

## **EXHIBIT B - SPECIAL CONDITIONS**

### **1. EXTENT OF CONTRACT:**

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- 1.1 The works under this contract "on turn key basis" includes Engineering, design, fabrication, factory testing, site delivery, loading, unloading, civil works, installing, testing & commissioning, training, insurance till handing over & warranty for **Maspero 66/11 kV Substation**.
- 1.2 The scope of works generally includes, but not limited, to, the following:
  - 1.2.1 Provide qualified engineers to supervise directly and control completely its employees during the execution of the works including supervision and control of its engineering, plant fabrication, construction, start up testing means and methods and work at the site.
  - 1.2.2 Designate Authorized Representative (s) and key personnel to ensure that all of Contractor's contacts and communication with Owner on all matters shall be made through Owner's authorized representative.
  - 1.2.3 Designate a qualified safety representative to implement and maintain Contractor's safety program for work at the Site in compliance with all applicable laws, regulations, and standards governing safety. Contractor shall direct its personnel and enforce compliance with the program to protect against and prevent injury to personnel and damage to property.
  - 1.2.4 Implement and maintain a quality surveillance/audit program to ensure the quality of the works including furnishing of shop and field-testing certifications, reports and engineering quality verification documentation.
  - 1.2.5 Cooperate with other contractors at the Site so as to minimize interferences among other experienced contractors and to facilitate the expeditious completion of the Project as a whole.
  - 1.2.6 Provide qualified erection and start up personnel to ensure that the erection work at the site shall be done under the supervision of the personnel of the respective subcontractor furnishing the plant or obtain certification from the Subcontractor furnishing the plant that the personnel supervising the erection of the plant are capable to supervise erection and startup work independently.
  - 1.2.7 Contractor shall provide all spare parts which owner has selected to purchase from the list of spares identified in Exhibit (C). Furthermore, Contractor shall identify any additional spare parts which are either not included in Exhibit C or those spare parts which are different due to changes initiated by Contractor and/or requested by Owner.

- 1.2.8 Provide qualified engineering and technical personnel to prepare and submit design drawings and details, procedures documentation, reports, schedules, As-Built, etc. to complete the final design of the works.
- 1.2.9 Designate qualified personnel to perform under contractor's supervision and responsibility the works up to the date of issuance of construction completion certificate for works.
- 1.2.10 Correct any deficiencies resulting from the operation of the plant until the date of Owner's issuance of taking over and Acceptance Certificate for works to the extent required in the Contract.

## 2. INSURANCE REQUIREMENTS:

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### 2.1 INSURANCE:

Contractor shall, before commencing the works deliver to the Owner three copies of certificates of insurance Attachment [1] completed by his insurance carrier or agent and certifying that minimum insurance coverages are in effect. Certificates shall indicate contractor's name, project, and contract number. The same procedure shall be followed for subcontractors. The following subitems are the minimum insurance coverages required and the contractor is encouraged to place insurance with Egyptian companies.

### 2.2 INSURANCE DURING CONSTRUCTION:

Without limiting his obligations and responsibilities contractor will insure, in the joint names of Owner and Contractor, against all loss or damage, from whatever cause arising for which he is responsible under the terms of the contract, and in such manner that Owner and contractor are covered during the period of construction of the Works and are also covered until the taking over and Acceptance for loss or damage arising from a cause occurring prior to the taking over and Acceptance of the works and for any loss or damage occasioned by contractor in the course of any operations carried out by him for the purpose of complying with his obligations:

2.2.1 The works and the temporary works to the full value of such works execution from time to time.

2.2.2 The materials, contractor's equipment, and other things brought onto the site by contractor to the full value of such materials, contractor's equipment, and other things. Such coverage will be effected with an insurer and in terms approved by Owner (which approval will not be unreasonably withheld), and contractor will, whenever required, produce to the Owner's representative the policy or policies of insurance and the receipts for payment of the current premiums. It is provided always that, without limiting his obligations and responsibilities aforesaid, nothing in this clause contained will render contractor liable to insure against the necessity for the repair or reconstruction of any work constructed with material or workmanship not in accordance with the requirements of contract.

## 2.3 THIRD PARTY INSURANCE:

Before commencing the execution of the works, contractor (but without limiting his obligations and responsibilities whatsoever) will insure against any damage or loss or injury that may occur to any property (including that of Owner) or to any person (including any employee of Owner) by or arising out of the execution of the works or temporary works or in the carrying out of contract.

Such insurance will be effected with an insurer and in terms approved by Owner and for at least the amount of L.E 5,000,000 Contractor will, whenever required produce to the Owner or the Owner's authorized representative the policy or policies of insurance and the receipts for payment of the current premiums.

## 2.4 ACCIDENT OR INJURY TO WORKMEN:

2.4.1 Owner will not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of contractor or any subcontractor, save and except and accident or injury resulting from any act or default of Owner, his agents, or servants. Contractor will indemnify, and keep indemnified, Owner against all such damages and compensations (save and except as aforesaid) and against all claims, demands, proceedings, cost charges, and expenses whatsoever in respect there of or in relation there to.

2.4.2 Contractor will insure against such liability with an insurer approved by Owner and will continue such insurance during the whole of the time that any persons are employed by him on the works. Contractor will, when required, produce to the Owner or the Owner's authorized representative such policy of insurance and the receipt for payment of the current premiums, provided always that in respect of any persons employed by any subcontractor, obligation to insure as aforesaid under this sub clause will be satisfied if subcontractor will have insured against the liability in respect of such persons in such manner that Owner is indemnified under the policy. Contractor will require such subcontractor to produce to the Owner or the Owner's authorized representative, when required, such policy of insurance and the receipt for payment of the current premium.

## 3. DECENNIAL LIABILITY INSURANCE:

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3.1 Contractor will take out for the benefit of Owner, Contractor and lower tier subcontractors:

3.1.1 An insurance policy as required in accordance with clause 46 of law No. 119 year 2008, and to account for any further amendments to such laws or any new laws which address construction law requirements in the A.R.E.

3.1.2 An insurance policy as required in accordance with clause 651 of civil law which addresses decennial liability in the ARE.

The policy will be in the amount as stated in the above-mentioned laws and will cover the total value of the civil works portion of this Contract. The total contract price as stated in Exhibit (C), section (3) shall be deemed to include the premium cost for decennial liability insurance which shall be paid in local currency. Contractor will furnish Owner with the certificates of decennial liability insurance signed by the insurance carrier evidencing that

such policy is in full force and effect not less than 30 days prior to the commencement of the work at the jobsite.

#### 4. OWNER-FURNISHED UTILITIES AND FACILITIES:

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4.1 The facilities and services listed below will be furnished by Owner. Such facilities may be used by Contractor provided that any such use will be subject to written approval of Owner:

4.1.1 **Site and Access** to the Site, up to the Site perimeter.

4.1.2 **Site Benchmarks** for vertical and horizontal control.

4.1.3 **Assistance** by providing recommendation letters to support Contractor's reasonable request for all clearances, visas, work permits and residence permits for Contractor's and its subcontractor's employees assigned to work in the A.R.E. Owner will also provide assistance in obtaining general permits necessary for construction of the plant at the Site as required by Governmental and local laws, ordinances, and regulations of the A.R.E., its subdivisions or any other Governmental authority.

4.1.4 **Limited Space** will be provided by Owner for contractor's use

#### 5. CONTRACTOR-FURNISHED UTILITIES AND FACILITIES:

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5.1 Contractor shall, at its expense, arrange for, develop, and maintain utilities and facilities at the Site to execute the work under the Contract, including but not limited to the following:

5.1.1 **Illumination**. Contractor shall provide light sufficient to safely perform work at night or when daylight is inadequate or obscured including illumination of the access to the place of work.

5.1.2 **First Aid Facilities**. Contractor shall provide first aid facilities for the treatment of its employees who may be injured or become ill while engaged in the performance of work under the Contract.

5.1.3 **Temporary Furnished Field Offices**. Contractor shall provide site field offices, and change facilities for its employees and Owner's employees. Owner will provide an adequate space. Take into consideration that the area of the works is considered included in the contract price and they shall be transferred to Owner in a good condition after completion of the contract.

5.1.4 **Fire Prevention/protection** Contractor shall provide a fire prevention/protection program including fire protection equipment to mitigate the possibility of fires. Contractor's recommended fire prevention /protection program shall be subject to Owner's review.

5.1.5 **Potable Water**. Contractor shall provide potable water for use by its employees and Owner employees.

5.1.6 **Construction Service Water and Fire Water** Contractor shall provide water for use during construction of the plant, including fire

protection.

5.1.7 **Toilet Facilities.** Contractor shall provide toilet facilities for all Contractor and Owner personnel

5.1.8 **Trash Disposal.** Contractor shall at its expense; collect and remove trash including scrap metal and wood from the Site and dispose it at a location in compliance with the requirements of the local municipal authorities. The removal of trash including scrap metal and wood shall be on daily basis.

5.1.9 **Security for Site and Off-Site facilities.** Contractor shall provide all the necessary security measures for all its on-site and off-site facilities.

5.1.10 **Identification badges.** Contractor shall provide proper identification badges for all its personnel, including visitors.

5.1.11 **Electric Power.** Except as otherwise provided in the contract, contractor shall provide the electric Power as required at the Jobsite.

5.1.12 **Back-up Power.** Contractor shall provide stand-by back-up power as required at the jobsite.

5.1.13 **Telephone and Telex Service.** Contractor shall provide telephone and telex service for its use at the Site, if required.

## **6. COMMENCEMENT, PROSECUTION, AND COMPLETION OF THE WORKS:**

6.1 The Contractor shall commence the works on the commencement Date of the contract. The Commencement Date of the contract shall be the date of signature of contract. The Owner must receive the acceptable performance Guarantee and Advance payment Guarantee at the time specified in this tender. Owner shall pay the (Advance payment) to the contractor within 60 days from the date of signature of the contract and submission of acceptable advance payment guarantee and claim. Any delay in this period, the contractor shall have the right to extend the completion period with the same period of delay.

6.2 Contractor shall commence the Works promptly, prosecute the said works diligently, and complete the Works in (10) months starting from the date of signature of the contract

## **7. LIQUIDATED DAMAGES:**

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### **7.1 Completion of the works:**

The parties acknowledge that failure of contractor to complete the works in the time schedule specified in the contract will cause damage to Owner and agree that contractor shall pay to Owner as liquidated damages , not as a penalty , calculated on the basis of one percent (1%) of the value of the delayed complete section for each full week or part of it , however not exceeding a total of 10 % (ten percent) of the delayed complete section .If the delay of this part does not allow owner to operate the whole substation, then the liquidated damages will be calculated on the total contract price . Owner's right to liquidated damages to any

rights or remedies owner may also have for contractor's default under Exhibit A, clause entitled (Termination for Default). Contractor's obligation to pay liquidated damages under this clause shall be limited to the amount of 10 % percent of the

Total contract price and will be included in computing contractor's liability as specified in Exhibit A, clause entitled (limitation of Liability). Owner shall have the right to deduct from amounts otherwise due to contractor any liquidated damages.

In addition to above item, any delay in completing the execution due to contractor's responsibility, the contractor shall bear the cost of the consultant services due to this delay.

## 8. SCHEDULE SUBMITTALS:

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8.1 Contractor shall submit the following schedule reports, at its own expense, during the duration of the execution of the Works. Distribution of all schedules shall be in accordance with the Report Distribution matrix as shown in Attachment [2].

### 8.2 Contractor Schedule

8.2.1 Contractor's detailed time-framed schedule shall be submitted to Owner monthly. This schedule showing all activities and sequence of operations for the orderly performance of the Works shall be drawn to a monthly time scale commencing with the date of commencement date of Contract and will show in an integrated way, detail intermediate milestone dates for all engineering, procurement, and construction activities. Activity descriptions shall be discrete so that the actual and scheduled work progress can be determined. Composition of these activities need to be such that scope of work within the respective pay items is not divided between the schedule activities. Contractor shall identify the critical paths both on activity listing and graphic display.

