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**CONSTRUCTION OF THE INDIA CHANCERY AND CULTURAL  
CENTER IN RABAT**

**CONTRACT AGREEMENT**

**TENDER CONTRACT N° XX/XX/XX**

**TENDER DOCUMENT: LUMP SUM PROJECT**

Contract taken place by invitation for a call for tenders  
Between \_\_\_\_\_ the \_\_\_\_\_ undersigned:

**THE AMBASSADOR OF INDIA REPUBLIC IN RABAT**, His Excellence Mr **RAJESH VAISHNAW**,  
(hereinafter called "the Employer")

AND

The Contractor ....., represented by  
Mr ....., **acting as**  
.....  
Domiciled at .....  
Legal forme .....  
Registre de commerce délivré in ..... **Under the n°**.....  
Affiliated in the CNSS under the n°.....  
Bank account n° ..... **opened at**  
..... **Agency Bank**.....  
Patente n°.....,  
Share capital.....**Dhs.**  
  
(hereinafter called "the Contractor")

**It was been agreed as follows**

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### **ARTICLE 3 - DEFINITION**

#### 1.1 CONTRACT

#### **The work consists of CONSTRUCTION OF THE INDIA CHANCERY AND CULTURAL CENTER IN RABAT**

The works are for the Employer **Républic of India represented by its Embassy in Rabat.**

#### 1.2 DEFINITION OF THE TENDER.

The Tender CAHIER DES PRESCRIPTIONS SPECIALES "CPS". is an element of the contract after signature by the Contractor and the Employer.

#### 1.3 NOTIFICATION OF THE TENDER

In accordance with the requirement of The CCACT (Moroccan Construction Law) , The notification of the contract by the Employer will be made for the Contractor for a maximum deadline of ninety days (90 jours) From the date in which it is proceeded to the opening of the competitors tender. A expiration of this deadline, and if the contract was not yet notified to the Contractor, he is free to renounce to the project according to article 74 of the decree (law) n°2-98-482 of 30 December 1998.

#### 1.4 TENDER VALIDITY

The present contract will be valid, definitive and enforceable that after **approval** of the financial controller or the Central Administration which depends the embassy of the Republic of India in Rabat and notification of its approval by the Employer (Employer)

#### 1.5 TENDERING PROCESS

The bidding will take place in two stages

- (i) **Stage I:-** Qualification of the firms as per eligibility criteria as per Notice Inviting Tender (NIT) would be assessed.
- (ii) **StageII:-** Eligible firms would be issued with Tender documents for submission of lump-sum financial bid.

#### 1.6 **STAKEHOLDERS**

The Contractor has knowledge that the Employer appointed the participants below:

##### 1.6.1 CONSULTANTS:

**1.6.1** \_\_\_\_\_ **The** \_\_\_\_\_ **Architect :**

**ARCHOHM CONSULTS**  
C-28C, Sector-8, Noida, UP, India

**And it's representant in Morocco MY GROUP ARCHITECTURE**

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#### 1.6.2 PROJECT MANAGEMENT,

Project Manager / Project Management: natural or legal person appointed by the project owner to ensure the design and monitoring of the execution of the works and control of the site work;

#### 1.6.3 EXEMPTION FROM THE C.C.A.G-T AND D.G.A. :

If the present Contract breaks a prescription of texts present in the article 3, the Contractor will follow to the prescriptions of the present book of the special prescriptions.

#### 1.7 CODE OF INTEGRITY

All the bidders shall have to observe the highest standard of ethics and should not indulge in any of the prohibited practices, wither directly or indirectly, at any stage during the procurement process or during execution of resultant contracts. No official of the procuring entity or bidder shall act in contravention of the codes which include making offer, solicitation of acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process. The bidders shall also have to avoid the following prohibited practices such as

- (i) Corrupt practice
- (ii) Fraudulent practice
- (iii) Anti-competitive practice
- (iv) Coercive practice
- (v) Conflict of interest
- (vi) Obstructive practice.

#### 1.8 CONFLICT OF INTEREST

The bidder shall not have conflict of interest with other bidders. Such conflict of interest can lead to anti-competitive practice to the detriment of procuring entities' interests. The bidder found to have a conflict of interest shall be disqualified based on any such activities like participation by bidding firm or any of procurement is linked or if they are part of more than one bid in the procurement or if the bidding firm or their personnel have relationships of financial or business transactions with any official of procuring entity who are directly or indirectly related to tender or execution process of contract or improper use of information obtained by the bidder from the procuring entity with an intent to gain unfair advantage in the procurement process or for personal gain.

#### 1.9 LANGUAGE FOR CORRESPONDANCE

English and French shall be the language for all official communications related with the project.

### **ARTICLE 4: DEVOLUTIONS OF ATTRIBUTIONS**

#### 1.1 SCOPE OF WORK OF THE PROJECT MANAGEMENT

The Employer shall appoint the Project Manager, who shall carry out the duties assigned to the Project Manager in the Contract. The Project Manager shall be vested with all the authority necessary to act as the Project Manager under the Contract. If the Project Manager is a legal entity, a natural person employed by the Project Manager shall be appointed and authorised to act on behalf of the Project Manager under the Contract. The Project Manager (or, if a legal entity, the natural person appointed to act on its behalf) shall be:

- (a) a professional Project Manager having suitable qualifications, experience and competence to act as the Project Manager under the Contract; and
- (b) shall be fluent in the English and French language.

Where the Project Manager is a legal entity, the Project Manager shall give a Notice to the Parties of the natural person (or any replacement) appointed and authorised to act on its behalf. The authority shall not take effect until

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this Notice has been received by both Parties. The Project Manager shall similarly give a Notice of any revocation of such authority

Except as otherwise stated in these Conditions, whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Project Manager shall act as a skilled professional and shall be deemed to act for the Employer.

The Project Manager shall have no authority to amend the Contract or, except as otherwise stated in these Conditions, to relieve either Party of any duty, obligation or responsibility under or in connection with the Contract.

The Project Manager may exercise the authority attributable to the Project Manager as specified in or necessarily to be implied from the Contract.

Any acceptance, agreement, approval, check, certificate, comment, consent, disapproval, examination, inspection, instruction, Notice, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, test, valuation, or similar act (including the absence of any such act) by the Project Manager, the Project Manager's Representative or any assistant shall not relieve the Contractor from any duty, obligation or responsibility the Contractor has under or in connection with the Contract.

### 1.2 Delegation by Project Manager

The Project Manager may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation, by giving a Notice to the Parties, describing the assigned duties and the delegated authority of each assistant. The assignment, delegation or revocation shall not take effect until this Notice has been received by both Parties.

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the Project Manager's Notice of delegation.. Any act by an assistant, in accordance with the Project Manager's Notice of delegation, shall have the same effect as though the act had been an act of the Project Manager. However, if the Contractor questions any instruction or Notice given by an assistant, the Contractor may by giving a Notice refer the matter to the Project Manager. The Project Manager shall be deemed to have confirmed the assistant's instruction or Notice if the Project Manager does not respond, within 7 days after receiving the Contractor's Notice, reversing or varying the assistant's instruction or Notice (as the case may be)

### 1.3 Project Managers Instructions :-

The Project Manager may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, all in accordance with the Contract. The Contractor shall only take instructions from the Project Manager, or from the Project Manager's Representative (if appointed) or an assistant to whom the appropriate authority to give instruction has been delegated

Subject to the following provisions, the Contractor shall comply with the instructions given by the Project Manager or the Project Manager's Representative (if appointed) or delegated assistant, on any matter related to the Contract.

If an instruction states that it constitutes a Variation,. If not so stated, and the Contractor considers that the instruction:

- (a) constitutes a Variation (or involves work that is already part of an existing Variation); or
- (b) does not comply with applicable Laws or will reduce the safety of the Works or is technically impossible the Contractor shall immediately, and before commencing any work related to the instruction, give a Notice to the Project Manager with reasons. If the Project Manager does not respond within 7 days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Project Manager shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Project Manager's response.

