT effective date, the SUBCONTRACTOR shall advise the CONTRACTOR in writing on whether any goods, products, CONSTRUCTION EQUIPMENT, MATERIALS, or any components thereof to be supplied under the SUBCONTRACT fall within the scope of or are affected in any manner by:

- (i) any laws or regulations enacted by any governmental authorities in the country of the SUBCONTRACTOR and/or the country of origin of such good, products, MATERIALS or CONSTRUCTION EQUIPMENT, in connection with any restrictions imposed on the export of dual-use items and technology.
- (ii) any restrictions which may be imposed by the internal policies of the SUBCONTRACTOR's organization or of any AFFILIATE or group of

companies of which the SUBCONTRACTOR forms part relating to the export or re-export of dual-use items and technology.

(hereinafter items (i) and (ii) shall collectively be referred to as Dual Use Regulations).

In the event SUBCONTRACTOR informs the CONTRACTOR that the goods, products, CONSTRUCTION EQUIPMENT, MATERIALS, or any components thereof to be supplied under the SUBCONTRACT do not fall within the scope and are not affected by the Dual Use Regulations, such information shall for all purposes be construed as a warranty and representation granted by SUBCONTRACTOR under the SUBCONTRACT.

SUBCONTRACTOR undertakes to comply with all Dual Use Regulations which may apply to the scope of the WORK and for such purposes shall carry out all actions and obtain all authorizations for which it may be responsible in accordance therewith.

SUBCONTRACTOR shall further provide all reasonable assistance to the CONTRACTOR and furnish to the CONTRACTOR all the information that may be necessary or requested to apply for any mandatory export authorization before any competent authorities in accordance with the Dual Use Regulations for which the CONTRACTOR is responsible.

In the event SUBCONTRACTOR fails to perform or to comply with the provisions contained in this clause relating to Dual Use Regulations, SUBCONTRACTOR shall indemnify, defend and hold harmless the CONTRACTOR and/or the OWNER from and against any and all losses, damages, costs, expenses, claims, liabilities or delays incurred or suffered by CONTRACTOR or the OWNER arising out of, based upon, relating to or in connection with any such failure to perform or to comply with any of the aforesaid provisions.

#### 16.2 MATERIALS AND EQUIPMENT SUPPLIED BY CONTRACTOR.

CONTRACTOR shall deliver to SUBCONTRACTOR the materials and equipment specified in the Requisition I.

The SUBCONTRACTOR, in accordance with the WORK requirements, will load, transport and unload all the materials and equipment supplied by the CONTRACTOR from the CONTRACTOR's warehouse or from the storage area up to its final location.

The SUBCONTRACTOR will not remove materials and/or any equipment from the CONTRACTOR's warehouse, nor will he start any portion of the WORK until the DRAWINGS, SPECIFICATIONS and lists of materials for the SUBCONTRACT have been marked "Approved for Construction".

In SUBCONTRACT to carry out the removal of materials and/or equipment, the SUBCONTRACTOR shall abide by the rules established by the CONTRACTOR for control and delivery of materials.

The SUBCONTRACTOR will be responsible up to the PROVISIONAL ACCEPTANCE date of all the activities related to transportation, storage, protection, care, custody and control of the materials and equipment which have been provided by the CONTRACTOR. Therefore the SUBCONTRACTOR will have to replace or repair at its own cost any such materials and equipment which become damaged, lost and/or stolen and must use all suitable means such as cover sheets, plastics, planks, grease, oils, etc. for their protection.

### 16.3 DOCUMENTS

The SUBCONTRACTOR shall keep at the WORK SITE a copy of all DRAWINGS, SPECIFICATIONS and standards for the performance of WORK.

a) Documents to be delivered by the SUBCONTRACTOR.

The SUBCONTRACTOR undertakes to deliver all the administrative documentation specified in the SUBCONTRACT together with all documentation, which may become necessary in accordance with the Omani administrative regulations. The above will be an irrevocable condition required for the CONTRACTOR's approval of the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE of the WORK.

The minimum documents to be submitted by SUBCONTRACTOR to CONTRACTOR shall be the following:

- i) Quality Control Dossier including Quality certificates all of materials provided by SUBCONTRACTOR and certificates of all non destructive and destructive test and examinations required in the SUBCONTRACT documents.
- ii) "As built" DRAWING as indicated in clause 7 i.
- iii) DRAWINGS to be furnished by SUBCONTRACTOR in accordance with the SUBCONTRACT documents.
- iv) Quality Control Manual and Program of Inspection Points.
- v) Safety and Health Manual.

All the designs and DRAWINGS and SPECIFICATIONS provided by the SUBCONTRACTOR will be in accordance with the codes, standards and SPECIFICATIONS of the SUBCONTRACT Documents, and the "as built" DRAWINGS as indicated in clause 7 i) shall be delivered to the CONTRACTOR by the

SUBCONTRACTOR at the date of PROVISIONAL ACCEPTANCE or such other date as may be specified in the SUBCONTRACT documents.

The scope of “as built” DRAWINGS as indicated in clause 7 i) preparation comprises in addition to the above indications, the following:

- Preparation and updating of all those DRAWINGS which have been affected by on SITE modifications such as sketches, plant DRAWINGS, isometrics, detail DRAWINGS, overhead and underground facilities, supports, foundations, elevations, wiring in general and any other data and documentation as may be required in SUBCONTRACT to fully and accurately portray the constructed units.
- The “As built” DRAWINGS as indicated in clause 7 i) will be furnished to the CONTRACTOR with the degree of design, presentation, format and detail equivalent to those the SUBCONTRACTOR has received from the CONTRACTOR throughout the WORK.

The SUBCONTRACTOR must maintain in its files all the documents related to the SUBCONTRACT for a period of four (4) years from the date of PROVISIONAL ACCEPTANCE of all the WORK, at CONTRACTOR’s disposal.

- b) Custody of confidential documents and information provided by the CONTRACTOR.

CONFIDENTIAL INFORMATION will be treated confidentially and will not be used by the SUBCONTRACTOR for other purposes than the execution of the WORK in accordance with the terms of the SUBCONTRACT and will not be disclosed by the SUBCONTRACTOR to third parties except with the prior express approval in writing of the CONTRACTOR.

SUBCONTRACTOR acknowledges that the award and the performance of the SUBCONTRACT and any dispute that could arise thereof, its terms and conditions (including but not limited to the SUBCONTRACT PRICE, the WORK Schedule and the WORK progress) and any communication to be held between the CONTRACTOR and the SUBCONTRACTOR (whether oral, written, electronic or otherwise) shall be deemed CONFIDENTIAL INFORMATION and shall be treated accordingly.

The SUBCONTRACTOR will not publicly release in any way any information concerning the WORK, including the fact of the SUBCONTRACT award, nor will he use any part of the WORK for exhibitions, advertisements or other promotional purposes, without the prior express approval in writing of the CONTRACTOR.

SUBCONTRACTOR agrees that it will not transmit, disclose, ship, export, or re-export either directly or indirectly any CONFIDENTIAL INFORMATION to any country

which such disclosure, shipment or export is restricted or prohibited by the LAWS and regulations of the United States of America and/or the European Union

The SUBCONTRACTOR, at CONTRACTOR's request, shall sign any additional confidentiality agreement that the CONTRACTOR considers needed for the performance of the WORK in the form requested by the CONTRACTOR.

The foregoing undertakings with respect to the obligations of confidentiality and the restriction on use shall continue, notwithstanding the expiration or termination of the SUBCONTRACT.

SUBCONTRACTOR agrees to obtain an undertaking identical in terms to the foregoing from any subcontractor performing work under the SUBCONTRACT.

SUBCONTRACTOR shall indemnify CONTRACTOR against any third party's claim arising from or in connection with any unauthorised disclosure of CONFIDENTIAL INFORMATION or other material violation of the provisions of this clause and shall bear full responsibility for the loss and damages that could arise therefrom.

#### **16.4 NON IDENTIFICATION**

SUBCONTRACTOR shall not identify himself publicly as supplier of goods or services to the CONTRACTOR without his prior agreement.

#### **17- TITLE TO DESIGNS AND PATENTS.**

All technical data, standards, SPECIFICATIONS, designs, DRAWINGS and the like furnished to SUBCONTRACTOR are and shall continue to be the property of the CONTRACTOR or the OWNER, as identified by the CONTRACTOR or identified in the SUBCONTRACT. Neither SUBCONTRACTOR nor any subcontractor shall reproduce or copy any such materials in whole or in part except as required to perform the WORK. All such material together with all reproductions or copies of it shall be returned to the CONTRACTOR upon WORK COMPLETION or termination of this SUBCONTRACT.

Except for such designs, DRAWINGS and calculations as are considered proprietary by SUBCONTRACTOR and of which the CONTRACTOR is given notice as provided below, all designs, DRAWINGS and calculations developed by SUBCONTRACTOR, its subcontractors or suppliers, and all Software initially and specifically developed by SUBCONTRACTOR or its subcontractors or suppliers, under this SUBCONTRACT shall at all times be the property of the CONTRACTOR or the OWNER, as indicated in the SUBCONTRACT documents or identified by the CONTRACTOR. The OWNER and /or the CONTRACTOR shall have the unlimited and unrestricted right to use or possess such material for whatever purpose. The SUBCONTRACT PRICE includes, without need to make any reference to the same in the SUBCONTRACT, such

assignment of the Intellectual Property Rights (including but not limited to plans, studies, manuals and documents).

SUBCONTRACTOR shall not incorporate or procure any material considered proprietary by SUBCONTRACTOR or its subcontractors or suppliers into designs or DRAWINGS developed under this SUBCONTRACT without first informing the CONTRACTOR of the nature of the proprietary material and obtaining the CONTRACTOR's approval of its incorporation or its procurement. To the extent that such material considered proprietary by SUBCONTRACTOR are so included or procured and save to the extent otherwise agreed in writing by CONTRACTOR, SUBCONTRACTOR shall either grant to OWNER and/or CONTRACTOR or procure for OWNER and/or CONTRACTOR a royalty free, non-exclusive, worldwide, perpetual, irrevocable, transferable license itself or through a third party to copy, use, modify and adapt such materials to the extent reasonably necessary for the enjoyment of the WORK. Such license shall include the right for a third party contractor to perform and/or complete any or all of the WORK on CONTRACTOR's and/or OWNER behalf in the event that CONTRACTOR exercises any step in rights under this Contract or SUBCONTRACTOR's employment is determined under this SUBCONTRACT. Unless otherwise directed by the CONTRACTOR, SUBCONTRACTOR shall keep all designs, DRAWINGS and calculations in a neat and legible manner as required by the CONTRACTOR or the OWNER and, following completion of the WORK, shall surrender the originals of all material to the CONTRACTOR. Except as provided above, no design or DRAWING developed under this SUBCONTRACT may be duplicated in whole or in part by SUBCONTRACTOR without first obtaining the written consent of the CONTRACTOR.

SUBCONTRACTOR agrees to disclose promptly to CONTRACTOR any inventions, discoveries, or improvements conceived or made by SUBCONTRACTOR'S employees solely or jointly with others during SUBCONTRACTOR'S performance under SUBCONTRACT or within one year thereafter, which are based on CONFIDENTIAL INFORMATION, warranting that it has the right to do so, grants to CONTRACTOR a nonexclusive, irrevocable, worldwide, royalty-free license under such inventions, discoveries, or improvements, together with the right to extend said license to others without accounting to SUBCONTRACTOR.

SUBCONTRACTOR warrants that any designs, DRAWINGS and calculations developed, any Software developed or procured, and any materials procured, by SUBCONTRACTOR under this SUBCONTRACT shall not infringe any valid patent, copyright or trade secret owned or controlled by any other party. As regards such designs, DRAWINGS, calculations, Software, and materials, the SUBCONTRACTOR shall indemnify and hold harmless the CONTRACTOR and the OWNER from and against any and all claims, losses, costs, damages and expenses of any nature whatsoever including the legal fees in which the CONTRACTOR or the OWNER may incur, as a result of or in connection with any alleged or actual infringement of any Patents, copyrights, registered design, trade mark or trade name or any other intellectual property right resulting from the performance of the WORK by the

SUBCONTRACTOR or by its subcontractors, vendors or suppliers or which may result from the use of technical procedures, materials, processes or methods. If the OWNER's or CONTRACTOR's right to use such designs, DRAWINGS, calculations, Software, or MATERIALS is enjoined as a result of a claim of infringement, SUBCONTRACTOR shall either procure for any of them the right to use the infringing item, replace the infringing item with a substantially compatible and functionally equivalent non-infringing item, or remove the infringing item and compensate them for the costs associated with procuring a suitable substitute.

The SUBCONTRACTOR must defend, exclusively at his own cost and expense, any suit, action or claim arising out of or connected with the indemnity granted above.

In the event any MATERIALS, CONSTRUCTION EQUIPMENT or other supplies to be provided by the SUBCONTRACTOR, its subcontractors, vendors or suppliers for incorporation into the WORK is held in any such suit to infringe any intellectual property right and its use is enjoined, SUBCONTRACTOR shall at its own expense and at CONTRACTOR's option, either,

- (i) procure the CONTRACTOR and/or OWNER the right to continue using such materials, equipment or WORK; or
- (ii) replace the same with non-infringing materials, equipment or supplies or modify it so it becomes non-infringing,

and in both cases any costs and expenses resulting from such procurement, replacement or modification shall be exclusively borne by SUBCONTRACTOR.