8.2.2 If Contractor, during the execution of the Works shall see it necessary to make any modification to Contractor Schedule, he shall immediately submit said modifications to Owner for review. Contractor's submittal to Owner shall include its recommendations and means to resolve the impact of these modifications on other contractors' work. Contractor's submittal of these recommendations and the review of Owner thereto, shall not relieve Contractor of his responsibilities and duties under the Contract. The schedule will be updated and submitted to the Owner on a monthly basis.

### 8.3 90 Day / Daily Engineering Schedule:

8.3.1 Within 30 calendar days from the date of commencement of the Contract, Contractor shall submit to Owner a 90-calendar day engineering schedule in bar chart format. The engineering schedule shall include submittal dates for drawings, calculations reports and documentation related to design, and those items including the above required for review and/or interface with equipment/design provided by others.

8.3.2 Submittals shall also include documents submitted by Contractor to Owner and information to be received by Contractor from Owner.

8.3.3 The 90 Day/Daily Engineering Schedule shall be prepared showing in detail all activities, their descriptions, durations and dependencies on a daily time

scale for a succeeding 30-day period, and on a weekly time scale for the balance of the 90-day period. In preparing the 90 Day/Daily Engineering Schedule, Contractor shall utilize, as a minimum, the same subdivision of work activities developed in the Contractor Schedule. The 90 Day/Daily Engineering Schedule will be updated and resubmitted monthly, displaying progress for the past 30-day period on a weekly time scale, and forecast for the next 90-day period on time scales outlined above. All activities should be cross-referenced to pay items.

#### 8.4 90 Day/Daily Construction Schedule:

8.4.1 Thirty days prior to start of work at the Site, Contractor shall submit to Owner a 90-calendar day schedule in bar chart format. For lump-sum price items of the Contract the activity subdivisions shall correspond to the elements comprising each lump-sum price item.

8.4.2 The 90 Day/Daily Construction Schedule shall be prepared showing in detail all activities, their descriptions, durations and dependencies on a daily time scale for a succeeding 30-day period, and on a weekly time scale for the balance of the 90-day period. In preparing the 90 Day/Daily Construction Schedule, Contractor shall utilize the same subdivision and all intermediate milestones of work activities developed in the Contractor Schedule. The 90 Day/Daily Construction Schedule shall be resubmitted every month, displaying progress for the past month period on a weekly time scale, and forecast for the next 90-day period on the time scale outlined above. All activities should be cross-referenced to Contractor pay items and resource loaded, if requested by Owner.

8.4.3 This schedule is to also include procurement fabrication shipping and delivery information.

8.4.4 This ninety (90) day/daily construction schedule is to identify all interfaces/restrains with other contractors as well as material and equipment delivery requirements.

8.4.5 All activities are to be resource loaded. The resources to be identified by activity are manual craft (expatriates and local separately) man-hours and the associated work quantities. Examples of typical quantities are as follows:

8.4.5.1 *concrete (cubic meter)*

8.4.5.2 *Structural Steel (metric tone)*

### 9. CONTRACTOR REPORTS:

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Contractor shall submit the following reports, at its expense, during the duration of the contract when the final Contract report is to be submitted latest. Distribution of all reports shall be in accordance with the report distribution matrix as shown in Attachment [2].

#### 9.1 Daily Manpower and Equipment Reports:

9.1.1 Contractor shall prepare and submit to owner, two copies of daily manpower

reports indicating the total number of manual personnel by craft and non-manual personnel including those of its subcontractors working at the site Attachment [3]. These daily reports shall be summarized on a weekly basis and the summary submitted to owner.

- 9.1.2 Contractor shall prepare and submit to owner, two copies of the daily equipment reports indicating major construction Equipment in working order, including that of its subcontractors utilized for the execution of work at the site per Attachment [4].

These daily reports shall be summarized on a biweekly basis and the summary submitted to owner.

## 9.2 Manpower Reports:

Contractor shall prepare and submit to owner monthly manpower curves by:

- a) craft,
- b) the total number of manual personnel, and
- c) the total number of non-manual personnel at the site.

These curves shall be prepared separately for expatriates and local personnel. The monthly manpower curves shall be prepared on the basis of the daily manpower reports and plotted against the projected manpower reports and plotted against the projected manpower loading curve which should include employees of its subcontractors. Additionally, these curves are to be projected for the total job duration on a quarterly time scale. Total job curves are to be progressed and submitted on quarterly time frequency, to the owner.

## 9.3 Imported/ Re-exported Shipments Reports: (N.A)

## 9.4 Plant Fabrication and Site Delivery Progress Report:

Contractor shall, within 30 calendar days after the execution of the contract, and monthly thereafter, submit to owner five copies of the completed plant Fabrication and site delivery progress Report.

The progress report shall also include data provided by subcontractors' portions of the plant and must be in the detail. This report shall progress status the planned schedule of all major permanent plant equipment to be procured by contractor, including that of subcontractors' material and equipment.

## 9.5 Monthly Contract Progress Report:

During the duration of the Contract, Contractor shall submit to Owner the Monthly Monitoring Report in duplicate. Such report shall include the following:

- 9.5.1 A narrative summary of the Contract history to date, including, list of significant milestone events accomplished and related dates.

- 9.5.2 Narrative description of major near-term events scheduled and their impact on the Contract.



9.5.3 Shortage list, restraints and interfaces.

9.5.4 A marked-up submittal of the latest issue of each construction drawing applicable to the works. and on each drawing the following information will be delineated graphically by marking or shading and listed numerically in the upper right-hand corner, for each unique work operation covered by the Drawing

9.5.4.1.1 The total quantity of work.

9.5.4.1.2 The total quantity of work performed to date.

9.5.4.1.3 The total quantity of work performed during the month.

9.5.5 A typed quantity Report which summarizes the amounts of contractor quantities per drawing and in total on the basis of work completed for the month, to date and total estimated for the Contractor reported for each commodity specified in the Extent of works Section of the Contractor Package Specifications. The Quantities to be reported and the method of measurement of quantities are defined in Exhibit (B), clause entitled "Measurement of and Payment for the Works."

9.5.6 Photographs of progress of the work with negative.

9.6 Quarterly Cash flow Report:

Contractors detailed cash flow report, shall be updated quarterly and submitted to owner for overall project financial planning. The report shall be based on contractors projected cash flow for Exhibit (B), article entitled (Measurement of and payment for the works). Cash flow report must be broken down into individual pay items to show separately the Foreign currency and local currency projected cash flow on a monthly time scale for duration of the contract.

9.7 Quantity Summary Curves:

Contractor shall prepare and submit to owner, quantity summary curves in the form of (S) Shaped curves which indicate the scheduled amount of installation consistent with the contractor schedule. These curves will be updated on a monthly basis to indicate actual quantities installed. Five copies of the above curves are required.

9.8 Bi-Weekly Critical Items Report:

Contractor shall, within 30 calendar days after the execution of contract, initiate a Critical Items Report which will indicate those activities which are currently behind schedule and will highlight activities that have the potential of affecting the schedule. The report will include the corrective action required and the responsible party for such action per. Attachment [5]. The report will be updated issued to owner every two weeks.

9.9 Final Contract Report:

9.9.1 Contractor shall submit a final contract report with detailed cost breakdown will include cost for items such as engineering, plant, manual and non-manual labor including man-hours, and construction Equipment for the execution of the works.

9.9.2 Additionally the Contractor shall summarize on monthly and /or quarterly time scale, as determined by Owner, all the reports as specified in clause [9] Contractor Reports, except Monthly Contract progress Report.

9.10 Quality Surveillance Report:

Contractor shall prepare and submit a monthly Quality surveillance Report implementing Contractors quality surveillance/audit program to verify that Subcontractors furnishing the plant are meeting the quality requirements stated in the contract specifications.

The quality surveillance/audit program shall include Contractors attendance of factory inspections and/or witnessing of performance, functional or other tests including review of specific, documentation for compliance with Contract requirements.

10. PERMITS:

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Except other wise provided by this clause. Contractor shall procure and pay for all permits, licenses, and shall furnish any bonds, security, or deposits required to permit performance of its Works hereunder if the owner issue the necessary letters to Egyptian Authorities to help the contractor.

11. SECURITY:

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11.1 Contractor will establish a project security program and will engage a security force to patrol the site during the working hours." Including appropriate surveillance at site during non-working hours, nights and holidays." All contractors' employees working on the site will be required to wear an identification badge to be provided by contractor. Contractor shall comply with the project security program and all applicable laws and regulations. Such compliance with these security requirements shall not relieve contractor of its responsibility for maintaining security for the above noted items, nor shall it be construed as limiting in any manner contractor's obligation to undertake reasonable action as required to establish and maintain secured conditions at the site.

11.2 Contractor shall prepare and maintain accurate reports of incidents of loss, theft, or vandalism and shall furnish these reports monthly to Owner.

12. SETTLEMENT OF DISPUTES:

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If any disagreement or dispute arising between the Owner and the contractor, they shall make every effort to resolve amicably by direct informal negotiation, otherwise they resorted to civil courts.

13. TOOLS AND CONSTRUCTION EQUIPMENT:

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13.1 Contractor shall present to Owner an itemized list of all Construction Equipment, including but not limited to power tools, welding equipment

and compressors, with cost of US\$ 500 or more per each item, at the time such Construction Equipment is moved on Site. Said list must include descriptions, quantities, and serial numbers where applicable. Contractor shall identify its Equipment where practicable by color, decal, or etching.

- 13.2 Prior to removal of any or all Construction Equipment, Contractor shall check out through Owner, who will issue documentation to be presented by Contractor at the exit gate. No Construction Equipment or tools may be removed from the Site without proper clearance by Owner.

**14. SITE WORK RULES:**

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Contractor's employees working on the Site shall comply with the Site Work Rules attachment [6].

**15. SCHEDULED WORK WEEK — OVERTIME:**

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The scheduled work week at the Site is based on 60 hours, Saturday through Thursday. However, Contractor shall plan to work such hours, shifts or overtime as required to prosecute work in accordance with Contractor's Schedule submitted pursuant with the requirements of Exhibit (B), clause entitled "Commencement, Prosecution, and Completion of the Works."

**16. ADVANCE PAYMENT GUARANTEE:**

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- 16.1 Contractor shall submit (after the date of signature of the contract) an unconditional Advance Payment Guarantee in the form of Bank Guarantee in Appendix (2) of instruction to tenderer, issued or confirmed by a licensed Egyptian Bank in the A.R.E. and acceptable to Owner. The amount of Advance Payment Guarantee shall be not less than the advance payment and, in its currency, and no addition amounts as advance payment for Contract amendments provided under the Contract.

- 16.2 The Advance Payment Guarantee shall cover the Advance Payment given to Contractor according to provisions of clause entitled, "Measurement of and Payment for the Works" and shall be valid until the advance payment is credited to Owner, it will be reduced by an amount of 10% of each invoice, except for the invoices of the shipped goods which will be reduced after the site delivery of the goods, the reduction will be issued by owner to issuing bank.

**17. PROVISIONAL SUM: (Not Applicable)**

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**18. CONTRACT ORIGIN REQUIREMENT:**

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- 18.1 Contractor shall furnish the required information concerning the geographical origin of the plant furnished with each delivery to the site.

**19. MANNER AND DOCUMENTATION FOR PAYMENT:**

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Payments under the Contract shall be made in accordance with price stated in Exhibit C, section entitled "Schedule of Quantities and Prices," and as follows:

**19.1 Manner of Payment:**

19.1.1 Payment for the Total Contract Price will be by direct payment i.e. by cheque drawn on a bank in Cairo.

19.1.2 All banking fees and other charges of whatsoever nature, incurred as a result of direct payment to the Contractor will be paid by Contractor.

**19.2 Documentation for Invoices:**

Contractor shall prepare and submit to Owner the following documentation:

19.2.1. Original and three copies of invoice describing the Works executed and identifying the applicable Item No. of Exhibit C – section (2) for which the invoice is submitted. Contractor shall include the required documentation for each partial payment.

19.2.2. Certificate of origin.

19.2.3. Inspection certificate.

19.2.4. Packing List.

19.2.5. Owner's notification that the plant is received at site in satisfactory condition (i.e. Material Receiving Report signed by owner / consultant).

