

ACE Medical Center Zamboanga

Don Alfaro St., Tetuan, Zamboanga City



CONTRACT AGREEMENT

 **STONERICH**
METRO STONERICH CORPORATION

RECEIVED BY:

JAMES S. B. XM
02 OCT. 2018

**AMENDMENT 2018-001 TO CONSTRUCTION AGREEMENT
ANNEX M**

KNOW ALL MEN BY THESE PRESENTS:

This Construction Agreement ("Agreement") is executed and entered into this 26 September 2018 at Zamboanga City, by and between:

Allied Care Experts Medical Center – Zamboanga, Inc., a corporation duly-organized and existing under and by the laws of the Philippines, with address at Don Alfaro Street, Tetuan, Zamboanga City, duly represented herein by its ~~President Dr. Fernando P. Carlos~~, by its President, **Dr. James Robertson C. Pichel** hereinafter, the "OWNER");

-and-

Metro Stonerich Corporation, a corporation duly-organized and existing under and by the laws of the Philippines, with address at Timog Avenue, South Triangle, Quezon City, Philippines, duly represented herein by its President, **Engr. Ibrahim M. Nuño** (hereinafter, the "CONTRACTOR").

WITNESSETH: That -

WHEREAS, the OWNER is constructing, developing and establishing ~~an Eight Storey + Basement Hospital with an additional one (1) storey with steel roofing~~ project known as the Allied Care Experts Medical Center-Zamboanga located at Don Alfaro St, Tetuan, Zamboanga City;

WHEREAS, the CONTRACTOR is engaged in the business of general development and construction, as well as in other allied businesses, including, but not limited to technical civil, ~~structural~~ works and Architectural construction;

WHEREAS, the CONTRACTOR has offered to render its services to the OWNER and the OWNER has agreed to engage the services of the CONTRACTOR for the construction of the HOSPITAL in accordance with the plans and specifications of the OWNER (hereafter, the "Project");

WHEREAS, the CONTRACTOR warrants that it is a bona fide independent contractor maintaining an independent business possessed with adequate capital and construction facilities and equipment to undertake the job contracted for;

NOW THEREFORE, for and in consideration of the foregoing premises, and the mutual covenants, stipulations and agreements herein contained, and the payment by the OWNER of a sum of money in the manner hereinafter specified, the OWNER and the CONTRACTOR have agreed, as they do hereby agree, and contract as follows:

**Article I
CONTRACT DOCUMENTS**

1.01 The documents hereunder listed and referred to as CONTRACT DOCUMENTS, each duly-authenticated by the parties or their duly-authorized representatives, are hereby embodied and specifically made integral parts hereof by way of Annexes, and shall likewise govern and control in full force and effect the rights and obligations of the parties hereto, as if the contents of said documents were fully set forth herein, thus:



a. Complete Plans & Specifications	-	Annex "A"
b. List of Guaranteed Maximum Quantity of OWNER-Supplied Materials (Contract Bills)	-	Annex "B"
c. Project Gantt Chart	-	Annex "C"
d. Notice of Award and Attached Cost	-	Annex "D"
e. Manpower Schedule & Construction Schedule	-	Annex "E"
f. Project Work Breakdown Structure with weighted Percentage (Contract Bills)	-	Annex "F"
g. List of Equipment & Equipment Utilization Schedule	-	Annex "G"
h. General Conditions (<u>Original Contract Provisions shall prevail over Annex H if there are redundancies</u>)	-	Annex "H"
i. Revised Schedule	-	Annex "I"
j. Revised Project Work Breakdown Structure with weighted Percentage (Contract Bills)	-	Annex "J"
k. Revised List of Equipment & Equipment Utilization Schedule)	-	Annex "K"
l. Resumption of Notice of Award and Attached Cost-	-	Annex "L"
m. Amended Original Contract (2008-001)	-	Annex "M"

1.02 All CONTRACT DOCUMENTS including all additional instructions and copies thereof, furnished to the CONTRACTOR shall remain the property of the OWNER. They are not to be used by the CONTRACTOR on any other work, and, with the exception of the signed Agreement inclusive of CONTRACT DOCUMENTS, they shall be returned to the OWNER upon completion of the Project before Final Payment to the CONTRACTOR is made. In the event that the CONTRACTOR fails to return the CONTRACT DOCUMENTS, the CONTRACTOR undertakes not to use the same for any other project or construction works.

1.03 The CONTRACTOR shall make no changes or alterations in the contents of this Agreement as well as those of the CONTRACT DOCUMENTS without the prior written approval of the OWNER or the latter's duly-authorized representative.

1.04 It is expressly agreed and understood that in case of conflict between or among the provisions of the various CONTRACT DOCUMENTS, an equitable interpretation thereof shall be adopted by the parties, considering all circumstances and the general principles of the construction trade, to the end that the intention of this Agreement be carried out in a fair and equitable manner.