The SUBCONTRACTOR waives, and shall procure that the SUBCONTRACTOR's personnel engaged in the generation of any Materials shall waive to the fullest extent permitted by law any moral rights it or they may have in any Materials developed, procured or delivered pursuant to the SUBCONTRACT, including any moral rights under or of the kind described in the Copyright Design and Patents Act 1988.

## **18. SUBCONTRACTS.**

The SUBCONTRACTOR shall not subcontract all of any portion of the WORK without the CONTRACTOR's prior written authorization.

After receiving the CONTRACTOR's written authorization that a portion of the WORK may be subcontracted, the SUBCONTRACTOR shall, before procuring any SUBCONTRACT for any portion of the WORK, submit a notification to the CONTRACTOR containing the following information:

- a) If the proposed subcontractor is a sole proprietorship or partnership, the name (s) and address (es) of the proprietor or all members of the partnership, as the case may be.
- b) If the proposed subcontractor is a corporation, the place of its incorporation or formation and its corporate headquarters.
- c) The name and address of the proposed subcontractor's principal bank and a copy of the subcontractor's latest audited financial statement.
- d) Evidence acceptable to the CONTRACTOR of the proposed subcontractor's technical qualifications to perform the portion of the WORK to be subcontracted.

Any further subcontracting of any portion of the WORK is prohibited without first obtaining the approval of the CONTRACTOR.

The CONTRACTOR shall, in a timely manner, review the information and, provided that the proposed subcontractor is, in the CONTRACTOR's opinion, both technically competent and financially able to perform the portion of the WORK to be subcontracted, the CONTRACTOR shall advise the SUBCONTRACTOR in writing of its non-objection to the proposed subcontractor. If the CONTRACTOR objects to the proposed subcontractor, the SUBCONTRACTOR shall either itself accomplish the WORK which would have been performed by the proposed subcontractor or shall seek the consent of the CONTRACTOR to use another subcontractor to which the CONTRACTOR has no objection.

The SUBCONTRACTOR shall ensure that all subcontractors selected by the SUBCONTRACTOR abide by and observe, to the same extent required of the SUBCONTRACTOR, all applicable OWNER's regulations, and the SUBCONTRACTOR agrees to insert or cause to be inserted into all subcontracts provisions to that effect.

The SUBCONTRACTOR shall, if CONTRACTOR or OWNER request, assign to the CONTRACTOR or the OWNER, or to any affiliated company or group of companies designated by any of them, as requested, all of its rights under all subcontracts and the benefit of the future performance of all purchase orders entered into by SUBCONTRACTOR with Subcontractors or Vendors (as the case may be), and CONTRACTOR may pay any Subcontractor or Vendor for any materials or good delivered, works executed and/or any services performed for the purposes of the WORKS after any such assignment. All subcontracts and purchase orders entered into by SUBCONTRACTOR shall contain a provision enforceable by CONTRACTOR whereby the Subcontractor or Vendor (as the case may be) agrees and consents to such assignment by SUBCONTRACTOR to CONTRACTOR. The SUBCONTRACTOR shall do everything within its reasonable efforts to obtain and maintain to the benefit of CONTRACTOR the same contractual benefits (including warranties, guarantees,

indemnities and insurance benefits) obtained for the protection of SUBCONTRACTOR from each Subcontractor and Vendor. SUBCONTRACTOR shall inform CONTRACTOR of any potential Subcontractor or Vendor having a corporate relationship or alliance with SUBCONTRACTOR.

The SUBCONTRACTOR shall be fully responsible to the CONTRACTOR for the acts and omissions of all its subcontractors at whatever tier, and their personnel. The SUBCONTRACTOR shall manage, schedule and coordinate the work of all its subcontractors so as to meet the TIME (S) FOR COMPLETION.

Nothing in the SUBCONTRACT shall create any contractual relation between the OWNER and the CONTRACTOR and any subcontractor, including the SUBCONTRACTOR. The SUBCONTRACTOR expressly undertakes to waive, and warrants that shall cause its subcontractors to waive, any and all rights to claim against the OWNER that may be conferred by whatever Law or Regulation in respect of any part of the SUBCONTRACT. 7.1. Within a period of 5 days from the Signature of the Contract, SUBCONTRACTOR shall submit to CONTRACTOR duly signed the waiver declaration form attached to these SUBCONTRACT.

In no case will any contractual relationship be deemed to exist between the subcontractors of the SUBCONTRACTOR and the CONTRACTOR, thus the SUBCONTRACTOR shall always remain solely responsible for any obligations resulting from performance of the WORK.

SUBCONTRACTOR shall include in every subcontract under this SUBCONTRACT a provision prohibiting any further subcontracting of any portion of the WORK by its subcontractors or vendors (as the case may be) unless the subcontractor or vendor (as the case may be) first obtains the written approval of SUBCONTRACTOR.

SUBCONTRACTOR shall not give such approval without first obtaining the non objection of CONTRACTOR.

## **19. TAXES AND ASSESSMENTS.**

SUBCONTRACTOR shall comply with all LAWS AND REGULATIONS regarding taxes, and the payment of taxes of all kinds now in effect and those becoming effective hereafter, until the SUBCONTRACT has been completed.

SUBCONTRACT PRICE is inclusive of any and all direct and indirect taxes, charges, duties, royalties and fees levied on SUBCONTRACTOR, its SUBCONTRACTORS and VENDORS and/or their employees by any local, state or national government authorities, both within and outside of Sultanate of Oman, in connection with the SUBCONTRACT, but is only exclusive of any Value Added Tax imposed by, and payable to, the government of the Sultanate of Oman in relation with this SUBCONTRACT. To the extent that such VAT is properly chargeable due to the

execution of this SUBCONTRACT, the CONTRACTOR shall pay such VAT as an addition to the invoiced amount and at the time of payment otherwise due to the SUBCONTRACTOR.

The SUBCONTRACTOR will administer, bear the cost and directly pay taxes, as and when due, including furnishing to the appropriate taxing authorities all information and reports required to be furnished in connection with taxes.

- a) all corporate and individual income taxes with respect to SUBCONTRACTOR's profits imposed by any Governmental Authority of any country on SUBCONTRACTOR, its employees, SUBCONTRACTORS and/or VENDORS due to the execution of any agreement or the performance of or payment for work described in this SUBCONTRACT.
- b) all taxes in connection with the employment of SUBCONTRACTOR's personnel and any withholding taxes that SUBCONTRACTOR is required to deduct from any payments to SUBCONTRACTORS and/or VENDORS.
- c) any VAT arising in connection with the purchase by SUBCONTRACTOR of goods, equipment, materials, services and other items.
- d) any additional taxes, duties or charges levied on this SUBCONTRACT;
- e) any custom or import duties, VAT and/or any taxes arising on the importation into the Sultanate of Oman and/or in any other country in connection with this SUBCONTRACT;
- f) any additional taxes, VAT, duties or charges which SUBCONTRACTOR is legally obligated to pay.

The SUBCONTRACTOR shall be responsible for reporting, and shall pay directly, the taxes as defined above. Furthermore, Subcontractor shall make its SUBCONTRACTORS and VENDORS to comply with its relevant reporting and payment responsibilities to the relevant tax authorities of any applicable taxes to them.

To the extent that any withholding, tax retention or deduction from any amount payable by the CONTRACTOR to the SUBCONTRACTOR is required under LAWS to be made by the CONTRACTOR, the CONTRACTOR may make such withholding, retention or deduction from such payment and the SUBCONTRACTOR shall have no recourse against the CONTRACTOR in respect of such withholding, retention or deduction provided that the CONTRACTOR will provide to the SUBCONTRACTOR with the pertinent receipt or evidence of it.

SUBCONTRACTOR, shall be liable for and shall protect, defend, indemnify and hold harmless CONTRACTOR and/or OWNER against, all taxes, imposts, duties, withholding taxes, tariffs, levies, charges or other dues or assessments of whatsoever nature, whether levied on or chargeable to SUBCONTRACTOR or its SUBCONTRACTORS and/or VENDORS in Sultanate of Oman or elsewhere, payable on or in respect of anything done under the SUBCONTRACT or in connection therewith. CONTRACTOR does not assume any liability in case of tax defaults by

SUBCONTRACTOR and SUBCONTRACTOR undertakes to strictly abide by the rules in force in respect of any and all tax matters.

The SUBCONTRACTOR is fully and solely liable for all and any payments relating to registration charges or sponsorship to enable SUBCONTRACTOR to work in the Sultanate of Oman, if applicable.

The SUBCONTRACTOR shall, to the extent reasonably possible, provide the CONTRACTOR with such assistance as the BUYER reasonably request in order to enable the CONTRACTOR to obtain or take advantage of tax exemptions, rebates and credits available with respect to the ORDER for the benefit of the BUYER.

The SUBCONTRACTOR shall be fully liable for and assumes the complete and exclusive responsibility in respect of payment of all its own taxes and assessments in force at the date of signature or which could thereafter be established by the national or local authorities, as well as of all those expenses which, according to the provisions in force or which could be established later, may be applicable to the performance of any activities which form part of the WORK, and the SUBCONTRACTOR, with the assistance of CONTRACTOR as the case may be, shall further bear the cost of and be responsible for obtaining any authorizations, PERMITS and documents necessary to perform such activity at the WORK SITE.

CONTRACTOR may request from SUBCONTRACTOR at any time during the term of the SUBCONTRACT, the payment receipts or other documents evidencing compliance with the above mentioned obligations, as well as any documents evidencing payment of social security both for SUBCONTRACTOR's own personnel and for that of its subcontractors. The CONTRACTOR may withhold from any payments due under the SUBCONTRACT the estimated amount of any sums in respect of which payment has not been duly justified by means of the corresponding official documents in accordance with the provisions of this clause.

In no case will the modification of taxes, assessments and other charges in force at the date of the SUBCONTRACT signature entitle the SUBCONTRACTOR to a price revision.

## **20. PERMITS, AUTHORIZATIONS AND LICENSES.**

The SUBCONTRACTOR shall obtain all licenses, authorizations and permits required to comply with the applicable Laws and Regulations as may be necessary for performance and completion of the WORK unless such licenses, authorizations or PERMITS are expressly stated in the SUBCONTRACT as being the responsibility of the OWNER or the CONTRACTOR.

If within the scope of WORK of the SUBCONTRACTOR special installations are included to meet the technical requirements set forth in the SUBCONTRACT, the

SUBCONTRACTOR, apart from complying with the technical prescriptions officially imposed, will obtain for the OWNER and/or the CONTRACTOR any such certificates or controls as may be required by such installations according to the legal regulations in force.

The SUBCONTRACTOR will carry out at his account and risk any quality controls required by the regulations in force as well as such other quality controls which may be foreseen in the SUBCONTRACT or the technical documentation attached thereto.

Any penalty, fine, damages, losses, costs or expenses which may be assessed against or incurred by CONTRACTOR due to SUBCONTRACTOR's non compliance with any of the obligations detailed above shall entitle CONTRACTOR to deduct any such amount from any sums due under the SUBCONTRACT or recover said amount from the Performance Bond submitted by SUBCONTRACTOR.

Any delay suffered in the performance of the WORK as a result of a delay in obtaining the permits, authorizations and licenses to which this clause refers will be considered as a delay in the performance of the SUBCONTRACT for the purposes of clause 11.2. unless and to the extent SUBCONTRACTOR demonstrates the delay in obtaining such permits, authorizations and licenses is due to events of Force Majeure as this term is defined in clause 30.

The SUBCONTRACTOR and the CONTRACTOR will collaborate and provide each other reasonable assistance for obtaining the permits, licenses or authorizations as may be required under the MAIN CONTRACT and the SUBCONTRACT or under the applicable Laws and Regulations.

The SUBCONTRACTOR, upon the CONTRACTOR's request must provide adequate evidence of the obtaining of all permits, authorizations or licenses required hereunder.

## **21. SAFETY, HEALTH AND ENVIRONMENTAL IMPACT.**

The SUBCONTRACTOR must comply with all the local Omani Laws, Rules and Regulations in force during the performance of the WORK regarding Safety and Health at SITE including all Omani Safety and Security Directives issued by the Omani Government.

SUBCONTRACTOR must comply with the OWNER's Safety Manual and/or specific safety rules of OWNER for access and/or works in the premises of his property.

The SUBCONTRACTOR shall hold harmless the OWNER and the CONTRACTOR from all responsibility with respect to any labor accident suffered by SUBCONTRACTOR's personnel, or of his subcontractors and suppliers, or of any firm which SUBCONTRACTOR may have working in the performance and execution of the WORK.

The SUBCONTRACTOR shall assign a Safety and Health Inspector, who in accordance with CONTRACTOR indications, will not be able to perform other functions for the SUBCONTRACTOR.

Such Safety and Health Inspector will oversee the compliance on the part of the SUBCONTRACTOR of the specific safety rules for this type of WORK, of the standards and indications required by the OWNER and the CONTRACTOR and of those established by the legal provisions in force.