19.2.6. The Social Insurance Clearance Certificate, clearance from tax authorities evidencing the payment of Labor Income Taxes due under the laws of the release of lien, must be submitted with Contractor invoices invoiced upon the issuance of Taking Over and Acceptance Certificate and prior to issuance of Final Certificate as applicable. Furthermore, the release of liens must be signed by Contractor and all Subcontractors performing work at the Site.

19.2.7. If the Contract had been terminated pursuant to the provisions herein, the claim for termination costs shall be accompanied by:

19.2.7.1. Written justification by Contractor supporting in detail the claimed charge.

19.2.7.2. Either written concurrence by Owner to Contractor's claim or a

certified copy of an arbitration award.

19.2.8. If Contractor claims payments for suspension of the Works pursuant to the provisions under the Contract, the claim for suspension costs shall be accompanied by:

19.2.8.1. Written justification by Contractor supporting in detail the claimed charge.

19.2.8.2. Either written concurrence by Owner to contractor's claim or a certified copy of an arbitration award.

19.3 Payment of invoice under Direct Transfer:

Within (45) days following the date of receipt of Contractor's invoices and required documentation, Owner will return a copy of the invoice marked either approved or if any item of the invoice is disputed or disapproved such item shall be marked disapproved on the returned copy provided the invoice for the advance payment will be returned within (30) calendar days from the date of receipt of contractor's invoice and required documentation

Contractor may then present the approved original invoice.

Owner will make direct payment by cheque to contractor for the approved invoice which will be within (45) calendar days from the date of receipt of contractor's invoice by Owner except the advance payment will be paid within 60 days.

19.4 Disapproval of contractor invoices:

CM. in addition to Owner, may disapprove contractor invoices. in the event any or all items from contractor's invoices are disapproved by either Owner or CM, Owner or CM shall submit its explanation for such disapproval in writing to contractor within (45) days from the date of receipt of such invoices .for the disapproved item ,contractor shall clarify or justify the disputed items and owner agrees to resolve the disputed or disapproved items within a period of (15) days from the date of receipt of contractor's written justification of the disputed or disapproved items . Upon Owner and contractor resolution of the disapproved items, contractor will only invoice the agreed upon items on a separate invoice and Owner agrees to approve such invoice within (15) calendar days following the date of receipt of the agreed invoice.

19.5 Withholding of Monies or Credits Due to Owner:

All damages or payments for which Contractor is liable to Owner may be recovered by either of the following methods or a combination thereof:

19.5.1 Deduction from monies due Contractor, or to later become due Contractor, or being retained by Owner pending issuance of Final Certificate,

19.5.2 Recovery from Contractor's Bank guarantees.

Owner has either not returned a copy of the invoice approved or either owner or CM has not provided a written explanation of its

disapproval of any item in the invoice, within a (45) day period.  
Owner approval is required for payment of final payment invoice.

## **20. MEASUREMENT AND PAYMENT FOR THE WORKS:**

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Measurement and payment for the Works shall be as follows:

- 20.1 **15%** of the total contract price as advance payment shall be paid within (60) days from the contract signing and receiving of claim and acceptable bank guarantee with the same value and currency valid until the advance payment is credit to owner.
  - 20.2 For Deliveries:  
**75%** upon receipt of Goods at site against invoice supported by the receipt of receiving storing certificate signed by owner.
  - 20.3 For Services  
**75%** against invoice supported by progress report approved and signed by owner.
  - 20.4 **10%** of the total contract price against invoice approved by owner and accompanied by a copy of the taking over the acceptance certificate, social insurance clearance certificate and any other documents mentioned at (SC 19).
  - 20.5 Limitation of Owner Approved Invoices:
    - 20.5.1 At any time Owner shall approve only the invoices within the limitation of the cumulative installments, and contractor shall continue to undertake and perform the duties set forth in the contract without any additional compensation.
- Unless otherwise accepted by Owner, the value of each invoice should not be less than five percent (5%) of the contract

## **21. INDEBTEDNESS AND LIENS:**

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Contractor agrees to furnish Owner, from time to time during the progress of the Works as requested, verified statements showing Contractor's total outstanding indebtedness in connection with the Works covered by Contract and evidence of periodic payment to Social Insurance office. If during the execution of the Works, Contractor shall allow any indebtedness to accrue to Subcontractors of others or fails to provide evidence of periodic payments to Social Insurance Office, and shall fail to pay or discharge same within 10 days after Owner's notice, Owner may withhold any money due contractor until such indebtedness is paid, or apply same toward the discharge thereof. Contractor may provide at its expense a payment bond satisfactory to Owner to indemnify Owner against any lien.

If any lien remains unsatisfied or any payments remain due to Social Insurance Office, after all payments are made, Contractor shall refund to Owner all monies that Owner may be compelled to pay in discharging such a lien or making payments to Social insurance office, including all costs and reasonable attorneys' fees.

## **22. PERFORMANCE GUARANTEE:**

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Upon Contractor's performance of all its obligations under the Contract the performance guarantee will be returned to the issuing Bank, and Contractor will be so notified.

**23. PACKING:**

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Contractor shall properly prepare all materials and equipment to withstand exposure to the elements and rough handling during transportation. Such packing must be sufficient to insure safe arrival at the site and fully cover such hazards as extreme Temperature and /or Possible corrosion due to salt air on open storage.

**24. FUMIGATION:**

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Fumigation should take place for all wooden cases according to the International Standard. Wooden cases should be marked with International stamp.

**25. NOTICES:**

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1. All notices required by the Contract to be given by Contractor to Owner will be validly made by registered letter or by personal delivery with acknowledgement of receipt required, at the address as set forth below or as such address may have been changed by written notice:

- 1.1 OWNER

Original and one copy

To: NEW URBAN COMMUNITIES AUTHORITY

ELHORIA STREET INTERSECTION OF 26 JULY ROAD WITH GATE 2-  
SHEIK ZAIED CITY

ATTENTION: GENERAL MANAGER

- 1.2 THE CONSULTANT

Electric Power System Engineering Company

Misr Leltaamir Buildings- Sheraton Heliopolis, Zone 8, Street No. 9, Building  
No. 7 Cairo, Egypt

Tel No.: +20-2-2266-9414

Fax No.: +20-2-2266-1810

[E-mail: sub-st@eps-egypt.com](mailto:sub-st@eps-egypt.com)

- 1.3 CONSTRUCTION MANAGER (CM)

One copy each as follows:

(Address Later)

Any notices required by the Contract to be given by Owner to Contractor shall be delivered to Contractor's project site representative or mailed, to the address of his office in Egypt.

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**EXHIBIT [A] - GENERAL CONDITIONS****1. ENTIRE AGREEMENT:**

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This contract embodies the entire agreement between owner and contractor. The parties shall not be bound by or be liable for any statement, representation, promise, in document or understanding of any kind or nature not set forth herein. No modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

**2. DEFINITIONS:**

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2.1 Definitions: In the contract (as hereinafter defined), the following words and expressions shall have the following meanings:

2.1.1 The "Government" means the government of the Arab Republic of Egypt.

"Owner" means NEW URBAN COMMUNITIES AUTHORITY

2.1.2 The consultant means Electric Power Systems Engineering Company (EPS).

2.1.3 "Contractor" means the party who has been awarded this contract by owner, including contractor's personal representatives, successors, permitted assigns with the consent of owner, and related entities.

2.1.4 "Subcontractor" means any party with whom contractor has subcontracted and includes parties at any tier with whom Subcontractor has subcontracted any part of the works and the legal personal representatives and successors of such party.

2.1.5 "CM" means Construction Manager, the party who will be selected by the Owner to act as the Owner's authorized representative.

2.1.6 "Works" means all plant to be provided and work to be done by Contractor under the contract.

2.1.7 "Contract" means, collectively, all the covenants, terms, and conditions contained in the following documents of this Contract, Contract Form, General Conditions, Special Conditions, Contract Data, Technical Specifications, Technical Data and Drawings and all written amendment and other documents amending, modifying the contract.

2.1.8 "Construction Equipment" means all appliances or things of Whatsoever nature required in or about the execution, completion, or maintenance of the Works, but does not include plant or other things intended to form or forming part of the Works.

2.1.9 "Plant" means all of the equipment, machinery, apparatus, materials, articles, and things of all kinds to be provided under the Contract, other than Construction Equipment.

2.1.10 "Total Contract Price" means the total amount set forth in Exhibit C subject to such additions thereto or deductions their form as may be made under the provisions hereinafter contained.

2.1.11 "Site" or "Jobsite" means the land and other places provided by Owner on, under, or through which plant is delivered and the work is executed or carried out, and any other lands or places provided by Owner for the purposes of the Contract, together with such other places as may be



- specifically designated in the Contract as forming part of the site or Jobsite.
- 2.1.12 "Drawings" means, collectively, all the drawings listed in the Contract and also such supplementary drawings, as Contractor will issue from time to time. The word drawings shall also be understood to include documents such as procedures and manuals.
- 2.1.13 "Completion date" is a date of satisfactory completion of erection work testing and commissioning included in the works so that the works is ready for energizing.
- 2.1.14 "Taking over and Acceptance Certificate" is a document, which indicates Owner's provisional acceptance of the works.
- 2.1.15 "Warranty period" means the period of 24 months of cumulative and successful operation after the date of issuance of Taking Over and Acceptance Certificate. In the event, for reasons within or beyond the control of Owner, and is not due to contractor default the successful operation of 24 continuous months has not been achieved, the warranty period will terminate at the end of successful operation of 24 continuous months or 30 month from the date of issuance of the Taking over and Acceptance certificate, whichever ends sooner. "Cumulative" means total number of days of successful operation. "Successful" means contractor furnished equipment will withstand all operational conditions required by owner and shall not be a cause of loss of power or derating due to forced outages. This definition shall not be applicable to any extended warranty in pursuant to clause GC-38 entitled "Warranty".
- 2.1.16 "Final Certificate" is Owner's written notification that the Warranty Period has terminated and that Contractor has performed all of its obligations under the clause entitled Final Certificate.
- 2.1.17 "Contractor's Schedule" means Contractor's schedule submitted by Contractor to Owner to meet the completion milestone dates specified in the Contract.
- 2.1.18 "Calendar Day" or "Days" means consecutive days, including, Fridays, Saturdays, Sundays, and holidays.
- 2.1.19 "Approved" or "Approval" means approved by or approval of Owner unless otherwise stated. All approvals shall be in writing.
- 2.1.20 "Engineer" The engineer delegated by the Owner to supervise the works and shall include also the consulting Engineer as well as the inspection engineer and his representatives.
- 2.1.21 "Authorized Representative (s)" means those Contractor personnel designated by Contractor and approved by owner who shall be duly authorized to act for and commit Contractor in regards to all matters under the Contract.
- 2.1.22 "Key personnel" mean those Contractor personnel designated by Contractor and approved by Owner to manage the Works.
- 2.1.23 "A.R.E." means the Arab Republic of Egypt.
- 2.1.24 "LE" means Egyptian Pound.
- 2.2 Singular and Plural: Words importing the singular only also include the plural and vice versa where the context requires.
- 2.3 Gender: Words importing the masculine gender only may also include the feminine and neuter, the converse may be true.

**3. OWNER'S AUTHORIZED REPRESENTATIVE:**

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- 3.1 Owner shall designate in writing a Construction Manager (CM) as its authorized representative to manage the Contract under Owner's overall management. Owner will provide the overall direction and control.
- 3.2 Unless otherwise notified in writing to Contractor by Owner, all of Contractor's contacts and communications with Owner and from Owner on all matters relating to the Contract shall be made only through Owner's authorized representative, except that the authorized representative is not authorized to receive service of legal process or legal notices on behalf of Owner. To this end, CM will receive all documents prepared by Contractor and, when applicable, will process such documents for Owner approval and advise Contractor of Owner decisions, determinations, instructions, and orders.
- 3.3 Contractor understands that in the event any decision, instruction, determination, or order received by Contractor from CM materially affects Contractor's obligations, Contractor shall immediately notify CM in writing and justify the effect of such decision, instruction, determination, or order on Contractor's Works. Contractor shall not implement the effect of CM decision, determination, instruction, or order in the execution of the Works until Owner's written approval has been received by Contractor or CM notifies Contractor that Owner's approval has been obtained. CM will obtain Owner approval before issuing either Change Notice, Change Order, or confirming in writing, as applicable.
- 3.4 Contractor understands and agrees that no action or inaction by Owner or CM will relieve Contractor of any of its duties or obligations under the Contract nor will it constitute a waiver or release of Contractor's liabilities hereunder.