However, in case the conflict cannot be resolved by the foregoing, the following rules shall be observed:

- a. The Detailed Drawings shall prevail over the General Drawings;
- b. Words and figures shall prevail over the drawings;
- c. Words shall prevail over figures in the CONTRACT DOCUMENTS; and
- d. Written dimensions shall prevail over measured dimensions.

If the inconsistency is between this Agreement and the provisions of the CONTRACT DOCUMENTS, the latter shall be controlling, except in case which involve contract documents of which the OWNER has no participation in the preparation.

1.05 The OWNER shall be fully responsible for adequacy of the design and for sufficiency of the Drawings and Specifications. The complete requirements of the Work shall be set forth in Drawings and Specifications to be supplied by the Owner. However, if there be variance between the Drawings and Specifications, the provisions of the Specifications shall control.

In the event that any part or whole of the Works, when agreed upon, are designed by the CONTRACTOR, then all responsibilities assigned to the OWNER for the said design shall automatically be assigned to the CONTRACTOR as his responsibility.

1.06 The CONTRACTOR shall verify all Contract Drawings, Specifications and Contract Documents before any work could be commenced. The CONTRACTOR shall report to the OWNER any discrepancy in the figures in the drawings immediately upon its discovery. The OWNER shall make the necessary correction. The CONTRACTOR shall not be entitled to an adjustment of the Contract Price and Completion Time should its work be ordered re-done if such work was made without notifying the




OWNER of the discovery of the discrepancy and before the OWNER makes the necessary correction.

Failure of the CONTRACTOR to immediately report any discrepancy in the Drawings and Specifications shall be deemed that the CONTRACTOR had fully examined, reviewed and accepted the Drawings and Specifications as accurate and complete.

1.07 If the CONTRACTOR is a specialty contractor or is engaged by the OWNER as a specialty contractor, the OWNER's approval of shop drawings will be general. It shall not relieve the CONTRACTOR of responsibility for accuracy of such shop drawings, nor for proper fitting and construction of work, nor for furnishing of materials or work required by the Agreement and not indicated on the shop drawings. The OWNER's approval of such drawings or schedule shall not relieve the specialty contractor from responsibility for deviations from the Drawings or Specifications, unless the CONTRACTOR has, in writing, called the OWNER's attention to such deviations at the time of submission and secured the OWNER's written approval.

Unless specified to the contrary or unless the CONTRACTOR's submission is deficient, shop drawing approval by the OWNER shall be made within seven (7) working days of submission by the CONTRACTOR.

1.08 Contract Bills – The Contract Bills shall have been prepared in accordance with Current Standard Method of Measurement of Building Works for the Philippines and in accordance with preambles set out in the Contract Bills.

- a) If in the Contract Bills there is any departure from the method of preparation or any error or omission in either description or quantity within the Contract Bills, then such departure or error or omission shall not vitiate this Agreement or release the CONTRACTOR from any obligations, duties, responsibilities or liabilities under this Agreement. The CONTRACTOR is deemed to have included for all works shown on the drawings and described in the specifications, regardless of whether specific items are contained within the Bill of Quantities. The CONTRACTOR takes full responsibilities for the quantities contained in the Contract Bills and will not be entitled to re-measurement for any items as a result of errors or omissions in the quantities.
- b) All quantities marked provisional or approximate will be subject to re-measurement and the final quantities at the rate inserted in the Contract Bills and as shown in the CONTRACT, Drawings and as described in the Contract Specifications.
- c) The quality and quantity of the Project included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills and as shown in the Contract Drawings and as described in the Specification.
- d) Where an item of work has been included in the Contract Bills but neither the Contract Specification nor the Contract Drawings indicate that such an item is required or shown in the Contract Drawings but indicated as to be done by others, it shall be deemed that due allowance for the full value of that item of work as described in the Contract Bills has been included in the Contract Sum and that it is Work which is required to be executed by the Contractor in fulfilment of his obligations under the Agreement.
- e) Where an item of work is indicated in the Contract Specifications and/or the Contract Drawings but has not been included or referred to in any way in the Contract Bills, it shall be deemed both that due allowance for the full value of that item of work as indicated in the Contract Specifications and/or the Contract Drawings has been included in the Contract Sum and that it is work which is required to be executed by the Contractor in fulfilment of his obligations under the Agreement unless it is specifically excluded.
- f) The OWNER shall supply all the materials in accordance and pursuant to the "List of Guaranteed Maximum Quantity for OWNER-Supplied Materials" attached hereto as Annex "B", which shall be delivered by the OWNER in such manner and time so as not to cause delay to the Project. Any other construction materials over and beyond the said List shall be supplied by the CONTRACTOR for its own exclusive account.
- g) Where an item of work included in the Contract Bill is described therein in more detail and/or specified to a higher standard/value than that which is indicated in the Contract



Specifications and/or Contract Drawings, it shall be deemed both that the full value of that item of work as described in the Contract Sum and that is work which is required to be executed by the Contractor in fulfilment of his obligations under the Agreement.

