

PARLIAMENT OF GHANA LIBRARY

**AGREEMENT
FOR MILITARY HOUSING PROJECT**

BETWEEN

**THE GOVERNMENT OF GHANA
(REPRESENTED BY THE MINISTRY OF DEFENCE)**

AND

POLY CHANGDA OVERSEAS ENGINEERING CO., LTD.

&

POLY TECHNOLOGIES, INC.

8 MARCH 2019

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AGREEMENT

This Construction Agreement (the "Agreement") is made this 8 day of March, 2019

BETWEEN

~~THE GOVERNMENT OF GHANA represented by the Ministry of Defence~~ of P.O. Box CT139 Cantonment, Accra, Ghana (hereinafter referred to as "the Employer") of the one part.

AND

The Consortium of **POLY CHANGDA OVERSEAS ENGINEERING CO., LTD.** a State-Owned Company duly incorporated under the laws of the People's Republic of China, registered at the address: 942 Guangzhou Av. (m), Guangzhou, Guangdong 510620, P. R. China and

POLY TECHNOLOGIES, INC. a state-owned company duly incorporated under the legislation of the People's Republic of China, registered at the address: 27/F New Poly Plaza, No. 1 Dongcheng District, Beijing, and P.R. China. (Hereinafter collectively referred to as "the Contractor") of the other part.

The Employer and the Contractor shall hereinafter be referred to individually as "the Party" and collectively as the "Parties"

WHEREAS

- A. The Employer desires to execute the construction of half compound house, four-storey block of 16 flats, military academy administration office, academy auditorium, academy classroom, Platoon Commander's flat, and academy hostel for the Ghana Armed Forces (hereinafter referred to as "the Military Housing Project").
- B. The Contractor is engaged in building and housing construction, civil works, and offers construction services for office/commercial buildings, public buildings, hotels, department stores, resorts, apartments and stores, as well as building redevelopment, reconstruction, and remodelling services.
- C. The Employer and Contractor have entered into negotiations and the Contractor has agreed to finance, execute and complete the Project and remedy any defects therein in accordance with this Agreement for a sum of **One Hundred Million United States Dollars Only (US\$100,000,000)** (hereinafter referred to as the "the Contract Price").
- D. The Project has received Cabinet and Public Procurement Authority Approvals (hereinafter referred to as "Authorizations").

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) This Agreement
 - (b) The Particular Conditions of Contract
 - (c) The General Conditions of Contract, and
 - (d) The Annexures
 - (e) The Employers' Requirements


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- (f) Technical specifications and detailed drawings
- (g) The Proposal dated on 30th September, 2018
- (h) Any other necessary documents as the Parties may agree

3. In the event of any ambiguity or conflict between the Contract documents listed above, the order of priority shall be the order in which the Contract documents are listed in clause 2 above.
4. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to finance, execute and complete the Works and remedy any defects therein in conformity with the provisions of this Contract.
5. The Employer hereby covenants to grant to the Contractor, in consideration of the financing, execution and completion of the Works and the remedying of defects therein, the Contract price at the times and in the manner prescribed by the Contract. The main source of funding for the Project is a loan from the Contractor to the Employer.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers the day and year first above written.

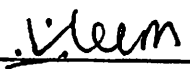
SIGNED ON BEHALF OF THE EMPLOYER:



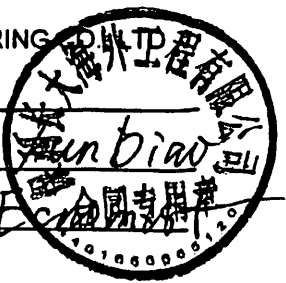
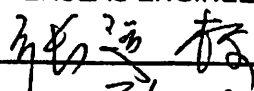
 HON. MINISTER FOR DEFENCE
 MINISTRY OF DEFENCE

Signature: _____
 Printed Name: HON. DOMINIC NITIKAU
 Title: MINISTER FOR DEFENCE


Witness

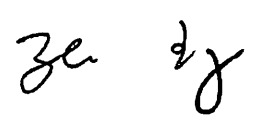
Signature: 
 Printed Name: EVANS A. DZIKUM CDR
 Title: CHIEF DIRECTOR 08/03/19

SIGNED ON BEHALF OF THE CONSORTIUM:

POLY CHANGDA OVERSEAS ENGINEERING 
 Signature: 
 Printed Name: Zhang Sunbiao
 Title: Chief Engineer

Witness

Signature: 