**4. INDEPENDENT CONTRACTOR:**

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- 4.1 Contractor represents that it is fully experienced and properly qualified to carry out the Works provided for herein, and that it is properly licensed, equipped, organized, and financed to carry out the Works. Contractor shall act as an independent Contractor and not as the agent of Owner or CM in executing the Works. Contractor shall provide qualified engineers and other appropriate personnel to supervise directly and control completely its employees and Subcontractors in the execution of the Works including supervision and control of its engineering, materials and fabrication, construction means, methods, techniques, sequences or procedures during the execution of the Works. Nothing contained in the Contract or any Subcontract Awarded by Contractor shall create any contractual relationship between any such Subcontractor and Owner, nor be construed to relieve Contractor of any of its obligations under the Contract. Contractor shall execute the Works in accordance with its own methods subject to compliance with the Contract and applicable laws and regulations.

**5. CONTRACTOR'S AUTHORIZED REPRESENTATIVES:**

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- 5.1 Contractor shall designate one or more competent Authorized Representatives,

acceptable to Owner, who shall be duly authorized for superintending the execution of the Works. Owner shall be entitled to rely on the authority of such Authorized Representative (s) to act for and to commit Contractor in regard to all matters under the Contract any orders, notices, or instructions which owner or CM may give to said Authorized Representative(s) of contractor shall be deemed to have been given to contractor.

5. .2 Within 30 calendar days following the execution of the Contract, other than those pre- approved, listed in Exhibit C, "List of Authorized Representatives and key personnel", Contractor shall communicate in writing to Owner the name or names of Contractor's Authorized Representative (s) and any changes thereto. Owner shall reserve the right to object to and/or require Contractor to remove or change Contractor's Authorized Representative (s) or key personnel at any time, if that Authorized Representative or key personnel is unacceptable to Owner.
5. .3 Upon commencement of work at Site, the said Authorized Representative, or if more than one to be designated, then one of such Authorized Representatives, shall be present on the Site during all working hours. During periods when the work at site may be suspended, arrangements for an Authorized Representative acceptable to Owner shall be made for any emergency work which may be required.

## 6. LAWS AND REGULATIONS

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- 6.1 Contractor shall in all matters arising in the performance of the Contract, conform in all respects with the provisions of the laws of the A.R.E or any national or state statute, labor laws, labor standards, ordinance, or other law, or any regulation, or by-law of any local or duly constituted authority that shall be applicable to the works and in effect at the time and place of execution of the Works.
- 6.2 Contractor shall report to Owner any discrepancy or inconsistency discovered between the Contract and any national or state statute, ordinance, or other law, or any regulations, or by-law of any local or duly constituted authority during the execution of the Works.

## 7. LABOR AND PERSONNEL

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7. 1 Contractor shall provide and employ in connection with the execution of the Works:
- 7.1.1 Professional and technically competent key personnel for the execution of the Works
- 7.1.2 Qualified supervising engineers and technical assistants, skilled and experienced to give direct supervision to the execution of the Works.
- 7.1.3 Such skilled, semi-skilled, and unskilled labor as is necessary for the proper and timely execution of the Works.
- 7.2 Contractor may substitute other Contractor personnel for those designated as Authorized Representative(s) or key personnel in the Contract provided that any of those personnel so designated are not available at the time such assignment is required and that prior Owner written approval is obtained. Any such substitute personnel shall be equally qualified for the duties of the position. Prior to

making any substitutions of Authorized Representative(s) or key personnel, Contractor shall give Owner 60 calendar days advance written notice and shall furnish a resume of the educational and work experience of such substitute personnel. Owner shall inform Contractor of its approval or objection of the substitute within 30 days after receipt of the substitute's resume. Contractor shall endeavor to provide an uninterrupted transition between Authorized Representative (s) or key personnel and their replacements.

- 7.3 Contractor shall, if required to do so by Owner, remove from the Site any Contractor personnel who, in the opinion of Owner, misconduct himself, is incompetent or negligent in the performance of his duties, is dishonest, or is uncooperative. Such personnel shall not be again employed at the Site without the written permission of Owner. The costs for removal of such personnel and for providing his replacement shall be at Contractor's expense.
- 7.4 Contractor is responsible for maintaining harmonious labor relations so that the work is performed efficiently and without disruption at Site.

## **8. SUBCONTRACTOR'S ERECTION PERSONNEL:**

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Where there is more than one Subcontractor involved in supplying the plant, then the erection work at site shall be done under the supervision of the personnel of the respective Subcontractor furnishing the plant or the Subcontractor of that certain type of plant should certify that the personnel employed by Contractor for supervising the erection of the plant are capable to supervise the erection work on the Contract independently. The foregoing requirement shall also apply where Contractor is erecting Owner Furnished plant.

## **9. CODES AND STANDARDS**

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- 9.1 Wherever references are made in the Contract to the respective codes and standards in accordance with which the works are to be executed or tested, the edition or revision of such codes and standards current on the effective date of the Contract shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such codes or standards is solely for implementation of the technical portions of such codes or standards.
- 9.2 In Case of conflict among any referenced codes and standards or between any referenced codes and standards and technical Specifications, Contractor shall advise Owner in writing and Owner will determine which shall govern.
- 9.3 Codes and standards for design, workmanship, material, and equipment have been selected in these specifications. However, codes and standards of other, countries and recommendations of standard international organizations will be acceptable provided they meet or exceed the designated codes and standards, and provided furthermore, that Contractor submits for owner approval, details of codes and standards which it proposes to use.
- 9.4 Contractor shall demonstrate to the satisfaction of Owner that these codes and standards meet or exceed the requirements of the designated codes and standards.

## 10. CONFLICTS, ERRORS, OMISSIONS, OR DISCREPANCIES:

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- 10.1 The order of precedence for the Contract documents shall be as follows:
  - 10.1.1 Contract Form
  - 10.1.2 Exhibit [B], Special Conditions
  - 10.1.3 Exhibit [A], General Conditions
  - 10.1.4 Exhibit [D], Technical specifications, Technical Data and Drawings
  - 10.1.5 Exhibit [C], Contract Data, Schedules of Quantities & Prices.
- 10.2 Contractor having represented himself as a qualified engineer, producer or manufacturer, and constructor experienced in the Works, shall be deemed to have concurred with and accepted all technical specifications, drawings, and information provided herein as being sufficient to ensure reliable and safe operation, if properly operated, of the executed works. Contractor shall be deemed to include such matters considered supplementary and essential to the efficient execution of the Works.
- 10.3 Any portion of the Works shown on the drawings and not mentioned or described in the technical specifications and any portion of the Works described in the technical specifications and not shown on the drawings will nevertheless be held to be included in the Total Contract price in the same manner as if they had been expressly shown on the drawings and/or described in the technical specifications.
- 10.4 Without limiting the effect of the preceding paragraphs, should Contractor identify what it considers to be any conflict or discrepancy, error, or omission among the various Contract documents, it shall immediately identify and recommend to owner its means of resolving the conflict or discrepancy, error, or omission.

## 11. CONTRACTOR PROTEST PROCEDURE:

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- 11.1 If at any time Contractor disputes any decision, determination, instruction or order of Owner, Contractor shall submit a written protest to Owner within 14 calendar days after receiving such decision, determination, instruction, or order stating clearly the nature of the dispute, Contractor position regarding the dispute, and a narrative of facts supporting Contractor position. Within 30 days after receipt of Contractor protest. Owner will review contractor's protest and advise Contractor of its decision of Contractor's protest in writing, including the reasons supporting the decision, if adverse to Contractor. Such decision will be final and binding unless Contractor, within 30 calendar days after the receipt of written confirmation there of, notifies owner of its intention to refer the matter to arbitration pursuant to the article entitled "settlement of Disputes Arbitration."
- 11.2 Notwithstanding contractor's filing of a written protest or a notification of its intention to refer the matter to arbitration, Contractor shall proceed with the works in accordance with decisions, determination, instructions, and orders of owner.

## 12. Deleted.

### 13. WORKS CONDITIONS:

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Contractor shall be deemed to have satisfied himself as to all the conditions and circumstances affecting the Total Contract Price, as to the possibility of executing the works as shown and described in the Contract, as to the general and local conditions, particularly, but without limitation, with respect to the following: the technical information and requirements, those affecting transportation, customs clearance, access, disposal, handling and storage of materials at Site, availability, quality, and productivity of labor, water, and electric power, availability and condition of roads and rights-of way, availability of housing, climatic conditions and seasons, physical conditions at the Site and rights-of-way as a whole, topography and ground surface conditions, subsurface geology and nature and quantity of surface and subsurface materials to be encountered, equipment and facilities needed preliminary to and during performance of the Contract, and all other matters which can in any way affect performance of the Contract, or the cost associated with such performance. The failure of Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties or the costs of successfully performing the Contract.

### 14. SUBSURFACE INVESTIGATIONS

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Where Owner has provided information or performed investigations of Subsurface conditions in areas where work is to be performed under the Contract, such investigations are made only for the purposes of study and design by Contractor. The information and/or records of such investigations are part of the Contract according to (Soil investigation on the civil works technical specification) and are furnished solely for the convenience of the contractor. Owner assumes no responsibility whatsoever with respect to the sufficiency or accuracy of the information, the investigations thus made, the records thereof, or the interpretations set forth therein or made by owner in their use thereof. There is no warranty or guarantee, either expressed or implied that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

### 15. DIFFERING SITE CONDITIONS:

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Contractor shall promptly, after discovery and before such conditions are disturbed, furnish owner with a complete written description of its findings and recommendations of physical conditions of any unusual nature at the Site, differing materially from those ordinarily encountered and generally recognized as inherent in Works of the character provided for in the Contract, and which are in capable of being discovered by Contractor before beginning work at Site. Owner will, as promptly as practicable, review Contractor's investigations and recommendations and also independently conduct investigations of such differing conditions, to make a determination. If it is determined by Owner that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of or the time required for performance of any part of any Works under the Contract, whether or not changed as a result of such conditions, an equitable adjustment will be made and the Contract modified in writing accordingly. No claim of Contractor under this article will be allowed unless Contractor has given the required

notice.

## **16. TITLE TO MATERIALS FOUND**

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- 16.1. The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other Site operations of Contractor or any of its Subcontractors and the right to use said items in carrying out the Contract or to dispose of same is hereby expressly reserved by Owner. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or Interest in such materials nor shall they assert or make any claim thereto. Contractor will, as determined by Owner, be permitted to use in its work without charge any such materials, which meet the requirements of the Contract.
- 16.2 Contractor must promptly notify Owner of the discovery of any antiquities, archaeological finds; coins, relic, and such other valuables as may be discovered during the execution of the work at Site. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any property rights in such items, and such items as may be found during the performance of the work must immediately be delivered to the representative of owner or to such person as owner may have authorized to receive them. Contractor must take all precautions necessary to prevent the occurrence of any breakage or damage to these valuables.

## **17. PATENT INDEMNITY:**

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- 17.1 Contractor hereby agrees to indemnify, defend, and hold harmless Owner, and their Representatives ,from and against all claims, losses, costs, damages, and expenses, including attorney's fees, incurred by Owner, and their representatives, respectively, as a result of or in connection with any claims or actions based upon infringement or alleged infringement of any patent and arising out of the use of the plant and Construction Equipment furnished under the Contract by Contractor, or out of the processes ,designs, or actions employed by or on behalf of Contractor in connection with the performance of the Contract .
- 17.2 Contractor shall, at its sole expense, promptly defend against any such claim or action unless directed otherwise by Owner, provided that owner shall have notified Contractor upon becoming aware of such claims or actions, and provided further that Contractor's aforementioned obligations shall not apply to equipment, materials, or processes furnished or specified by owner or CM.
- 17.3 Contractor shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing plant or construction Equipment or processes, or to modify such infringing plant or Construction Equipment, or processes so they become noninfringing, or shall obtain the necessary licenses to use the infringing plant or Construction Equipment provided that such substituted and modified plant or Construction Equipment, or processes meet all the requirements and be subject to all the provisions of

the Contract.

