

Rural Access Improvement Project (RAIP-IV)

Rehabilitation and construction of bituminous seal-coat standard Road of Khaniqa to Aqcha District road CH: 3+700 - 8+850 Khaniqa and Aqcha Districts Jawzjan province of Afghanistan

(1) UNITED NATIONS OFFICE FOR PROJECT SERVICES (“UNOPS”)

- and -

(2) Name of the Company

Contract No.: Sida-RAIP –IV-/NTH-JWN-004-C2-005

May 16, 2017

Short Form Construction Contract

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INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the **May 11, 2017.**

BETWEEN

- (1) **United Nations Office for Project Services ("UNOPS")**, an organ of the United Nations, having its postal address at P. O. Box 1772, UNOCA Compound, Jalalabad Road, Kabul, Afghanistan ("**Employer**"); and
- (2) **XXXXXXXXXXXXXXXX ("XXXXX")** a construction company incorporated under the laws of Government of Islamic Republic of Afghanistan and having its registered address at **XXXXXXXXXXXXXXXXXXXXX**. ("**Contractor**").

BACKGROUND

- A The Employer intends to undertake the Project. The Works are an integral part of the Project.
- B The Contractor has represented to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Works and has agreed to undertake the Works in accordance with the Contract.
- C In reliance on the Contractor's representations the Employer has entered into the Contract.
- D The Contract sets out the terms and conditions upon which the Contractor will undertake the Works.

THIS CONTRACT:

1. The Employer agrees to pay the Contractor the Contract Price, at the times and in the manner prescribed by the Contract, in consideration for the Contractor executing and completing the Works and remedying all defects in accordance with the Contract and otherwise performing all of its obligations in accordance with the Contract.
2. In the Contract words and expressions will have the same meanings as are respectively assigned to them in the General Conditions.
3. The following documents, listed in the order of priority, are deemed to form and be read and construed as part of the Contract:
 - 3.1 this Instrument of Agreement;
 - 3.2 the Schedule of Details;
 - 3.3 the Particular Conditions;
 - 3.4 the General Conditions;
 - 3.5 the Specification;
 - 3.6 the Drawings; and
 - 3.7 the remaining Schedules.

SIGNING PAGE

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their respective duly authorised representatives as of the date first written above:

SIGNED BY _____

Paul Cruickshank, Director & Representative

Duly authorised to sign this Contract for and on behalf of the Employer, UNOPS:

In the presence of:

Signature _____ (witness)

Address _____

Occupation _____

SIGNED BY _____

XXXXXXXXXXXX ("**XXXXXXXXXX**")

Duly authorised to sign this Contract for and on behalf of the Contractor, XXXXXX:

In the presence of:

Signature _____ (witness)

Address _____

Occupation _____

GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1

Definitions

In the Contract as defined below, the words and expressions defined have the following meanings assigned to them, except where the context requires otherwise:

"Bank Guarantee for advance payment" means the security (or securities) to be provided under Sub-Clause 11.3 [*Advance Payment*].

"Bank Guarantee for performance" means the security (or securities) to be provided under Sub-Clause 4.4 [*Bank Guarantee for Performance*].

"Bill of Quantities" means the document, if any, entitled Bill of Quantities set out in the Schedule of Contract Price.

"Commencement Date" means the date stated in the Schedule of Details.

"Contract" means the Instrument of Agreement, these General and Particular Conditions, the Schedules and the further documents (if any) which are listed in the Instrument of Agreement.

"Contract Price" means the price specified in the Schedule of Details, subject to any increases or decreases as may be made in accordance with this Contract.

"Contractor" means the entity named as the "Contractor" in the Instrument of Agreement and the legal successors in title and assigns to this entity.

"Contractor's Equipment" means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.

"Contractor's Personnel" means the Contractor's Representative and all personnel the Contractor utilises on the Site, which may include the staff, labour, agents and other employees of the Contractor and of each subcontractor and any other personnel assisting the Contractor in the execution of the Works.

"Contractor's Representative" means the person named as such in the Schedule of Details or appointed from time to time by the Contractor under Sub-Clause 4.2, who acts on behalf of the Contractor.

"Cost" means all direct and reasonable expenditure properly incurred in connection with the execution of the Works by the Contractor but does not include non-project specific overheads, profit or loss of profit.

"Country" means the country in which the Site is located.

"Date of Substantial Completion" means the date when the Works have reached Substantial Completion as stated in the Taking-Over Certificate.

"day" means a calendar day, unless provided otherwise.

"Defects Notification Period" means the period for notifying defects in the Works under Sub-Clause 9.1, as stated in the Schedule of Details (with any extension under Sub-Clause 9.1), calculated from the Date of Substantial Completion as stated in the Taking-Over Certificate issued under Sub-Clause 8.2.

"Drawings" means the drawings of the Works as listed in the Schedule of Works, and any additional or modified drawings issued by (or on behalf of) the Employer.

"Employer" means the entity named as the "Employer" in the Instrument of Agreement, and the legal successors in title and assigns and novatees to this entity.

"Employer's Representative" means the person named as such in the Schedule of Details or as otherwise notified by the Employer to the Contractor, who acts on behalf of the Employer.

"Employer's Risks" means those matters listed in Sub-Clause 6.1.

"Final Completion Certificate" means the certificate issued under Sub-Clause 9.3.

"Force Majeure" means an event or circumstance which is beyond the control and without the fault or negligence of the Party affected and which by the exercise of reasonable diligence the Party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
- (c) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
- (d) earthquake, hurricane, typhoon, tsunami or fire emanating from outside the Site within the Country that are outside the normal range for that place at that time of year, but excluding any other weather conditions regardless of the severity.

"General Conditions" means these general conditions of Contract.

"Instrument of Agreement" means the document signed by the Parties and forming part of the Contract.

"Materials" means things of all kinds (other than Plant) intended to form or forming part of the permanent work.

"Particular Conditions" means the particular conditions (if any) set out immediately before the Schedules to the Contract.

"Party" means either the Employer or the Contractor.

"Plant" means the machinery, vehicles and apparatus intended to form or forming part of the permanent work.

"Project" means the project described in the Schedule of Details.

"Schedule of Contract Price" is Schedule 4.

"Schedule of Details" is Schedule 1.

"Schedule of Payment" is Schedule 5.

"Schedule of Security" is Schedule 6.

"Schedule of Site" is Schedule 3.

"Schedule of Works" is Schedule 2.

"Schedules" means Schedules 1 to 6 to this Contract, including any further documents which are annexed or attached to, or incorporated by reference into Schedules 1 to 6.

"Site" means the places provided by the Employer where the Works are to be executed and to which Plant and Materials are to be delivered as shown in the Schedule of Site, and any other places specified in the Contract as forming part of the Site.

"Specification" means the requirements or documents as listed in the Schedule of Works, including Employer's requirements in respect of design to be carried out by the Contractor, if any, and any Variation to such document.