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## **ARTICLE 5 : CONTRACT DOCUMENTS**

### 1.1 CONTRACT'S DOCUMENTS

The order of priority of documents as specified in Article 5 of CCAG-T shall be modified as below

- 1.1.1 Agreement
- 1.1.2 Letter of Acceptance
- 1.1.3 The tender document
- 1.1.4 The architecture and technical drawings
- 1.1.5 Technical Specifications
- 1.1.6 Special Specifications
- 1.1.7 Le CCAGT (Moroccan Construction Law ) approved by the decree n°2.99.1007 of 29 Moharrem 1421 (4 May 2000)
- 1.1.8 The Bill of quantity

### 1.2 GÉNÉRAL REGULATIONS

- 1.2.1 Official regulations for labors, workforce and employees.
- 1.2.2 The bulletin 6.015 of 1st april 1965 from Ministry of the Public works and the Communications making application of the exercise book of the typical special prescriptions.
- 1.2.2 The code of minimum salaries.
- 1.2.3 Le devis général d'Architecture (D G A) Fixing the conditions of all the works concerning administration buildings (édition 1959).
- 1.2.4 Décreé 2/98/482 of 11 Ramadan 1419 (30/12/1998) Fixing the conditions and the forms of procurement of tenders and their control and management.
- 1.2.5 The bulletin from Ministry of the Public works n°123/4028 of 2 April 1984, about the création of the buildings index for the revision of the prices of the public contract.
- 1.2.6 The Royal decree : 330.66 of 21/04/67 about general regulation of public compatibility
- 1.2.7 The Dahir of 23 Chaoual 1367 (28/08/48) about pledges of public procurements.

### 1.3 TEXTES SPÉCIAUX /SPECIAL RÉGULATIONS

- 1.3.1 Law n° 350/67 from Ministry of Public works and the communications of 15 July 1967, and technical regulations PNA 7.11 CL et 005 annexed to the law N° 350/67 and standards 7.68.100, 7.62.411 et 7.32.202.
- 1.3.2 The bulletin 6001 Bis TP of 7 August 1958 about au Transport of materials and goods for the execution of the public works.
- 1.3.3 The earthquake-resistant rules specialy RPS 2000, les D.T.U. (Technical regulation) and moroccan standards in particular the standard about concrete MN 10.03 F.009 and standards about Materials and binders 1001.F.004.
- 1.3.4 The current regulations against risks of fires and panic in public access buildings and private houses.

The tenderer will have to get himself at his expenses these documents if he does not possess them and cannot call on no account upon his ignorance of texts to shy away from the obligations that are contained there.

In case of contradiction between the present contract and those of the known documents aimed, the clauses of the present contract shall have precedence / shall prevail.



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## **ARTICLE 8: EXECUTION DELAY**

### 1.1 DEADLINES OF EXECUTION :

The commencement date shall be considered as 15 days from the date of handing over the construction site as per NIT.

The deadline of execution interesting the present tender for all work is of EIGHTEEN MONTHS ( **18 MONTHS**).

This deadline contains:

- The period of execution itself which takes into account of:
  - The execution of the works
  - The tries of control and reception
  - The paid leaves and the holidays, non-work and paid
  - The days of bad weather taken into account inclusively in 30 days a year.

This deadline is absolutely imperative. There would be no modification of the above schedule whatever the reason, with the exceptions as referred to in Article 47 of the C.C.A.G.T.

Any delay in the execution of works beyond the stipulated period of 18 months shall attract a penalty of 0.5% of the contract value per week computed on a day to day basis upto 10% of the contract value.

## **ARTICLE 9 : COMMUNICATIONS:**

1-All the notifications which relate to the execution of the present Contract are valid when they were made in the office of the company the address of which is indicated in the article 2, § 2-3 be known quoted.

2-In case of change of office, the Contractor has to inform the Employer about it by registered letter with recorded delivery in fifteen ( 15 ) days according to the date of intervention of this change.

3- English and French shall be the language for all official communications related with the project.

## **ARTICLE 15 :FINAL SURETY**

The entire clause is replaced as follows

### 1.1 PROVISIONAL TENDER GUARANTEE:

The provisional tender guarantee (in the form of a Bank Guarantee) of this Lump Sum contract is fixed to the amount of: 3% of the estimated cost of project.

This guarantee will be restored to the Company after the deposit of the definitive guarantee by the Company Assignee.

### 1.2 FINAL TENDER GUARANTEE:

The amount of the definitive tender guarantee (in the form of a Bank Guarantee) is fixed at 5 % (FIVE PERCENT) Of the initial amount of the contract.

According to the article 14 chapter II of the C.C.A.G T. this Tender guarantee must be established in Fourteen (14) days, which follow the notification of the approval of the contract. It remains allocated to the guarantee of the commitments of the Contractor until the 60 days from the definitive reception of the works.

The amount of the definitive guarantee can be retained by the Employer in case of failure of the Tenderer or the termination of the contract.

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## **ARTICLE 16 :HOLDBACK**

### 1.1 RETENTION MONEY :

The retention money to be taken from the amounts of the works is Five percent (5 %); She(It) will stop growing when it will reach to five percent (5%) of the initial amount of the contract, increased or decreased in the possible amendments.

It is acquired by rights to the Employer in case of faults carelessness or other breaches of the Tenderer on his obligations.

The possibility and the conditions to guarantee partially or totally this retention money, is left to the judgement by Employer.

## **ARTICLE 25 :INSURANCE AND RESPONSIBILITIES**

### 1.1 SITE ACCESS

The Contractor has to allow at any time, the representatives of the Employer, the Project management to visit the construction site.

The Contractor has to maintain a proper site management plan for making adequate usage of space allocated for storage of material. Premises and zones received by the Employer must be separated from premises and zones of construction site. Proper watch and ward of the construction site is the responsibility of the Contractor. The temporary works required for preservation of the traffic of the pedestrians and the cars around the construction site, or through, are within the scope of the Contractor. Necessary scaffolds and supporting arrangements and safety nets shall be provided by the Contractor on all four sides of the building without any additional / extra charges.

### 1.2 SITE KNOWLEDGE

The Contractor recognizes that he has a perfect knowledge of the nature of the ground as well as his topography on which the works must be made and of all the local elements in connection with the execution of the works and that he is aware of the ground plane and all the plans and the documents useful for the realization of his constructions.

### 1.3 GEOMETRICAL SETTING-UPAND ALTIMETRIQUE

The Contractor have to make at its expenses and under its by a topographer approved by the Project Management, the location layouts of all the works according to the plans given to him and the instructions given to him by the Project Management.

### 1.4 : PREPARATORY STUDIES

Apart from the plans that will be given to him by the Project Manager, the Contractor draws up on the basis of the plans in the contract file, and under his responsibility, all production drawings, sketches, outlines, details, as well as all calculation notes, explanatory notes necessary for the execution of the work.

These documents are submitted to the Project Management in as many copies as necessary as needed and, unless expressly waived, at least twenty days before the start of construction, so that the Project Management can check them and correct them if necessary before approving them.

All documents, plans and notes referred to in this article are submitted for review and assessment to the Project Management before being returned to the Contractor.

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Modifications to these construction drawings prescribed by the Project Management in no way diminish the Contractor's liability if the latter does not submit written and reasoned objections in good time.

The acceptance or rejection of claims presented by the Contractor are communicated by the Project Management to the Project Owner.

If the Contractor fails to submit to the Project Management the documents referred to in this article, he is fully responsible for the consequences of this omission which may lead to the refusal of the works and their **resumption** at his expense.

#### 1.5 ORGANISATION OF THE CONSTRUCTION SITE :

The Contractor have to assures the organization of the construction site on the instructions of the Project management to allow at any time the progress of the works in the best conditions and for the planned contractual deadlines.

The Contractor has to set up his own staff of control of the execution and supply in the Project management, any necessary information on the organization and the control systems.

The Contractor makes his affair with the competent services of any steps, authorizations and regulation of **fees** of connection to the network of public road network etc. or other subjections concerning the construction site, he makes establish in particular connections and of public road network pipes for the distribution of the water, the electricity and the telephone corresponding to the needs for construction site.

The Contractor assures the establishment and the maintenance of the temporary ways necessary for the supply of the construction site, as well as the construction of the installations of construction site and the maintenance of any installations such as sheds and necessary stores for a preservation of these materials, materials and supplies. He settles all the expenses relative to it.

**It is forbidden to the Contractor and his subcontractors to use the buildings under construction for their own needs such as deposits, stores, offices, dining halls, dormitories, etc....**

The attention of the Contractor that it is formally forbidden to accommodate the workers on the site of the project. All the temporary installations are demolished and removed at the end of construction site as well as areas of storage and manufacturing grounds are put back in perfect condition by cleanliness and leveling during the completion of the works and their reception. The Contractor has to carry, immediately, in the knowledge of the Project management any fact or observation likely to engender difficulties of connecting of buildings to the buried networks and to the public road network, even when those this must not be realized by himself.