Compliance with the safety rules and the recommendations given by the CONTRACTOR shall be the responsibility of the SUBCONTRACTOR.

Any costs resulting from compliance with the above, will be included in the SUBCONTRACT PRICE and in no case will it entail any extra cost for the CONTRACTOR.

The SUBCONTRACTOR shall be responsible for placing those safety devices which he or his subcontractors must install in the place of WORK.

Likewise, he shall specifically oversee his personnel and that of his subcontractors and suppliers in the use of their mandatory personal protection clothes.

SUBCONTRACTOR, in addition to the above, undertakes to comply with all safety and health standards established by the CONTRACTOR. The application of the above rules does not exempt nor limit the responsibility of SUBCONTRACTOR.

The SUBCONTRACTOR shall draft a Safety and Health Programme and any other mandatory documents for the performance of the WORK and compliance thereof, in accordance with Omani Safety Laws and Regulation, OWNER's regulations, including guidelines and standards, as well as CONTRACTOR's Safety Plan. The cost of this Programme and other documents shall be deemed to be included in the SUBCONTRACT PRICE.

Without diminishing the SUBCONTRACTOR's responsibility, the CONTRACTOR may inspect at all times the places of WORK and check compliance and suitability of the safety measures.

In the exercise of this right, CONTRACTOR is free to require the SUBCONTRACTOR to adopt certain measures, within the regulation limits or which may be of reasonable provision, guaranteeing a suitable level of safety according to the type of work or of risk. If the SUBCONTRACTOR does not adopt such measures, the CONTRACTOR may order the stoppage of WORK until the adoption of the safety measures which he considers suitable when, upon his judgement, risks occur of such nature as to advise such suspension. The SUBCONTRACTOR will not have the right to any extension in the time period for completion as a result of this suspension.

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Any accident occurred as a consequence of omissions or deficiencies in the safety measures, which produce a delay in the compliance with the TIME(S) FOR COMPLETION, will not excuse such delay and the SUBCONTRACTOR will incur in the established liquidated damages.

Any suspensions ordered by CONTRACTOR would not entitle SUBCONTRACTOR to an extension or compensation of any nature whatsoever, where such suspensions are due to reasons of risk in the conditions of WORK or to non-compliance of the safety measures established by legal provisions.

SUBCONTRACTOR shall use its best efforts to prevent and take all reasonable precautions to avoid pollution or contamination of the land, air or water arising out of SUBCONTRACTOR's or its subcontractors' performance of the WORK. Should there be a discharge or escape of any appreciable quantity of pollutants or contaminants during the performance of the WORK, SUBCONTRACTOR shall immediately notify the CONTRACTOR so that the CONTRACTOR may take the necessary action to contain, control, recover or disperse the substance.

SUBCONTRACTOR assumes all liability for and shall defend, indemnify, and hold harmless the CONTRACTOR and the OWNER from expenses incurred in the control and removal of, any and all pollution or contamination of the land, air or water arising from spills or discharges of all solid, liquid and gaseous wastes including asbestos, polychlorinated biphenyls (PCB), chemicals, fuels, lubricants, motor oils, pipe dope, paints, solvents, bilge, garbage and other like materials wholly in SUBCONTRACTOR's or its subcontractors' possession and control and directly associated with the WORK. SUBCONTRACTOR shall defend, indemnify, and hold the CONTRACTOR and the OWNER harmless from all claims, losses, expenses or damages in connection with such pollution or contamination. In addition, SUBCONTRACTOR shall lend every reasonable assistance to the CONTRACTOR in handling, controlling or cleaning up such pollutants or contaminants not related to the WORK.

SUBCONTRACTOR shall, at the CONTRACTOR 's direction remove from the WORK SITE (including the sea or sea bed located in Omani territorial waters), at SUBCONTRACTOR's expense all SUBCONTRACTOR equipment (including incapacitated or sunken vessels) hauled material, temporary structures, rubbish, unusual materials or other such items. In the event of SUBCONTRACTOR's failure to discharge the foregoing obligation the CONTRACTOR may accomplish the same or have it accomplished by others, all at SUBCONTRACTOR's expense.

SUBCONTRACTOR shall comply with CONTRACTOR regulations issued under or by international environmental conventions and regulatory bodies which the Omani Government has adopted.

## **22. INSURANCE**

22.1. SUBCONTRACTOR shall carry and maintain in force at all times during the term of this SUBCONTRACT the following insurances:

a) Workers' Compensation and Employer's Liability

Employer's Liability and such Worker's Compensation Insurance or similar social insurance as shall be necessary and adequate to cover all SUBCONTRACTOR's personnel while engaged in the performance of the WORK under this SUBCONTRACT. The limit of indemnity shall be not less than two and a half million United States Dollars (US\$2,500,000) for Employer's Liability.

b) Insurance for Subcontractor's equipment, covering physical loss of or damage to the SUBCONTRACTOR's permanent and temporary facilities, site huts, their contents, equipment, consumables, and tools including cranes and lifting equipment used in connection with the construction and completion of the Plant (other than motor vehicles, and marine vessels) and the like not forming a permanent part of the Plant, owned or leased by the SUBCONTRACTOR.

To the full replacement value at the time loss or damage occurs.

c) Comprehensive General Liability.

Its normal and customary comprehensive general liability insurance coverage with policy limits of at least two million U. S. Dollars (US \$2,000,000) for personal injury, death or property damage resulting from each occurrence and covering all of SUBCONTRACTOR's operations under this SUBCONTRACT. SUBCONTRACTOR represents and warrants that the aforesaid insurance covers, without limitation, loss of or damage to OWNER's or CONTRACTOR's other property for which SUBCONTRACTOR is responsible under this SUBCONTRACT.

d) Automobile Liability.

Automobile liability insurance covering owned, non-owned and hired motor vehicles, with limits of at least six hundred and fifty thousand U. S. Dollars (US \$650,000) for personal injury, death, or property damage resulting from each occurrence.

e) Marine Insurance on Vessels, Craft or Floating Equipment

If the performance of the Subcontract implies the use of any vessel or craft, SUBCONTRACTOR shall provide proper insurance in respect to any vessel, craft and other floating equipment owned, chartered or hired by SUBCONTRACTOR used in connection with the WORK, covering all risks of physical loss or damage howsoever arising, including marine THIRD PARTY

liability insurance in respect of legal liability to THIRD PARTIES of not less than one hundred million United States Dollars (US \$100,000,000) together with protection and indemnity risks with a member of the International Group of P&I Clubs including endorsements for charterers liabilities, pollution for maximum limits, cargo legal liabilities, removal of wreck, full collision liabilities and full coverage for all crew liabilities. Such insurances shall contain an express condition that the amount realisable under the Liability Section of the Policy is either up to the limit of Sum Insured or to the actual amount of claim whichever is lower and shall be free from the application of limitations of shipowners liability under the Omani Maritime law or any other law in force relating to the shipowners liability.

f) Aircraft Insurance on Aircraft or Helicopters

If the performance of the Subcontract implies the use of any aircraft or helicopter, SUBCONTRACTOR shall provide proper insurance to cover all aircraft or helicopters owned or hired by SUBCONTRACTOR used in connection with the execution of WORKS, against all risks of physical loss or damage howsoever arising up to a limit equivalent to the value of such aircraft or helicopters and including legal liability to THIRD PARTIES and passenger liability up to a limit of not less than fifty million United States Dollars (US \$50,000,000) per accident.

g)

22.2. The CONTRACTOR and the SUBCONTRACTOR agree that the insurance coverages listed under this clause are minimum coverages required to be purchased by SUBCONTRACTOR under this SUBCONTRACT. Should any loss occur for which SUBCONTRACTOR is responsible, SUBCONTRACTOR shall be liable for the full amount of the loss, including the amount in excess of SUBCONTRACTOR's insurance limits and including the amount of any deductible specified in SUBCONTRACTOR's insurance policy.

22.3. The SUBCONTRACTOR shall submit Certificates of Insurance issued by its Insurance companies to the CONTRACTOR at CONTRACTOR's request and in any case before the performance of any part of the SUBCONTRACT. No amount will be paid to the SUBCONTRACTOR until the CONTRACTOR has received and approved these Certificates of Insurance.

Those Certificates of Insurance shall specify the types and amounts of coverage in effect and the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed without thirty (30) days prior written notice to the CONTRACTOR. The CONTRACTOR's approval of or non objection to SUBCONTRACTOR's insurance certificates or policies shall not relieve SUBCONTRACTOR of any obligation or liability under this SUBCONTRACT.

22.4. The insurance policies which the SUBCONTRACTOR is required to have shall, as far as applicable, name the CONTRACTOR and/or the OWNER as named insured and shall contain a waiver of subrogation in favour of the CONTRACTOR and/or the OWNER. Those insurances which the Subcontractor is required to have shall always be considered as primary insurances in relation to insurances taken out by the CONTRACTOR and/or OWNER.

22.5. If SUBCONTRACTOR subcontracts any part of the WORK, SUBCONTRACTOR shall require its subcontractors to maintain insurances specified in the subcontracts, and shall further require that provisions giving the OWNER and the CONTRACTOR the rights specified in this clause be included in such subcontracts.

22.6. SUBCONTRACTOR shall notify OWNER and CONTRACTOR of any occurrence likely to give rise to a claim under CONTRACTOR's insurances as soon as possible and in any event within two (2) working days of such occurrence coming to the notice of SUBCONTRACTOR.

22.7. The deductibles provided under the insurance to be arranged by CONTRACTOR and/or OWNER, as the case may be, shall be for the account of and paid by SUBCONTRACTOR only for the case that the SUBCONTRACTOR is the solely responsible of the damage.

If, following loss or damage to the WORK or the PLANT, or other loss or damage insured, a claim is made under a policy of insurance effected by CONTRACTOR and/or OWNER, SUBCONTRACTOR shall be paid the amounts (if any) recovered from such policy upon rectifying the loss or damage or settling the relevant liability as the case may be. SUBCONTRACTOR shall not be paid any further or other amounts greater than the amounts recovered after deducting the amount due to the OWNER and/or CONTRACTOR, if in any, from insurance for carrying out such rectification or other amounts allowed to OWNER and/or CONTRACTOR in respect of OWNER and/or CONTRACTOR'S expense.

22.8. In event of any failure by SUBCONTRACTOR to make good in accordance with the terms of the SUBCONTRACTOR, such losses or damage to the WORK and/or the PLANT, which falls within the deductibles and exceptions as aforesaid, CONTRACTOR may deduct the applicable amounts from the sums otherwise due to SUBCONTRACTOR under the SUBCONTRACT or recover the same as a debt due from SUBCONTRACTOR.

22.9. Each policy of insurance taken out by CONTRACTOR (and/or where applicable any SUBCONTRACTOR) in accordance with this clause shall be placed and maintained with approved first class, reputable insurers or underwriters;

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22.10. The SUBCONTRACTOR shall cooperate with any loss adjusters, surveyors or others in connection with the insurance; observe and fulfil the terms and conditions of the insurance policies including any marine survey requirements, and in the event SUBCONTRACTOR or its Subcontractors and Vendors fail to do so, SUBCONTRACTOR shall:

- (i) indemnify CONTRACTOR against all damage, expenses, loss or liability claims resulting from any such failure;
- (ii) promptly provide to CONTRACTOR any information which may reasonably be required by CONTRACTOR and/or OWNER for provision to insurers on behalf of SUBCONTRACTOR and Subcontractors and Vendors regarding insurance;
- (iii) forward a copy of a notice to CONTRACTOR within twenty four (24) hours of sending of any notice of claim pursuant to the insurance.

22.11. SUBCONTRACTOR must punctually pay all premiums and other moneys payable in respect of all insurances for which it is responsible. If the SUBCONTRACTOR does not comply then the CONTRACTOR may, but is not obliged to, effect the relevant insurances and recover the reasonable costs of so doing as a debt due from the SUBCONTRACTOR.

### **23. TRANSFER OF TITLE.**

The SUBCONTRACTOR agrees and represents and warrants that title to, and ownership of, all the WORK shall pass to and vest in the CONTRACTOR upon the occurrence of any of the following dates, whichever is the earlier:

- a) event by which title passes to the OWNER from the CONTRACTOR, under the MAIN CONTRACT.
- b) when delivered to SITE
- c) when first identified as being specific to the Work
- d) when delivered to the custody of SUBCONTRACTOR
- e) when SUBCONTRACTOR receives payment from CONTRACTOR for the WORK.

Notwithstanding the transfer of ownership of all the WORK, the responsibility for care and custody together with the risk of loss or damage thereto shall remain with SUBCONTRACTOR pursuant to Clause 24 hereof until SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE of the WORK is issued.

### **24. RISK OF LOSS.**

24.1 SUBCONTRACTOR shall be responsible for the WORK, all MATERIALS and materials and equipment supplied by the CONTRACTOR or the OWNER in its custody until PROVISIONAL ACCEPTANCE.

24.2 SUBCONTRACTOR shall hold the OWNER and the CONTRACTOR free and harmless from liability for any loss of, or damage to, MATERIALS or materials supplied by third parties.