"Substantial Completion" means that stage in the execution of the Works when the following has occurred:

- (a) the Works are performed and completed in accordance with this Contract except for minor defects which would not affect the performance or operation of the Works;
- (b) all tests required by this Contract have been undertaken and successfully passed;
- (c) all documents, technical and other information, including plans, designs, drawings, as-built drawings, engineering information, data, specifications, reports and any other information required under this Contract have been supplied to the Employer's Representative in accordance with this Contract or as directed by the Employer's Representative from time to time;
- (d) all third party warranties and certificates and local authority approvals have been issued and provided to the Employer's Representative; and
- (d) any other preconditions to Substantial Completion set out in the Schedule of Details have been met.

"Taking-Over Certificate" means a certificate issued under Clause 8 certifying that the Works have reached Substantial Completion and stating the Date of Substantial Completion.

"Time for Completion" means the time for completing the Works as stated in the Schedule of Details (or as extended under Sub-Clause 7.3), calculated from the Commencement Date.

"Variation" means a change, alterations, addition or omission to the Works which is instructed by the Employer's Representative under Sub-Clause 10.1

"Works" means all the work and design (if any) to be performed by the Contractor in accordance with this Contract as specified in the Schedule of Works, including temporary work and any Variation.

1.2

Interpretation

Words importing persons or parties include firms and organisations. Words importing singular or one gender include plural or the other gender where the context requires.

1.3

Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer's Representative will issue any necessary instructions to the Contractor, and the priority of the documents is in accordance with the order as listed in the Instrument of Agreement.

1.4

Language

The language for communications is English.

1.5

Communications

Any notice, approval, consent or other communication in relation to this Contract must be in writing, signed, dated and marked to the relevant representative of the Parties and sent to the address for service of notices and communications set out in the Schedule of Details.

1.6

Statutory Obligations

The Contractor must comply with the laws of the countries where activities are performed. The Contractor must give all notices and pay all fees and other charges in respect of the Works.

1.7

Assignment

The Contractor must not assign or novate any of its rights or obligations under this Contract without prior written consent of the Employer.

The Employer has the right to assign or novate any or all of its rights or obligations under this Contract after giving written notice to the Contractor.

1.8

Confidential Details

The Contractor must keep confidential and must not, without the written consent of the Employer, disclose to any third party the terms and conditions of the Contract, or any documents or other information furnished directly or indirectly by either Party in connection with the Contract or the Works, except if disclosure is required by law or for outside consultants engaged to act in connection with the Works (including insurance and legal advisers). In addition, the Contractor must not (without the prior written consent of the Employer) take, or authorise the taking of, any photograph of the Works or the Site for use in any publicity or advertising.

2. THE EMPLOYER

2.1

Provision of Site

The Employer will provide non-exclusive possession of the Site and non-exclusive right of access to the Site at the times stated in the Schedule of Details. The Contractor must comply with any conditions relating to the Site as stated in the Schedule of Site.

2.2

Permits and Licences

The Contractor must obtain and comply with all relevant permits, licences, authorisations and approvals necessary to carry out the Works in accordance with the Contract. The Employer must, if requested, assist the Contractor in applying for such permits, licences, authorisations or approvals which are required for the Works.

2.3

Employer's Instructions

The Contractor must comply with all instructions given by the Employer or the Employer's Representative in respect of Works. The Employer or the Employer's Representative is entitled to suspend progress of part or all of the Works at any time and for any reason by giving the Contractor written notice. During such suspension,

the Contractor must protect, store and secure such part of the Works against any deterioration, loss or damage.

If the Contractor receives a notice of suspension under this Sub-Clause 2.3, the Contractor must suspend progress of the relevant parts of the Works until such time as the Employer's Representative directs the Contractor to resume progress of those parts of the Works by notice in writing.

If a suspension under this Sub-Clause 2.3 has continued for more than 180 consecutive days, the Contractor may request the Employer's Representative's permission to proceed with the Works. If the Employer's Representative does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Employer's Representative, treat the suspension as an omission under Sub-Clause 10.1 of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give a notice in accordance with Sub-Clause 12.2.

2.4

Approvals

No approval or consent or absence of comment by the Employer or the Employer's Representative will affect the Contractor's obligations.

3. EMPLOYER'S REPRESENTATIVES

3.1

Employer's Representative

The Employer's Representative is authorised to carry out the duties assigned to it in the Contract. The Employer's Representative has no authority to amend the terms of the Contract unless an amendment is authorised and approved in writing by the Employer. The Employer's Representative may instruct Variations in accordance with Clause 10.

3.2

Employer's Representative's Assistant

The Employer's Representative may from time to time assign duties and delegate authority to an individual to carry out certain duties. The appointee may be notified by the Employer to the Contractor from time to time. The Employer must notify the Contractor of the delegated duties and authority of this Employer's Representative's assistant.

4. THE CONTRACTOR & PERFORMANCE OF THE WORKS

4.1

General Obligations

The Contractor must carry out the Works properly and in accordance with the Contract, including all works which are necessary to satisfy the Specifications and the Drawings and all other works which (although not expressly mentioned in the Contract) are necessary for the stability and/or for the completion, and/or safe and proper operation of the Works. The Contractor must provide all supervision, labour, Materials, Plant and Contractor's Equipment which may be required. All Materials and Plant on Site are deemed to be the property of the Employer.

The Contractor must comply with all applicable occupational health and safety and environmental laws, guidelines, rules, procedures, quality control requirements and codes of practice including those stated in the Schedule of Works and any provided to the Contractor by the Employer's Representative.

The Contractor is deemed to have inspected and examined the Site, its surroundings, and access to the Site and to have satisfied itself that the Site and access to the Site, including security, is suitable for the Works and is deemed to have obtained all necessary information as to risks which may affect execution of the Works including climatic, hydrological and natural conditions and is not entitled to an increase to the Contract Price or to an extension to the Time for Completion based upon such conditions encountered during the execution of the Works that could have been reasonably foreseen by an experienced contractor acting in accordance with industry best practice.

The Contractor must, in a form acceptable to the Employer's Representative, provide the Employer's Representative with monthly, or more frequently on request by the Employer's Representative, reports in relation to the Works and any occupational, health and safety issues in relation to the Works. The report must comply with any requirements stated in the Schedule of Works.

4.2

Contractor's Representative

The Contractor's Representative is named in the Schedule of Details. The Contractor must not replace the Contractor's Representative without the prior written consent of the Employer's Representative and must submit to the Employer's Representative for approval the name and particulars of the person the Contractor proposes to replace the Contractor's Representative. The Contractor is responsible for all acts and omissions of the Contractor's Representative.

The Contractor gives the Contractor's Representative all authority necessary to act on the Contractor's behalf under the Contract.

4.3

Subcontracting

The Contractor must not subcontract the whole of the Works. The Contractor must not subcontract any part of the Works without the prior written consent of the Employer's Representative.

4.4

Bank Guarantee for Performance

Unless otherwise stated in the Schedule of Details, the Contractor must deliver to the Employer, within 14 days of the Commencement Date, an unconditional and irrevocable on-demand bank guarantee in the form provided in the Schedule of Security, from a bank approved by the Employer, for the amount stated in the Schedule of Details.