#### 1.6 INSTALLATION OF CONSTRUCTION SITE :

- From the date of commencement of works, the Contractor shall supply and erect as directed by the Project management, panels of sufficient dimensions to indicate the nature and the consistency of the project in particular the names and the addresses of the Employer, the delegated Employer, the Architect, the grouping B.E.T., the Contractors, the name of the Work, the date of beginning of the works, that planned for their completion, the number and the date of the building permit and image of the project, etc.

He proceeds to the installation of his construction site and has to consider the predictable needs for all the building trades has to come in particular as for the way of lifting: crane, topspin or goods lift.

He makes his steps with the local authorities for any authorizations as well as the authorization of the activity of the public domain.

**He obtains the authorizations of use of the public domain and pay any fees about .**

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From the opening of the construction site, the Contractor has to supply and set up a house of construction site according to the plan of and equipped by:

- telephone, fax, photocopier, lighting and toilets (Toilets. - washbasins etc.), of boots and helmets of construction site(work) and equipment and supplies of offices this shed will be of use to project meetings.
- dimensions(size) of 12,00m x 6,00m equipped with notice boards (plans schedule) of a big table with a sufficient number of chairs (minimum 18) for project meetings T.C.E.
- - 1 office for the coordination of construction site locking 4,00 x 3,00m and equipped with a P.C. with color printer with ink jet of a digital camera and with an office with chairs and cupboards.
- - 1 room of material samples locking 6,00 x 3,00m and equipped with sets of shelves reserved for the storage of samples approved by the Control of work.
- Panel of metallic construction site(work), raised(drawn up) according to the indication of Employer, Architects and B.E.T. This panel will have the minimal dimensions of (5X3, 00) and of TYPICAL industrial production: A.I.C. or similar, dressed in a fluorescent paint, its sheet steel will be steel galvanized on this picture will be carried(worn) the following data:  
· Name of the project, Employer, Architect , B.E.T, Companies, Laboratory, Audit firm  
dates beginning of the works ... ETC.
- Cloakrooms for the employees with showers equipped with hot water

The Contractor has to Supply permanently an exercise book of construction site trifold at the disposal of the Project management.

On this exercise book will be recorded any remarks and the reports of the meetings of construction site and coordination.

- The Contractor of the present lot Puts down a complete file of the aimed plans " GOOD FOR EXECUTION " and written documents of the Contract.

The Contractor is responsible for the maintenance of the roads made available to him from the start of the construction site or during it is his responsibility, as well as all the accesses, he will have to repair and restore them. condition as well as their cleaning and disposal of waste and rubble to the public landfill.

The Contractor for this lot is responsible for complaints of any kind that may be presented by the Administrations or public authorities for the use of public roads or networks. The same applies to periodic cleaning work which would be required in the same way, all in such a way that the Project Owner cannot be worried or sought out on this subject..

## 1.7 PROTECTION OF THE WORK SITE

The Contractor has to guarantee materials, materials, installation, supplies, equipments and works of the damages that they could undergo in particular because of the bad weather, or replace at his expenses the works which would have been damaged, whoever is the cause of the damage and except its possible appeal against the third person in charge, the Employer staying in any event utterly strange in any contesting or distribution of the spending of this leader.

If the works come to be interrupted, whatever the reason, the Contractor has to protect the constructions and the realized works, against the damages which they could undergo or the damage which they could cause, without additional charges for Employer.

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## 1.8 SAFETY MEASURES :

The Contractor will take care of installing on the facades of safety nets, keeps them body on scaffolds, cleaning of boards lifting of nails after form removal supply of helmets, etc. independently of the current protective measures. No additional funds will be provided, in case any need of any of the above protection measures arises at a later date.

## 1.9 INSURANCE AND LIABILITIES

the Contractor will have to present certificates and draft contract for the following insurances:

- \* police of construction site(work) civil liability,
- \* vehicle and machines.

the insurance company and the terms of the police will have to receive the approval of Employer who cannot refuse him(it) without valid motive. the amount guaranteed by the insurance will be equal at least to that mentioned in the submission.

the Contractor will have to present to project management of the work, policies and receipts of the following insurances :

- \* policy of construction site civil liability,
- \* insurance of vehicles and machines,
- \* any risks construction sites, at the most three weeks after the notification of the Contract.

The Contractor must be able to all the time prove the existence of the diverse insurances this below described and the payment of concerned fees.

Any payment of works or deposits can be postponed if the Contractor cannot supply the wanted insurances justifications.

Insurances certificates from insurance companies have to cover the right recognized to the Contractor by his insurer to notify to employer every fact likely to cause the suspension or the termination of the insurances policies or the decreases of guarantees.

In case the Contractor would be lacking in his obligation to contract or to maintain in in good condition of validity any insurances mentioned in the present article, The Employer would be entitled to contract this insurance or to maintain it in in good condition of validity, to pay the corresponding Bonuses and to deduct amounts paid from the Contractor payment or get back the amount as if it was about a debt of the Contractor.

### 1.9.1 Damage appeal:

The Contractor will have no appeal against management project of the work and the project management for any damage which could arise because of thirds to the staff and to the material of his company except its rights of appeal against the author responsible for damage.

In case damage would come to be caused to every people on the occasion of the execution of the Contract, the contractor makes a commitment to guarantee the project management of the work of all the condemnations pronounced against the latter in repair of said damage and refrains from himself of any appeal against them.

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#### 1.9.2 ONE YEAR GUARANTEE :

The Contractor will have to integrate into its unit prices one-year guaranteed insurance, this insurance will have to guarantee the works during a period of one year against any damage or vices of all kinds. This guarantee shall be applicable during the Defect Liability period.

#### 1.9.3 ALL RISKS INSSURANCE IN THE WORK SITE :

All-risk construction insurance must cover all construction, installations, equipment, losses, damage, deterioration whatever the cause, in particular by fortuitous cause such as clumsiness, negligence, theft or misappropriation fire, storm , hurricane, cyclone, land subsidence, water damage.

This insurance must also cover the activities on the site of the Owner, and of the various consultants of the Project Management.

This insurance will be contracted by the main company of the project for all the companies which will pay their share according to the amount of their contracts (Amount not included in the 1.5% of the pro rata account). It will have to run over the contractual period of the works increased by six additional months..

#### 1.9.4 CIVIL LIABILITY SITE POLICY:

The Contractor ensures under his personal responsibility the good behavior, order, hygiene, surveillance and safety of the site in accordance with the laws, decrees, road police regulations, hygiene or others of which he cannot plead the ignorance, so that the Owner is never worried or prosecuted on this subject, these indications not being exhaustive.

He is responsible for the conduct of workers and agents on the site and its surroundings.

The contractor, at his own expense and diligence, will be required to take out individual insurance for "CIVIL LIABILITY OF THE HEAD OF THE COMPANY" to cover the pecuniary consequences of damage of any kind caused to third parties either by salaried personnel in work activity, by industrial, business or operating equipment and as a result of the works before acceptance.

The Contractor must guarantee and indemnify the Project Owner against the consequences of any damage or injury caused during the works to any person or property, including that of the Project Owner, excluding superficial damage due permanent use of workplaces.

The Contractor must also guarantee and indemnify the Project Owner against all claims, complaints, lawsuits, claims for damages, costs, charges and expenses of any kind that may arise during this work.

This guarantee must be sufficient. It must be unlimited for bodily injury..

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#### 1.9.5 VEHICLES AND MACHINES:

The Contractor will also have to present, a certificate proving that all the vehicles and machines allocated to the construction site are assured according to the current regulations.

### **ARTICLE 27 :ASSIGNMENT OF THE CONTRACT**

The subcontracting is a written contract by which one of the holder confides the execution of a part of his Contract has a third. The holder chooses freely his subcontractors under reserve that he notifies to the Employer the nature of the services which he envisages of money to deal and the identity, the reason or the company name and the address of the subcontractors

The subcontractors have to satisfy the conditions required by the competitors planned in the article 27 of the decree 2-98-482 of 30-12-98.

The Employer can exercise his right of challenge by letter motivated within 15 days has to matter of the date of the acknowledgement of receipt in particular when the subcontractors do not satisfy the conditions planned in the article 27 of the decree 2-98-482.

The Contractor remains personally responsible person in charge of all the obligations resulting from the Contract so much to the Employer as face to face the workers and the thirds.

The Employer recognizes no legal link with the subcontractors.

The Contractor remains personally responsible for all the obligations resulting from the Contract both to the Employer and toward the workers and thirds The Employer recognizes no legal link with the subcontractors. On no account the subcontracting can carryon all of the Contract.