#### 18. INDEMNITY:

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Contractor agrees to indemnify, defend and hold harmless Owner, their employees or authorized representatives and related entities, from and against third party actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of whatsoever kind or nature including those arising out of injury to or death of Contractor's employees, whether arising before or after completion of the Works hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence whether active or passive of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of the Contract. Contractor's aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply to the fullest extent permitted by law both in the A.R.E. and else where, but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

#### 19. SUBCONTRACTS AND ASSIGNMENTS

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- 19.1 Contractor shall not subcontract the whole of the Works. Contractor shall not subcontract any part of the works (including subcontracts for the supply of plant fabricated to a special design) without the prior written consent of Owner other than those listed in Exhibit C, List of Proposed Subcontractors". Owner consent or denial will be given within 45 days after receipt of Contractor request, and such consent or denial shall not relieve Contractor or its Surety from any of Contractor's responsibilities, liabilities, obligations hereunder.
- 19.2 Prior to award of any subcontract, other than those listed in "List of Proposed Sub contractors", for which subcontract price equals, or exceeds the equivalent of L.E 1500,000 and regardless of whether payment for such subcontract is to be in foreign currency or local currency or any combination thereof, the written approval of owner shall be obtained.
- 19.3 Contractor shall furnish owner with two copies of all such subcontracts (or similar documents) entered into by it, provided that the prices thereon may be deleted .
- 19.4 Contractor shall not assign the Contract or any part thereof or any benefit or interest therein or hereunder (except any money due or to become due under the Contract in favor of Contractor) without the prior written consent of Owner.

#### 20. CONTRACTOR'S CONSTRUCTION EQUIPMENT AND FACILITIES

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- 20.1 Contractor shall provide and use only such Construction Equipment as is capable of producing the quality and quantity of work required by the Contract and within the time or times specified in Contractor's Schedule. Before proceeding with execution of any portion of work at the Site, including but not limited to temporary structures, offices and warehouses, Contractor shall furnish Owner with such information and drawings relative to such Construction Equipment and facilities as Owner may request Upon written notification by Owner, Contractor



shall immediately discontinue operations of unsatisfactory Construction Equipment or facilities and shall modify some to meet Owner's approval.

## **21. SAFETY:**

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- 21.1 Contractor shall execute the work and conduct its operations at the Site in compliance with all applicable laws, regulations, and standards, including those governing safety, and the Safety program submitted by Contractor and approved by Owner. Contractor shall direct its personnel to take all precautions necessary to protect against and prevent injury to personnel and damage to property. Contractor shall continuously inspect the work and supervise its personnel to determine and enforce compliance with the above provisions. Contractor shall cooperate with other contractors and subcontractors and shall respond promptly to the direction of Owner for the purpose of implementing the Safety program.
- 21.2 Contractor shall submit a written Safety program, with details appropriate to the work to be performed, for Owner's review. Such review shall not relieve Contractor of its responsibility for safety, nor shall it be construed as limiting in any manner the Contractor's obligation to undertake any action that may be necessary or required to establish and maintain safe working conditions at the Site.
- 21.3 Contractor shall appoint a qualified Safety Representative. Such Representative shall attend all project monthly safety meetings and participate fully in all activities outlined in Contractor's Safety program.
- 21.4 Contractor shall maintain reports of all accidents and injuries and shall furnish Owner a monthly summary of injuries and man-hours lost due to injuries. Contractor shall report immediately any accidents occurring at the Site or in route to or from the Site.
- 21.5 Contractor shall hold regularly scheduled meetings to instruct its personnel on safety practices and the requirements of its Safety program. Contractor shall furnish safety equipment and enforce the use of such equipment by its personnel.

## **22. USE OF OWNER'S EQUIPMENT OR FACILITIES:**

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- 22.1 Contractor may request Owner to make available to Contractor certain equipment or facilities belonging to Owner for the performance of Contractor's work under the Contract. Such requests shall be made in writing, and Owner will give Contractor a written notice of its agreement to or denial of such requests. Owner shall be reimbursed by Contractor for use of its equipment and/or facilities at a mutually agreed upon price.
- 22.2 If Owner agrees to the request, Owner will furnish a copy of the list of equipment or facility maintenance and inspection records. Such records must be maintained by Contractor during Contractor's use of equipment or facility.
- 22.3 Contractor shall assure itself or the safety of such equipment or facility before use and shall assume all risks and responsibilities in its use of the equipment. Contractor hereby agrees to indemnify and hold Owner harmless against any damages or claims that may arise from such use, whether or not the equipment is operated by an operator furnished by Owner. Owner and Contractor shall jointly inspect such equipment before Contractor's use and upon its return to Owner, to establish its condition and substantial whether or

not any part of the equipment used by Contractor has been over stressed or damaged in any way as a result of its use. The cost of repairs or replacement to correct such overstress or damage resulting from such use shall be at Contractor's expense.

- 22.4 In the event such equipment is furnished with an operator, such operator will perform its services under the complete direction and control of Contractor and shall be considered Contractor's employee for all purposes other than the payment of wages, workmen's compensation, or other benefits whether paid directly or indirectly by Owner.

### 23. DELIVERY, UNLOADING, AND STORAGE:

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- 23.1 Contractor shall bear all expenses of delivery of Plant and Construction Equipment furnished under the Contract including expenses related to unloading of Owner furnished plant included under the Contract. These expenses shall include expenses related to receiving, unloading.
- 23.2 Contractor shall unload all plant including Owner furnished plant and Construction Equipment only in the area allocated by Owner. Contractor shall include storage costs in the total contract price. Contractor's usage of storage area will be limited to the area designated for the Contractor. Any necessary leveling, preparation, or other measures required to make contractor's designated area suitable for storage shall be carried out by contractor at its own cost.
- 23.3 Contractor shall be solely responsible for storage and protection of plant including owner furnished plant and construction equipment against deterioration, corrosion, and mechanical damage during storage and work at the site. Additionally, Contractor shall keep complete and accurate records for Owner's detailed audit of all plant including Owner furnished plant and Construction Equipment received, stored, and issued for use under the Contract. Contractor shall furnish Owner copies of these records upon request.

### 24. LAYOUT AND QUANTITY SURVEYS:

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- 24.1 Contractor shall lay out its work from Owner established baselines and monuments indicated on the drawings and shall be responsible for all measurements in connection therewith. Contractor shall furnish, at its own expense, all labor and Construction Equipment as may be required for laying out any part of the work from the baselines and monuments and shall be held responsible for the execution of the works to such lines and grades as may be established or indicated on the drawings, subject to such modifications as Owner may require as the work progresses.
- 24.2 Contractor shall maintain and preserve all monuments established by Contractor until authorized by Owner to remove them. Furthermore, if through the negligence or fault of Contractor, any monument established by Owner or Contractor is moved, destroyed, or rendered inaccurate, such monument shall be repaired or replaced by Contractor at its expense.
- 24.3 Contractor shall make at its expense such surveys and computations as are necessary to determine the quantities of work executed. All original field notes, computations and other records of Contractor, for the purposes of layout, original, progress, and final surveys, shall be furnished promptly to Owner at the Site and shall be used by Owner to the extent necessary in verifying the proper amounts of progress and final payments. A copy of the original notes,

computations, and records furnished to owner shall be retained by Contractor.

## 25. TITLE TO THE WORKS, RISK OF LOSS:

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- 25.1 Title to the Works, or portions thereof, shall pass to *Owner upon the* occurrence of any of the following events, as applicable:
  - 25.1.1 When the plant is delivered to Site pursuant to the Contract,
  - 25.1.2 When Contractor has been paid any sum to which it may become entitled in respect to the plant.
  - 25.1.3 The completion of such portion of the work to the extent that it is an identifiable whole to which title can attach, or,
  - 25.1.4 The issuance of Taking over and Acceptance Certificate of the Works by owner.
- 25.2 Notwithstanding the above, Contractor shall be responsible for and shall bear the cost of any and all risk of loss of or damage to the plant including Owner furnished plant included under the Contract, Construction Equipment, and the Works as a whole, until the issuance of Taking over and Acceptance Certificate of the Works, except:
  - 25.2.1 If such loss or damage results from the sole negligence of Owner, or, To the extent of the proceeds received by Owner with respect to such loss or damage, from the insurance being provided.

## 26. CONTRACTOR QUALITY SURVEILLANCE

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- 26.1 Contractor shall be responsible for the quality of the works executed under the Contract and shall at its expense implement a quality surveillance/audit program.
- 26.2 Owner shall at all reasonable times be allowed free and ready access to Contractor's shops and work areas at the Site to review Contractor's quality surveillance/audit program during the execution of the Works. In those cases, in which parts of the said plant are being supplied by Subcontractors, Contractor shall provide Owner with permission for access to subcontractor's shops for the same purpose and under the same conditions as if the production was carried out in its own shops.
- 26.3 Contractor shall give Owner reasonable, but not less than 45 days written notice to allow owner to be present to witness tests specified in the Contract. If Owner does not appear at the place specified by Contractor within 45 days after receipt of said notice, then Contractor shall perform the test after owner's agreement and submit a certified copy of the results to Owner. When Owner desires to attend the test, it shall notify Contractor at least 24 hours prior to the test.
- 26.4 If, during Owner's review of Contractor's quality surveillance/audit program or during the execution of the works, any work is found to be not in compliance with the requirements of Contractor's quality surveillance/audit program or is not in compliance with the Contract, Owner shall notify Contractor in writing that such plant or work is not in compliance with the Contract. Thereupon, Contractor shall, at its own expense, immediately remove and replace or correct such defective plant or work by making the same comply with all requirements

of the Contract.

- 26.5 If any portion or aspect of Contractor's performance of its work depends, for proper execution or results, upon the work of any other contractor, Contractor shall conduct reasonable inspection and promptly report to Owner any apparent discrepancies or defects in such work that would render Contractor's performance deficient. Failure of Contractor to so inspect and report shall constitute an acceptance of the other contractors, work as fit and proper to receive Contractor's work, except as to latent defects which may exist in the other separate contractor's work.

## 27. TESTING:

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- 27.1 All shop and field-testing certifications, reporting, and assuring of engineering quality verification documentation of the Works shall be performed by Contractor at its expense and in accordance with the technical specifications. Should tests, in addition to those included in Contractor's testing program to fulfill its obligations under the Contract, be desired by Owner, Contractor will be advised in reasonable time to permit such testing. Such additional tests requested by Owner and conducted by Contractor will be at Owner's expense. Should owner require a third-party test, Contractor agrees to provide access and/or sample materials.
- 27.2 Contractor shall furnish samples as requested and shall provide reasonable assistance, including labor, and cooperation as necessary to permit tests to be performed during the execution of the Works.
- 27.3 In the event any additional test requested by Owner indicates noncompliance with the terms of the Contract, Contractor shall, at its own expense, make all necessary repairs and perform additional test (s) required to indicate compliance with the terms of the Contract.

## 28. COOPERATION WITH OTHERS:

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- 28.1 Other contractors will be working simultaneously at the Site during the performance of the Contract. Contractor shall anticipate in its schedule and its Contract price that the performance of the work may be interfered with or temporarily delayed from time to time on account of concurrent activities of other contractors and to allow other contractors or Owner to make measurements or surveys. Contractor shall do all it can to cooperate with other contractors so that minimum delays and interference are experienced among contractors. Should any conflict arise between Contractor and other contractors, which interferes with Contractor's work, Owner will decide priorities to which Contractor shall be deemed under obligation, so as to facilitate the expeditious performance or completion of the project as a whole. Owner will require the certain facilities be used concurrently by contractor and other contractors.