Any Bank Guarantee for performance provided to the Employer under Sub-Clause 4.4 must be valid until the Taking-Over Certificate for the whole of the Works is issued under Sub-Clause 8.2, when it will reduce by half. It must be valid until the Final Completion Certificate is issued or the final resolution of any dispute between the Parties under or in connection with this Contract, whichever is the later.

The Employer may withhold, retain or set off from any payment due to the Contractor under this Contract amounts to protect the Employer against any costs, charges, expenses and damages for which the Contractor is liable to the Employer under or in connection with this Contract. This right to withhold, retain or set off does not limit the Employer's right to recover those amounts in any other way.

4.5

Contractor's Personnel

The Contractor's Personnel must be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer's Representative may require the Contractor to remove (or cause to be removed) any person employed on the Site or in the execution of the Works, including the Contractor's Representative who in the opinion of the Employer's Representative:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to conform with any provisions of the Contract; or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

Where this Sub-Clause 4.5 applies, the Contractor must then appoint (or cause to be appointed) a suitable replacement person for each person so removed.

The Contractor must provide and maintain all necessary sanitary and welfare facilities for the Contractor's personnel and must at all times take all reasonable

precautions to maintain the health and safety of the Contractor's personnel and comply with all relevant labour laws.

The parties agree that if the Employer's Representative becomes aware that the Contractor has failed to pay any subcontractor's or the Contractor's Personnel in accordance with this Contract, and the Employer's Representative gives the Contractor written notice 48 hours before the Employer intends to pay, the Employer may, in its absolute discretion, pay those staff, labour or subcontractors the amount the Employer's Representative determines is, or may be owing and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer.

The Employer 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 of the Contractor's Personnel, unless resulting from any act or default of the Employer, its agents or servants. The Contractor must defend, hold and save harmless and indemnify the Employer against all claims and proceedings, as well as damages and compensation in relation to any accident or injury to any of the Contractor's Personnel, unless resulting from any act or default of the Employer, its agents or servants. The Contractor is responsible for all costs, including legal costs, charges and expenses whatsoever associated with the defence of the Employer. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

4.6

Publicity and Use of the Name, Emblem or official Seal of the Employer or United Nations

The Contractor must not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer or the United Nations, nor must the Contractor, in any manner whatsoever use the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of their name in connection with its business or otherwise without the written permission of the Employer. This Sub-Clause 4.6 survives the completion, expiry or termination of the Contract.

4.7

Mines

- (a) The Contractor warrants and represents that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.
- (b) The Contractor acknowledges and agrees that any breach of this Sub-Clause 4.7 entitles the Employer to terminate the Contract immediately in accordance with Sub-Clause 12.1, without any liability for termination charges or any other liability of any kind.

4.8

Official-Not-To-Benefit, Corruption and Fraud

- (a) The Contractor warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any corruption or fraud in connection with the selection process or the execution of this Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's personnel or representative, official, or other agent of the Employer or any other entity of the United Nations.
- (b) In this Sub-Clause 4.8, "corruption" means the offering, giving, receiving or soliciting from or to any person, directly or indirectly, anything of value as an inducement or reward:
 - i. for doing or forbearing to do any action in relation to the Contract, the selection process or any other activities of the Employer or of any other entity of the United Nations; or
 - ii. for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or any other activities of the Employer or of any other entity of the United Nations.
- (c) In this Sub-Clause 4.8, "fraud" means a misrepresentation or omission of fact(s) in order to influence, or to attempt to influence, the selection process or the execution of this Contract or any other activities of the Employer or of any other entity of the United Nations.
- (d) Contractor acknowledges and agrees that any breach of this Sub-Clause 4.8 entitles the Employer to terminate the Contract immediately by written notice in accordance with Sub-Clause 12.1, without any liability for termination charges or any other liability of any kind.

4.9

Supply of Water

The Contractor must provide on the Site, for the duration of the Works, an adequate supply of drinking and other water for the use of its staff and labour.

4.10

Alcoholic Liquor or Drugs

The Contractor must not bring onto or store on the Site, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by its subcontractors, agents, staff or labour.

4.11

Arms, Ammunition & Explosives

Unless otherwise stated in the Schedule of Works or instructed or permitted by the Employer in writing, the Contractor must not bring onto or store on the Site, give,

barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

4.12

Festivals and Religious Customs

The Contractor must in all dealings with its staff and labour have due regard to all recognised festivals, days of rest and religious or other customs.

4.13

Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor must comply with and carry out such regulations, orders and requirements as may be made by the relevant authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.

4.14

Fundamental Principles and Rights at Work:

- (a) The Contractor warrants that it will comply with, and ensure the Contractor's Personnel will comply with, the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work. These universal rights, as applied in the context of ILO, are freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.
- (b) The Contractor must provide a safe and secure working environment, and provide separate amenities on the Site, for women employed in the execution of the Works.
- (c) The Contractor acknowledges and agrees that any breach of this Sub-Clause 4.14 entitles the Employer to terminate the Contract immediately in accordance with sub-Clause 12.1, without any liability for termination charges or any other liability of any kind.

4.15

Child Labour

- (a) The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child must be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

- (b) The Contractor acknowledges and agrees that any breach of this Sub-Clause 4.15 entitles the Employer to terminate the Contract immediately in accordance with Sub-Clause 12.1, without any liability for termination charges or any other liability of any kind.

4.16

Sexual Exploitation

- (a) The Contractor must take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Contractor's Personnel. For these purposes, sexual exploitation and abuse includes sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, unless such sexual activity is consensual between two persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel.
- (b) In addition, the Contractor must refrain from, and must take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging any sexual activities that are exploitive or degrading to any person.
- (c) The Contractor acknowledges and agrees that any breach of this Sub-Clause 4.16 entitles the Employer to terminate the Contract immediately in accordance with Sub-Clause 12.1, without any liability for termination charges or any other liability of any kind.

4.17

Security of the Site

Unless otherwise stated in the Contract, the Contractor must keep unauthorised persons from entering the Site. Authorised persons are limited to the Contractor's Personnel and the Employer's personnel and any other personnel notified to the Contractor, by the Employer or the Employer's Representative, as authorised personnel of the Employer or the Employer's other contractors on the Site. The security and safety of the Site, the Contractor's Equipment, the Employer's equipment, Plant, Materials and all other property or personnel on the Site is the sole responsibility of the Contractor. The Contractor must comply with any other security requirements set out in the Schedule of Site.

4.18

Unexploded Ordinances

If at any time during the carrying out of the Works the Contractor discovers an unexploded ordinance or land mine, the Contractor must immediately stop work, notify the Employer's Representative, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Contractor must immediately resume the Works when instructed by the Employer's Representative that it is safe to do so.

5. DESIGN BY CONTRACTOR

5.1

Contractor's Design

The Contractor must carry out design to the extent specified in accordance with the Contract, including the Schedule of Works. The Contractor must promptly submit to the Employer's Representative all designs prepared by the Contractor. Within 14 days of receipt the Employer's Representative may notify any comments or, if the design submitted is not in accordance with the Contract, may reject it stating the reasons. The Contractor must not construct any element of the permanent work designed by the Contractor without the approval and prior written consent of the Employer's Representative or where the design for that element has been rejected. Design that has been rejected must be promptly amended and resubmitted. The Contractor must resubmit all designs commented on, taking these comments into account as necessary.