Printed Name: ZHANG JIMIN

Title: Project Manager

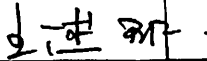
POLY TECHNOLOGIES, INC

Signature: 

Printed Name: Lin Xuanzhu

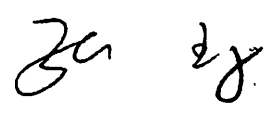
Title: GM Africa Department

Witness

Signature: 

Printed Name: Wang Shu Ming

Title: Chief Representative, Ghana Office



PARTICULAR CONDITIONS OF CONTRACT

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Clause 1 General Provisions

These Particular Conditions of Contract delete, amend or add to the clauses in the General Conditions of Contract. In the event of an inconsistency, these Particular Conditions of Contract shall take precedence over the General Conditions of Contract to the extent of that inconsistency.

1.1 Definitions

1.1.1 The Contract

Sub-clause 1.1.1.2 is amended as follows:

The term "Contract Agreement" in the General Conditions and all references thereto elsewhere in the General Conditions and Particular Conditions shall be replaced by the word "Agreement".

1.1.2 Dates, Tests, Periods and Completion

Sub-clause 1.1.2.2 is amended as follows:

The Definition of "Employer" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Employer" means the Government of Ghana.

Sub-clause 1.1.2.3 is amended as follows:

The Definition of "Contractor" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Contractor" means the Poly Changda Overseas Engineering Co., Ltd. and Poly Technologies Inc.

Sub-clause 1.1.2.9 is amended as follows:

The Definition of "DAB" in the General Conditions and all references thereto elsewhere in the General Conditions is deleted.

"Contractor" means the Poly Changda Overseas Engineering Co., Ltd. and Poly Technologies Inc.

Sub-clause 1.1.3.1 is amended as follows:

The Definition of "Base Date" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

Sub-clause 1.1.3.2 is amended as follows:

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The Definition of "Commencement Date" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Commencement Date" shall have the meaning ascribed to it in clause 8.1 of the Particular Conditions

Sub-clause 1.1.3.3 is amended as follows:

The Definition of "Time for Completion" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Time for Completion" shall mean time for completing the works or sections of the works as stated in clause 8.2

Sub-clause 1.1.3.7 is amended as follows:

The Definition of "Defect notification Period" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Defect Notification Period" means the period for notifying defects in the works or a section (as the case may be) under subclause 11.1 and subclause 11.3 (extension of Defect Notification Period)

1.1.4 Money and Payments

Sub-clause 1.1.4.8 is amended as follows:

The Definition of "Local Currency" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Local Currency" means Ghana Cedi

1.1.5 Works and Goods

Sub-clause 1.1.5.6 is amended as follows:

The Definition of "Section" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Section" means a part of the Works specified in the Employers Requirement.

1.1.6 Other Definitions

Sub-clause 1.1.6.2 is amended as follows:

The Definition of "Country" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Country" means the Republic of Ghana.

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Sub-clause 1.1.6.5 is amended as follows:

The Definition of "Laws" in the General Conditions and all references thereto elsewhere in the General Conditions shall be replaced by the following:

"Laws" mean the Laws of the Republic of Ghana.

Sub-clause 1.1.7.0 is added to the definitions as follows:

The Definition of "***Effective Dates***" is added to the General Conditions to mean the following:

Effective Date shall mean the date on which the Contract comes into effect and shall mean when the following conditions have been satisfied:

This Contract shall come into effect on the date when the following conditions have been satisfied:

- i. The Contract has been signed by the Employer and the Contractor.
- ii. The Financing Agreement has been signed by the Ministry of Finance of the Republic of Ghana and the Contractor, and the Financing Agreement has come into force finally.
- iii. The Contract and the Financing Agreement have been approved by the Parliament of the Republic of Ghana
- iv. The China Export & Credit Insurance Corporation (hereinafter referred to as "Sinosure") has agreed to provide insurance to the Financing Agreement.

The validity period shall be extended until the Parties fulfil all related obligations stipulated in the Contract.

Sub-clause 1.1.7.1 is added to the definitions as follows:

The Definition of "***Conditions Precedent***" is added to the General Conditions to mean the following:

Conditions Precedent shall have the meaning ascribed to it in Clause 8.1 of the Particular Conditions.