If prior to the date of PROVISIONAL ACCEPTANCE, all or any part of the FACILITIES are lost, damage or destroyed, SUBCONTRACTOR must at its own cost and expense carry out the reconstruction, repair or replacement WORK, including the removal of debris.

24.3 From the date of PROVISIONAL ACCEPTANCE SUBCONTRACTOR will remain responsible for the carrying out of any additional WORK arising from the failure of any or all of the Performance Guarantees, the risk in and the care of outstanding WORK and items to be removed from the WORK Site by SUBCONTRACTOR and will be liable for damage, defect or loss occasioned by SUBCONTRACTOR in the course of carrying out of any additional WORK, completing outstanding WORK or otherwise complying with SUBCONTRACTOR'S obligations under the SUBCONTRACT.

24.4 SUBCONTRACTOR shall carry out the reconstruction, repair or replacement work directed by CONTRACTOR at SUBCONTRACTOR'S sole cost and expense under the following events:

- cost of making good faulty or defective workmanship or MATERIALS supplied by the SUBCONTRACTOR.
- cost of making good fault, defect, error or omission in design, plan or specification provided by the SUBCONTRACTOR or
- loss due to disappearance or shortage where such loss is only revealed by the making of an inventory;

24.5 SUBCONTRACTOR shall indemnify, defend and hold harmless the CONTRACTOR and the OWNER, their affiliates, and their personnel or agents (hereafter individually and collectively referred to as "indemnitee") from claims, demands, and causes of action asserted against the indemnitee by any person (including, without limitation, SUBCONTRACTOR's and indemnitee's employees, SUBCONTRACTOR's subcontractors and employees of such subcontractors, and any other third party) for personal injury or death and for loss of or damage to property and resulting from the negligence of SUBCONTRACTOR, its subcontractors or the employees or agents of any of them.

24.6 SUBCONTRACTOR shall indemnify, defend and hold harmless the OWNER from and against any claim, damage, expense, loss or liability brought against, incurred or suffered in respect of damage or loss or destruction to property of Owner (including

particularly the existing refinery and ancillary facilities) in, adjacent to, near or upon which the WORK is being carried out.

## **25. SUBCONTRACT PRICE AND PAYMENTS.**

### **25.1 SUBCONTRACT PRICE.**

In consideration for the successful execution of all the WORK to be performed by SUBCONTRACTOR under the SUBCONTRACT and documents attached thereto, the CONTRACTOR shall pay the SUBCONTRACT PRICE as this term is defined in clause 2.24.

The SUBCONTRACT PRICE for Lump Sum subcontracts shall be paid in full and final settlement of all the WORK in accordance with the terms of this SUBCONTRACT and shall be fixed and firm, not subject to escalation or any other modification, save for any modification resulting from a FEWO issued by the CONTRACTOR in accordance with clause 15.2.

For Unit Prices subcontracts, the quantities of the WORK units appearing or which could appear for each unit price in the Requisition are an estimate and represent approximate quantities of the WORK to be performed. The SUBCONTRACTOR will not have the right to vary any of the unit prices in the event the quantities of such WORK units are later determined to be greater or lesser than those indicated in said Requisition, unless otherwise expressly specified in the SUBCONTRACT Documents.

In any case, the SUBCONTRACT PRICE includes both what is described in the WORK as well as the costs derived from compliance with all and each one of the requirements, conditions and operations described in the SUBCONTRACT Documents.

### **25.2 INVOICES AND PAYMENTS.**

Payment for WORK performed by the SUBCONTRACTOR will be made upon receipt and acceptance of the invoices submitted by SUBCONTRACTOR on a monthly basis in accordance with the progress of WORK performed or by measurement against DRAWINGS of the units performed, as determined by the WORK Certificates issued by the SUBCONTRACTOR and approved by the CONTRACTOR which shall be attached thereto and further provided that the payments under the MAIN CONTRACT to which the invoiced WORK relates have been effected.

Such invoices must be submitted to the CONTRACTOR before the tenth day of each month, and **CONTRACTOR shall either approve or submit remarks in respect thereof within a period of fifteen (15) days** from the date of receipt. Each invoice shall be accompanied by an Affidavit of Payment and Partial Release of Lien for Payment.

At the CONTRACTOR request, the SUBCONTRACTOR shall provide any additional data as required to check the progress of the WORK.

For Unit Prices SUBCONTRACTS payments relating to the monthly measurements of the WORK Certificates shall be deemed to be progress payments on account of the final measurements to be submitted and approved by the CONTRACTOR.

Payment by CONTRACTOR of any amounts invoiced in accordance with the above provisions shall in no case be deemed to imply acceptance of the WORK to which such invoice relates and shall in no case relieve the SUBCONTRACTOR from properly discharging any and all obligations under the SUBCONTRACT until FINAL ACCEPTANCE has been effected in accordance with the provisions of the SUBCONTRACT.

Payment terms including applicable retention amounts shall be as given in the Order.  
An amount of ten percent (10%) of the total value of each invoice submitted by the SUBCONTRACTOR in accordance with the provisions hereof shall be withheld by CONTRACTOR and paid to SUBCONTRACTOR upon the approval of the PROVISIONAL ACCEPTANCE CERTIFICATE by CONTRACTOR. A separate invoice will be issued for the mentioned amount of 10% of the total SUBCONTRACT PRICE.

Unless otherwise stated in the Requisition II, all payments hereunder shall be made within a period of ninety (90) days from the date of approval by the CONTRACTOR of the SUBCONTRACTOR's invoices issued in accordance with this clause by wire transfer to the account designated by the SUBCONTRACTOR and acceptable to CONTRACTOR or by such other mutually agreed expeditious method as may be appropriate.

CONTRACTOR will have the right to deduct or withhold, as the case may be, from any sums payable hereunder: a) any amounts which in accordance with the applicable Laws and Regulations the CONTRACTOR is obliged to withhold; b) any amounts due by the SUBCONTRACTOR to the CONTRACTOR in accordance with the terms of the SUBCONTRACT, and c) any sums due in whole or in part, in the event of claims, damages or expenses arising from the non-performance of the WORK by the SUBCONTRACTOR, in accordance with the provisions of the SUBCONTRACT.

The SUBCONTRACTOR and its affiliated companies shall maintain, and shall cause their subcontractors to maintain, books, records, correspondence, instructions, plans, DRAWINGS, receipts, vouchers, memoranda and other evidence ("records"), according to such accounting procedures and practices as are satisfactory to the CONTRACTOR and the OWNER, sufficient to accurately and properly reflect costs incurred by the SUBCONTRACTOR. The OWNER or the CONTRACTOR, or any firm of auditors appointed by any of them, shall have access, at all reasonable times, to all such records for the purposes of auditing and verifying costs or for any other reasonable purpose, and shall have the right to reproduce any such records. The

SUBCONTRACTOR shall preserve and make available, and shall cause its affiliated companies and subcontractors to preserve and make available of such records for a period of five (5) years after the SUBCONTRACT completion or termination of the SUBCONTRACT; provided, however, that if any such records are or may be required to resolve any claim or arbitration, or any legal proceeding pursuant to the SUBCONTRACT, the period of retention and the rights of access and examination described in this paragraph shall continue until final disposition of such claim or arbitration.

As a condition precedent for the issuance of PROVISIONAL ACCEPTANCE, the SUBCONTRACTOR shall furnish the CONTRACTOR with a "Release Letter" in accordance with the form established in Appendix I and releases to the CONTRACTOR and the OWNER from the SUBCONTRACTOR, and from each subcontractor or assignee under the SUBCONTRACT, discharging the CONTRACTOR, the OWNER, their affiliated companies, and the stockholders, offices, directors, employees, and agents of each of them from all liabilities, obligations and claims arising out of or under the SUBCONTRACT. The Release Letter shall be without prejudice to and shall not relieve the SUBCONTRACTOR from any and all obligations under the SUBCONTRACT which at the date of issuing the letter have not been expressly discharged by the CONTRACTOR or which, by their nature, survive completion of the WORK, including without limitations, warranties guarantees and indemnities; such obligations to be discharged strictly in accordance with the terms of the SUBCONTRACT.

SUBCONTRACTOR shall provide CONTRACTOR with a tax clearance certificate from the Omani Tax Authorities for the most recent fiscal year showing that the SUBCONTRACTOR is current in the payment of all of its income tax liabilities in Oman.

After CONTRACTOR's receipt of the foregoing documents and after all adjustments to SUBCONTRACT PRICE and all unsettled matters under the SUBCONTRACT have been disposed of, the SUBCONTRACTOR shall submit to CONTRACTOR its final invoice for amounts retained pursuant to the SUBCONTRACT provisions. After receipt and verification of said invoice, the CONTRACTOR shall pay the SUBCONTRACTOR all outstanding sums properly due and owing.

No sums shall be paid to the SUBCONTRACTOR under the SUBCONTRACT unless and to the extent the corresponding amounts are paid by the OWNER to the CONTRACTOR.

## **26. CONFLICT OF INTEREST.**

Except for customary promotional material and occasional business entertainment, limited in value in any instance to the reasonable cost of a business meal, and other than as specifically authorized under the terms of this SUBCONTRACT,

SUBCONTRACTOR shall not give, offer, or accept, and warrants that it has not given, offered or accepted, directly or indirectly any money, personal services, credit, extravagant entertainment, payments, loans, or other thing of value, to or from:

- a) The OWNER or its affiliated or related companies, or
- b) The CONTRACTOR or its affiliated or related companies, or
- c) Any of their agents, independent contractors or subcontractors, or
- d) The employees of any of the foregoing,

in order to influence the award of this SUBCONTRACT or any other contract that has been or may be awarded by the OWNER or the CONTRACTOR, or their terms, performance, administration, extension or termination.

Any violation of this provision shall constitute a substantial breach of this SUBCONTRACT which, without prejudice to CONTRACTOR's right to enforce any other remedy provided by law, shall empower the CONTRACTOR to terminate this SUBCONTRACT for default and claim damages including, but not limited to, any increased costs incurred by the CONTRACTOR as a result of such breach.

SUBCONTRACTOR acknowledge that is aware of a practice where consultants (termed "Illegal Information Brokers") approach suppliers and offer them CONFIDENTIAL INFORMATION or illicit influence to obtain business through corruption of the competitive bidding process. SUBCONTRACTOR recognizes that the practice of Illegal Information Brokering or any other corruption of the contract award process is not permitted by CONTRACTOR, and SUBCONTRACTOR warrants and represents that it has not utilized Illegal Information Brokering in connection with SUBCONTRACT and will not permit Illegal Information Brokering in connection with WORK. SUBCONTRACTOR agrees that if an Illegal Information Broker approaches SUBCONTRACTOR concerning any aspect of WORK, SUBCONTRACTOR will contact CONTRACTOR's REPRESENTATIVE promptly. COMPANY undertakes that the information provided by CONTRACTOR in this respect will be treated with the utmost confidence.

## **27. OPERATING CONDITIONS AT THE WORK SITE.**

### **PERFORMANCE.**

#### **A) Quality of the WORK.**

As regards quality requirements, SUBCONTRACTOR undertakes to exercise all necessary skill, care and diligence in performing the WORK subject of the SUBCONTRACT in accordance with (i) GOOD INDUSTRY PRACTICE for works of a similar nature, (ii) the provisions of the SUBCONTRACT and; (iii) with all applicable Laws and Regulations in force at the date of the SUBCONTRACT or which thereafter may enter into force.

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First quality will be required in the performance of the WORK. Whenever the CONTRACTOR deems that some of the WORK units are not properly performed, it may SUBCONTRACT, either during the period of performance or the WARRANTY PERIOD, the inspection of such units, and the SUBCONTRACTOR will bear the expenses resulting from repair, replacement or reperformance of any parts discovered to be defective. In the event the SUBCONTRACTOR fails to perform such corrective actions in a timely manner, the CONTRACTOR may carry them out directly or through third parties in the SUBCONTRACTOR's presence notifying him previously of the starting date for such operation. Any such WORKS will always be at SUBCONTRACTOR's expense which shall have no right to payment for the repaired, replaced or reperformed units nor shall it be entitled to any extension in the TIME(S) FOR COMPLETION as a result thereof.

The SUBCONTRACTOR, prior to commencement of any WORK shall submit to the CONTRACTOR for approval its Quality Control Manual and Quality Control Plan, which will include the Program of Inspection Points, as well as the list of operations and applicable procedures. If the CONTRACTOR does not approve such documents, he shall so notify the SUBCONTRACTOR stating the reasons therefor and the SUBCONTRACTOR must modify the documents accordingly without additional cost to the CONTRACTOR. The SUBCONTRACTOR may not commence any part of the WORK affected thereby until the necessary corrections have been performed in accordance with the modifications proposed by the CONTRACTOR.

B) Inspection of the WORK.

The SUBCONTRACTOR shall provide and make available all the necessary means and arrangements in SUBCONTRACT to allow the CONTRACTOR's inspectors and/or those of the OWNER access to and inspection of the WORK and the WORK SITE at any stage thereof. For such purposes the SUBCONTRACTOR will not remove scaffolding, platforms or stairs, nor in general the means of access to the parts of WORKS that are above ground or under ground until their inspection has been performed and no WORK shall be covered up or put out of view without the approval of the CONTRACTOR.