5.2

Design by Contractor

The Contractor is responsible for any design it has prepared and such design must be fit for the intended purposes defined in the Contract. The Contractor is also responsible for any infringement of any patent or copyright in respect of the same.

6. EMPLOYER'S RISKS

6.1

Employer's Risks

In this Contract, Employer's Risks mean:

- (a) a Force Majeure event,
- (b) a suspension under Sub-Clause 2.3 unless it is attributable to the Contractor's failure, act, omission or breach,
- (c) any delay or disruption caused by any Variation, except where that Variation is caused by the Contractor's failure, act, omission or breach,
- (d) any act, omission or breach by the Employer or its agents, and
- (e) the occurrence of any event specified in the Schedule of Details.

7. TIME FOR COMPLETION

7.1

Execution of the Works

The Contractor must commence the Works on the Commencement Date and must proceed expeditiously and without delay and must complete the Works within the Time for Completion.

7.2

Programme

Within the time stated in the Schedule of Details, the Contractor must submit to the Employer's Representative for approval, a programme for the Works in accordance with and in the form stated in the Schedule of Works. The programme will be used to monitor the progress of the Works under the Contract. The Employer's Representative may request the Contractor to submit an amended programme at any time for approval.

7.3

Extension of Time

Subject to Sub-Clause 10.3, the Contractor may be entitled to an extension to the Time for Completion if it is or will be delayed by any of the Employer's Risks.

Despite any other provision in this Contract, the Employer's Representative may, in its absolute discretion and at any time, grant an extension to the Time for Completion. Such an extension must be granted in writing.

7.4

Late Completion

If the Contractor fails to complete the Works within the Time for Completion, the Contractor must pay delay damages for such failure in the amount stated in the Schedule of Details for each day for which the Contractor fails to complete the Works up to and including the Date of Substantial Completion as stated in the Taking-Over Certificate.

If the cumulative amount of delay damages reaches the amount stated in the Schedule of Details, the Employer may terminate the Contract at any time in accordance with Sub-Clause 12.1.

8. TAKING-OVER

8.1

Completion

The Contractor must notify the Employer's Representative in writing as soon as it considers that the Works have reached the stage of Substantial Completion.

8.2

Taking-Over Certificate

After receiving the notice under Sub-Clause 8.1, the Employer's Representative must either issue a Taking-Over Certificate stating the Date of Substantial Completion or notify the Contractor that there are defects or deficiencies in the Works that prevent Substantial Completion being reached.

If the Employer's Representative notifies the Contractor that there are defects or deficiencies in the Works, the Contractor must correct the defects or deficiencies and the procedures in this Clause 8 must be repeated until the Employer's Representative issues a Taking-Over Certificate.

The Contractor acknowledges and agrees that it takes full responsibility for the care of the Works until the Date of Substantial Completion and that no partial or entire use or occupancy of the Site or the Works by the Employer in any way constitutes an acknowledgement by the Employer that Substantial Completion has occurred, nor does it release the Contractor from any of its warranties, obligations or liabilities under or in connection with this Contract.

The Employer must take over the Works upon the Date of Substantial Completion.

After issuance of the Taking-Over Certificate the Contractor must promptly complete any outstanding work, submit a statement in accordance with Sub-Clause 11.2 and, subject to Clause 9, clear the Site.

8.3

Testing

The Contractor must undertake all tests in accordance with the requirements set out in the Schedule of Works, and must agree, with the Employer's Representative, 4 days prior written notice of the time and place for the specified testing of any Plant, Materials and other parts of the Works.

9. REMEDYING DEFECTS

9.1

Remedying Defects

The Employer's Representative may at any time prior to the expiry of the relevant Defects Notification Period, notify the Contractor of any defects or outstanding work. The Contractor must remedy at no cost to the Employer any defects due to the Contractor's design, Materials, Plant or workmanship not being in accordance with

the Contract. The timing of remedying a defect must be agreed between the Parties, or failing agreement, be reasonably specified by the Employer's Representative.

If the Contractor fails to rectify the defect within the time agreed or specified, the Employer's Representative may do so or engage another party to do so at the Contractor's risk and expense and any cost will be a debt due from the Contractor to the Employer.

The Defects Notification Period will be extended to the extent that the Works, part of the Works or a major item of Plant (as the case may be) cannot be used for the purposes for which they are intended by reason of a defect or damage or failure by the Contractor to comply with any other obligation of the Contract and such extension will be equal to the period for which the Works, part of the Works or major item of Plant cannot be so used for the purpose intended or, if instructed in writing by the Employer's Representative, the Defects Notification Period will recommence (and restart from the beginning) from the date of the repair, replacement or making good of such defect or damage, but only in respect of that part of the Works repaired, replaced or made good.

9.2

Uncovering and Testing

The Employer's Representative may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the Contractor's design, Materials, Plant or workmanship are defective or not in accordance with the Contract or the Contractor did not give sufficient notice in accordance with Sub-Clause 8.3 before covering the relevant parts of the Works, the Contractor will be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 10.2. If the Contractor did not give sufficient notice in accordance with Sub-Clause 8.3 before covering the relevant parts of the Works or if the Employer's Representative establishes that the Contractor's design, Materials, Plant or workmanship are defective or not in accordance with the Contract, the Contractor must (at its cost) then promptly make good the defect and ensure that the rejected item complies with the Contract and bears the cost of uncovering and testing.

9.3

Final Completion Certificate

Performance of the Contractor's obligations will not be considered to have been completed until the Employer's Representative has issued the Final Completion Certificate to the Contractor, stating the date on which the Contractor completed its obligations under the Contract.

The Employer's Representative must issue the Final Completion Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods or as soon thereafter as the Contractor has supplied all relevant documents and completed and tested all of the Works, including remedying defects notified under Sub-Clause 9.1. A copy of the Final Completion Certificate must be issued to the Employer. Notwithstanding this the Employer may issue the Final Completion Certificate at any time after the Employer's Representative has issued the Taking-Over Certificate.

9.4

Unfulfilled Obligations

After the Final Completion Certificate has been issued, each Party remains liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract is deemed to remain in force.

10. VARIATIONS AND CLAIMS

10.1

Right to Vary

The Employer's Representative may, in its absolute discretion and at any time before the Taking-Over Certificate is issued, initiate, or immediately instruct Variations by written notice and the Contractor must carry out and be bound by any such Variations. Unless otherwise instructed by the Employer's Representative in this notice, the Contractor must provide a detailed breakdown of the increase or decrease in the Contract Price and any effect on the Time for Completion within 7 days of receipt of this notice, and before the Contractor carries out the Variation. The Contractor must then execute and is bound by the Variation unless otherwise instructed by the Employer's Representative.

The Contractor agrees that a Variation may involve an omission of any part or parts of the Works and in the case of an omission the Employer may engage others to perform that part or parts so omitted.