## 29. PROGRESS:

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- 29.1 If, for any reason that does not entitle Contractor to an extension of time, Contractor's actual progress of the Works or any portion thereof is at any time inadequate to meet the requirements of the Contract, Owner may so notify Contractor, in writing. Contractor shall thereupon take such steps as may be necessary to improve its progress. If, within a reasonable period as determined

by Owner, Contractor does not improve performance to meet Contractor's Schedule, Owner may require an increase in Contractor's labor force and the number of shifts, overtime operations, additional days of work per week, and an increase in the amount of Construction Equipment, all without additional cost to Owner.

- 29.2 Owner shall at all reasonable times be allowed free and ready access to Contractor's shops for the purposes of review of progress, examining the expediting activities of Contractor to meet the promised deliveries, and for other actions deemed necessary pertaining to all plant to be provided under the Contract. In cases where parts of the said plant are being supplied by Subcontractors, Contractor shall provide Owner with permission for access to Subcontractor's shops for the same purpose and under the same conditions as if the production/manufacturing were carried out in its own shops.
- 29.3 Failure of Contractor to comply with the instructions of Owner may be grounds for determination by Owner that Contractor is not prosecuting the Works with such diligence as will assure completion or the quality warranted by Contractor within the time specified. Upon such determination, Owner may terminate Contractor's right to proceed with the execution of the Works, or any separable part thereof, in accordance with the article entitled "Termination for Default."

### 30. USE OF COMPLETED PORTIONS OF THE WORKS:

- 30.1 If Taking Over and Acceptance Certificate Date, or any extension hereof, for any portion of the Works in respect of which a separate Taking Over and Acceptance Certificate Date is provided in Exhibit [B], article entitled " Commencement, Prosecution and Completion of the Works, " has passed, Owner shall be at liberty to use the Works or portions of the Works provided that the said Works is in a suitable for use.
- 30.2 Such use by Owner shall neither relieve Contractor of any of its responsibilities under the contract, nor act as a waiver by Owner of any of the conditions thereof, provided that Contractor shall not be liable for the cost of repairs, rework, or renewals which may be required due to ordinary wear and tear resulting from such use. Owner and Contractor shall discuss the effect of passage of risk of loss for any portion of the works to be used and contractor shall be afforded the earliest possible opportunity of taking such steps as may be necessary to permit the issuance of Taking Over and Acceptance Certificate.
- 30.3 Contractor shall not use any permanently installed plant unless such use is approved by Owner in writing. Where contractor's written request is granted for the use of certain plant. Contractor shall properly use and maintain and, upon completion of its use and at its expense, recondition such plant to the satisfaction of Owner. If Owner furnishes an operator for such plant, such operator's services shall be performed under the complete direction and control of contractor and shall be considered contractor's employee for all purposes other than the payment of such operator's wages, workmen's compensation, or other benefits paid directly or indirectly by Owner.

### 31. CLEANING UP AND ENVIRONMENTAL PROTECTION:

- 31.1 Contractor shall, at all times, keep its work areas at the site in a neat, clean, and

safe condition. Waste material shall be removed by contractor from work areas on a continuous basis. Upon completion of any portion of the work, Contractor shall promptly remove all of its Construction Equipment, any plant, temporary structures, and surplus materials not to be used at or near the same location during later stages of work. Upon completion of the work, Contractor shall, at its expense, satisfactorily dispose of all buildings, rubbish, unused materials, and other equipment and materials belonging to it or used in the performance of the work, including return of any unused salvageable materials supplied by Owner for incorporation into the work to Owner's warehouse or storage area on Site. Contractor shall leave the premises in a neat, clean and safe condition. In the event of contractor's failure to comply with the foregoing, the same may be accomplished by Owner at Contractor's expense.

- 31.2 Contractor's operations should be so performed as to prevent accidental spillage of contaminants, debris or other pollutants and waste into streams or underground water sources. Such pollutants include, but are not restricted to, sanitary waste, aggregate processing, tailings, concrete curing water, oil or petroleum products, mineral salts and thermal pollution. Denaturing operations should be conducted in a manner to prevent muddy water from being discharged into streams. Settling ponds or other approved means should be used. Turbidity increases in the streams must be avoided and methods of reducing turbidity increases must be adopted. Waste water from aggregate processing, concrete batching, must not enter streams without using settling ponds, gravel filters or other processes so as not to be harmful to fish.
- 31.3 Abatement of air pollution should be observed by contractor by use of devices to control prevent and minimize emissions to the atmosphere. Dust from contractor pertains, as far as practicable, should be minimized. Exhaust gases due to poor engine adjustments must be avoided and engines not operated until corrective adjustments are made. Dust control by sprinkling or other methods must be adopted to avoid and reduce the dust nuisance. Burning of waste materials, brush or trees shall only be done when atmosphere conditions are favorable, as determined by Owner. Clean-up to prevent accumulation of waste materials and rubbish should be enforced. Disposal of waste materials by burial should not contaminate ground water supplies. Excessive noise levels should be controlled.
- 31.4 Equipment and materials which use components and substances with adverse effect on the environment, such as polychlorinated biphenyl (PCB), Halone etc. should not be used and the use of asbestos is not permitted.

## 32. SUSPENSION:

- 32.1 Owner may, at its sole option, decide to suspend at any time the performance of all or any portion of the Works to be performed under the contract. Contractor will be notified of such Owner decision in writing. Such notice of suspension of the Works will designate the amount and type of plant and construction Equipment to be committed to work at the Site during the period of suspension. Contractor shall use its best efforts to utilize its Construction Equipment and labor in such a manner as to minimize costs associated with suspension.
- 32.2 Upon receipt of any such notice, contractor shall, unless the notice requires otherwise:
- 32.2.1 Immediately discontinue the works on the date and to the extent specified in the notice.
- 32.2.2 Place no further orders or subcontracts for plant or Construction Equipment

- with respect to suspended work other than to the extent required in the notice.
- 32.2.3 Promptly make every reasonable effort to obtain suspension upon terms satisfactory to owner of all subcontracts, to the extent they relate to performance of work suspended.
- 32.2.4 Continue to protect and maintain the works including those portions, which have been suspended.
- 32.3 Upon receipt of notice from Owner to resume suspended Works, Contractor shall immediately resume performance of the suspended works to the extent required in the notice. Contractor shall submit to Owner in writing its claim for extra costs and revised contractor's schedule within 30 calendar days after receipt of notice to resume suspended works.
- 32.4 Owner will evaluate Contractor's claim and, as full compensation for such suspension, make an equitable adjustment to contractor's schedule and reimburse the following costs (excluding profits), reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension:
- 32.4.1 A standby charge to be paid to contractor during the period of suspension of any work at the Site. Such standby charge shall be sufficient to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work on a standby status at the Site.
- 32.4.2 All reasonable costs associated with mobilization and demobilization of Construction Equipment and labor at the Site.
- 32.4.3 An equitable amount to reimburse Contractor for the cost of maintaining and protecting that portion of the work at the Site upon which work has been suspended.
- 32.4.4 An equitable adjustment in the cost of performing the remaining portion of work if, as a result of any such suspension of work, the cost to contractor of performing said remaining work is increased or decreased at the Site.
- 32.4.5 An equitable adjustment in the cost incidental to suspension of plant not received at the Site.
- 32.5 Notwithstanding the provisions of the above paragraph, should the suspension of the works directly result in the suspension of plant which was scheduled for shipment to the Site within 6 months from the date of receipt of notice of suspension, as shown in contractor's schedule or the suspension exceeds a continuous period of 12 months, Owner and Contractor agree to consult each other to assess the impact of such suspension on the portion of suspended works. For the suspended plant, Owner agrees to pay contractor reasonable costs of the portion of the plant completed, provided such costs were incurred prior to suspension and furthermore, Contractor agrees to provide a Bank Guarantee for such costs in the form acceptable to Owner. For the remaining portions of Works, an equitable adjustment for the costs of completed portions of the Works will be mutually agreed, provided such costs were incurred prior to suspension.
- 32.6 No compensation or extension of time will be granted for any suspension to the extent that:
- 32.6.1 The execution of the Contract would have been so suspended by

- Contractor delay, including fault, negligence, or from contractor's Noncompliance with the requirements of the Contract, or
- 32.6.2 For which an equitable adjustment is provided for or excluded under any other provision of the contract.

### 33. TERMINATION FOR DEFAULT:

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- 33.1 If any or all of the works to be performed under the Contract should be abandoned by Contractor, or if the Contract or any part thereof shall be assigned in violation of Exhibit A article entitled "subcontracts and assignments," or if any work is subcontracted by Contractor without the required approval of Owner, or if Contractor becomes insolvent or unable to meet its payroll or other current obligations, or be adjudicated as bankrupt, or have an involuntary petition in Bankruptcy filed against it, or make an assignment for benefit of creditors, or file a petition for an arrangement, composition or compromise with its creditors under any applicable laws, or have a trustee or other officer appointed to take charge of its assets, or if Contractor's Schedule is not being maintained or if Contractor is failing to perform in accordance with the terms of the Contract, then Contractor shall be in default. If Contractor fails to start remedy such Default within 15 calendar days after receipt of a written notice of default, or if contractor fails to provide reasonable evidence that such default will be corrected, Owner may, without notice to Contractor's sureties, either withhold any amounts otherwise due under the contract or terminate contractor's right to proceed with all or any portion of the works. Thereupon, Owner will have the right, but not the obligation, to complete Such works by whatever method Owner may deem expedient including Employing another contractor or contractors under such form of contracts Owner may deem advisable, or Owner may provide any labor or materials and perform any part of the works that been terminated, and Owner will have the right to take possession of and to use any or all of the plant and Construction Equipment and other property of any and every kind furnished by contractor for such work, including completed works.
- 33.2 The expense of so completing such works, together with a reasonable charge for administering any subcontract for such completion, will be charged to Contractor, and such expense may be deducted by Owner out of such money as may be due or may at any time thereafter become due to contractor and notify Contractor's Sureties and demand payment of the amounts guaranteed. In case such expense exceeds the sum, which would have otherwise been payable under the Contract, then Contractor shall be liable for and shall upon notice from Owner promptly pay to Owner the amount of such excess. Owner will not be required to obtain proposals for completing such work, but may make such expenditures, as are reasonable to accomplish completion.
- 33.3 In addition to the remedies for contractor's default which Owner may have as described above, whether or not Contractor's right to proceed is terminated, Contractor shall also be liable for liquidated damages to Owner in accordance with the requirement of Exhibit B, clause entitled "Liquidated Damages," and as follows:
- 33.3.1 If Owner so terminates Contractor's right to proceed, the resulting damages will consist of such liquidated damages until such time as



- may be reasonably required for final completion of the works together with any increased costs occasioned Owner in completing the works.
- 33.3.2 If Owner does not so terminate contractor's right to proceed, the resulting damage will consist of such liquidated damages until the works is accepted.
- 33.4 Upon receipt of any such written notice of termination of right to proceed, contractor shall, at its expense, for that part of the works affected by any such termination:
- 33.4.1 Provide to Owner an inventory of all plant in storage at the Site, in route to the Site, in storage or manufactured away from the Site, and on order from subcontractors, and assist Owner as required to ascertain the validity of the inventory.
- 33.4.2 Assign to Owner subcontracts and Construction Equipment rental agreements, all as designated by Owner.
- 33.4.3 Remove from the Site all Construction Equipment listed in said inventory other than such Construction Equipment, which is designated in writing by Owner to be used by Owner in completing such work.
- 33.5 In deciding the amount due Contractor, all unliquidated advances or other payments made to Contractor applicable to the termination portion of the Contract; all settled claims Which Owner may have against Contractor in connection with the Contract; and the agreed price for, or the proceeds of sale of portions of plant acquired by contractor, sold and not otherwise recovered by or credited to Owner, shall be deducted.
- 33.6 If, after notice of termination of Contractor's right to proceed under the provisions of this article and after actual termination by Contractor is in accordance with said notice, it is determined that Contractor was not in default under the provisions of this article, or that the delay was excusable under the provisions of Exhibit [A], item [35] entitled " Force Majeure, " the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Exhibit [A], item [34] entitled " Termination for Convenience."
- 33.7 The rights and remedies of Owner provided for under the Contract are cumulative and are in addition to any other rights and remedies provided by law.