SUBCONTRACTOR shall afford full opportunity for the CONTRACTOR or OWNER to examine and measure any WORK which is about to be covered up or put out of view and to examine foundations before permanent works are placed thereon. SUBCONTRACTOR shall give a notice to CONTRACTOR whenever any such WORK or foundations is or are ready or about to be ready for examination and CONTRACTOR shall without delay examine such WORK or foundations, unless CONTRACTOR considers it unnecessary and advises SUBCONTRACTOR accordingly.

If any part of the WORK shall be covered up or put out of view without approval or consent of CONTRACTOR, SUBCONTRACTOR shall, if required by

CONTRACTOR, uncover such parts for examination and shall have to cover it again, and all expenses shall be borne by the SUBCONTRACTOR.

The CONTRACTOR shall determine which works require the permanent presence of the inspector, and such works will not be performed until he is present. If the WORK is rejected it must be satisfactorily corrected by the SUBCONTRACTOR in accordance with the provisions of this SUBCONTRACT.

The SUBCONTRACTOR shall inform the CONTRACTOR of any WORK performed outside the WORK SITE, indicating the place and date of possible inspections; CONTRACTOR's and OWNER's personnel will have free access to the shops or facilities where any such WORK is being performed.

The fact that the CONTRACTOR waives an inspection will not relieve the SUBCONTRACTOR of his responsibility and guarantee obligations under the SUBCONTRACT.

The SUBCONTRACTOR shall carry out as many tests as may be deemed necessary by the CONTRACTOR to demonstrate that the WORK fully complies with the requirements of the SUBCONTRACT. The CONTRACTOR shall at its own discretion decide whether the tests must be performed by the SUBCONTRACTOR in an official laboratory or by a specialized firm.

If the tests requested by the CONTRACTOR are not identified in the respective SPECIFICATION or its number exceeds that agreed in the Requisitions, the expenses shall be at CONTRACTOR's charge should they result satisfactory, otherwise, such expenses will be paid by the SUBCONTRACTOR.

The SUBCONTRACTOR shall be responsible for and bear the cost of all the expenses arising from performance of tests and examinations that CONTRACTOR deems necessary for the qualification of personnel who has to perform the WORK.

The inspection and tests made by the CONTRACTOR will be carried out in coordination with the SUBCONTRACTOR in order to minimise any possible delays and interference in the general progress of the WORK. Nevertheless, if some interference or delay should occur, SUBCONTRACTOR shall not be entitled to any compensation nor extension in TIME(S) FOR COMPLETION by reason thereof.

Any part of the WORK performed which does not comply in all respects with the SUBCONTRACT requirements and SPECIFICATIONS will be considered as defective unless otherwise agreed by the CONTRACTOR. CONTRACTOR shall inspect the quality of the WORK and the SUBCONTRACTOR shall correct at its own expense any part of the WORK which does not pass the inspection or test, after being qualified as defective.

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In addition of the foregoing, SUBCONTRACTOR shall provide the OWNER and the CONTRACTOR with free access to and copies of all information and records pertaining to the WORK necessary to appraise SUBCONTRACTOR's performance of the WORK, as and when requested, including all information prepared, produced, provided or supplied by SUBCONTRACTOR, its subcontractors and suppliers for the WORK.

## **28. GENERAL PROVISIONS.**

### **28.1 SUBCONTRACT ASSIGNMENT.**

Neither the SUBCONTRACT, nor any interest or claim thereunder, shall be either wholly or partially assigned, ceded or transferred by the SUBCONTRACTOR without the CONTRACTOR's prior written approval.

Similarly, by accepting the SUBCONTRACT, the SUBCONTRACTOR undertakes not to pledge the SUBCONTRACT, or to transfer any claim based on this SUBCONTRACT, to any third party.

In case assignment is approved by the CONTRACTOR, the SUBCONTRACTOR, as initial recipient of the SUBCONTRACT, shall remain jointly and severally liable for the performance of the SUBCONTRACT vis-à-vis the CONTRACTOR, except with the CONTRACTOR's prior written derogation agreement.

The CONTRACTOR may assign in whole or in part any of its rights and obligations under this SUBCONTRACT without approval of the SUBCONTRACTOR and SUBCONTRACTOR accepts to sign a novation agreement in the form requested by CONTRACTOR.

### **28.2 WAIVER.**

Failure of the CONTRACTOR to exercise any of its rights under the SUBCONTRACT shall in no way constitute a waiver of those rights, nor shall such failure excuse the SUBCONTRACTOR from any of its obligations under the SUBCONTRACT. Neither the CONTRACTOR's exercise of any of its rights of review, inspection or testing, nor SUBCONTRACTOR's submission or updating, or CONTRACTOR's review, revision, certification, acceptance for approval, of documents prepared by the SUBCONTRACTOR, shall have the effect of amending, modifying, or limiting in any way the SUBCONTRACTOR's obligations under the SUBCONTRACT.

Within 15 days after the execution of the SUBCONTRACT, as condition precedent for any payment, SUBCONTRACTOR shall submit to CONTRACTOR the Waiver Declaration attached to the SUBCONTRACT duly executed.

### **28.3. ENTIRE AGREEMENT.**

This SUBCONTRACT supersedes all previous contracts, correspondence and understandings between the parties concerning the SUBCONTRACT, and constitutes their entire agreement concerning the WORK to be performed hereunder. No promise, agreement, representation or modification to the SUBCONTRACT shall be of any force or effect between the parties, unless set forth or provided for in the SUBCONTRACT or in a FEWO.

The warranty, liability, indemnity and confidentiality (including publicity releases) provisions of the SUBCONTRACT shall survive its termination or final settlement. The provisions of the SUBCONTRACT relating to termination and dispute settlement (including choice of law and arbitration) shall survive its termination, but not its final settlement.

#### 28.4 TITLES OF THE CLAUSES.

The titles or headings of the different clauses or subclauses of the SUBCONTRACT have been employed with the only purpose of serving as a guideline in reading such document. Any such headings and titles are for ease of reference and shall not be deemed to alter the content of the clauses or subclauses to which they correspond, nor in any way affect the SUBCONTRACT interpretation.

#### 28.5 AUTHORIZED REPRESENTATIVES.

Immediately after the effective date of this SUBCONTRACT, SUBCONTRACTOR shall notify the CONTRACTOR in writing of the proposed SUBCONTRACTOR REPRESENTATIVE and shall promptly notify the CONTRACTOR of any change in the designation of SUBCONTRACTOR's REPRESENTATIVE. The SUBCONTRACTOR shall not designate nor change the SUBCONTRACTOR's REPRESENTATIVE without the CONTRACTOR's written approval.

For any physical absence of SUBCONTRACTOR's REPRESENTATIVE from the WORK SITE exceeding one (1) working day, CONTRACTOR shall appoint a substitute SUBCONTRACTOR's Representative.

SUBCONTRACTOR's REPRESENTATIVE shall be fluent in the written and spoken English language and shall be delegated sufficient authority to accept and sign any FEWO on behalf of SUBCONTRACTOR.

All formal contacts and correspondence between the CONTRACTOR and SUBCONTRACTOR shall be through the SUBCONTRACTOR's REPRESENTATIVE, except as otherwise provided in this SUBCONTRACT or otherwise decided by the CONTRACTOR.

#### 28.6 WORKING HOURS.

SUBCONTRACTOR shall work whatever hours are necessary to maintain the WORK Schedule and if necessary, shall work double shifts from the start from to complete the Project on time. However, all WORK shall be in accordance with Omani Labor and Workman Law. SUBCONTRACTOR shall notify the CONTRACTOR ten (10) days in advance of any planned WORK outside OWNER's normal work hours or on normal holidays shown on the "Operational Calendar" issued by the OWNER.

If night work is approved by the OWNER or the CONTRACTOR, SUBCONTRACTOR shall ensure that there is a suitable work environment including, but not limited to, adequate safety precautions, sufficient lighting, supervisory staff and the like all to the OWNER's and/or CONTRACTOR's approval.

SUBCONTRACTOR shall plan and schedule WORK such that material deliveries, and major personnel movements in and out of the restricted area gates do not interfere with operations (shift changes, lunch, and arrival / departure times) of the OWNER or the CONTRACTOR.

SUBCONTRACTOR shall propose alternative work hours to the CONTRACTOR in order to coordinate and schedule the WORK with work being executed by other contractors.

#### **28.7 ELECTRONIC FORMATS.**

SUBCONTRACTOR shall provide documents in electronic formats in accordance with SPECIFICATIONS.

#### **28.8 PHOTOGRAPHY.**

SUBCONTRACTOR shall photograph existing OWNER facilities only after obtaining the express written approval of the CONTRACTOR.

#### **28.9 MOST STRINGENT INTERPRETATION.**

SUBCONTRACTOR shall follow, and ensure that its subcontractors and suppliers follow, the most stringent interpretation of the SPECIFICATIONS standards and procedures that apply to the WORK. Where the words such as 'will', 'may' or 'should' appear in standards and procedures, these shall mean and be interpreted as 'shall' by SUBCONTRACTOR.

Omission of a specific requirement in one SPECIFICATION document shall not constitute a conflict with another document that includes the requirement.

#### **28.10 SUBCONTRACTOR OFFICES.**

During the period of performance of the WORK, the SUBCONTRACTOR shall establish an office at the WORK SITE.

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## **28.11 COMMUNICATION BETWEEN THE PARTIES.**

Any orders, instructions or communications between the SUBCONTRACTOR and the CONTRACTOR pursuant to the SUBCONTRACT shall be made in writing and delivered to the parties at the address specified in the Purchase Order. The notification shall be effective:

- If hand delivered -- at the moment of delivery.
- If by fax or e-mail -- at the moment of receiving it, if it occurs during working hours.
- If sent by certified mail -- at the moment of its delivery.

## **28.12 INDEPENDENT CONTRACTOR.**

The SUBCONTRACTOR shall be an independent contractor with respect to the WORK under the SUBCONTRACT. Neither the SUBCONTRACTOR, any subcontractor nor the personnel of either of them shall be deemed to be the servants, agents or employees of the CONTRACTOR.

The SUBCONTRACT shall not be deemed for the benefit of any third party nor shall it give any person not a party to the SUBCONTRACT any right to enforce its provisions.

## **28.13 CONTRACTOR's RIGHT IN CASE THE SUBCONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS.**

In the event the SUBCONTRACTOR fails to perform any of its obligations under the SUBCONTRACT, the CONTRACTOR, may, upon written notice, and without prejudice to any other remedies permitted by law or the SUBCONTRACT, perform the SUBCONTRACTOR's obligations, or cause them to be performed, at SUBCONTRACTOR's expenses.

SUBCONTRACTOR warrants to the CONTRACTOR that:

- 1.- under the laws of its country of incorporation, this SUBCONTRACT has been duly authorized and executed by the SUBCONTRACTOR, constitutes the legal, valid and binding obligations of the SUBCONTRACTOR, is enforceable against SUBCONTRACTOR in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and except as the availability of equitable remedies may be limited under applicable Laws;
- 2.- there is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best its knowledge, threatened against or affecting any of its properties, rights or assets, which could reasonably be expected to result in a

- material adverse effect on its ability to perform its obligations under this SUBCONTRACT or on the validity or enforceability of this SUBCONTRACT; and
- 3.- the activities to be undertaken by the SUBCONTRACTOR under this SUBCONTRACT are commercial, and not sovereign or public, in nature and are typical of the normal business activities of the SUBCONTRACTOR; and
- 4.- SUBCONTRACTOR further represents and warrants to CONTRACTOR that SUBCONTRACTOR is fully aware of and familiar with all of the legal requirements and business practices that must be followed in executing the WORK and that such execution will be in conformity with such requirements and practices and in compliance with all Laws and applicable government approvals, that all engineering services to be provided under this SUBCONTRACT shall be provided by personnel qualified to perform such services in the countries where such services will be performed, that the WORK can be constructed under current building codes, zoning, land use and other applicable Laws and government approvals affecting or likely to affect the Construction Site, its development and the execution of the WORK and that they can be constructed, and completed, and
- 5.- All materials incorporated into the FACILITIES shall be new, unused and free and clear of all liens and any other encumbrances.
- 6.- This SUBCONTRACT and all related documents, instruments and other materials relating thereto shall be in the English language. If there are versions of any part of this SUBCONTRACT or any other document relating thereto which are written in more than one language, the version which is in English shall prevail.

The remedies of the parties arising under the SUBCONTRACT are without prejudice to and cumulative with any remedy otherwise available at law or in equity or otherwise (including by reason of negligence) and including the right of either party to seek injunctive relief or a decree of specific performance against the other party.

In order that the PARTIES may fully exercise their rights and fulfil their obligations hereunder arising from the performance of the WORK, such provisions of this SUBCONTRACT as are expressed to survive expiry or termination of this SUBCONTRACT or are of a continuing nature or which are required to ensure the exercise by the PARTIES of their rights or fulfilment of their obligations shall survive expiry or termination of this SUBCONTRACT.