10.2

Valuation of Variations

Variations will be valued by the Employer's Representative as follows:

- (a) at a rate or lump sum price agreed between the Parties, or in the absence of agreement
- (b) where appropriate, at rates in the Bill of Quantities, or if there are no applicable rates in the Bill of Quantities, at the rates in the schedule of Variation rates contained in the Schedule of Contract Price, or
- (c) in the absence of appropriate rates, then a fair and reasonable valuation of the Variation will be made by the Employer's Representative, or
- (d) if the Employer's Representative so instructs, at daywork rates set out in the Schedule of Contract Price for which the Contractor must keep records of hours of labour and Contractor's Equipment, and of Materials used.

For the avoidance of doubt the Contractor's entitlement to payment for a Variation excludes non-project specific overheads and costs.

10.3

Notice of Delay

The Contractor must notify the Employer's Representative as soon as practicable and in any case in writing no later than 7 days (or within a time frame notified by the Employer's Representative) after it becomes aware of any event or circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment, Costs and/or other entitlements or relief from obligations, under any Clause of these General Conditions or otherwise arising out of or in connection with the Contract. The Contractor must take all reasonable steps to minimise these effects.

The notice submitted by the Contractor under this Sub-Clause 10.3 must set out details of the event or circumstance giving rise to the claim, and if requested supply supporting documents, stating a reasonable period by which the Contractor believes the Time for Completion should be extended and the nature and extent of any additional resultant Costs. As soon as practicable after the receipt of this notice, the Employer's Representative will notify the Contractor of the period, if any, by which the Time for Completion will be extended and additional payment of Costs (if any) to which the Contractor is entitled under the Contract. The Employer's Representative may also respond with comments and request any necessary further particulars.

The Contractor is not entitled to an extension to the Time for Completion or additional payment or Costs if it does not submit a notice in accordance with and within the time stated in Sub-Clause 10.3 in which case the Contractor will be deemed to have waived its entitlement to make such claim, the Employer will be discharged from all liability arising out of or in connection with the claim and the Contractor must comply with its obligations to perform the Works by the Time for Completion and for the Contract Price.

10.4

Right to Claim

Subject to Sub-Clause 10.3, if the Contractor incurs Cost as a result of any of the Employer's Risks, other than a Force Majeure event, the Contractor will be entitled to the amount of such Cost. If as a result of any of the Employer's Risks, it is necessary to change the Works, this will be dealt with as a Variation.

10.5

Adjustments for Changes in Cost

Unless otherwise expressly stated in the Schedule of Contract Price, the Contract Price, and the rates and prices inserted in the Bill of Quantities, will not be adjusted for rises or falls in the cost of labour, goods and other inputs to the Works and the Contract Price and the rates and prices inserted in the Bill of Quantities, will be deemed to include amounts to cover contingency of rises and falls in the cost of labour, goods and other inputs to the Works.

11. CONTRACT PRICE AND PAYMENT

11.1

Contract Price & Valuation of the Works

The Employer must pay the Contractor the Contract Price in accordance with this Clause 11 and the Schedule of Contract Price. The Contractor is deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price and all fixed unit rates and prices in the Contract.

11.2

Statements

The Contractor must submit a statement to the Employer's Representative in accordance with the requirements and timings stated in the Schedule of Payment or otherwise as notified by the Employer's Representative in writing. Each statement must be in a form approved by the Employer's Representative, showing the value of the work performed and details of any other amounts to which the Contractor considers itself entitled. If requested by the Employer's Representative, when submitting the statement the Contractor must provide verification of all payments owed to subcontractors and the Contractor's Personnel.

The statement must be based on the prices and/or rates set out in the Bill of Quantities or as otherwise set out in the Schedule of Contract Price.

If a percentage is stated in the Schedule of Details, the Contractor will be entitled to that percentage of the value of Materials and Plant listed in the Schedule of Details if such Plant and Materials are in accordance with the Contract, delivered to and properly stored on the Site at a reasonable time.

Within 28 days after the Employer's Representative issues the Taking-Over Certificate, the Contractor must submit a statement to the Employer's Representative as its final statement in respect of the Contract Price and any claim the Contractor has in respect of the Works under the Contract which the Contractor considers to be due from the Employer for all events and circumstances that have occurred up to the Date of Substantial Completion stated in the Taking-Over Certificate.

The Contractor is not entitled to make, and the Employer is released from, any new claim or an increased existing claim against the Employer in respect of the Contract Price or otherwise in respect of all events and circumstances that have occurred up to the earlier of the submission of the statement or expiration of the 28 days.

11.3

Advance Payment

- (a) The Employer will make the advance payment (if any) set out in the Schedule of Payment, as a loan for mobilisation, when the Contractor submits a Bank Guarantee for advance payment in accordance with this Sub-Clause 11.3. If no advance payment is set out in the Schedule of Payment, then this Sub-Clause 11.3 will not apply.

- (b) Unless otherwise notified by the Employer, the Employer will pay the advance payment only after receiving the Bank Guarantee for performance (if any) in accordance with Sub-Clause 4.4 and a Bank Guarantee for advance payment in accordance with Sub-Clause 11.3(c), in amounts and currencies equal to the advance payment.
- (c) The Bank Guarantee for advance payment payable in accordance with Sub-Clause 11.3(b), must be an unconditional and irrevocable on-demand bank guarantee in the form provided in the Schedule of Security, from a bank approved by the Employer. Unless and until the Employer receives this guarantee, Sub-Clause 11.3 will not apply.
- (d) The Contractor must ensure that the Bank Guarantee for advance payment is valid and enforceable until the whole of the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor in the interim payments. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor must extend the validity of the guarantee until the advance payment has been repaid.
- (e) The advance payment must be repaid by the Contractor through percentage deductions in interim payments. The Employer will deduct a percentage of each interim payment, at the rate stated in the Schedule of Payments, until such time as the advance payment has been repaid.
- (f) If the advance payment has not been repaid prior to the issue of the Taking Over Certificate for the Works or prior to termination of the Contract, the whole of the balance then outstanding will immediately become due and payable by the Contractor to the Employer.

11.4

Interim Payment

Within 28 days of delivery of each statement submitted in accordance with Sub-Clause 11.2, the Employer will pay to the Contractor the amount shown in the Contractor's statement less retention at the rate stated in the Schedule of Details and less any amounts to be deducted for advance payment and repayments in accordance with Sub-Clause 11.3, and less any other amount for which the Employer's Representative has specified its reasons for disagreement or that has become due under the Contract. The Employer is not bound by any sum previously considered by the Employer to be due to the Contractor

The Employer may withhold interim payments until it receives the performance security under Sub-Clause 4.4 (if any).

11.5

Payment of First Half of Retention

One half of the retention will be paid by the Employer to the Contractor within 14 days after issuing the Taking-Over Certificate under Sub-Clause 8.2.

11.6

Payment of Second Half Retention

The remainder of the retention will be paid by the Employer to the Contractor within 14 days after receiving the Final Completion Certificate.

11.7

Final Payment

Within 7 days after receiving the Final Completion Certificate, the Contractor must submit a final account to the Employer's Representative together with any documentation reasonably required to enable the Employer to ascertain the final contract value.