#### 34. TERMINATION FOR CONVENIENCE:

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- 34.1 Owner may, at its sole option, terminate the Contract in whole, or from time to time in part, at any time by written notice thereof to Contractor, whether or not Contractor is in default. Termination shall be effected by a Notice of Termination to Contractor, specifying that termination is for the convenience of Owner, the extent to which performance of works under the contract is terminated, and the date upon which such termination becomes effective. Upon receipt of notice of any such termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of Contractor, Owner will pay Contractor in accordance with item [34.3] below, provided, however, that those provisions of the contract

which by their very nature survive final acceptance under the contract shall remain in full force and effect after such termination to the extent provided in such provisions.

- 34.2 Upon receipt of such notice, Contractor shall, unless the notice requires otherwise:
- 34.2.1 Immediately discontinue the Works on the date and to the extent specified in the notice.
  - 34.2.2 Place no further subcontracts for plant or Construction Equipment, other than as may be necessary or required for completion of such portion of the Works under the Contract that is not terminated.
  - 34.2.3 Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to Owner of all contracts to the extent they relate to the performance of the Works terminated, or assign to Owner those subcontracts and revoke agreements specified in such notice.
  - 34.2.4 Assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of Plant acquired by Owner under the Contract.
  - 34.2.5 Transfer title to Owner and deliver as directed by Owner, the completed or partially completed plans, drawings, information, and other plant which would be required to be furnished, to Owner under the Contract except that this requirement shall not apply to Plant for which Contractor has not been reimbursed.
  - 34.2.6 Complete performance of the part of the Works, which has not been terminated.
- 34.3 Contractor shall submit to Owner its written claim promptly but not later than 3 months from the effective date of termination, except as Owner may agree in writing Owner will pay to Contractor an amount determined in accordance with the following (without duplication of any item):
- 34.3.1 All amounts due and not previously paid to Contractor for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in notice.
  - 34.3.2 The cost of settling and paying claims arising out of the termination of work under subcontracts as provided in item [34.2.3] above.
  - 34.3.3 Any other reasonable costs incidental to such termination of work.
- 34.4 The foregoing amounts will include a reasonable sum, under all of the circumstances, as profit for all portions of the works satisfactorily performed by contractor.
- 34.5 In deciding the amount due Contractor, all unliquidated advance or other payments made to Contractor applicable to the terminated portion of the Contract, all settled claims which Owner may have against Contractor in connection with the Contract, and the agreed price for, or the proceeds of sale of plant acquired by Contractor or sold and not otherwise recovered by or credited to Owner, shall be deducted.

### 35. FORCE MAJEURE:

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- 35.1 The term "Force Majeure" means any cause beyond the control of either party, which either party could not foresee and/or reasonably provide against and which prevents either party from performing duties under the Contract.

Force Majeure includes but is not limited to the following:

- 34.1.1 War, revolution, insurrection, or hostilities (whether declared or not).
  - 34.1.2 A riot, civil commotion, or a civil uprising (other than among Contractor's employees).
  - 34.1.3 Earthquake, flood, tempest, hurricane, lightning, or other natural disaster.
  - 34.1.4 Any fire of major proportions, or explosions.
  - 34.1.5 Strike, lockout, or other industrial disturbance.
- 35.2 In the event that the performance of the Contract is delayed by force majeure, either party shall, within 15 calendar days of the commencement of any such delay, give the other party written notice thereof including a statement describing force majeure and its effect upon the performance of the Contract. If the delay is excusable, Owner and Contractor shall, within 10 days after receipt of such notice, consult regarding action to be taken.
- 35.3 In the event of a force majeure, Contractor, unless directed otherwise in writing by Owner, shall continue to undertake and perform the duties set forth in the Contract as far as reasonably practicable.
- 35.4 Within 15 calendar days after the termination of any such delay Contractor shall file a written notice with Owner specifying the actual duration of the delay and the delay impact with respect to each of the affected milestone dates pursuant to Exhibit [B], article entitled "Commencement, Prosecution, and Completion of the Works." Failure to give either of the above notices shall be sufficient grounds for denial of an extension of time. Owner will evaluate Contractor's notice specifying the actual duration of the delay and the delay impact and an equitable adjustment to the time of performance of the affected milestone date(s) set forth in Exhibit [B], article entitled "Commencement, Prosecution, and completion of the Works" will be mutually agreed.

### 36. CONSTRUCTION COMPLETION CERTIFICATE:

- 36.1 Contractor shall notify Owner upon the completion of erection of the Plant at the Site, including satisfactory completion of testing included in the works so that the works is ready for energization. Such notices shall be in writing and shall be deemed to be a request by Contractor for Owner to issue a Construction Completion Certificate. Owner will, within 30 calendar days of the delivery of such notice either issue to Contractor a Construction Completion Certificate verifying the date on which the portion of the Works for which Construction Completion Certificate is issued where completed or give instructions in writing to Contractor specifying the unfinished portion of the Works which require to be completed by Contractor before the issuance of such Certificate. Upon completion of specified unfinished portion of the Works and correction of all specified deficiencies, Contractor shall so notify Owner in writing and Owner will, within 15 calendar days of the date of delivery of such notice either issue a Construction Completion Certificate or give Contractor notice of failure to complete the specified deficiencies. In the latter instance, the foregoing procedure with respect to unfinished portion of the Works and specified deficiencies shall be repeated, provided Owner will not

refrain from issuance of construction completion Certificate because minor portions of the Works are not completed and these minor portions does not affect the safe and reliable, testing and operation of the Plant.

- 36.2 In accordance with the provision of the above paragraph, contractor may request and Owner will issue Construction Completion Certificate for any portion of the Works in respect of which a separate Construction Completion Date is provided in Exhibit [B] item [6] entitled "Commencement, Prosecution and Completion of the Works".
- 36.3 The issuance of any specific Construction Completion Certificate does not constitute Owner's acceptance of the works or acknowledgement of Contractor's satisfactory completion of the Works. The issuance of any Construction Completion Certificate shall not relieve Contractor from any of its obligations under the Contract connected with the works or any part thereof. The Operation of the Plant included in the Works shall be under the supervision and responsibility of Contractor until the date of issuance of "Taking Over and Acceptance Certificate".

### 37. TAKING OVER AND ACCEPTANCE CERTIFICATE:

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- 37.1 Contractor shall notify Owner upon receiving of construction completion certificate and the completion of the works including satisfactory completion of the tests included in the technical specifications. Such notice shall be in writing and shall be deemed to be a request by contractor for Owner to issue Taking Over and Acceptance Certificate. Owner will within 30 calendar days of the delivery of such notice, conduct inspection of the works and either issue to contractor the Taking Over and Acceptance Certificate indicating the date on which, the works for which Taking Over and Acceptance Certificate is issued were completed or notify Contractor of the unfinished portions of the works or correction of deficiencies Contractor shall so notify Owner in writing and Owner will, within 10 calendar days of the date of receipt of such notice either issue a Taking Over and Acceptance Certificate or give Contractor notice of failure to complete the specified unfinished portions of the Works or correct the specified deficiencies .In the latter instance, the foregoing procedure with respect to such specified unfinished portions of the Works or specified deficiencies shall be repeated ,provided the Owner will not refrain from issuance of Taking over and Acceptance certificate because minor portions of the works are not completed and these minor portions of uncompleted works do not affect the safe, reliable and normal operation of the plant .
- 37.2 In accordance with the provisions of the above paragraph, Contractor may request and Owner will issue Taking Over and Acceptance Certificate for any portion of the Works in respect of which a separate Taking Over and Acceptance Certificate Date is provided in Exhibit [B], clause entitled "Commencement, Prosecution and Completion of the Works".
- 37.3 The date of issuance of any specific Taking Over and Acceptance Certificate indicates the beginning of the Warranty Period. However, issuance of the

Taking Over and Acceptance Certificate does not constitute final acceptance of the Works or acknowledgement by Owner that Contractor has satisfactorily completed performance of its obligations under the contract.

### 38. WARRANTY:

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- 38.1 Contractor warrants during warranty period that all plant furnished and work performed under the Contract shall be free from defects in title, design, materials, and workmanship and shall conform in all respects to technical specifications and the terms of the contract, and shall be new and of good quality, if no quality is specified. Owner shall also be entitled to, at no additional cost, the benefits of extended warranties for period exceeding the Warranty Period, which are received by Contractor from any of its subcontractors.
- 38.2 Upon receipt by contractor of written notice from owner of any such defect or nonconformity in any such plant of the Works or work during the Warranty Period, the defect or nonconformity shall be redesigned, repaired, or replaced by Contractor at a time acceptable to Owner. Contractor shall do such tests as Owner may require to verify that such redesign, repairs and replacements comply with the requirements of the Contract. All costs incidental to such redesign, repairs replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by Contractor. Contractor warrants such redesigned, repaired, replaced Works against defective design, materials, and workmanship for a period of 24 months from the date of such repair or replacement of works. Should Contractor fail to promptly make the necessary redesign, repairs, replacement, and tests, Owner may perform or cause to be performed the same at Contractor's expense. Contractor and its surety or sureties, if any, shall be liable for the satisfaction and full performance of the warranties as set forth therein.
- 38.3 The Warranty obligations of this paragraph are in addition to, and not in limitation of, whatever obligations are imposed by applicable law or regulation of the A.R.E.

### 39. FINAL CERTIFICATE:

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- 39.1 Contractor may notify Owner to issue a Final Certificate at any time after the end of the Warranty Period provided Contractor has satisfactorily performed its obligations under the Contract. Such notice shall be in writing and shall be deemed to be a request by Contractor for Owner to issue Final Certificate. If during the Warranty period, It has become necessary for Contractor to replace or renew any portion of the works, the obligations of Contractor shall continue and the right of Contractor to apply for a Final Certificate in respect to the Works or portions thereof, other than the portions so replaced or renewed, shall not be affected, and after Contractor has ceased to be under any obligation in respect of the portions replaced or renewed, Contractor may apply for a Final Certificate in respect to the works or portions thereof.
- 39.2 Owner will, within 30 calendar days of the delivery of such notice, verify the

completion of the Works and either issue to Contractor the Final Certificate indicating the date on which the Works for which Final Certificate is issued were completed or specify the deficiencies, which are required to be completed by Contractor before the issuance of such certificate. Upon completion of specified deficiencies, Contractor shall so notify Owner in writing and Owner will, within 10 calendar days of the date of receipt of such notice either issue a Final Certificate or give Contractor notice of failure to complete the specified deficiencies. In the latter instance, the foregoing procedure with respect to such specified deficiencies shall be repeated.

- 39.3 In accordance with the provisions of the above paragraph, Contractor may request and Owner will issue Final Certificate for any portion of the Works in respect of which a separate Taking Over and Acceptance Certificate Date is provided in Exhibit [B], clause entitled "Commencement, Prosecution and Completion of the Works" and a Final Certificate can be issued.
- 39.4 The issuance of Final Certificate signed by Owner indicates that Contractor has performed all of its obligations and shall be deemed to constitute the final acceptance of the works.

#### **40. CHANGES TO THE WORKS:**

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- 40.1 Changes: Orders for changes will be described in Change Notices and Owner will issue Change Notices in accordance with the following:
- 40.1.1 Changes within the Scope of Works: Owner will issue changes within the Scope of Works for which a provisional sum has been included in the Total contract price.
- 40.1.2 Changes outside the Scope of the Works: The provisional sum included in the Total Contract Price may be utilized for these changes and all changes in Total Contract Price will be incorporated by issuing a Contract Amendment.
- 40.2 Owner may at any time, without invalidating the Contract and without notice to Contractor's Sureties, order any changes in the Works, except that the value (if any) of all such changes shall be taken into account by Owner in ascertaining the amount of the Total Contract Price. Such changes shall not be made by Contractor unless ordered in writing by Owner, provided that in the event of an emergency, which Owner determines endangers life or plant, Owner will issue oral orders to Contractor for any work required by reason of such emergency. Contractor shall comply with such order, and the confirmation in writing of such oral order given by Owner, whether before or after the carrying out of the order, shall be deemed to be an order in writing within the meaning of this Clause. Any such authorization, whether written or oral, may be accompanied by drawings and data as are necessary to show the extent of such change. Contractor shall commence such work so that all the dates set forth in Contractor's Schedule will be met. Failure to commence any such work in timely fashion shall entitle Owner to invoke the provisions of Exhibit [A], clause entitled "Termination for Default".
- 40.3 Increases or decreases in the quantity of any unit price works that do not result in a reduction or an addition greater than 25 percent of the total

contract price stated in Exhibit [C], section entitled "Schedule of Quantities and Prices," shall not constitute a change to the works and shall not provide a basis for any adjustment in the contract unit price or any extension of time. The clause is valid during the execution period.