1.3 Communications

Sub-Clause 1.3 is amended to read as follows:

Except as expressly provided otherwise in this Agreement, whenever these Conditions provide for the giving or issuing of approvals, certificates, consent, determinations, notices and requests to be given to any of the Parties pursuant to or in connection with this Agreement such giving or issuing of approvals, certificates, consent, determinations, notices and requests shall be in writing, shall be delivered by email, by hand, by certified or registered mail with return receipt requested, by facsimile transmission with confirmation, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Notices are effective when received. Notice addresses are as follows:

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If to the Employer:

Ministry of Defence
PMB CT 139
THE SQUARE
CANTONMENTS ACCRA
Attention: The Honourable Minister
Fax: +233 (0) 302-785549
Email: info@mod.gov.gh

If to Contractor:

Poly Changda Overseas Engineering Co. Ltd.
942 Guangzhou Av. (m), Guangzhou, Guangdong 510620,
P. R. China.
Attention: ZHANG YIMIN
Fax: 86-20-84581303
Email: zhangym@polyinc.com

Any Party may, by written notice to the other Party given in accordance with the foregoing, change its address for notices.

Approvals, certificates, consent, determinations, notices and requests shall not be unreasonably withheld or delayed.

1.4 Laws and Language

Sub-Clause 1.4 is amended to read as follows:

This Agreement shall be governed in accordance with the laws of the Republic of Ghana and shall be written in the English language. If this Contract is translated into any other language, the English language text shall prevail.

1.5 Priority of Documents

Sub-Clause 1.5 is amended to read as follows:

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Agreement,
- (b) the Particular Conditions of Contract,
- (c) the General Conditions of Contract,
- (d) the Annexures
- (e) the Employers Requirements,
- (f) the Technical Specifications and Detailed Drawings
- (g) the Proposal dated 30th September, 2018
- (h) Any other necessary documents as the Parties may agree.

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1.15 Amendment

Sub-Clause 1.15 is added to read as follows:

This Contract may be amended or modified only by written instrument duly executed between Parties.

1.16 Entire Contract

Sub-Clause 1.16 is added to read as follows:

Each of the Parties confirms that subject to Clause 2 of the Contract Agreement, this Contract represents the entire Agreement, and constitutes the whole Contract, among the Parties and supersedes all prior negotiations, representations and proposals, whether oral or written with respect to the subject matter of this Contract.

1.17 Indirect Damages

Sub-Clause 1.17 is added to read as follows:

Neither Party shall be liable to the other Party for indirect or consequential loss or damages which may be suffered by the other Party in connection with the Contract.

1.18 Survival

Sub-Clause 1.18 is added to read as follows:

Termination of this Contract shall not affect accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

1.19 No Partnership

Sub-Clause 1.19 is added to read as follows:

Termination of this Contract shall not affect accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

1.20 Further Assurances

Sub-Clause 1.20 is added to read as follows:

Each Party shall do all further acts and execute and deliver all further instruments, deeds and

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documents as shall be reasonably required in order to perform and carry out the provisions of this Contract.

1.21 Waiver

Sub-Clause 1.21 is added to read as follows:

A waiver of any right or remedy under this Contract is only effective if given in writing.

No failure or delay unless otherwise stated in GCC FIDIC Clause 8.4 by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

Any waiver of any breach of this Contract shall not be deemed to be a waiver of any subsequent breach (whether of a like or different character).

1.22 Severability

Sub-Clause 1.22 is added to read as follows:

If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Contract and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

Clause 2 The Employer

2.1 Right of Access to the Site

The first paragraph of Sub-Clause 2.1 is amended follows:

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site

within the time thirty (30) days before the Commencement Date. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Employer's Requirements. However, the Employer may withhold any such right of possession until the Performance Guarantee has been received.

The second paragraph of sub clause 2.1 is deleted.

Sub clause 2.1(b) is deleted.

The last paragraph of clause 2.1 is amended as follows:

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time.

2.2 Permits, Licences or Approvals

Sub-Clause 2.2 is amended to read as follows:

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

(a) by obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and

(b) for the Contractor's applications for any permits (including residence Permit and work permit), licences or approvals required by the Laws of the Country:

(i) which the Contractor is required to obtain under Sub-Clause 1.13 [*Compliance with Laws*],

(ii) for the delivery of Goods, construction materials, machinery and equipment including clearance through customs, and

(iii) for the export of Contractor's Equipment when it is removed from the Site.

2.6 Obligations of the Employer

Sub-Clause 2.6 is added to clause 2 as follows:

The Employer shall be responsible for:

Ensuring that the financing agreement between the Contractor and the MOF is signed.

Ensuring that all payment shall be paid to the Contractor by MOF as per the Financing Agreement.