Within 28 days after the submission of this final account, the Employer must pay to the Contractor any amount due. If the Employer disagrees with any part of the Contractor's final account, the Employer must specify its reasons for disagreement when making payment.

11.8

Currency

Payment will be in the currency stated in the Schedule of Details.

11.9

Delayed Payment

The Contractor is not entitled to any interest in respect of any amount in any statement submitted to the Employer in accordance with Sub-Clause 11.2 which remains due and unpaid.

11.10

Provisional Sums

If a provisional sum is included in the Schedule of Contract Price, it will not be payable by the Employer unless the Employer's Representative directs the Contractor to perform the work or item to which the provisional sum relates. If the Employer's Representative directs the Contractor to perform that work, the work or item will be priced by the Employer's Representative in accordance with Sub-Clause 10.2, and the difference will be added to or deducted from the Contract Price.

11.11

Audit and Investigations

- (a) Each payment made by the Employer to the Contractor may be subject to a post-payment audit by auditors, whether internal or external, of the Employer or by other authorised and qualified agents of the Employer at any time during the term of the Contract and for a period of two (2) years following the

expiration or prior termination of the Contract. The Employer is entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.

- (b) The Contractor acknowledges and agrees that, from time to time, the Employer may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of the Employer to conduct an investigation and the Contractor's obligation to comply with such an investigation does not lapse upon issuance of the Final Completion Certificate or prior termination of the Contract. The Contractor must provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation must include, but is not limited to, the Contractor's obligation to make available the Contractor's Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's Personnel and relevant documentation. The Contractor must require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

12. DEFAULT & TERMINATION

12.1

Default by Contractor

If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Employer or the Employer's Representative or fails to proceed expeditiously and without delay, or is in breach of the Contract, the Employer's Representative may give notice referring to this Sub-Clause and stating the default.

If the Contractor has not taken all practicable steps to remedy the default within 14 days after the Contractor's receipt of the Employer's Representative's notice, the Employer may by a second notice of 14 days, terminate the Contract.

The Employer may terminate the Contract immediately by written notice if the Contractor is declared insolvent under Sub-Clause 12.3 or is in breach of Sub-Clauses 4.7, 4.8, 4.14, 4.15 or 4.16 or submits a guarantee, certificate, statement, test result or any other document it is required to submit under the Contract that is false or intentionally misleading.

If the Employer delivers a termination notice under this Sub-Clause 12.1, the Contractor must stop work and demobilise (except to the extent specified in the

notice from the Employer) and take such action as necessary or as the Employer's Representative directs, for the transfer, protection and preservation of the Employer's property and deliver any required goods and documents to the Employer's Representative. The Contractor must use its best efforts to comply immediately with any reasonable instructions included in the notice for the assignment of any subcontract and for the protection of life or property or for the safety of the Works. The Contractor must leave behind any Contractor's Equipment, Materials and Plant which the Employer or the Employer's Representative instructs, in writing, is to be used until the completion of the Works. The Employer may employ others to complete or perform the Works and the cost incurred that exceeds the Contract Price will be a debt due from the Contractor to the Employer.

12.2

Default by Employer

If the Employer fails to pay in accordance with the Contract, or if a prolonged suspension affects the whole of the Works as described in Sub-Clause 2.3, the Contractor may give notice referring to this Sub-Clause and stating the default. If the default is not remedied within 14 days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works.

If the default is not remedied within 28 days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice of 14 days, terminate the Contract. The Contractor must then demobilise from the Site.

12.3

Insolvency

If the Contractor is declared insolvent under any applicable law, the Employer may by written notice terminate the Contract immediately.

12.4

Payment upon Termination

After termination, the Contractor is entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- (a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- (b) any sums to which the Employer is entitled,
- (c) in the absence of appropriate rates, the rates in the Contract will be used as the basis for valuation, or failing which the Employer's Representative will make a reasonable valuation, or
- (d) if the Contractor has terminated under Sub-Clause 12.2 or the Employer has terminated under Sub-Clause 12.5, the Contractor is entitled to the Cost of its suspension and demobilisation together with a sum equivalent to 5% of the value of those parts of the Works not executed at the date of termination.

The net balance due must be paid or repaid within 28 days of the notice of termination.

12.5

Employer's Entitlement to Terminate for Convenience

The Employer may in its absolute discretion terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination will take effect 28 days after the latter of the dates on which the Contractor receives this notice, or the Employer returns the Bank Guarantee for performance.

12.6

Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clauses 12.2, 12.5, 13.2 or 12.3 has taken effect, the Contractor must promptly cease all further work (except to the extent specified in the notice from the Employer) and take such action as necessary or as directed by the Employer, for the transfer, protection and preservation of the Employer's property, protection of life or for the safety of the Works. Unless otherwise notified in writing by the Employer under Sub-Clause 12.1, the Contractor must remove all Contractor's Equipment from the Site and remove from the Site any wreckage, rubbish and debris of any kind and leave the whole of the Site in a clean and safe condition.

13. RISK AND RESPONSIBILITY

13.1

Contractor's Care of the Works

The Contractor is responsible for the care of the Works from the Commencement Date until the date the Taking-Over Certificate is issued under Sub-Clause 8.2. Responsibility will then pass to the Employer. If any loss or damage happens to the Works during the above period, the Contractor must rectify such loss or damage so that the Works conform with the Contract and the requirements of any relevant authorities.

The Contractor must defend, hold and save harmless and indemnify, at its own cost, including legal costs, the Employer, its agents and employees from and against all suits, actions, claims and costs arising out of the acts or omissions of the Contractor, its employees, agents or subcontractors in connection with the Works and the Contractor's other obligations under or in connection with the Contract, in respect of any accident, bodily injury, sickness or death to any person, infringement of any intellectual property rights and loss or damage to the Works or any property unless due to an act or default of the Employer or its personnel. In defending the Employer, the Contractor shall not enter into a settlement agreement without the prior written approval of the Employer.

13.2

Force Majeure

If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected must notify the other Party immediately in writing and not later than 7 days, setting out full details of the Force Majeure event and the reasons for the Force Majeure event preventing that Party from, or delaying that Party from, performing the affected obligations under this Contract. If instructed by the Employer's Representative, the Contractor must suspend the execution of the affected Works and, to the extent agreed with the Employer's Representative, demobilise the Contractor's Equipment, but only so far as, and for so long as, the performance of those obligations is affected by the Force Majeure event. The affected Party must use its best endeavours to overcome or remove the effects of the Force Majeure event as quickly as possible.

Upon completion of the Force Majeure event, the affected Party must as soon as is reasonably practicable recommence the performance of the affected obligations.

If the event continues for a period of 84 days, either Party may then give notice of termination which will take effect 28 days after the giving of the notice.

After termination, the Contractor is entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- (a) any sums to which the Contractor is entitled under Sub-Clause 10.4,
- (b) the Cost of suspension and demobilisation,
- (c) any sums to which the Employer is entitled.

The net balance due must be paid or repaid within 28 days of the notice of termination.

The Contractor acknowledges and agrees that, with respect to any of its obligations under the Contract, the Contractor will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and to itself, constitute a Force Majeure event.