- 40.4 Orders for changes will be described in Change Notices issued by Owner, and Contractor shall proceed with the Works as indicated in the Change Notice. If Contractor agrees with the terms of the Change Notice in its entirety it shall sign the Change Notice and return it to Owner within 14 calendar days after receipt. Such Change Notices shall have the full force and effect of a Change Order.
- 40.5 If contractor does not agree with the terms of the Change Notice. Contractor shall, within 14 calendar days following receipt of a written notice of change, submit to Owner a proposal for executing the changed Works. This proposal shall justify any increase or decrease in the cost to contractor of performing the Works under the Contract, in comparison to the cost had such change not been ordered. The proposal shall contain detailed breakdowns for thorough analysis of all labor cost, including man hours, cost of Construction Equipment, cost of Plant and overhead cost, as well as profit and shall cover amount of any subcontracts involved in the change. Any amount claimed for subcontracts shall be supported by a similar price breakdown.
- 40.6 Any Contractor claim for time extensions as a result of changes in the Works shall be based upon the extent, if any, by which changes cause delay in the completion of the various portions of the works, except there shall be no adjustment in contract schedules for unit price items unless the changes are in excess of 25 percent of the total contract price stated in Exhibit[C], section entitled "Schedule of Quantities and prices" Further more, any Contractor proposal for extension of time shall be documented by detailed information concerning the circumstances of the delay, the number of days of anticipated delay, and the measures taken to prevent or minimize the delay.
- 40.7 Change Order: Owner will evaluate Contractor's proposals and, on mutual agreement, issue a Change Order which shall be signed by Owner and Contractor. Any Change Order granting a time extension will extend only those specific elements of the Works so delayed, and the remaining Contract completion dates for all other portions of the Works will not be altered.
- 40.8 Contract Amendment: Owner will issue Contract Amendments incorporating changes, which are outside the Scope of the Works. Such contract amendments outside the scope of works will require approval of the Bank, Owner may, at its option, issue periodic Contract Amendments to incorporate Change Orders previously executed by Owner and Contractor.
- 40.9 Notwithstanding, if Contractor is directed by Owner to proceed on reimbursement basis, Contractor shall proceed with such work, and compensation therefore will be made on the basis set forth in items [40.9.1, 40.9.2] below. In any event, Contractor shall keep accurate records of the actual cost to Contractor for such work.

40.9.1 Direct Labor Costs: Charges for all of the labor furnished and used shall be made

for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foremen, office personnel, timekeepers, and maintenance mechanics. The time charged to variations shall be subject to the daily approval of Owner. Contractor's labor rates included in the Contract shall be used to calculate the cost the changed work. The direct labor costs shall include the following, in addition to the direct payroll costs: payroll taxes and insurance, vacation allowance, subsistence, if applicable, travel time, and overtime premium and any other payroll additives required to be paid by Contractor by law. Copies of pertinent payrolls shall be submitted to Owner.

40.9.2 Construction Equipment Costs: Charges for the rental of the Construction Equipment furnished and used shall be made for all Construction Equipment. Such charges shall not include charges for any equipment or tools with a new cost of the equivalent of USD 500.00 or less each. The equipment rental rates included in the Contract include costs for rental Fuel, oil, grease, repair parts, service and maintenance of any kind, and necessary attachments. Such charges do not include costs for operating labor and transportation to and from the location of the Site.

40.9.3 Material Costs: Charges for the furnishing of materials incorporated into the works in performing changes shall be made, provided such furnishing and use were as specifically authorized, and the actual use was verified by Owner. Charges shall be the net cost delivered at the Site, and material invoices shall accompany the billing.

40.9.4 Plant Costs: *In cases where Plant is already manufactured or in course of manufacture, or any matter done or drawings made that require to be altered, an equitable adjustment in respect thereof shall be allowed by mutual agreement between Owner and Contractor* If any such change is likely to prevent or prejudice Contractor from fulfilling any of its obligations under the Contract, it shall notify Owner thereof in writing within 14 calendar days after the receipt of change notice.

40.10 To the total of above items [40.9.1- 40.9.2] of this clause, Contractor shall add 25 percent to cover tools, supplies, overhead, supervision, management services, profit, and all other costs and expenses.

40.11 If any change ordered in the Works results in a reduction in the works, Contractor shall neither have nor assert any claim for or be entitled to any additional compensation for damages or for loss of anticipated profits on portion of the works that is eliminated.

#### 41. TAXATION AND SOCIAL INSURANCE:

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41.1 Contractor shall pay all taxes including but not limited to levies, duties, fees fiscal stamp, labor income tax, social insurance for the whole contract price corporate tax, all taxes for deliveries and services and all taxes for total service of the Contract, foreign services and whatsoever other taxes and duties imposed under the laws of the A.R.E., with respect to the works performed under the contract.

41.2 All Plant furnished by contractor or the subcontractors to perform the works



under the contract shall be subject to payment of customs taxes in accordance with the laws of the A.R.E.

#### 42. CONFIDENTIALITY AND NONDISCLOSURE:

- 42.1 Contractor agrees that it shall not divulge to third parties, without the written consent of Owner, any information which it obtains in connection with the performance of the contract unless:
  - 42.1.1 The information is known to Contractor prior to obtaining the same from Owner.
  - 42.1.2 The information is, at the time of disclosure by contractor, then in the public domain and not as a result of any act by Contractor.
  - 42.1.3 The information is obtained by Contractor from a third party who did not receive same, directly or indirectly from the Owner and who has no obligation of secrecy with respect thereto.
- 42.2 Contractor further agrees that it shall not, without the prior written Consent of Owner, disclose to any third party any information developed or obtained by Contractor in the performance of the contract except to the extent that such information falls within one of the categories described in items [42.1.1, 42.1.2, 42.1.3] above.
- 42.3 If so requested by Owner, Contractor further agrees to require its employees to execute a nondisclosure agreement prior to performance of the works under the contract.

#### 43. BRAND NAMES OR CATALOGUE NUMBERS:

- 43.1 References to brand names or catalogue numbers, if any, in these contract specifications have been made only for that equipment for which it has been determined that a degree of standardization is necessary to maintain certain essential features. In certain instances, such references have also been made for purposes of convenience to specify the requirements. In either case, alternative equipment or material which has similar characteristics and provides performance and quality at least equal to those specified is acceptable, provided that contractor submits a written request for Owner approval of the use of alternative equipment or material.
- 43.2 Contractor shall make such requests at least 60 calendar days before it requires approval. Following receipt of all requested information from Contractor, Owner will determine whether the proposed alternative equipment or material meets the requirements of the contract and will in form Contractor in writing of its determination. Equipment and material approved as alternatives shall be incorporated into the works at no increase in cost to Owner. Rejection of proposed alternatives shall not result in any increase in contract price or period of performance.

**44. EXAMINATION OF CONTRACTOR'S RECORDS:**

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Contractor shall maintain records during the term of the contract and for a period of 3 years after final payment. However, records, which relate to disputes, appeals, arbitration, litigation or the settlement of claims arising out of the performance of the contract, shall be retained until such disputes, appeals, arbitration, litigation or claims have been finally settled.

**45. WAIVER:**

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None of the conditions of the contract shall be considered waived by Owner or CM unless such waiver is given in writing by Owner. No such waiver shall be a waiver of any past or future default, breach or modification of any of the conditions of the contract unless expressly stipulated in such waiver.

**46. INSPECTION:**

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The owner shall have the right to inspect the goods to confirm their conformity to the contract. The specification specify what inspections owner requires and where they are to be conducted. The owner shall notify the contractor in writing of the identity of any representatives retained for these purposes.

Should any inspected goods fail to conform to the specifications, owner may reject them and the contractor shall either replace the rejected goods or make all alterations necessary to meet specifications requirements free of cost to the owner.

**47. LAW APPLICABLE:**

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The contract shall be governed by and construed in accordance with the civil law of the Arab republic of Egypt will be applied on the articles which is not covered by the Owner's rules.

**48. RECOGNIZED FESTIVALS AND CUSTOMS:**

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Contractor shall have due regard for all recognized festivals and religious or other customs in dealing with its workmen and others in the A.R.E.

**49. INTOXICANTS AND NARCOTICS:**

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Contractor shall not permit or suffer the introduction or use of intoxicating liquor or narcotics on or about the site.

**50. COMMERCIAL ACTIVITIES:**

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Contractor shall not establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on land owned or

controlled by Owner. Contractor shall not allow its employees to engage in any commercial activity on the Site.

**51. CONFLICT OF INTEREST:**

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No employee, officer, or director of the contractor or its subcontractors performing the works described herein shall engage, directly or indirectly, either in its own name or through the agency of another person as a consultant or, in any business, profession, or occupation in the A.R.E. for admittance to any share or part of this contract, or to any benefit that may arise there from, in conflict with the works executed under the contract.

**52. OFFICERS NOT TO BENEFIT:**

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If contractor or any of its subcontractors, agents or employees shall offer or give, or agree to offer or give, to any employee of Owner, or CM or any other person, any bribe, gift, gratuity, or commission as an inducement or reward for doing or forbearing to do any action in relation to the contract or any other contract with Owner, or for showing or forbearing to show favor or disfavor to any person in relation to the contract or any other contract with owner then Owner may terminate the contract under the provisions of Exhibit [A], clause entitle "Termination for Default".

**53. LANGUAGE OF CONTRACT:**

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- 53.1 The contract is prepared and executed in the English language, which shall govern.
- 53.2 The English language shall be used in all written communications, instructions, catalogues, Brochures, pamphlets invoices, documents, labels on work, and any other information to be given.

**54. METRIC SYSTEM:**

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Contractor shall use the soft metric system of measurement for all designs, plants, and drawings. English units shall be expressed in parentheses.

**55. EXPLOSIVES:**

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The use of explosives by contractor is expressly prohibited without prior notification and prior written consent of Owner. Contractor shall be responsible for the proper handling, transporting, storage, and use of explosives and shall, at its expense, repair any damage caused by its handling, transporting, storage and use of explosives. Contractor shall be responsible for obtaining required permits for blasting from the Government agencies, as applicable.

**56. SURVIVAL:**

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- 56.1 Certain obligations of the Contract by their nature continue beyond the termination or completion of contractor's performance obligations including, for example, and without limitation the obligation of items [17, 18, 44 and 57].
- 56.2 Said obligations shall survive the termination or completion of the contract in accordance with them.

**57. SEVERABILITY:**

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In the event that any of the provisions, or portions or applications thereof, of the contract are held to be unenforceable or invalid by any court of competent jurisdiction Owner and Contractor shall negotiate an equitable adjustment in the provisions of the contract with a view toward effecting the purpose of the contract and the validity and enforceability of the remaining provisions, or portion or applications thereof, shall not be affected thereby.

#### **58. LIMITATION OF LIABILITY:**

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58.1 Contractor's liability to Owner for any claim of any kind, including claims based on breach of contract, tort (including negligence), or otherwise arising out of or in connection with the work performed under the contract or breach thereof, shall in no case exceed the Total contract price. This limitation of liability shall however not apply in case of gross negligence by the contractor.

In no event, whether in Contract, tort (including negligence), or otherwise, shall Contractor or its Subcontractors be liable for indirect or consequential damages such as loss of profits or production, loss of use or cost of capital cost of purchased power.