The Contractor shall not subcontract:

- (a) works with a total accumulated value greater than the percentage of the Accepted Contract Amount stated in the Contract Data (if not stated, the whole of the Works); or
- (b) any part of the Works for which subcontracting is not permitted as stated in the Contract Data.

The Contractor shall obtain the Employer's prior consent to all proposed Subcontractors, except:

- (i) suppliers of Materials; or
- (ii) a subcontract for which the Subcontractor is named in the Contract

Where the Contractor is required to obtain the Employer's consent to a proposed Subcontractor, the Contractor shall submit the name, address, detailed particulars and relevant experience of such a Subcontractor and the work intended to be subcontracted to the Employer and further information which the Employer may reasonably require. If the Employer does not respond within 14 days after receiving this submission (or further information if requested), by giving a Notice objecting to the proposed Subcontractor, the Employer shall be deemed to have given his/her consent. The Contractor shall give a Notice to the Employer not less than 28 days before the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site

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**However, provisions of the article 75 of the aforesaid decree remain applicable.**

**JOINT VENTURES / GROUP OF CONTRACTORS:**

A Joint Venture undertaking has to be provided to the Employer as part of the Tender setting out the legal undertaking between the two or more persons constituting the Contractor as a JV. This undertaking shall be signed by all the persons who are members of the JV, shall be addressed to the Employer and shall include:

- (a) each such member's undertaking to be jointly and severally liable to the Employer for the performance of the Contractor's obligations under the Contract;
- (b) identification and authorisation of the leader of the JV
- (c) identification of the separate scope or part of the Works (if any) to be carried out by each member of the JV.

Joint Venture (JV) firms formed specifically for this tender shall not be permitted. JV, like a single entity, meeting all eligibility criteria shall be permitted. JV partners meeting eligibility criteria on individual basis separately shall not be permitted.

**ARTICLE 41: DOCUMENTS TO BE PREPARED BY THE CONTRACTOR**

**1.1 DETAILED SCHEDULE :**

The Project management will establish from documents and schedules supplied in due course by the Contractor a schedule of execution detailed by task resuming the global deadline planned in the schedule.

**1.2 EXTENSION OF DEADLINE:**

As soon as the detailed schedule becomes enforceable, no extension of deadline can be given by the Employer without an express request formulated by registered letter to the Employer within ten (10) days in most after the event motivating the request of extension.

It is stipulated that in case no extension of deadline is given, the Contractor obliges himself there expressly. No additional remuneration would be allowed for such extension of deadline.

**1.3 AS BUILT DRAWINGS**

At the end of the execution of the works and at least 15 days before the provisional acceptance, the Contractor will submit to the Project Owner under cover of the Project Management, a copy and five prints of the following drawings, folded in the format 21 x 29,7, as well as a CD ROM (dxf or dwg format) containing all the installations, as they were carried out:

- a. Dimensional drawings of the works as they were actually executed.
- b. Drawings as they were laid, identified by symbols and conventional colors with indication of the characteristics.
- c. All drawings, plans and calculation notes of the works executed.
- d. The technical notices and maintenance manuals and the parts provided for in the descriptions.

If the Contractor fails to provide the reassembly plans and computer documents and notices 15 days (fifteen days) before the provisional acceptance, a deduction of 0.33/1000 (zero point thirty three per thousand) of the initial contract amount per calendar day of delay. This deduction will be automatic without prior notice.



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#### 1.4 OPERATION AND MAINTENANCE MANUAL

The Contractor shall prepare, and keep up-to-date, the operation and maintenance manuals in the format and other relevant details as instructed by the Project Manager.

The operation and maintenance manuals shall be submitted to the Project Manager for Review, and the Works shall not be considered to be completed for the purposes of Final Acceptance until the Project Manager has given an approval on the same.

#### 1.5 PROGRESS REPORTS

Monthly progress reports, in the format acceptable to the project Manager shall be prepared by the Contractor and submitted to the Project Manager. Each progress report shall be submitted in one paper-original, one electronic copy and additional paper copies (if any) as required.

The first report shall cover the period up to the end of the first month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the month to which it relates.

Reporting shall continue until the Date of Completion of the Works or, if outstanding work is listed in the Taking-Over Certificate, the date on which such outstanding work is completed.

Each progress report shall include:

- (a) charts, diagrams and detailed descriptions of progress, including each stage of Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing;
- (b) photographs and/or video recordings showing the status of manufacture and of progress on and off the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - (i) commencement of manufacture,
  - (ii) Contractor's inspections,
  - (iii) tests, and
  - (iv) shipment and arrival at the Site;
- (d) copies of quality management documents, inspection reports, test results, and compliance verification documentation (including certificates of Materials);
- (e) a list of Modifications, and any Notices given (by either Party);
- (g) health and safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may adversely affect the completion of the Works in accordance with the Programme and the Schedule of Completion, and the measures being (or to be) adopted to overcome delays.

### **ARTICLE 42 : ORIGIN, QUALITY AND IMPLEMENTATION MATERIALS AND PRODUCTS**

#### 1.1 QUALITY

The works have to be in excellent quality, conform in every respect to the rules of the art, exempt from any fault and present all the perfection of which they may. If they do not satisfy these conditions, they are refused and replaced at the expense of the Contractor.

This one is also responsible face to face for the Employer of the faults and the faults committed by his(her) agents or workers in the supply and the employment of materials, as well as faults and faults were committed by his(her) subcontractors.

The Contractor having knowledge of the difficulties of realization which can arise, can state on no account an omission or a bad interpretation of exhibits of the case to refuse to supply or to go up an arrangement or any device the absence of which would question the functioning of the installation or its completeness.

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## 1.2 MATERIALS AND FURNITURES

The Contractor has to use the sorts and the qualities of materials, materials and supplies were prescribed by the Architect .

In every case where the "equivalent " or " similar" words are used on the detailed estimate, the Contractor has to subject the product to be substituted and the name of the manufacturer in the form of leaflets detailed with all the technical precision, during his submission. The Committee will rule if there is equivalence or similarity if the Contractor does not present during his submission the equivalent or similar product, he will necessarily have to use the product from which the mark was quoted.

Following this presentation, the Project management fixes its choice in the presence of Employer and if he considers that there is no equivalence or similarity between the presented products and those prescribed by the detailed estimate, the Contractor has to supply the latter at the risk of seeing his rejected offer; if he was declared Assignee.

Any work which would be executed before the Project management gave its agreement onto samples is refused.

The Contractor has to produce any justifications of origin and quality of materials and to supply all the samples of materials which are asked him in sight in particular tries been imperative in every particular case by the detailed estimate. The supply of these samples and the expenses of these tries are chargeable to the Contractor.

The Project management has the faculty to prescribe the execution of complementary verifications and tests, the expenses of these tests are chargeable to the Contractor.

The Project management has the right to be represented in factories, stores, studios and careers of the Contractor, subcontracting Contractors and their suppliers to proceed to the check and on approval the raw materials before manufacturing, to the control of the manufacturing and to the expedition of supplies intended for the works of the Contract. The necessary diligences to allow these controls are charged by the Contractor.

Materials, furniture and supplies supplied cannot be removed for another construction site; if they are refused, they must be put aside and indicated in a visible way and immediately removed by the construction site.

### **ARTICLE 45 :CONSTRUCTION DEFECTS**

The graphic or written attachments of the progresses of works are jointly established by the Control of work, the Contractor and the Employer delegated in number of necessary copies.

The attachments determine and specify all the material facts useful for the regulation, they are verified on the spot by the Control of work.

The Contractor is considered as having accepted the rectifications brought by the Control of work if he does not supply his observations in writing for a maximum deadline of ten ( 10 ) days. One of the copies of the attachment is returned to the Contractor after signature of the Control of work which registers him on the continuation on a special register, the third copy is joined to reports and situations established with the aim of regulation.

Any attachment concerning works having the character of additional works the report of which would not be presented within two ( 2 ) months is not considered by the Employer.

### **ARTICLE 47 :CAS DE FORCE MAJEURE :**

In the event of the occurrence of an event of force majeure as defined by articles 268 and 269 of the Dahir of Ramadan 9, 1331 (August 12, 1913) forming the code of obligations and contracts, the contractor is entitled to a reasonable increase in the execution which must be the subject of an addendum, it being specified however that no compensation can be granted to the contractor for total or partial loss of his floating equipment, the insurance costs of this equipment being deemed to be included in market prices.

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The special requirements specification defines, as necessary, the threshold of bad weather and other natural phenomena which are deemed to constitute an event of force majeure under the contract.