#### 28.14 EXCLUSION OF CONSEQUENTIAL DAMAGES

Neither SUBCONTRACTOR nor CONTRACTOR shall be liable for any indirect or consequential damages which may be suffered by the other party in connection with the

SUBCONTRACT, such as loss of profit or loss of any contract provided always that this clause shall not prevent, limit or exclude:

- a) liability in respect of the SUBCONTRACTOR's indemnity obligations set out in the SUBCONTRACT;
- b) in respect of SUBCONTRACTOR, liability for losses or costs insofar as they form part of the pre-estimated losses for the purpose of calculation of liquidated damages under the SUBCONTRACT.
- c) liability in the case of fraud, corrupt practices, gross negligence, wilful misconduct, prohibited acts, or violation of any applicable LAWS;
- d) Confidentiality obligations; and
- e) liability of SUBCONTRACTOR to the extent of amounts received or recoverable by SUBCONTRACTOR in respect of such liability pursuant to insurance policies required to be effected and maintained in accordance with the SUBCONTRACT, or payments received by SUBCONTRACTOR under such insurance policies.

## **29. SUSPENSION AND TERMINATION.**

### **29.1. SUSPENSION OF THE WORK.**

The CONTRACTOR may at any time, with or without cause, suspend performance of the WORK or any part thereof by giving the SUBCONTRACTOR prior notice specifying the portion of the WORK to be suspended and the effective date of such suspension. The SUBCONTRACTOR shall cease all activity on the suspended portion of the WORK on the effective date of suspension but shall continue to prosecute any unsuspended portion of the WORK. The SUBCONTRACTOR shall take all actions necessary to maintain and safeguard the suspended portion of the WORK. The CONTRACTOR shall not be liable for loss of anticipated profits or for any damages or any other costs incurred with respect to the suspended portion of the WORK during the period of suspension, provided that when the suspension is without cause, the CONTRACTOR shall pay reasonable, auditable and verifiable costs arising out of such suspension, including without limitation costs which:

- a) Are incurred for the purpose of safeguarding the WORK and materials and equipment in transit or at the WORK SITE.
- b) Are incurred for the SUBCONTRACTOR personnel or equipment, which the SUBCONTRACTOR continues to maintain, at the CONTRACTOR's request, at the WORK SITE.

Provided that SUBCONTRACTOR shall not be entitled to recover any such extra cost and expense unless SUBCONTRACTOR gives written notice of its intention to claim from CONTRACTOR within ten (10) days of CONTRACTOR'S suspension notice

In addition, SUBCONTRACTOR may be entitled to an extension in the time for completion, subject to the provisions contained within the SUBCONTRACT.

In case any suspension of the WORK ordered by CONTRACTOR for reasons attributable to SUBCONTRACTOR continues for a period exceeding two (2) weeks, the CONTRACTOR shall be entitled to recover from SUBCONTRACTOR any losses, damages, expenses or costs resulting from said suspension, or, at its option, to terminate the SUBCONTRACT forthwith in accordance with clause 29.3.

Whenever a suspension occurs the CONTRACTOR and the SUBCONTRACTOR shall sign a certificate detailing the causes or reasons therefor and specifying the contracting party which requests it. The certificate will reflect the WORK performed, the situation of the WORK and all data considered necessary to define the respective position of the parties at the time of suspension. The fact that the SUBCONTRACTOR should refuse to sign the certificate will not relieve him from his responsibility under the SUBCONTRACT.

The CONTRACTOR may, at any time, authorize resumption of all or any part of the suspended portion of the WORK by giving notice to the SUBCONTRACTOR specifying the part of the WORK to be resumed and the effective date of the resumption. Suspended part of the WORK shall be promptly resumed by the SUBCONTRACTOR after receipt of such notice.

## 29.2. TERMINATION AT CONTRACTOR CONVENIENCE.

The CONTRACTOR may at any time and at its sole convenience, terminate the SUBCONTRACT or any part of the WORK by giving written notice to the SUBCONTRACTOR specifying the extent and the effective date of the termination ("Termination Date"). Should the CONTRACTOR terminate the SUBCONTRACT or any part of the WORK in accordance with this clause, the SUBCONTRACTOR shall immediately stop performance of the terminated portion of the WORK, and demobilize within sixty (60) days, unless otherwise directed by the CONTRACTOR.

In that event, the SUBCONTRACTOR shall accept in full and final settlement of all the SUBCONTRACTOR entitlements of any kind for performance of terminated portion of the WORK up to the Termination Date and arising from any termination under this compensation ("Termination Compensation"):all reasonable, auditable and verifiable costs necessarily incurred by the SUBCONTRACTOR on or before the Termination Date attributable to the terminated portion of the WORK.

Termination Compensation shall be subject to retention requirements of the SUBCONTRACT, shall be reduced by any amounts previously paid to the SUBCONTRACTOR for the performance of the terminated portion of the WORK before the Termination Date, and shall exclude compensation for depreciation, liquidation, the unexpired portion of leases for capital equipment and facilities, or other capital costs attributable to the WORK not to be performed as a result of the termination. The amount due under this clause shall exclude compensation paid by the SUBCONTRACTOR or to any affiliated subcontractor to settle their entitlements of any kind arising from the terminated portion of the WORK to the extent such compensation is not a reasonable, auditable and verifiable cost of such SUBCONTRACTOR attributable to the terminated portion of the WORK. The Termination Compensation less reductions and exclusions shall in no event exceed the SUBCONTRACT PRICE. For the avoidance of doubt, the Termination Compensation shall not include any allowances for any indirect or consequential damages, costs, loss or expenses of whatever nature as well as for any loss of profits, loss of anticipated profit, loss of revenue, loss of contracts, loss of use, loss of opportunity, standby or down time costs and the costs of obtaining or maintaining finance or any similar economic or financial loss, whether direct or indirect

The CONTRACTOR shall have the right to audit all of the SUBCONTRACTOR's records for the purpose of verifying compensation paid for the terminated portion of the WORK.

In the event the SUBCONTRACT is terminated for convenience by CONTRACTOR as a result of the MAIN CONTRACT likewise having been terminated by the OWNER for convenience, the sums to be paid by CONTRACTOR to the SUBCONTRACTOR shall in no case exceed the amounts received by the CONTRACTOR from the OWNER under the MAIN CONTRACT for the corresponding WORK.

### 29.3. TERMINATION FOR SUBCONTRACTOR'S DEFAULT.

Should the SUBCONTRACTOR commit a breach of the SUBCONTRACT, the CONTRACTOR may demand, in writing, that the SUBCONTRACTOR comply with the terms of the SUBCONTRACT. If within five (5) days after receipt of such demand, the SUBCONTRACTOR has failed to take satisfactory steps to comply, or within fifteen (15) days the SUBCONTRACTOR has not remedied the breach, the CONTRACTOR may without prejudice to the exercise of any other rights or remedies which may be available to it, terminate the SUBCONTRACT or any part of the WORK by giving the SUBCONTRACTOR notice to that effect.

Should the SUBCONTRACTOR commit an act of bankruptcy, or seek legal or equitable relief for reasons of insolvency, or become unable to meet its financial obligations, the CONTRACTOR may, without prejudice to the exercise of any other rights or remedies which may be available to it, terminate the SUBCONTRACT by giving the SUBCONTRACTOR notice to that effect. Such termination shall be

effective on the date specified in the CONTRACTOR's notice but in no event prior to the SUBCONTRACTOR's actual receipt of such notice.

On the day on which termination becomes effective, the SUBCONTRACTOR shall stop performance of the terminated portion of the WORK. The CONTRACTOR shall retain all amounts which are then due and payable to the SUBCONTRACTOR plus reimbursements due to the SUBCONTRACTOR for its reasonable and auditable costs incurred in the performance of the WORK but only to the extent authorized in advance by the CONTRACTOR. If the cost to the CONTRACTOR of completing the terminated WORK is greater than the compensation the CONTRACTOR would have paid the SUBCONTRACTOR for completing such WORK, then the CONTRACTOR shall deduct the difference from the retained amounts. If the difference exceeds the retained amounts, the SUBCONTRACTOR shall pay the CONTRACTOR that difference less the retained amounts.

In the event the SUBCONTRACT is terminated for SUBCONTRACTOR's default pursuant to this clause, the SUBCONTRACTOR shall only be entitled to payment of the balance of any payments due to the SUBCONTRACTOR for the WORK actually completed and accepted by the CONTRACTOR in accordance with the SUBCONTRACT at the Termination Date. For such purposes the CONTRACTOR shall examine the WORK completed and accepted by the CONTRACTOR in accordance with the SUBCONTRACT at the date of termination and shall thereafter notify it the SUBCONTRACTOR together with the payments due in respect thereof in accordance with the SUBCONTRACT PRICE (the sum of the aforesaid amounts shall be hereinafter referred to as "the amount payable to the SUBCONTRACTOR by the CONTRACTOR").

Payment by the CONTRACTOR shall only be made following expiration of the Period specified in clause 13.3. and after deduction of any sums due by the SUBCONTRACTOR to the CONTRACTOR under the SUBCONTRACT and in particular of any losses, costs and expenses incurred by the CONTRACTOR as a result of the SUBCONTRACT termination, including any Liquidated Damages for Delay accrued under clause 11.2.(the sum of the aforesaid amounts shall be hereinafter referred to as "the amount payable to the CONTRACTOR by the SUBCONTRACTOR").

The difference between the amount payable to the CONTRACTOR by the SUBCONTRACTOR on the one hand and the amount payable to the SUBCONTRACTOR by the CONTRACTOR on the other hand shall be referred to as the "Balance at Termination".

The CONTRACTOR and the SUBCONTRACTOR shall endeavour to agree the amount of the Balance at Termination in writing within two (2) months of the date of submission of the corresponding account by the CONTRACTOR. If the parties are unable to agree the amount of the Balance at Termination within the said two (2) months the discrepancy shall be settled by arbitration in accordance with clause 31.

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Notwithstanding the foregoing ,any amount due to the CONTRACTOR pursuant to the Balance at Termination as submitted by the CONTRACTOR in the account, shall, pending the result of any arbitral proceedings, be initially recovered by the CONTRACTOR by whatever means are available including set off of payments due to the SUBCONTRACTOR and forfeiture of the corresponding Bonds.

If, after termination pursuant to this clause, it is determined for any reason that SUBCONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to clause 29.2.

#### **29.4. SUBCONTRACTOR OBLIGATIONS UPON SUSPENSION OR TERMINATION.**

The SUBCONTRACTOR shall minimize all costs to the CONTRACTOR resulting from such termination or suspension. Unless otherwise directed in writing by the CONTRACTOR, the SUBCONTRACTOR shall enter into no further contracts or other obligations, and immediately make every reasonable effort to terminate or suspend contracts or other obligations, other than as may be required to complete those portions of the WORK not suspended or terminated. If the CONTRACTOR so directs, the SUBCONTRACTOR shall execute and deliver all documents required to fully vest in the CONTRACTOR the SUBCONTRACTOR's rights in contracts and other obligations. The SUBCONTRACTOR shall take the actions that may be necessary, or that the CONTRACTOR may direct, for the protection and preservation of the WORK in progress.

#### **29.5 TERMINATION OF THE MAIN CONTRACT.**

In the event the SUBCONTRACT is terminated for convenience pursuant to clause 29.2. above, by CONTRACTOR as a result of the MAIN CONTRACT likewise having been terminated by the OWNER for convenience, the sums to be paid by CONTRACTOR to the SUBCONTRACTOR shall in no case exceed the amounts received by the CONTRACTOR from the OWNER under the MAIN CONTRACT for the corresponding work.

In the event termination of the SUBCONTRACT for SUBCONTRACTOR's default pursuant to clause 29.3. above, results in the Termination of the MAIN CONTRACT by OWNER for CONTRACTOR's default, SUBCONTRACTOR shall be liable for any losses, expenses and damages incurred by the CONTRACTOR in connection therewith, and no sums shall be paid to SUBCONTRACTOR under the SUBCONTRACT unless and to the extent the corresponding amounts are paid by the OWNER to the CONTRACTOR.

#### **29.5 EXCLUSIVITY OF REMEDIES**

The remedies described in the SUBCONTRACT shall constitute the SUBCONTRACTOR's sole remedies against the CONTRACTOR for any liability of the CONTRACTOR under or in any way connected with the SUBCONTRACT, in contract, law or in equity, howsoever arising. This article shall survive the termination of this SUBCONTRACT.

### **30. FORCE MAJEURE.**

For the purpose of this clause 30 "Force Majeure" shall mean an exceptional event or circumstance:

- a. which is beyond a Party's control;
- b. which such Party could not reasonably foresee before entering into this SUBCONTRACT;
- c. which, having arisen, such Party could not reasonably have avoided or overcome;
- d. which is not substantially attributable to the other Party; and
- e. which, in the case of Force Majeure affecting performance of SUBCONTRACTOR's obligations, directly affects the SITE

Force Majeure may include exceptional events or circumstances of the kind listed below, so long as the conditions in Clause 30 are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion or acts of foreign enemies, within Oman;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Oman;
- (iii) riot, commotion, disorder, strike or lockout within Oman by persons other than the SUBCONTRACTOR's Personnel and other employees of the SUBCONTRACTOR and Subcontractors;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radioactivity, except as may be attributable to the SUBCONTRACTOR's use of such munitions, explosives, radiation or radio-activity within the Force Majeure Countries; and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity within Oman.