14. INSURANCE

14.1

Extent of Cover

The Contractor must, on or prior to the Commencement Date, effect and thereafter maintain insurances in the joint names of the Parties:

- (a) for loss and damage to the Works, Materials, Plant and the Contractor's Equipment,
- (b) for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Contractor's performance of the Contract, including the Contractor's liability for damage to the Employer's property other than the Works, and
- (c) for liability of both Parties and of any Employer's personnel for death or injury to the Contractor's Personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees.

14.2

Arrangements

All insurances must conform with any requirements detailed in the Schedule of Details. The policies must be issued by insurers and in terms approved by the Employer. The Contractor must provide the Employer with evidence that any required policy is in force and that the premiums have been paid.

All payments received from insurers relating to loss or damage to the Works must be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

14.3

Failure to Insure

If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor.

15. RESOLUTION OF DISPUTES

15.1

Dispute Resolution Procedure

Unless settled amicably by the Parties' Representatives, any dispute or difference which arises between the Contractor and the Employer out of or in connection with the Contract, including any valuation or other decision of the Employer ("**Dispute**"), the Dispute must be referred, if requested by either Party, to the Senior Representatives of the Parties set out in the Schedule of Details, or any replacement notified by a Party to the other Party in writing.

If the Senior Representatives of the Parties are unable to resolve a Dispute referred to them within 28 days, either Party may invite the other Party to conciliate the

Dispute in accordance with the provisions of Sub-Clause 15.2. Otherwise the Dispute must be referred, if requested by either Party, directly to arbitration in accordance with the provisions of Sub-Clause 15.3.

15.2

Conciliation

- (a) In accordance with Sub-Clause 15.1, either Party may invite the other Party to conciliate a Dispute under the UNCITRAL Permanent Court of Arbitration Optional Conciliation Rules, 1996 (the “**Conciliation Rules**”) provided that;
 - i. the language of the conciliation must be in English;
 - ii. one conciliator must be appointed and agreed by the Parties; or
 - iii. if the Parties are unable to agree on the appointment of a conciliator within 14 days after the matter has been referred to conciliation, the conciliator will be appointed by the Secretary-General of the Permanent Court of Arbitration in accordance with the Conciliation Rules.

If the Parties do not reach agreement under the Conciliation Rules, the Dispute shall be referred, if requested by either Party, to arbitration in accordance with Sub-Clause 15.3.

15.3

Arbitration

If the Parties are unable to resolve the Dispute in accordance with Sub-Clause 15.1 or 15.2, the Dispute must, if requested by either Party, be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules (“**Arbitration Rules**”) then in effect, provided that:

- (a) there is no seat or place of arbitration. The place of hearing must be the place stated in the Schedule of Details;
- (b) the language of the arbitration must be English;
- (c) the decisions of the arbitral tribunal must be based on general principles of international commercial law. The arbitral tribunal must not award punitive damages. In addition, the arbitral tribunal must not award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest must be simple interest only.

The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

The arbitral proceedings and any information and documents relating to these proceedings must be regarded as confidential.

15.4

Dispute resolution not to delay execution of the Works

Despite any activation of the dispute resolution procedures under Sub-Clause 15.1, the Contractor must continue to execute the Works and its other obligations under or in connection with the Contract.

15.5

Survival

This Clause 15 survives the completion, expiry or termination of the Contract.

16. PRIVILEGES AND IMMUNITIES

Nothing in or relating to the Contract is deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which the Employer is an integral part, which are hereby expressly reserved.

PARTICULAR CONDITIONS**Additional Clauses**

The General Conditions are amended by the inclusion of the following additional conditions:

If nothing is stated, then no additional conditions apply.

Clause	Additional General Condition

SCHEDULES**SCHEDULE 1 - SCHEDULE OF DETAILS**

Commencement Date (Sub-Clause 1.1)	The date of execution of the Contract as stated in the Right of Access to the Site document.
Contract Price (Sub-Clause 1.1)	The final Contract Price is XXXXXXXXXXXXXXXXXXXXXXXXXXXX as determined in accordance with the Schedule of Contract Price & Payment. See the Schedule of Contract Price & Payment for a breakdown of the Contract Price.
Contractor's Representative (Sub-Clause 1.1)	XXXXXXXXXXXX
Defects Notification Periods (Sub-Clause 1.1)	8 months
Employer's Representative (Sub-Clause 1.1)	Mr. Shekhar Kumar Shrestha, Acting Project Manager E-mail: Shekhark@unops.org Mobile: +93 792277709
Project (Sub-Clause 1.1)	Rehabilitation and construction of bituminous seal-coat standard Road of Khaniqa to Aqcha District road CH: 3+700 - 8+850 Khaniqa and Aqcha Districts Jawzjan province of Afghanistan
Substantial Completion (Sub-Clause 1.1)	Eight (8) months from the date of issuance of the Right of Access to the Site document.
Time for Completion (Sub-Clause 1.1)	Whole of the Works Eight (8) Months from the Date of Notice to Proceed.

Address for Service of Notices and Communications (Sub-Clause 1.5)	Employer Attention: Mr. Shekhar Kumar Shrestha Position title: Acting Project Manager Address: UNOPS – Mazar office Facsimile Number: N/A Email Address: Shekhark@unops.org Contractor Attention: XXXXXXXX Position title: XXXXXXXX Address: XXXXXXXXXXXX Facsimile Number: XXXXXXXX Email Address: XXXXXXXXXXXX
Time(s) for access to and possession of site (Sub-Clause 2.1)	Parts of the Site from signing the Right of Access and completion within eight months from the date of Right of Access.
Amount of Bank Guarantee for Performance (Sub-Clause 4.4)	The amount of the Bank Guarantee for performance to be provided under Sub-Clause 4.4 is the amount equal to 10 % of the Contract Price.
Additional Employer's Risks (Sub-Clause 6.1)	None.
Time for Programme Submission (Sub-Clause 7.2)	As agreed by UNOPS engineer after the Commencement date of the contract.

Delay Damages for failure to complete the Works within the Times for Completion (Sub-Clause 7.4)	Whole of the work Whole of the Works: 0.3% of the contract amount per day
Cumulative Amount of Delay Damages (Sub-Clause 7.4)	10% of the contract amount.
Percentage of Plant & Materials (Sub-Clause 11.2)	Nil
Percentage deduction for Retention (Sub-Clause 11.4)	The amount of 10% of the estimated value of the works executed in the relevant payment period as set out in the invoice for that period will be retained from each and every payment. Release of Retention Money The Employer will release the retention money after the end of the Defects Notification Period
Currencies of payment (Sub-Clause 11.8)	Payments will be made in United States Dollars (US\$).
Insurance Details (Sub-Clause 14.2)	Insurance requirement attached to the contract.
Senior Representatives (Sub-Clause 15.1)	Employer Paul Cruickshank, Director & Representative UNOPS - Afghanistan E-mail: Contractor E-mail: Cell:
Arbitration (Sub-Clause 15.3)	The place of the hearing, if any, shall be determined at the time the dispute arises.