The contractor who invokes the case of force majeure must immediately after the appearance of such a case, and within a maximum period of seven (7) days, send the Employer a notification by registered letter establishing the constituent elements of force majeure and its probable consequences on performance of the contract.

In all cases, the contractor must take all necessary measures to ensure, as soon as possible, the normal resumption of the performance of the obligations affected by the case of force majeure.

If, following a case of force majeure, the contractor can no longer perform the services as provided for in the contract for a period of thirty (30) days, he must examine as soon as possible with the Employer the contractual implications of said events on the execution of the contract and in particular on the price, the deadlines and the respective obligations of each of the parties.

When a situation of force majeure persists for a period of at least sixty (60) days, the contract may be terminated at the initiative of the Employer or at the request of the contractor.

#### **ARTICLE 48 : MARKET PRICE REVIEW:**

Paragraph 6, 7, 8 and 9 of CCAG (T) shall be deleted and replaced as follows

In case of postponement of works, the Contractor shall not be entitled to any compensation.

#### **ARTICLE 49 : CESSATION OF WORK:**

The entire clause is amended as follows

1. Cessation is a definitive stoppage of the execution of the works, it is decided by service order of the Employer either before or after the start of the execution of the works.
2. When the Employer prescribes the cessation of work, the contract is immediately terminated; the contractor is entitled to no compensation except payment for works already carried out on ground and material on site, which would be the property of the Employer. The contractor's request is admissible only if it is presented in writing, within forty (40) days from the date of notification of the service order prescribing the cessation of work.
3. If the works have received a start of execution, the provisional acceptance of the works or parts of works carried out is immediately carried out, then their final acceptance after the expiry of the guarantee period.

The service order prescribing the cessation of work must be recorded in the market register.

#### **ARTICLE 54 : MARKET PRICE REVIEW:**

##### 1.1 REVISION OF PRICES :

The prices are decisive and can not be revised.

#### **ARTICLE 55 : ADDITIONAL WORK OR WORKS :**

The amount of additional works can exceed upto any amount of the initial contract.

1. "Additional work or works" means work or works which do not appear in the initial contract that the Employer prescribes to the contractor by immediately executable service order, when without changing the subject of the contract:
  - 1.1 These work or works, unforeseen at the time of its award, are considered as ancillary to the said contract;

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- 1.2 there is an interest from the point of view of the execution time or the smooth running of the execution of the contract in not introducing a new contractor;
- 1.3 the execution of these works or additional works involves equipment already occupied or used on site by the contractor.
- 1.4 the amount of the said works or additional works can exceed upto any amount of the initial contract to which they relate.
2. These works or additional works are noted by amendment which fixes their nature, their prices and, if necessary, the deadline for their execution.
3. The prices of the works or additional works can be either unit prices or market prices as given below:
  - 3.1 In case the items of additional works are available in the Bill of quantities, the rates shall be considered as those available in the bill of quantities without any indexation.
  - 3.2 In case the items of additional works are not available in the Bill of quantities, the rates shall be fixed on the basis of the prices negotiated with the contractor by reference to the current prices at the time of the conclusion of the addendum.
4. In the absence of agreement between the project owner and the contractor on the fixing of the prices provided above, the prescriptions of article 81 of this specification apply. However, the services concerned are provisionally settled on the basis of the prices fixed by the Employer.

#### 1.1 WORKS WITHOUT AUTHORIZATION :

If the Contractor brings without authorization of the modifications to the works, such as they are defined by the Contract, the Employer can, as one pleases or on proposal of the Project management ( Architect, Engineer):

\* Require the rubble, the corrections, the substantive work, in the exact execution of the Contract, without prejudice on one hand the repairs which he could require on the amount of the Contract, if this rubble, corrections, occasions, pull a decrease of the final quality of the works, and on the other hand, any other incidence, in particular on the works of the other Contractors.

\* Accept the operated modifications and in this case Employer owes no supplementary payment if the modified works pulled(entailed) for the Contractor of the spending(expenses) superior to those concerned to the works initially planned.

The Employer is entitled on the other hand to decrease the Contract prices of the amount of savings if the cost of the modified works is lower that that of the works initially planned.

### **ARTICLE 57 : INCREASE IN THE MASS OF WORKS:**

#### 1.1: INCREASE IN THE MASS OF THE WORKS

Since the nature of the Contract is fixed lump sum, this clause stands deleted.

### **ARTICLE 58 : DECREASE IN THE MASS OF WORKS:**

#### 1.1: DECREASE IN THE MASS OF THE WORKS

Since the nature of the Contract is fixed lump sum, this clause stands deleted.

### **ARTICLE 60 : BASIS OF SETTLEMENT OF WORKS:**

#### **1.1 Nature of prices :**

**1.1.1 Nature of contract :**

The present contract is concluded in overall price and fixed price for the works planned .

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The decomposition of the prices is presented with unit prices denominated in Dirhams, excluding VAT/ GST but inclusive of other miscellaneous expenses and taxes such as overheads and profit, transportation cost, carrying and forwarding charges, import duties, incidental expenses and other direct or indirect expenses.

The prices quoted by the Bidder in the Bill of quantities shall be considered for the determination of rates for additional works as per Article 55 above.

#### **1.1.2 Contents of the prices:**

Contract prices include the profit as well as any rights, the taxes , overheads, incidental expenses, and generally all the spending which are the direct or indirect necessary consequence of the works concerning this contract

#### **1.1.3 Appreciation of the package:**

The total amount presented by the Company as the final and fixed contract price for the works, represent the value of the constructions, the supplies and the works of installation, The plans of design and the indications concerned these including any spending as well as working drawings, The deadlines and the finishes considered as being a part of best practices without any need to describe them more explicitly.

The plans and the descriptions complement each other and the Tenderer in case of doubt, has to realize all of the works inherent to its works that they result of any document of the project or that they are necessary for the good finish of the works.

Accordingly, the Employer and the Architect will admit no complaint for any oversight of quantity or price or any error of interpretation of the subdued documents and drawings.

#### **1.1.4 Secondary spending included in contract prices :**

It concern among others, such as they are clarified in diverse articles of the present Contract and in general documents with which they are connected:

- Stamps, recording and purchasing cost of the files of Call for tenders.
- The expenses of reproduction in 03 copies of the documents of the Contract.
- Various expenses.
- The expenses of checking, tests and controls of any materials finished for which the frequencies are precise in the technical specifications (statement of work)

If the additional controls asked by the Project management or project managing turn out defective, they will be chargeable to the Company

- The expenses of insurances of all kinds (Any risks related to the construction site, individual or collective).
- The expenses of reproduction of documents asked during construction site.
- Penalties and the planned obligations.

#### **1.1.5 Sub details of the prices:**

At the stage of the consultation, the Employer and the Project management ( Architect) can ask the Contractor, without any restriction to give the sub detail of any price appearing in the price schedule - estimated detail

### **ARTICLE 61 : ATTACHMENTS:**

#### **1 METHOD OF PAYMENT**

##### **1.1 Works at fixed Lump sum**

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The lump sum of the Contract will be decomposed into monthly milestones on the basis of the amounts of the prices of the estimated details. This decomposition will allow the assessment of the works completed on a monthly basis.

This would be established by the Contractor and approved by the Project management (Architect and Project Manager) at the time of the establishment of the contract with the company Assignee and will become contractual after signature of the Contractor, the Project management, Architect and the delegated Employer.

However, to do it, it is specified to the company by dispensation of the C.C.A.G.T. that:

- during the consultation, after removal of the file and before presenting his offer, the Contractor will have to realize the accuracy of the quantities of work carried in the frame of decomposition of the lump and fixed price.
- After presenting the offers, the quantities will be considered definitive and cannot anymore be subjects to revision.
- All the graphic documents necessary for the calculations of the quantities of works which the Contractor has to determine are joined to the present file of call for tenders.

### **1.2 Monthly Statement**

The monthly statements will be drawn up in 03 (three) copies. These situations will show on the one hand for each price the percentage of work actually carried out at the end of the month. Attachments will only take into account fully executed tasks.

The situations determined at the end of each month will be sent to the Project Management (Architect) for verification and visa before transmission to the Employer.

### **1.3 Measurement and Valuation**

The Works shall be measured, and valued for payment, in accordance with this Clause. Whenever the Project Manager requires any part of the Works to be measured on Site, he/she shall give a Notice to the Contractor of not less than 7 days, of the part to be measured and the date on which and place on Site at which the measurement will be made.

Unless otherwise agreed with the Contractor, the measurement on Site shall be made on this date and the Contractor's Representative shall:

- (a) either attend or send another qualified representative to assist the Project Manager and to endeavour to reach agreement of the measurement, and
- (b) supply any particulars requested by the Project Manager.