Notwithstanding the above, Force Majeure shall not include any of the events or circumstances listed below:

- (i) war, hostilities (whether war be declared or not), invasion or acts of foreign enemies, outside Oman;
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war, outside Omanies;
- (iii) travel restrictions, advisories or warnings by countries other than the Sultanate of Oman on travel to the relevant part of the Sultanate of Oman or travel advisories or warnings by the Sultanate of Oman on travel
- (iv) sandstorms, heavy rainfall or accumulation of water caused thereby, and poor visibility due to fog or dust storms;

- (v) strike or lockout by the SUBCONTRACTOR or other employees of the SUBCONTRACTOR and its Subcontractors, unless part of a national general strike throughout Oman;
- (vi) acts, omissions or failures of any Subcontractor unless itself caused by an event of Force Majeure;
- (vii) shortage of Subcontractors, labour or materials unless itself caused by an event of Force Majeure;
- (viii) mechanical or electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party, unless the breakdown or failure is caused by an event of Force Majeure;
- (ix) any failure by the SUBCONTRACTOR to obtain and/or maintain a licence, consent or approval or insurance which it is its responsibility under this SUBCONTRACT to obtain; or
- (x) risks which are expressly assumed by the SUBCONTRACTOR pursuant to this SUBCONTRACT.

If SUBCONTRACTOR is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify CONTRACTOR in writing of the occurrence of such event and the circumstances thereof within five (5) Days after the occurrence of such event.

The Party who affected by the Force Majeure be excused from the performance or punctual performance of its obligations under the SUBCONTRACT for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed and sub-Clause 15 shall apply to deal with any extension to any of the Scheduled.

The Party or Parties affected by the event of Force Majeure shall use reasonable efforts (but without incurring unreasonable costs) to mitigate the effect thereof upon its or their performance of the subcontract and to fulfill its or their obligations under the subcontract, but no delay or non-performance by either party hereto caused by the occurrence of any event of Force Majeure shall:

- constitute a default or breach of the SUBCONTRACT; or
- give rise to any claim for damages or additional cost or expense occasioned thereby, if and to the extent that such delay or non-performance is caused by the occurrence of an event of Force Majeure.

SUBCONTRACTOR shall not be entitled and hereby expressly waive recovery of, any compensation of any nature in consequence of the occurrence of an event of Force Majeure. An extension of time where applicable shall constitute the sole liability of CONTRACTOR and SUBCONTRACTOR's sole remedy for Force Majeure.

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### **31. APPLICABLE LAW AND ARBITRATION.**

The validity, interpretation, construction and performance of the SUBCONTRACT and all aspects derived therefrom, will be governed by the laws of England and Wales.

If at any time any question, dispute or difference (a "Dispute") arises between CONTRACTOR and SUBCONTRACTOR in connection with the SUBCONTRACT or the carrying out of the WORKS such Dispute shall be finally settled by Arbitration administered by the International Chamber of Commerce in accordance with Rules of Conciliation and Arbitration of the International Chamber of Commerce by three Arbitrators appointed in accordance with those Rules.

All disputes, differences or contentions, arising out of the execution of, or in connection with, the SUBCONTRACT shall be settled through friendly negotiation between the PARTIES.

Should no amicable settlement be reached through negotiation, the PARTIES expressly agree that any and all disputes, controversies, matters or claims of any nature whatsoever directly, or indirectly arising out of, based-upon, relating to or in connection with the formation, validity, existence, interpretation, application, implementation, performance, breach or termination of the SUBCONTRACT, any provision or part thereof or any activities carried out in connection therewith, shall be finally settled by arbitration in accordance with the Rules of Arbitration and Statutes of the International Chamber of Commerce to which the administration of the arbitration and the appointment of the arbitrator is hereby entrusted in accordance with the said Rules and Statutes.

The arbitral tribunal shall sit in London (England) and the proceedings shall be in the English language.

The PARTIES expressly state their express undertaking to abide by and comply with the arbitral award so rendered which shall be final and binding for all purposes.

Performance of the SUBCONTRACT will continue during the course of any disagreement or arbitration procedure.

**FOR CONTRACTOR:**

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Name:  
Title:  
Date:

**FOR SUBCONTRACTOR:**

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Name:  
Title:  
Date:

## APPENDIX I

### **MODEL OF “RELEASE LETTER”**

With reference to SUBCONTRACT No. \_\_\_\_\_ dated \_\_\_\_\_, (the “SUBCONTRACT”) between the undersigned Subcontractor and [REDACTED] (the “CONTRACTOR”) for \_\_\_\_\_.

We hereby DECLARE and CERTIFY that the work certificate No ..... we enclose is the final work certificate. Therefore , payment by you of the corresponding invoice No. \_\_\_\_\_ dated \_\_\_\_\_ for the amount of \_\_\_\_\_ [insert currency] shall be deemed to be in full and final settlement of all equipment and materials supplied and services or activities rendered (the “WORKS”), or any other amounts due in connection with, resulting from or arising under the performance by us of the SUBCONTRACT.

In consideration of the said final payment, we, on behalf of ourselves and our agents, representatives, successors, subsidiaries, parent companies and all other affiliated of every tier and all person or entities claiming through them (including without limitation insurers) agree to hereby unconditionally WAIVE, dismiss, release and forever discharge the CONTRACTOR from all claims, demands and disputes as well as any liabilities, responsibilities and obligations of any nature whatsoever relating to, arising under or in connection with the SUBCONTRACT, including but not limited to, all claims for additional works or services, [interest accrued in respect of payments] , claims derived from omissions or errors we may have incurred in calculating the quantities or unit prices/rates regarding the work certificates, claims relating to price revision or escalation, claims regarding unforeseen circumstances encountered during the performance of the SUBCONTRACT, etc. whether such claims are (or could have been) based in contract, tort, equity, law or otherwise asserted under any legal theory.

Consequently, this Release Letter shall constitute conclusive evidence for all purposes and in any proceedings whatsoever between the CONTRACTOR and the SUBCONTRACTOR that the CONTRACTOR has satisfied its obligations in all regards towards the SUBCONTRACTOR under the SUBCONTRACT.

We hereby further CERTIFY, represent and warrant that we have settled all debts, liabilities and obligations contracted or incurred with third parties in connection with the SUBCONTRACT and that, therefore, the WORKS are free from any liens, claims, charges, security interests, preferential rights, attachments, retention rights or encumbrances of any nature whatsoever which have been or could be asserted by third parties including SUBCONTRACTORS’ personnel, under any legal theory, applicable law or jurisdiction, such as but not limited to materialsmen’s , labourers’, mechanics’ ,

subcontractors' and vendors' liens and we shall provide due evidence of the foregoing warranties and representations, if so requested by the CONTRACTOR.

Accordingly, we agree to indemnify and hold harmless the CONTRACTOR and their successors, assigns, directors, officers, agents, and employees and their properties from and against all costs, losses, damages, claims, causes of actions, judgments and expenses, including attorneys fees arising out of or in connection with claims against the CONTRACTOR or its property which arise out of the performance of the SUBCONTRACT, and which may be asserted by any of the SUBCONTRACTOR's suppliers, vendors, subcontractors of any tier, or any of their employees or agents or otherwise resulting from the breach of the foregoing warranties and representations.

This Release Letter shall be without prejudice to and shall not relieve the SUBCONTRACTOR from any and all obligations under the SUBCONTRACT which at the date of issuing this letter have not been expressly discharged by the CONTRACTOR or which, by their nature, survive completion of the WORKS including without limitation, warranties guarantees and indemnities; such obligations to be discharged strictly in accordance with the terms of the SUBCONTRACT.

All references to the term "SUBCONTRACT" in this letter shall be deemed to include references to any amendments, change orders and other modifications thereto which have been expressly accepted by the CONTRACTOR

Executed this \_\_\_\_\_ day of \_\_\_\_\_

SUBCONTRACTOR NAME

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

## APPENDIX II

### **MODEL OF IRREVOCABLE BANK LETTER OF GUARANTEE FOR DOWN PAYMENT**

Beneficiary: \_\_\_\_\_

\_\_\_\_\_(Issuing Bank)\_\_\_\_\_, resident in \_\_\_\_\_, Tax identification number \_\_\_\_\_, and for him and on his behalf \_\_\_\_\_, entitled to bind him in this act, as stipulated in deed No. \_\_\_\_\_ dated \_\_\_\_\_ by the Notary Public \_\_\_\_\_.

Having knowledge of Subcontract No. \_\_\_\_\_ dated \_\_\_\_\_ between \_\_\_\_\_(Contractor)\_\_\_\_\_ and \_\_\_\_\_(Subcontractor)\_\_\_\_\_ for the execution of \_\_\_\_\_(Work)\_\_\_\_\_.

We hereby guarantee, jointly and severally, the Subcontractor in front of (the Beneficiary), with express waiver of the rights of division, excusation and order, up to the maximum amount of \_\_\_\_\_ (*insert currency*), equivalent to the amount of the Advance Payment made by the Contractor to the Subcontractor under the Subcontract, as security for the observance of the obligations arising out of the above mentioned Subcontract.

We hereby guarantee to pay the Beneficiary the sum or sums up to and not exceeding the said amount as claimed by the Beneficiary, upon a first simple demand of Beneficiary within maximum 3 days after receipt without any excuse or objection.

The present Guarantee is irrevocable and unconditional, binding us from the date of its issuance until the date of the SUBCONTRACT PROVISIONAL ACCEPTANCE CERTIFICATE as stated in the General Terms and Conditions for Construction Subcontracts. This Guarantee shall be assignable by the Beneficiary.

This guarantee shall be governed by and construed in accordance with the laws of Spain and shall be subject the exclusive jurisdiction of the courts of Madrid, Spain.

\_\_\_\_\_(Issuing Bank)\_\_\_\_\_

(Place, date, and signature)

### APPENDIX III

#### **MODEL OF IRREVOCABLE BANK LETTER OF GUARANTEE FOR PERFORMANCE**

Beneficiary: \_\_\_\_\_

(Issuing Bank) \_\_\_\_\_, resident in \_\_\_\_\_, Tax identification number \_\_\_\_\_, and for him and on his behalf \_\_\_\_\_, entitled to bind him in this act, as stipulated in deed No. \_\_\_\_\_ dated \_\_\_\_\_ by the Notary Public \_\_\_\_\_.

Having knowledge of Subcontract No. \_\_\_\_\_ dated \_\_\_\_\_ between (Contractor) and (Subcontractor) for the execution of (Work)

We hereby guarantee, jointly and severally, the Subcontractor in front of \_\_\_\_\_ (the Beneficiary), with express waiver of the rights of division, excusation and order, up to the maximum amount of \_\_\_\_\_ (*insert currency*), as security for the faithful observance of the obligations arising out of the above mentioned Subcontract.

We hereby guarantee to pay the Beneficiary the sum or sums up to and not exceeding the said amount as claimed by the Beneficiary, upon a first simple demand of Beneficiary within maximum 3 days after receipt without any excuse or objection.

The present Guarantee is irrevocable and unconditional, binding us from the date of its issuance until the date of the Final Acceptance Certificate as stated in the General Terms and Conditions for Construction Subcontracts. This Guarantee shall be assignable by the Beneficiary.

This guarantee shall be governed by and construed in accordance with the laws of Spain and shall be subject the exclusive jurisdiction of the courts of Madrid, Spain.

(Issuing Bank)

(Place, date, and signature)

**APPENDIX IV**  
**Not Used**

## APPENDIX V

### **MODEL OF PARENT COMPANY GUARANTEE**

[TO BE SUBMITTED ON PARENT SUBCONTRACTOR'S HEADED PAPER]

[TBC]

[...]

[...]

DATE:

SUBJECT: PARENT SUBCONTRACTOR GUARANTEE REF:

SUBCONTRACT NO:

Dear Sirs,

THIS PARENT SUBCONTRACTOR GUARANTEE is made by way of deed the day of 20[...]

BETWEEN:

- (1) [ ] a company organised and existing under the laws of [ ] having its head office at [ ] (hereinafter referred to as the "Guarantor"); and
- (2) [TBC], a CONTRACTOR organised and existing under the laws of [...] and having its head office at [...] (hereinafter referred to as the "CONTRACTOR"), which expression shall, where the context so permits, include its successors and permitted assigns.

Capitalised terms used herein and not otherwise defined shall have the meanings ascribed thereto in the SUBCONTRACT.

WHEREAS:

By an SUBCONTRACT dated [ ] (the "SUBCONTRACT", which term includes all amendments to, variations of, or supplements to it, from time to time in force) the CONTRACTOR has agreed with the \_\_\_\_\_ (the "SUBCONTRACTOR") to carry out and complete the WORK (as defined in the SUBCONTRACT) upon and subject to the terms and conditions therein contained.

It is a condition of the SUBCONTRACT that SUBCONTRACTOR procures the execution and delivery to the CONTRACTOR of a Parent Company Guarantee in respect of the obligations of SUBCONTRACTOR under the SUBCONTRACT from a Parent Company of SUBCONTRACTOR suitable to the CONTRACTOR in the form of this guarantee.

The Guarantor has agreed to guarantee due performance under the SUBCONTRACT by SUBCONTRACTOR.