Providing and handing over the Site for the Project to the Contractor.

Acquiring the approvals/permits for the Project implementation at the various locations/sites and providing construction land as well as land for living, processing and warehouse.

Providing the Contractor with all detailed engineering drawings of the Project in both electronic and hard format before commencement of the relevant work.

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Extension of the Construction Period provided that construction work is delayed due to lack of drawings.

Providing benchmark and position and marking the site boundary within twenty (20) working days after the signing of this Contract.

Providing water, electricity (for construction and living) road and communication access to the sites.

Providing the Contractor with all the technical drawings and future planning services existing within the Project site which shall include but is not limited to, water supply pipes, sewage pipes, telephone lines and electricity lines, etc. within twenty (20) working days after the signing of this Contract.

Facilitating the process by which all construction machinery and equipment, office equipment and personal protection equipment for the implementation of the Project imported into Ghana or procured locally are all exempted from all taxes, duties or fees.

Facilitating customs clearance of construction materials, machinery and equipment imported into Ghana by the Contractor for the Project.

Facilitating the issuance of requisite entry visas, work permits and residence permit for Contractor's approved personnel during their stay in Ghana.

Relocating residences within the project location and clearing all buildings and obstruction on the construction site to include, levelling the site up to design elevation (including the removal of trees, weeds and mounds etc.) and clearing and removing from the site all obstacles caused by the aforesaid levelling of the site at the cost of the Employer.

Designating a site representative to assist the Contractor in organizing construction works, processing the technical issues arising from the construction and rendering assistance with Ghana's employment regulations and labour matters.

Providing all necessary assistance and arrangement for the repatriation of the personnel so affected to the port of embarkation in Ghana in the event of any accident, industrial injury, casualty, disease or death to the Contractor's personnel during the construction period.

The taxes and bank charges, which may occur during the transaction.

Obtaining all the taxes, duties, fees, and levies exemptions, including but not limited to Ghanaian VAT, NHIL, GETF, import duties, withholding tax and levies exemptions for the Contractor, its Subcontractor and its subsidiaries for all sums payable in relation to carrying out the works subject to this Contract.

Clause 4 The Contractor

4.1 Contractor's General Obligations

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Sub-Clause 4.1 is amended to add the following clauses:

The Contractor shall subcontract up to 20 million US Dollars of contract works to qualified subcontractors to be nominated by the Employer and certified by the Contractor.

The Contractor shall provide construction machinery and equipment necessary for the Project, and this machinery and equipment shall remain the property of the Contractor.

~~The Contractor shall procure all materials necessary for the Project to the construction site.~~

The Contractor shall dispatch necessary professionals to Ghana to ensure the successful completion of the Project.

The Contractor shall be responsible for handling, shipping and insurance matters for construction materials, machinery, equipment and necessities of the Contractor from the port of departure to the port of discharge.

The Contractor shall provide life insurance policy cover in China for the Contractor's professionals working on the project.

The Contractor shall transport Contractor's materials purchased locally and machinery and equipment from place of purchase or port of discharge to the construction sites.

The Contractor shall protect the surrounding environment while implementing the Project.

The Contractor shall ensure that all goods shipped by the Contractor shall be sea worthy shipment packaged and be properly bound, printed with necessary shipment/handling marks per each package and labelled with markings made by non-fading paint on each package.

The Contractor shall send the bills of lading, packing list and proforma invoice to the consignee of the Employer by express mail after the departure of the vessel from Chinese port with construction machinery, materials and goods of the Contractor.

4.2 Performance Guarantee

Within Fifteen (15) business days of receipt of notification of the contract award, the Contractor shall furnish the Employer with an unconditional performance guarantee. The performance guarantee shall be five (5) percent of the contract price. The proceeds of the performance guarantee shall be payable to the Employer as compensation for any loss that may result from the Contractor's failure to complete its performance obligations under this Agreement. The Performance Guarantee shall be denominated in the currency of this Agreement and shall be a Bank Guarantee. The Performance Guarantee shall expire at the end of the Warranty Period.

Clause 5 Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

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Sub-Clause 5.1 is amended to read as follows:

In the contract "nominated Subcontractor" means a qualified subcontractor to be nominated by the Employer and certified by the Contractor.

Clause 6 Staff and Labour

6.1 Engagement of Staff and Labour

Sub-Clause 6.1 is amended to read as follows:

The Contractor shall employ local labour in accordance with Project requirements and Ghana Labour laws.