If the Contractor fails to attend or send a representative at the time and place stated in the Project Manager's Notice (or otherwise agreed with the Contractor), the measurement made by (or on behalf of) the Project Manager shall be deemed to have been made in the Contractor's presence and the Contractor shall be deemed to have accepted the measurement as accurate.

Any part of the Permanent Works that is to be measured from records shall be identified in the Specification and, except as otherwise stated in the Contract, such records shall be prepared by the Project Manager. Whenever the Project Manager has prepared the records for such a part, he/she shall give a Notice to the Contractor of not less than 7 days, stating the date on which and place at which the Contractor's Representative shall attend to examine and agree the records with the Project Manager. If the Contractor fails to attend or send a representative at the time and place stated in the Project Manager's Notice (or otherwise agreed with the Contractor), the Contractor shall be deemed to have accepted the records as accurate.

If, for any part of the Works, the Contractor attends the measurement on Site or examines the measurement records (as the case may be) but the Project Manager and the Contractor are unable to agree the measurement, then the Contractor shall give a Notice to the Project Manager setting out the reasons why the Contractor considers the measurement on Site or records are inaccurate. If the Contractor does not give such a Notice to the Project Manager within 14 days after attending the measurement on Site or examining the measurement records, the Contractor shall be deemed to have accepted the measurement as accurate.

After receiving a Contractor's Notice under this Sub-Clause, the Project Manager shall:

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- proceed to determine the measurement;
- process the monthly account as per the time limits set in the contract.

### **ARTICLE 63 : ADVANCES**

#### 1.1 Mobilization Advance :

As per provisions of Article 63 of CCAG-T, mobilization advance shall be limited to 10% of the initial contract amount.

This advance shall be released only on a submission of a Guarantee for the amount of advance to be released valid for the entire duration of the Contract. This shall be kept renewed from time to time to cover the balance amount and likely period to complete recovery.

This advance shall be released in two or more installments. The recovery of the advance amount shall be made from the Provisional accounts of work after financial completion of 10% and shall be fully recovered by the time 80% of work is completed.

### **ARTICLE 64 : INSTALLMENTS-HOLDBACK**

The entire clause is replaced as below

#### 1.1 Payment against material :

As per provisions of Article 64 of CCAG-T, Payment against 75% of the landed price of non perishable material brought at site but yet to be used in works shall be allowed as advance and shall be adjusted in the Provisional accounts of work done involving material (full or part) as consumed in works.

The supplies of materials, object made, etc. intended to enter the composition of the works or the supplies object of the Contract can open straight ahead to deposits(advances) under reserves:

- A) That they are acquired by the holder of the Contract in any property and actually paid by him.
- B) That they are provided on the construction site in a way that their destination makes no doubt and that it can be easily checked by the control of the construction site.

These deposits for supply must be accompanied :

- Of a property certificate (stored in construction site)
- In case the amount of the supplies exceeds 20 % of the amount of the Contract, the temporary discount must be accompanied by a pledge equivalent to the amount of the corresponding deposit.

These deposits will be calculated according to the following preferential order:

- Either by application of the prices of supply of the paper A4, with 25 % reduction (Supply not received definitively).
- Either finally, in case of impossibility of the application of the Previous modes of calculation, by use Price Unitarian of price schedule And estimated detail Put back by the Contractor, with 40 % reduction.

In every case, both the conditions above must be filled before any payment.

The Contractor will necessarily have to give evidence of it in the form of an authentic certificate of property established to the advantage of the Employer. The presence on the construction site of materials and equipments for which the deposits are asked must be noticed, and the proof of their unique destination in this construction site must be specified.



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It is understood that during the last 3 months of contractual deadline, deposit will not be in advance on supply.

These supplies remain then the property of the Employer, and the Contractor cannot remove them of the construction site without having obtained beforehand the authorization of the Employer and paying off the deposits perceived on their subject.

#### 1.2 Release of Hold Back (retention money)

The Hold back as per Article 16 shall be released in two stages as follows:-

50% of the hold back amount shall be released on the provisional acceptance of works and;

50% of the hold back amount shall be released after the completion of Defect Liability Period (DLP). (1 year)

Retention money shall be released against equivalent amount of Bank Guarantee (BG) to be submitted by Contractor. BG should be valid for completion period plus defects liability period. In case of time extension of project, the BG should be revalidated up to extended time plus Defects Liability period.

### **ARTICLE 65: PENALTIES AND DEDUCTIONS IN THE EVENT OF DELAY IN EXECUTION OF WORKS**

#### 1.1 Penalties :

In application of the article 65 of the C.C.A.G.T. in case the works would not be ended within the time limit and without preliminary formal demand, on simple confrontation of the expiry date of the contractual deadline of execution and the date of provisional acceptance, will be applied a penalty of 0.5% per week of delay of the initial amount of a day calendar Contract of delay without exceeding the 10 % of the aforementioned amount. This shall be calculated on a per day basis for each day of delay.

The respect for the agreed date of the end of works is subordinated to the respect for the schedule of the works.

When in the course of operation, delays are observed in the execution of one or several tasks, penalties shall be enforced at the end of the month as per the %ages specified above.

#### 1.2 Fines for delay in the discount of the documents which are assumed by the Company after notification of the Contract .

From notification of the Contract, the Company assignee will have to supply to the Employer for a maximum deadline of 15 days, the further details of his services and all the information necessary for the establishment of the detailed schedule, as following:

- Deadline of supply
- The beginning of intervention on construction site
- Deadline of execution proposed according to the successive phases of intervention.
- The successive phases in the time of the various tasks according to slices, grouping, blocks, buildings, levels, execution of trenches, pose of pipes, etc.
- Spreading in the time of the staff of hand of work which will be affected on the construction site
- Discount of samples, etc....

In case of lack of having satisfied these obligations the Company assignee may of a fine of 0.33/1000 (zero comma thirty three for one thousand) of the initial amount of a day calendar Contract of delay

From notification of the Contract, the Company assignee will have to supply in the Project management for a maximum deadline of 15 days, the further details of his services and the set of the information necessary for the establishment of the detailed schedule, worth knowing:



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### 1.3 Delay in the cleaning:

The permanent cleaning of the construction site as well as the removal of gravois or the garbage will be assured by the Contractor of the present Contract. The Project management can require at any time this cleaning when it will not have spontaneously been executed.

The removal and the cleaning of the garbage of indefinite origin will be assured by the account pro rata.

In case these works would not be executed within a week from the date by the request expressed by the Project management, the Contractor will be liable, without prior notice, to a fine of 1500.00MAD (one thousand five hundred Moroccan Dirhams) a daily schedule late.

### 1.4 Penalties of functioning Absence in the meetings of construction site, delegations

The Contractor assignee has to attend the weekly meetings of construction site of Control and coordination when he will have been invited by letter or on the report of the previous meeting. The Employer and the Project management will reserve the right to modify the pace of these meetings.

It is specified that the Company should have permanently on the construction site a permanent representative qualified and authorized to make any decisions even financial. Besides, he must be approved by the Project management (Employer, Architect).

In case the Company would not follow up the complaints emanating from the Employer and from the Project management (Architect), and extra on the reports, it will be penalized 1500.00DH (one thousand five hundred dirhams) by absence.

## **ARTICLE 67 : DELAY IN PAYMENT OF SUMS DUE**

This clause stands deleted.

## **ARTICLE 69 : TERMINATION OF THE CONTRACT**

The contract may be terminated automatically, at the option of the Project Owner and without the Contractor being entitled to claim any compensation:

\* In the event of the death of the Contractor, except the right for the Project Owner to accept offers from the heirs or successors of the Contractor.

\* In the event of dissolution of the Contractor's Company if it is constituted as a Company.

\* In the event of legal settlement or liquidation of assets, unless the Client prefers to accept the offers of the liquidator of the trustee representing the body of creditors for the continuation of the work.

\* In the event of incapacity, fraud, serious deception, noted by the Project Management, or by the Employer on the quality of the materials or the quality of execution of the works.

\* In the event of abandonment of the site, or reduction of activity causing disturbances in the normal progress of the site, duly noted by the Project Management or by the Owner if the resumption is not carried out eight days after sending a registered letter serving as formal notice. The postmark attesting to this dispatch.

\* In the event of subcontracting, assignment, transfer or contribution of the contract without the authorization of the Employer.