**IT IS AGREED** as follows:

1. In consideration of the SUBCONTRACTOR entering into the SUBCONTRACT with CONTRACTOR, the Guarantor:

- (a) as primary obligor and not merely as a surety or guarantee only guarantees to the CONTRACTOR the due and punctual performance by SUBCONTRACTOR of each and all the obligations, warranties, duties and undertakings of SUBCONTRACTOR under and pursuant to the SUBCONTRACT when and if such obligations, warranties, duties and undertakings shall become due and performable according to the terms of the SUBCONTRACT; and
- (b) as a primary obligation, agrees in addition to its obligations set out above, to indemnify the CONTRACTOR forthwith on demand against any loss, damage, cost or liability suffered or incurred by the CONTRACTOR by reason of any breach by SUBCONTRACTOR of its obligations, warranties, duties and undertakings under and pursuant to the SUBCONTRACT.

2. The Guarantor agrees that it shall not in any way be released from liability under this Guarantee by any act, omission, matter or other thing whereby (in absence of this provision) the Guarantor would or might be released in whole or in part from liability under this Guarantee including, without limitation, and whether or not known to the Guarantor:

- (a) any arrangement made between CONTRACTOR and the SUBCONTRACTOR including any addendum or amendment to the obligations of the SUBCONTRACTOR under the SUBCONTRACT (including, without limitation, any adjustment to the amount payable to SUBCONTRACTOR under the SUBCONTRACT); or
- (b) any arrangement made between CONTRACTOR and the SUBCONTRACTOR including any addendum or amendment to the obligations of the SUBCONTRACTOR under the SUBCONTRACT (including, without limitation, any suspension of the

- WORK, extension of the time for performance of the WORK or otherwise); or
- (c) any waiver or forbearance by the CONTRACTOR whether as to payment, time, performance or otherwise; or
  - (d) the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against SUBCONTRACTOR or any other person; or
  - (e) any unenforceability, illegality or invalidity of the SUBCONTRACT or any of the provisions of the SUBCONTRACT or any of SUBCONTRACTOR's obligations under the SUBCONTRACT, so that this Guarantee shall be construed as if there were no such unenforceability, illegality or invalidity; or
  - (f) the termination of the SUBCONTRACT; or
  - (g) any breach of the SUBCONTRACT by, or other default of, the CONTRACTOR; or
  - (h) any legal limitation, disability, incapacity or other circumstances relating to SUBCONTRACTOR, or any other person; or
  - (i) the dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or employership, insolvency, liquidation or the appointment of an administrator or receiver of SUBCONTRACTOR or any other person;
  - (j) the assignment of the SUBCONTRACT; or
  - (k) any other matter or things (whether similar to the foregoing or otherwise) whereby the obligations of the Guarantor hereunder might under any applicable law be discharged or affected;

and the Guarantor hereby waives notice of the foregoing.

3. The Guarantor by this Guarantee authorizes CONTRACTOR and the SUBCONTRACTOR to make any addendum, variation or amendment to the SUBCONTRACT, or the WORK, the due and punctual performance of which addendum, variation or amendment shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee.

4. This Guarantee shall be a primary obligation of the Guarantor. The CONTRACTOR shall not be obliged to enforce any other security held by it in respect of the obligations of SUBCONTRACTOR under the SUBCONTRACT or to exercise, levy or enforce any distress, diligence or other process of execution against

SUBCONTRACTOR. In the event that the CONTRACTOR brings proceedings against SUBCONTRACTOR, the Guarantor will be bound by any findings of fact, interim or final award or judgment made by an arbitrator or the court in such proceedings.

5. This Guarantee is a continuing guarantee and accordingly shall remain in full force and effect (notwithstanding any intermediate satisfaction by SUBCONTRACTOR, the Guarantor or any other person) until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by SUBCONTRACTOR under the SUBCONTRACT shall have been satisfied or performed in full and is not revocable and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the CONTRACTOR may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security. Subject to Clause 13 when all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by SUBCONTRACTOR under the SUBCONTRACT shall have been satisfied and performed in full, pursuant to the SUBCONTRACT, this Guarantee shall become of no further effect and shall be returned to the Guarantor by the CONTRACTOR.

6. Until all amounts which may be or become payable under the SUBCONTRACT or this Guarantee have been irrevocably paid in full, the Guarantor shall not, as a result of this Guarantee or any payment or performance under this Guarantee, be subrogated to any right or security of the CONTRACTOR or, claim or prove in competition with the CONTRACTOR against SUBCONTRACTOR demand or, accept repayment of any monies or, claim any right of contribution, set-off or indemnity from and against SUBCONTRACTOR, and any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of this provision shall be segregated from Guarantor's other funds and shall be held by the Guarantor in trust for and shall be promptly paid to the CONTRACTOR.

7. The Guarantor shall not hold any security from SUBCONTRACTOR in respect of this Guarantee and any such security which is held in breach of this provision shall be segregated from Guarantor's other funds and shall be held by the Guarantor in trust for and shall promptly be transferred to the CONTRACTOR. Until all amounts which may be or become payable under the SUBCONTRACT or this Guarantee have been irrevocably paid in full, if (notwithstanding the provisions of Clauses 6 and 7) the Guarantor has any rights of subrogation against SUBCONTRACTOR or any rights to prove in a liquidation of SUBCONTRACTOR, the Guarantor agrees to exercise such rights in accordance with the reasonable directions of the CONTRACTOR.

8. Each payment to be made by the Guarantor under this Guarantee shall be made in U.S. Dollars, without any set-off or counterclaim and free and clear of all deductions or withholdings of any kind whatsoever or howsoever arising. If any deduction or withholding must be made by law (including double taxation treaties) the Guarantor will pay that additional amount which is necessary to ensure that the CONTRACTOR receives on the due date a net amount equal to the full amount which it would have

received if the payment had been made without the deduction or withholding. The Guarantor shall promptly deliver to the CONTRACTOR any receipts, certificates or other proof evidencing the amounts paid or payable in respect of any such deduction or withholding.

9. The Guarantor shall have ten (10) Business Days from the date of receipt of written demand (the expiry of such period being the "**Due Date**") to make payment in full to the CONTRACTOR of any amount due under this Guarantee. The Guarantor shall pay interest on any amount due under this Guarantee from the Due Date until the date of payment in full calculated on a daily basis on any Business Day at the rate for payments in US Dollars of two per cent (2%) per annum above the percentage rate per annum offered by ---- to prime banks in New York at or about 11.00 am on such Business Day.

10. The Guarantor will reimburse the CONTRACTOR for all reasonable legal and other costs (including non-recoverable VAT) incurred by the CONTRACTOR in connection with the enforcement of this Guarantee in respect of a successful claim under this Guarantee.

11. The CONTRACTOR may appropriate any sum paid by SUBCONTRACTOR, the Guarantor or any other person or recovered or received on account of the obligations which are the subject of this Guarantee as it sees fit.

12. Any settlement or discharge between the CONTRACTOR and SUBCONTRACTOR and/or the Guarantor shall be conditional upon no settlement with security or payment to the CONTRACTOR by SUBCONTRACTOR or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision of enactment relating to bankruptcy, insolvency or liquidation for the time being in force and accordingly (but without limitation the CONTRACTOR's other rights hereunder) the CONTRACTOR shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value which the CONTRACTOR has placed upon such settlement or security or the amount of any such payment.

13. The Guarantor warrants that this Guarantee is its legally binding obligation, enforceable in accordance with its terms, and that all necessary governmental and other consents and authorizations for the giving and implementation of this Guarantee have been obtained.

14. The Guarantor warrants and undertakes to the CONTRACTOR that it shall take all necessary action to perform the obligations expressed to be assumed by it or contemplated by this Guarantee and to implement the provisions of this Guarantee.

15. The Guarantor warrants and confirms to the CONTRACTOR that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the

CONTRACTOR (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee.

16. The CONTRACTOR shall be entitled by notice in writing to the Guarantor to assign the benefit of this Guarantee at any time in connection with an assignment of the SUBCONTRACT, without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Guarantee.

17. Any notice to or demand on the Guarantor to be served under this Guarantee may be delivered or sent by first class recorded delivery post or courier to the Guarantor at:

Address: [ ]  
Attention: [ ]  
Telephone: [ ]

18. Any such notice or demand shall be deemed to have been served:

- (a) if delivered, at the time of delivery as established by a courier's receipt; or
- (b) if posted, at the time of delivery, established by a postal receipt.

19. In proving service of a notice or demand it shall be sufficient to prove that delivery was made in accordance with Clause 18.

20. For the purposes of this Guarantee "Business Day" means a day (other than a Saturday or a Sunday) on which banks are generally open in London and New York for normal business.

21. No delay or omission of the CONTRACTOR in exercising any right, power or privilege under this Guarantee shall impair or be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

22. A waiver given or consent granted by the CONTRACTOR under this Guarantee will be effective only if given in writing and then only in the instance and for the purposes for which it is given in writing.

23. A waiver by the CONTRACTOR shall not constitute a continuing waiver and shall not prevent the CONTRACTOR from subsequently enforcing any of the provisions of this Guarantee.

24. The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.

25. The Guarantor shall pay all stamp duties and taxes, if any, to which the execution and delivery of this Guarantee may be subject in [ ] and shall indemnify the CONTRACTOR against any and all liabilities with respect to or arising from any delay or omission to pay any such duties and taxes.

26. Where applicable, words and expressions used in this Guarantee shall have the meaning assigned to them in the SUBCONTRACT, unless defined in this Guarantee.

27. The Guarantor submits to the exclusive jurisdiction of the Spanish courts for all purposes relating to this Guarantee. The Guarantor irrevocably appoints [NAME AND ADDRESS] to receive for it and on its behalf, service of process issued out of the Spanish Courts in any legal action or proceedings concerned. Nothing in this paragraph shall affect the right of the CONTRACTOR to join other parties in any proceedings to serve process in any other manner permitted by law but if the said process agent ceases to exist or have an office in Spain, the Guarantor shall forthwith appoint another process agent which shall be a company incorporated in and having its registered office in Spain. The Guarantor expressly consents to the enforcement of any judgment of the Spanish courts pursuant to this Clause in any court of any other competent jurisdiction.

28. This Guarantee shall be governed by the Laws of Spain. Any final and unappealable decision by an arbitration tribunal pursuant to the SUBCONTRACT or any settlement between SUBCONTRACTOR and the CONTRACTOR shall be binding on the Guarantor for the purposes of determining SUBCONTRACTOR's liability pursuant to the SUBCONTRACT.

29. For the avoidance of doubt, the Guarantee is not intended to confer any legally enforceable rights on any person other than the Parties, their successors in title and their assignees.

30. This Guarantee may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF this Guarantee has been executed and has been delivered on the day and year first above written.

EXECUTED by

[ ]

acting by [name], [title]  
acting under the authority  
of that Guarantor, in the  
presence of:

Witnesses

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

EXECUTED by

acting by [name], [title]  
acting under the authority  
of that [TBC], in the  
presence of:

Witnesses

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

## **APPENDIX VI**

### **INSURANCE DEDUCTIBLES**

The Construction /Erection All Risks Insurance excludes SUBCONTRACTOR's temporary facilities and CONSTRUCTION EQUIPMENT not forming a permanent part of the WORK.

Such insurance shall be subject to a deductible, but notwithstanding the level of that deductible, SUBCONTRACTOR shall be responsible as follows:

Whenever the loss, damage or occurrence resulting from an insured event caused by SUBCONTRACTOR negligence, default or omission would exceed TBC (US\$TBC), the SUBCONTRACTOR shall be liable for:

- (a) TBC US Dollars (US\$TBC) in respect of the first Claim;
- (b) TBC US Dollars (US\$TBC) in respect of the second Claim or if the Claim is less than TBC US Dollars (US\$TBC), the full amount of such Claim;
- (c) TBC US Dollars (US\$TBC) for the third and any subsequent Claim or if the Claim is less than TBC US Dollars (US\$TBC), the full amount of such Claim;

For the purpose of determining the order of any Claims, the date of occurrence of the insured event giving rise to such Claim shall be used.

Whenever the loss, damage or occurrence resulting from SUBCONTRACTOR negligence, default or omission is less than TBC US Dollars (US\$TBC), SUBCONTRACTOR shall be liable for the full amount of such loss.

**APPENDIX VII**  
**WAIVER DECLARATION**

With reference to SUBCONTRACT No. \_\_\_\_\_ dated \_\_\_\_\_,  
(the "SUBCONTRACT") between the undersigned SUBCONTRACTOR and  
\_\_\_\_\_ (the "CONTRACTOR") for \_\_\_\_\_.

We hereby DECLARE and CERTIFY that we, on behalf of ourselves and our agents, representatives, successors, subsidiaries, parent companies and all other affiliated of every tier and all person or entities claiming through them (including without limitation insurers) agree to hereby unconditionally WAIVE any and all rights to claim against the OWNER that may be conferred by whatever Law or Regulation in respect of any part of the SUBCONTRACT.

Executed this \_\_\_\_\_ day of \_\_\_\_\_

SELLER'S NAME

By: \_\_\_\_\_

Title: \_\_\_\_\_