Clause 8 Commencement, Delays and Suspension

8.1 Commencement of Works

Sub-Clause 8.1 is amended to read as follows:

The Commencement Date shall be the seventh day following the day of receipt by the Contractor of a notice from the Employer that the following conditions (Conditions Precedent) have been fulfilled:

- (a) The Employer has handed over the Site to the Contractor according to the provisions of this Contract.
- (b) All the existing houses, buildings etc., at the Site have been demolished and reimbursed at the cost of the Employer.
- (c) All such Authorizations as Building Permit etc. required for execution of the Project have been issued by the relevant Government Authority to the Contractor.
- (d) This Contract has been signed and comes into force.

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.

Conditions Precedent shall be fulfilled within a period of sixty (60) days after the signing of the Contract.

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8.2 Time for Completion

Sub-Clause 8.2 is amended by adding a last paragraph as follows:

The total Construction Period for the Project shall be **36 months**. In the event that the scope of the Project is varied according to the Employer's instruction, the Construction Period shall be adjusted accordingly.

If locally purchased materials cannot meet the required construction usage and thus lead to delay in the construction of the Project, the Construction period shall be adjusted accordingly.

Clause 13 Variations and Adjustments

13.1 Right to Vary

Sub-Clause 13.1 is amended to introduce a last paragraph as follows:

Variations shall be limited to matters, which do not change the Contract Price. If the works described in the engineering drawings which shall be provided by the Employer are not specified in the Bill of Quantities of this Contract, the Employer shall agree to use the new quotation provided by the Contractor for this kind of work.

Clause 14 Contract Price and Payment

14.1 The Contract Price

Sub-Clause 14.1 is amended to read as follows:

The Contract Price is **One Hundred Million United States Dollars Only (US\$100,000,000.00)** excluding taxes and duties. The Contract Price shall remain fixed for the Construction Period.

14.2 Advance Payment

Sub-Clause 14.2 is deleted and shall not be applicable

14.3 *Application for Interim Payments Certificate*

Sub-Clause 14.3 is deleted and shall not be applicable

14.4 *Schedule of Payments*

Sub-Clause 14.4 is deleted and shall not be applicable

14.5 *Plant and Materials intended for the Works*

Sub-Clause 14.5 is deleted and shall not be applicable

14.6 *Interim Payment Certificate*

Sub-Clause 14.6 is deleted and shall not be applicable

14.7 *Payments*

The payments shall be made in accordance with the Financing Agreement signed between the Contractor and the Ministry of Finance of the Republic of Ghana.

The Contractor's designated bank account is as follows:

Account Name: POLY CHANGDA OVERSEAS ENGINEERING CO., LTD.

Bank Name: Bank of China Guangzhou Tianhe Sub-branch

Account No.: 627557759607

SWIFTCODE: BKCHCNBJ400

Address: No. 942Guangzhou AV (m) Guangzhou, Tianhe District

All payments shall be paid by Telegraphic Transfer (T/T)

All payments under this Contract shall be made in US Dollars, or another currency with equivalent value that shall be accepted and consented to by the Contractor in a written form before the Employer remits the due payment.

14.8 *Delayed Payments*

Sub-Clause 14.8 is deleted and shall not be applicable

14.9 *Payment of Retention Money*

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Sub-Clause 14.9 is deleted and shall not be applicable

14.10 Statement at Completion

Sub-Clause 14.10 is deleted and shall not be applicable

~~**14.11 Application for Final Payment**~~

Sub-Clause 14.11 is deleted and shall not be applicable

14.13 Final Payment

Sub-Clause 14.13 is deleted and shall not be applicable

Clause 20 Claims, Disputes and Arbitration

Clause 20 is amended in its entirety as follows:

20.1 Dispute Resolution

- i. If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, the matter shall be settled amicably by either Mediation or Negotiation.
- ii. Without prejudice to the other provisions of Clause 20, the Parties to the dispute may seek to resolve any dispute by negotiations among senior executives (being individuals who have authority to settle the dispute for the Party) (each, a "Senior Executive "). Within thirty (30) days after the date of the receipt by each Party to the dispute of the Notice of Dispute, which notice may request negotiations among Senior Executives, the Senior Executives representing the parties to the dispute shall meet at a mutually acceptable time and place to exchange relevant information in an attempt to resolve the dispute.
- iii. If a Senior Executive intends to be accompanied at the meeting by an Attorney, each other Party's Senior Executive shall be given notice of such intention at least three (3) Business Days in advance and may also be accompanied at the meeting by an attorney.