\* Finally, in all other cases where the Contractor has not complied with the stipulations of the contract and the various articles of the C.C.A.G.T. or written orders given to him if the Contractor does not comply within ten (10) days from the date of the formal notice served on him by extrajudicial document.

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In all cases, termination is notified by registered letter with acknowledgment of receipt addressed to the defaulting Contractor or his assigns at the last officially known address of the Project Owner.

The termination letter must contain, in addition to the decision of the Project Owner to terminate the contract, the date on which the findings of the premises will be carried out. This termination letter is also a convocation for the purpose of attending this operation..

## **ARTICLE 70 : RECORDING OF WORKS CARRIED OUT AND RECOVERY OF EQUIPMENT AND MATERIALS IN THE EVENT OF TERMINATION OF CONTRACT**

In all cases of termination of the contract, the Project Management shall proceed in the presence of the Project Owner and the Contractor or his assigns present or duly summoned to ascertain the works executed and their quality. , the inventory of materials supplied as well as the descriptive inventory of the Contractor's site equipment and installations. In the event of non-participation of the defaulting Contractor, his successors or their duly authorized representative, for any reason whatsoever, after simple notification by registered letter with acknowledgment of receipt, to the operations of finding, the Employer shall be entitled to have the Project Management proceed with this observation without having recourse to the reconvening of the Contractor or his assignees or even to the appointment of an expert.

The observation operations are the subject of a report signed by the parties, approved by the Project Management, to which are attached the attachments shown and working drawings of the works carried out, as well as their evaluation. A copy of the minutes is notified by the Employer to each of the parties. The report drawn up in the absence of the Contractor, his successors in title or their representative summoned by registered letter sent to their last address known to the Project Owner will be enforceable against them. The report of the operations of observation carried out in the presence of the Contractor, his successors or their duly authorized representative signed by the Project Owner, and the Project Management, even if not approved by the Contractor, his successors in title or their representative.

The Contractor or his assignees may not refuse to transfer to the Project Owner, the temporary works whose provisions have been approved by the latter, and the equipment specially constructed for the site in question, as well as the materials supplied for the construction. execution of the ordered works. The sale is made at the prices agreed on the market or, failing that, at those fixed by experts.

The defaulting Contractor or his assignees are required to remove from the site and its annexes (sheds, stores, offices, etc.) the materials, equipment and supplies whose disposal is not requested by the Project Owner. , within the time limit set by the latter, which may not be less than one month from the date of the letter of termination, except in an emergency. If the Contractor fails to evacuate the site within the time allowed, the Project Owner is authorized to have this evacuation carried out at the expense, risk and peril of the defaulting Contractor or his assignees.

The Project Owner may then award a new contract, at the risk and peril of the defaulting Contractor or his successors in title. Excess expenditure will be borne by the Contractor or his assignees and deducted from sums that may be due to him (statements pending settlement, holdback, final guarantee, etc.) without prejudice to the actions to be taken. against him in case of insufficiency.

If, on the contrary, the new contract entails a reduction in expenditure, the resulting profit is entirely acquired by the Client.

## **ARTICLE 71 : COMPENSATION CALCULATIONS**

This clause stands deleted.

## **ARTICLE 73 : PROVISIONAL ACCEPTANCE**

### 1.1 TEMPORARY ACCEPTANCE OF WORK :

The Contractor has to ask for the reception of his works in writing, to the Employer through the project management of work, and for a minimum advance notice of two weeks.

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The project management of work informs the Employer of reserved dates, and the operations of reception are made by the Management of work, the delegated Employer, assisted by the Employer in the presence of the Contractor.

During the operations of reception, the Project management verifies the conformity of the works and the supplies and some execution of the works with the documents of the Contract, with the rules of the art and with the regulations in force. She raises at once, under her responsibility, a report of reception of these operations at which she aims and submits in to the approval of the Employer and at which she spreads immediately in the parts.

If the reception contains reserves, the report mentions detail, the omissions, the imperfections or the noticed faults and the simple notification by registered letter with acknowledgement of receipt to the Contractor is worth to him order to execute or to end the omitted or incomplete works and to remedy durably, according to the rules of the art, to the imperfections and the faults for the prescribed deadline, without this one can exceed on no account three months.

After this deadline, the Employer has the right to make proceed to the execution of said works by a company of its choice, at expenses, risks and for the failing Contractor, without prejudice the mentioned in the article late charges 7 this above.

The cost of said works and possibly the amount of late charges are taken from the sums the Employer of Which could be still indebted to the Contractor and a compensation takes place by rights between the prices of the works so executed and the remainders due to the Contractor.

The Contractor keeps the guarding of the construction site , that there is or not taking possession of buildings by the owner, until the observation, by the report, so much levying of the reserves as the complete cleaned up of the construction site.

A partial provisional acceptance can be pronounced when the Employer uses the right to take early ownership of certain works.

If the Project management notices faults or grave failures in the completion of the works, the Employer, even required, by the Contractor to make proceed to the reception of the works, can refuse himself there and there postpone the time in a date in which the repairs or the complements to works will have been executed; late charges are applied in the conditions of the article 7 this above.

## 1.2 DEFINITIVE ACCEPTANCE OF WORK :

After the expiration of the deadline of guarantee fixed to (1) year, as from the provisional acceptance he(it) is proceeded to the definitive reception in the same conditions as for the provisional acceptance.

During the duration of this deadline on (1) year, the Contractor remains responsible for his works and has to maintain them.

## **ARTICLE 82 : USE OF MEDIATION OR ARBITRATION**

### 1.1 CONSTITUTION OF THE DAAB (Dispute Avoidance/Adjudication Board):

Disputes shall be decided by a DAAB in accordance with Sub-Clause “Obtaining DAAB’s Decision”. The Parties shall jointly appoint the member(s) of the DAAB within 28 days after the date the Contractor receives the Letter of Acceptance.

The DAAB shall comprise, as stated in the Contract Data, either one suitably qualified member (the “sole member”) or three suitably qualified members (the “members”). If the number is not so stated, and the Parties do not agree otherwise, the DAAB shall comprise three members.

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The sole member or three members (as the case may be) shall be selected from those proposed by the Employer

If the DAAB is to comprise three members, each Party shall select one member for the agreement of the other Party. The Parties shall consult both these members and shall agree the third member, who shall be appointed to act as chairperson

The DAAB shall be deemed to be constituted on the date that the Parties and the sole member or the three members (as the case may be) of the DAAB have all signed a DAAB Agreement.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAAB consults, shall be mutually agreed by the Parties when agreeing the terms of the DAAB Agreement. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAAB. Unless the Parties agree otherwise, a replacement DAAB member shall be appointed if a member declines to act or is unable to act as a result of death, illness, disability, resignation or termination of appointment. The replacement member shall be appointed in the same manner as the replaced member was required to have been selected or agreed, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone.

Unless otherwise agreed by both Parties, the term of the DAAB (including the appointment of each member) shall expire either:

- (a) on the date the discharge shall have become, or deemed to have become, effective; or
- (b) 28 days after the DAAB has given its decision on all Disputes, referred to it under Sub-Clause "Obtaining DAAB's Decision" before such discharge has become effective,

whichever is later

However, if the Contract is terminated under any Sub-Clause of these Conditions or otherwise, the term of the DAAB (including the appointment of each member) shall expire 28 days after

- (i) the DAAB has given its decision on all Disputes, which were referred to it under Sub-Clause "Obtaining DAAB's Decision]" within 224 days after the date of termination; or
- (ii) the date that the Parties reach a final agreement on all matters (including payment) in connection with the termination

whichever is earlier.

## 1.2 FAILURE TO APPOINT DAAB MEMBER (S):

If any of the following conditions apply, namely

- (a) if the DAAB is to comprise a sole member, the Parties fail to agree the appointment of this member by the date stated in the first paragraph of Sub-Clause "Constitution of the DAAB"; or
- (b) if the DAAB is to comprise three persons, and if by the date stated in the first paragraph of Sub-Clause "Constitution of the DAAB":
  - (i) either Party fails to select a member (for agreement by the other Party);
  - (ii) either Party fails to agree a member selected by the other Party; and/or

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(iii) the Parties fail to agree the appointment of the third member (to act as chairperson) of the DAAB;

(c) the Parties fail to agree the appointment of a replacement within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, illness, disability, resignation, or termination of appointment; or

(d) if, after the Parties have agreed the appointment of the member(s) or replacement, such appointment cannot be effected because one Party refuses or fails to sign a DAAB Agreement with any such member or replacement (as the case may be) within 14 days of the other Party's request to do so then the appointing entity or official named in the Contract Data shall, at the request of either or both Parties and after due consultation with both Parties, appoint the member(s) of the DAAB (who, in the case of sub-paragraph (d) above, shall be the agreed member(s) or replacement). This appointment shall be final and conclusive.