SCHEDULE 2 - SCHEDULE OF WORKS

Scope of Work

The successful contractor shall carry out Rehabilitation and construction of bituminous seal-coat standard Road of Khaniqa to Aqcha District road CH: 3+700 - 8+850 Khaniqa and Aqcha Districts Jawzjan province of Afghanistan.

The successful contractor is expected to carry out the assignment in accordance with Technical Specifications and Drawings attached to this ITB. The contractor is obliged to provide all necessary labor, equipment, materials, tests, etc. to execute the assignment to the satisfaction of Employer.

Area of the Work

The General area of this work is Construction, which include, provision of material for construction, machinery, equipment, manpower, work permit and any other item/service needed for the execution of work.

2.0 General Scope of Work

The Contractor must comply and execute the works based on the BoQ, Drawings and Technical Specifications. The employer (UNOPS) will supervise the works time to time and will provide necessary guidance and instructions to the contractor. This fitness is measured by giving the on time responses to the contractor's requests for information, invoices and others during the project, UNOPS will have best deal of doing professional project management in regards.

2.1 Duration of the work

All activities shall be completed within (8 months) from the Awarding date. The Contractor shall prepare and submit time schedule of the Work for approval of the Client. The contractor shall start the work immediately only after receiving notice to proceed (NTP) and complete the work within project duration as per above-mentioned schedule

2.2 Equipment and Materials

All equipment and material necessary for implementation of the project shall be provided by Contractor, materials and equipment shall meet the requirements of technical specification and UNOPS's general requirements.

2.3 Transportation

All transportation works inclusive of contractor's personnel, equipment and material will be the responsibility of contractor.

2.4 Insurance

The Contractor shall insure his staff, machineries and works itself and shall be responsible for any accident, injuries, damages, loss, theft and etc.

2.5 Other Conditions

Other conditions not specified herein shall be settled by mutual understanding and agreement between Client and Contractor as per UNOPS general conditions.

2.6 TECHNICAL SPECIFICATIONS
Attached to this Short of Contract.

SCHEDULE 3 - SCHEDULE OF SITE

The project is located in Aqcha District of Jawzjan province of Afghanistan

SCHEDULE 4 - SCHEDULE OF CONTRACT PRICE

Annex II : Bill of Quantities:

Attached as an appendix to this Contract:

SCHEDULE 5 - SCHEDULE OF PAYMENT

The total Contract value is **XXXXXXXXXXXXXXXXXX** The payment will be made on monthly basis or as mutually agreed between both parties upon engineers certification of executed works in accordance with the BoQ, Drawings and Technical Specifications, the Contractor shall within 5 Days of completion of the Works or parts thereof, must submit an invoice to the Employer's Representative for the relevant amount payable on completion of the works or parts thereof.

SCHEDULE 6 - SCHEDULE OF SECURITY**BANK GUARANTEE FOR PERFORMANCE**

[On the letterhead of the Bank]

Date: **[insert]**

To: Paul Cruickshank
Director & Representative
United Nations Office for Project Services (UNOPS)
Afghanistan Operational Center (AFOC)

Dear Dr. Mohammad Haider Reza,

The Construction Contract - for the Rehabilitation and construction of bituminous seal-coat standard Road of Khaniqa to Aqcha District road CH: 3+700 - 8+850 Khaniqa and Aqcha Districts Jawzjan province of Afghanistan. Case reference: SIDA-RAIP-IV-NTH-JWN-004-C2-005

You entered into a contract dated **[insert date]** with **[insert]** ("Contractor") titled **[insert contract title]** Construction Contract for the **[insert name of the project]** for certain works and services ("**Works**") to be undertaken by the Contractor ("**Contract**").

We, **[insert Bank]**, irrevocably and unconditionally undertake with you that whenever you give written notice to us stating that in your sole and absolute judgment the Contractor has failed to observe or perform any of the terms, conditions or provisions of the Contract on its part to be observed or performed, we will, notwithstanding any objection which may be made by the Contractor and without any right of set-off or counterclaim, immediately pay to you or as you may direct such an amount as you may in such notice require not exceeding the sum equivalent to 10% of the Accepted Contract Amount ("**Guaranteed Sum**").

This Bank Guarantee for Performance ("**Guarantee**") is valid and will continue to be valid from the date of this letter for the Guaranteed Sum and will reduce to 5% of the Contract Price upon the issue of the Taking Over Certificate. This Guarantee will automatically become null and void on the issue of the Final Completion Certificate or, if a dispute arises under the Contract, after the final determination of that dispute, whichever occurs later.

Any payment by us in accordance with this Guarantee must be in immediately available and freely transferable **[insert currency]** free and clear of and without any deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, set off,

counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed.

Our obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations, do not require any previous notice to or claim against the Contractor and will not be discharged or otherwise prejudiced or adversely affected by any:

- time, lenience or tolerance which you may grant to the Contractor;
- amendment, modification or extension which may be made to the Contract or the Works executed under the Contract;
- intermediate payment or other fulfilment made by us;
- change in the constitution or organisation of the Contractor; or
- other matter or thing which in the absence of this provision would or might have that effect, except a discharge or amendment expressly made or agreed to by you in writing.

This Guarantee may not be assigned by you to any person, firm or company other than an Affiliate, without our prior written consent, which must not be unreasonably withheld. You must notify us in writing of any assignment, after which we must make any payment claimed under this Guarantee to the person, firm or company specified in the notice which will constitute a full and valid release by us in relation to that payment.

Any notice required by this Guarantee is deemed to be given when delivered (in the case of personal delivery) or forty-eight (48) hours after being despatched by prepaid registered post or recorded delivery (in the case of letter) or as otherwise advised by and between the parties.

We agree that part of the Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement between you and the Contractor, and this security may be exchanged or surrendered without in any way impairing or affecting our abilities under this Guarantee without notice to us and without the necessity of any additional endorsement, consent or guarantee by us, provided, however, that the Guaranteed Sum does not increase or decrease.

No action, event or condition which by any applicable law may operate to free us from liability under this Guarantee will have any effect. We waive any right we may have to apply such law so that in all respects our liability under this Guarantee will be irrevocable and, except as stated in this Guarantee, unconditional in all respects.

Capitalised words and phrases used within this Guarantee have the same meanings as are given to them in the Contract.

This Guarantee is governed by the Uniform Rules for Demand Guarantees, ICC Publication No. 758, provided that the supporting statement under Article 15 (a), and Articles 34 and 35 are excluded. Any disputes arising out or in connection with this Guarantee, or the breach, termination, or invalidity thereof will be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules then in effect, the language of the proceedings being English.

Nothing in or relating to this Guarantee shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which UNOPS is an integral part, which are hereby expressly reserved.

IN WITNESS of which the [**insert Bank**] has duly executed this Guarantee on the date stated above.

SIGNED by [**insert**])

as attorney for [**insert**])

under power of attorney dated)

[**insert**])

in the presence of)

)

.....)

Signature of witness)

)

.....)

Name of witness (block letters))

.....)

Address of witness)

.....)

Occupation of witness)

By executing this agreement the attorney states that the attorney has received no notice of revocation of the power of attorney

Address for notices

[**insert address**].



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