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- iv. A Party who desires to submit a dispute for resolution shall commence the dispute resolution process by providing a notice of dispute to the other Party (a "Notice of Dispute"). The Notice of Dispute shall contain a brief statement of the nature of the Dispute and the relief requested.
- v. Except to the extent a dispute is resolved either by: (i) Expert determination as provided in Clause 20.2; or (ii) under Clause 20.3; the parties to the dispute agree that any dispute shall be referred to and finally settled by arbitration in accordance with the Rules of Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) (the "Rules") in force at the commencement of the arbitration (pursuant to the Rules) and as modified by this Clause 20.2, which Rules shall be deemed incorporated into this clause. Unless the parties to the Dispute agree to a sole arbitrator within 30 days after the commencement of arbitration, the arbitration shall be conducted by three (3) arbitrators. If the parties to the Dispute choose three (3) arbitrators, two (2) arbitrators (one nominated by the claimant and one nominated by the respondent) shall be selected within forty-five (45) days of the commencement of arbitration and the third, who shall act as President, shall be nominated by the two party-nominated arbitrators, provided that if the third arbitrator has not been nominated within thirty (30) days of the nomination of the second party-nominated arbitrator, such third arbitrator shall be appointed by UNCITRAL Court, provided that where all the Parties are parties to the Dispute, each Party shall nominate one arbitrator and the arbitrators shall elect of their number, one as President. The seat of arbitration shall be London and the language of arbitration shall be English. Each Party to the Arbitration shall bear their own costs. The arbitral award shall be final and binding on the Parties.
- vi. The arbitral award shall be made and payable in United State dollars, free of any tax or other deduction.

20.2 Expert Determination.

- i. If any dispute arises under this Contract between the Employer and the Contractor with respect to compliance with technical specification, whether a particular quality of standard has been reached or the value of an item, a relevant Party may refer the matter to an Expert for determination. Where a Party wishes to refer a dispute to Expert determination, it shall give notice to the other relevant Party to the dispute of the request for Expert determination (the "Request for Expert Determination").
- ii. Where a Request for Expert Determination is made by a Party, the relevant Parties hereby agree that such determination shall be conducted expeditiously by an Expert. The Expert is not an

arbitrator of the dispute and shall be deemed to be acting in an arbitral capacity.

- iii. The United Nations Commission on International Trade Law (UNCITRAL) shall administer the Expert Determination through the UNCITRAL Rules for Expertise ("Rules for Expertise") as in force at the commencement of the Expert Determination and these Rules shall be deemed incorporated into this clause.
- iv. If the Parties to the dispute are unable to agree upon an Expert within ten (10) days after receipt of the Request for Expert Determination, then, upon the request by any of the Parties to the dispute, The United Nations Commission on International Trade Law shall appoint such Expert.
- v. Before issuing a final decision, the Expert shall issue a draft report and allow the Parties to the dispute to comment on it. The Expert shall try to resolve the dispute within thirty (30) days (but not later than sixty (60) days) after his or her appointment, taking into account the circumstances requiring an expeditious resolution of the matter in dispute. The Expert's decision shall be final and binding on the Parties to the dispute.

20.3 Confidentiality

All negotiations, mediation, arbitration, and Expert determinations relating to a dispute (including a settlement resulting from negotiation or mediation, an arbitral award, documents exchanged or produced during a mediation or arbitration proceedings, and memorials, briefs or other documents prepared for the arbitration) are confidential and may not be disclosed by the Parties to the dispute, their employees, officers, directors, counsel, consultants, and Expert witnesses, except to the extent necessary to enforce any settlement Contract, arbitration award, or Expert determination, to enforce other rights of a Party, as required by Law; provided, that, that breach of this confidentiality provision shall not void any settlement, Expert determination or award.

20.4 Notice

Any papers, notices, or process necessary or proper for an arbitration under this Contract, or any court action in connection with an arbitration or an award, maybe served on a Party by registered or certified mail, courier, facsimile transmission or any other means of communication that provides a record of the receipt thereof (but not by email) provided that a reasonable opportunity to be heard with regard to the court action is or has been granted to the Party.

20.5 Performance to Continue During Dispute

Performance of this Contract shall continue during arbitration proceedings or any other dispute

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resolution mechanism pursuant to Clause 20. No payment due or payable by the Employer or the Contractor shall be withheld on account of a pending reference to arbitration or other dispute resolution mechanism except to the extent that such amount of the payment is the subject of such dispute. All undisputed amounts must continue to be paid in the manner specified.

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