Thereafter, the Parties and the member(s) so appointed shall be deemed to have signed and be bound by a DAAB Agreement under which:

(i) the monthly services fee and daily fee shall be as stated in the terms of the appointment; and

(ii) the law governing the DAAB Agreement shall be the governing law of the Contract.

Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official. If the Contractor pays the remuneration in full, the Contractor shall include one-half of the amount of such remuneration in a Statement and the Employer shall then pay the Contractor in accordance with the Contract. If the Employer pays the remuneration in full, the Project Manager shall include one-half of the amount of such remuneration as a deduction in the monthly payments.

### 1.3 AVOIDANCE OF DISPUTES:

If the Parties so agree, they may jointly request (in writing, with a copy to the Project Manager) the DAAB to provide assistance and/or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Contract. If the DAAB becomes aware of an issue or disagreement, it may invite the Parties to make such a joint request.

Such joint request may be made at any time, except during the period that the Project Manager is carrying out his/her duties under Sub-Clause "Agreement or Determination" on the matter at issue or in disagreement unless the Parties agree otherwise

Such informal assistance may take place during any meeting, Site visit or otherwise. However, unless the Parties agree otherwise, both Parties shall be present at such discussions. The Parties are not bound to act on any advice given during such informal meetings, and the DAAB shall not be bound in any future Dispute resolution process or decision by any views or advice given during the informal assistance process, whether provided orally or in writing.

### 1.4 OBTAINING DAAB'S DECISION:

If a Dispute arises between the Parties then either Party may refer the Dispute to the DAAB for its decision (whether or not any informal discussions have been held under Sub-Clause "Avoidance of Disputes" and the following provisions shall apply.

#### 1.4.1 Reference of a Dispute to the DAAB

The reference of a Dispute to the DAAB (the "reference" in this Sub-Clause 21.4) shall.

(a) if Sub-Clause "Agreement or Determination" applied to the subject matter of the Dispute, be made within 42 days of giving or receiving (as the case may be) a NOD under Sub-Clause "Dissatisfaction with Project

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Manager's determination". If the Dispute is not referred to the DAAB within this period of 42 days, such NOD shall be deemed to have lapsed and no longer be valid;

(b) state that it is given under this Sub-Clause

(c) set out the referring Party's case relating to the Dispute

(d) be in writing, with copies to the other Party and the Project Manager; and

(e) for a DAAB of three persons, be deemed to have been received by the DAAB on the date it is received by the chairperson of the DAAB.

The reference of a Dispute to the DAAB under this Sub-Clause shall, unless prohibited by law, be deemed to interrupt the running of any applicable statute of limitation or prescription period.

#### 1.4.2 The Parties' obligations after the reference

Both Parties shall promptly make available to the DAAB all information, access to the Site, and appropriate facilities, as the DAAB may require for the purposes of making a decision on the Dispute.

Unless the Contract has already been abandoned or terminated, the Parties shall continue to perform their obligations in accordance with the Contract.

#### 1.4.3 The DAAB's decision

The DAAB shall complete and give its decision within:

(a) 84 days after receiving the reference; or

(b) such period as may be proposed by the DAAB and agreed by both Parties.

However, if at the end of this period, the due date(s) for payment of any DAAB member's invoice(s) has passed but such invoice(s) remains unpaid, the DAAB shall not be obliged to give its decision until such outstanding invoice(s) have been paid in full, in which case the DAAB shall give its decision as soon as practicable after payment has been received

The decision shall be given in writing to both Parties with a copy to the Project Manager, shall be reasoned, and shall state that it is given under this Sub-Clause.

The decision shall be binding on both Parties, who shall promptly comply with it whether or not a Party gives a NOD with respect to such decision under this Sub-Clause. The Employer shall be responsible for the Project Manager's compliance with the DAAB decision

If the decision of the DAAB requires a payment of an amount by one Party to the other Party

(i) subject to sub-paragraph (ii) below, this amount shall be immediately due and payable without any certification or Notice; and

(ii) the DAAB may (as part of the decision), at the request of a Party but only if there are reasonable grounds for the DAAB to believe that the payee will be unable to repay such amount in the event that the decision is reversed under Sub-Clause 21.6 [Arbitration], require the payee to provide an appropriate security (at the DAAB's sole discretion) in respect of such amount.

The DAAB proceeding shall not be deemed to be an arbitration and the DAAB shall not act as arbitrator(s).

#### 1.4.4 Dissatisfaction with DAAB's decision

If either Party is dissatisfied with the DAAB's decision

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- (a) such Party may give a NOD to the other Party, with a copy to the DAAB and to the Project Manager;
- (b) this NOD shall state that it is a “Notice of Dissatisfaction with the DAAB’s Decision” and shall set out the matter in Dispute and the reason(s) for dissatisfaction; and
- (c) this NOD shall be given within 28 days after receiving the DAAB’s decision

If the DAAB fails to give its decision within the period stated in Sub-Clause “The DAAB’s decision”, then either Party may, within 28 days after this period has expired, give a NOD to the other Party in accordance with sub-paragraphs (a) and (b) above.

Except as stated in the last paragraph of Sub-Clause “Dissatisfaction with Project Manager’s determination”, in Sub-Clause “Failure to Comply with DAAB’s Decision” and in Sub-Clause “No DAAB In Place”, neither Party shall be entitled to commence arbitration of a Dispute unless a NOD in respect of that Dispute has been given in accordance with this Sub-Clause.

If the DAAB has given its decision as to a matter in Dispute to both Parties, and no NOD under this Sub-Clause has been given by either Party within 28 days after receiving the DAAB’s decision, then the decision shall become final and binding on both Parties

If the dissatisfied Party is dissatisfied with only part(s) of the DAAB’s decision:

- (i) this part(s) shall be clearly identified in the NOD;
- (ii) this part(s), and any other parts of the decision that are affected by such part(s) or rely on such part(s) for completeness, shall be deemed to be severable from the remainder of the decision; and
- (iii) the remainder of the decision shall become final and binding on both Parties as if the NOD had not been given.

#### 1.5 AMICABLE SETTLEMENT:

Where a NOD has been given under Sub-Clause “Obtaining DAAB’s Decision”, both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made

#### 1.6 ARBITRATION:

Unless settled amicably, and subject to Sub-Clause “Dissatisfaction with Project Managers’s determination”, Sub-Clause “Dissatisfaction with DAAB’s decision”, Sub-Clause “Failure to Comply with DAAB’s Decision” and Sub-Clause “No DAAB In Place”, any Dispute in respect of which the DAAB’s decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;
- (b) the Dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and
- (c) the arbitration shall be conducted in English and French language.

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination (other than a final and binding determination), instruction, opinion or valuation of the Project Manager, and any decision of the DAAB (other than a final and binding decision) relevant to the Dispute. Nothing shall disqualify the Project Manager from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the Dispute.



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In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in constituting a DAAB under Sub-Clause “Constitution of the DAAB” and/or Sub-Clause “Failure to Appoint DAAB Member(s)”.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAAB to obtain its decision, or to the reasons for dissatisfaction given in the Party’s NOD under Sub-Clause “Obtaining DAAB’s Decision”. Any decision of the DAAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced before or after completion of the Works. The obligations of the Parties, the Project Manager and the DAAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

If an award requires a payment of an amount by one Party to the other Party, this amount shall be immediately due and payable without any further certification or Notice.

#### 1.7 FAILURE TO COMPLY WITH DAAB’S DECISION:

In the event that a Party fails to comply with any decision of the DAAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause “Arbitration” in which case Sub-Clause “Obtaining DAAB’s Decision” and Sub-Clause “Amicable Settlement” shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause “Arbitration” shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.

In the case of a binding but not final decision of the DAAB, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the Dispute are reserved until they are resolved by an award.

Any interim or provisional measure or award enforcing a decision of the DAAB which has not been complied with, whether such decision is binding or final and binding, may also include an order or award of damages or other relief.

#### 1.8 NO DAAB IN PLACE:

If a Dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAAB in place (or no DAAB is being constituted), whether by reason of the expiry of the DAAB’s appointment or otherwise:

(a) Sub-Clause “Obtaining DAAB’s Decision” and Sub-Clause “Amicable Settlement” shall not apply; and

(b) the Dispute may be referred by either Party directly to arbitration under Sub-Clause “Arbitration” without prejudice to any other rights the Party may have.