- h) Where the Contract Specifications and/or Contract Drawings indicate a higher standard/value than that which is indicated in the Contract Bills, the highest standard/value indicated for that item of work shall be deemed both to have been included in the Contract Sum and to be work which is required to be executed by the Contractor in fulfilment of his obligations under the Agreement.
- i) Notwithstanding the foregoing, in the event of any of the occurrences described under d), e), f) and g) arise, the same shall be brought by the CONTRACTOR to the attention of the OWNER or before any work so affected is put in hand; any such occurrence shall not in any way vitiate or invalidate the Agreement but shall be treated as an ambiguity or discrepancy and shall be explained and adjusted by the OWNER who may issue any direction that may in his opinion be necessary in respect of such ambiguity or discrepancy.

Article II **CONTRACTOR'S SCOPE OF WORK**

2.01 The CONTRACTOR, in consideration of the payment to be made by the OWNER to the CONTRACTOR of the sum of money hereinafter specified, undertakes to faithfully and continuously execute to complete all the Civil-Structural Work as may be required for and in the completion of the all the Civil-Structural and **Architectural** requirements of the Project in accordance with the plans, technical specifications, completion schedule and related Contract Documents and shall furnish all the necessary labor, supervision, tools, supplies, equipment materials and plant.

2.02 The CONTRACTOR recognizes the position of trust and confidence reposed upon it by the OWNER, and shall furnish its best skill and judgment in rendering efficient business administration and superintendence over the work herein set forth, and shall execute this Agreement in the soundest, most expeditious and economical manner consistent with the interests of the OWNER. However, it is agreed that the CONTRACTOR shall undertake the whole Project under the general supervision of a **Project Manager and/or Construction Manager** as may be designated by the OWNER.

2.03 The CONTRACTOR shall use such methods and appliances for the performance of the construction works as will ensure the completion of the Project of the required quality within the Completion Time. If, at any time before the commencement or during the progress of the construction works, such methods or appliances appear to the OWNER to be inefficient or inappropriate for producing the quality of work required, or insuring the required rate of progress, the OWNER may order the CONTRACTOR to increase the rate of their efficiency, or to improve their system of operation. The CONTRACTOR must comply with such order. Failure, however, of the OWNER to demand such increase of efficiency or improvement of the character or methods of work or of the appliances shall not relieve the CONTRACTOR from its obligation to turn out such quality of work and rate of progress as are called for in the CONTRACT.

2.04 Work that fails to comply with the Agreement is defective. Defective work shall be condemned by the OWNER upon discovery, and when such work has been condemned it shall be immediately removed by the CONTRACTOR and replaced in accordance with the Drawings and Specifications.

Article III **CONTRACT AMOUNT**

3.01 **Contract Amount** – For and in consideration of the revised sum of **PESOS: TWO HUNDRED SEVEN MILLION SEVEN HUNDRED SIXTY SEVEN THOUSAND (PHP 207,767,700.00) ~~ONE HUNDRED NINETY FIVE MILLION (PHP 195,000,000.00)~~** Philippine Currency, to be paid by the OWNER in the manner and under the conditions set forth in the following paragraphs, the CONTRACTOR hereby obligates and binds itself to fully, continuously, satisfactorily and faithfully execute the undertaking specified in Paragraph 2.01. The amount herein above specified shall constitute as the full compensation for everything furnished and done by the CONTRACTOR under this Agreement, including all work required but not specifically mentioned; and also for all losses and/or damages suffered by the CONTRACTOR arising out of the work aforesaid from the action of the elements or from any obstruction or difficulty encountered in the



prosecution of this Agreement, and for all expenses incurred by the CONTRACTOR as a consequence of the suspension or discontinuance of this Agreement due to its fault, act, omission or negligence. The Contract Amount herein above specified is subject to one (1%) percent withholding tax, as well as such other taxes and fees that the CONTRACTOR is legally bound to pay. **The remaining Labor contract amount is subject to price escalation using a construction standard formula.**

3.02 Manner and Conditions of Payment -

- a) An amount equivalent PESOS: ONE MILLION (PHP 1,000,000.00) shall be given to the CONTRACTOR upon the execution of the project hereof **and TEN MILLION (PHP10,000,000) for the resumption of the project** by way of mobilization fund.
- b) The remaining BALANCE of the Contract Amount shall be paid by the OWNER to the CONTRACTOR in pro-rated Monthly progress billing in the manner and conditions for payment as listed hereunder:

1] Progress payment(s) to the CONTRACTOR shall be made after completion of a duly-accomplished "Accomplishment Billing Form/s", and shall be released in accordance with the following procedure:

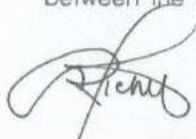
- a. The CONTRACTOR shall submit to the OWNER the progress bill(s) based upon Project Evaluation Form with weighted Percentage with supporting documents and pictures. After receiving the progress bill(s), the OWNER shall conduct within seven (7) days an inspection of the PROJECT or the part thereof Upon inspection, A Certificate of Accomplishment of Work shall be issued by the OWNER or of his authorized representative ~~and certified by an architect~~ hired by the OWNER.
- b. The CONTRACTOR shall then submit to the DEVELOPER OWNER a request for payment with corresponding Certificate of Accomplishment. Within FIFTEEN (15) days after a receipt of request for payment and Certificate of Accomplishment from the CONTRACTOR, the OWNER shall pay the amount as certified. The 15-day period shall be exclusive of the period required in evaluating and certifying the CONTRACTOR's accomplishment.

2] It is understood that only those items in the progress bill(s) representing duly-accomplished work upon inspection by the OWNER ~~or his representative~~, shall be paid. Any billing(s) covering any item of work done in violation of this CONTRACT and/or the CONTRACT DOCUMENTS, may be included in the next progress bill, provided repairs and/or changes have been made to conform with the Plans and Specifications (Annex "A") as well as the other terms of this CONTRACT.

3] A work is considered duly-accomplished if it is done in accordance with the Complete Plans and Specifications (Annex "A") as well as all the other terms of this CONTRACT, including the Annexes hereof.

3.03 Interim Certificates -

- a) The CONTRACTOR shall deliver to the OWNER not later than seven (7) days prior to the end of each calendar month, a statement (hereinafter referred to as the "Contractor's Statement") showing:
 - i. The estimated value of the work completed in accordance with the Agreement, together with the sums payable in respect of day works (if any), nominated suppliers, nominated sub-contractors and with adjustments for variations listed separately;
 - ii. All further estimated sum which the CONTRACTOR considers to be due under the Agreement.
- b) The amount stated as due in an Interim Certificates shall, subject to any agreement between the parties as to stage payments, be the estimated value of the work



properly executed less any amount which may be retained by the OWNER within the provisions of the Contract Documents and less any instalments previously paid by the OWNER to the CONTRACTOR.

- c) Following a review of the CONTRACTOR's Statement, the OWNER or his representative shall issue the Interim Certificate and the CONTRACTOR shall be entitled to payment for the period covered by the statement, subject to any bonafide set-off or counter claim by the OWNER and the submission by the CONTRACTOR of the progressive As-built Records/Drawings and Progress Photographs.
- d) The issuance of an Interim Certificate shall not be held as acceptance of the quantity, quality or standard of work included therein. Any percentages of completion in respect of work items stated in Interim Certificates and related supporting documents are for the sole purpose of on-account interim payments to the CONTRACTOR. The aforesaid percentages shall not be taken as conclusive evidence of the quantum of work completed as at the date of valuation in any litigation or arbitration proceedings.
- e) For the issuance of the Interim Certificates, the OWNER may require the CONTRACTOR to submit a monthly affidavit confirming all materials, plant, labour, and sub-contractor have been paid and that no lien exists on the Project.

3.03 Retention Money -

- a) An amount equivalent to ten (10%) percent of the Contract Amount shall be withheld by the OWNER as "Retention Money", the same to be done every progress payment.
- b) As soon as the CONTRACTOR finishes the Project, it shall give the OWNER a written Notice of Completion ("NC").
- c) If the whole PROJECT is duly-accomplished within the completion time stated in Article V Paragraph 5.01 hereof and any extension granted, the OWNER shall give the CONTRACTOR a written Notice of Confirmation of Completion ("NCC"). Otherwise, if repairs and/or changes have to be made on the Project, the CONTRACTOR is obliged to undertake the same to conform with the Plans and Specifications and other requirements of this Agreement, within the original completion time and any extension granted above-mentioned.
- d) If at the end of the completion time and extension granted, if any, the CONTRACTOR has duly-accomplished the Project, the OWNER shall give the CONTRACTOR a written Notice Confirmation of Completion and Acceptance (NCCA) . ~~Otherwise, the OWNER may take over the Project and in which case, the Retention Money shall be forfeited automatically in favor of the OWNER.~~
- e) If the whole Project remains free from any kind of defect ~~within one hundred eighty days (180) from the date of issuance of NGG,~~ the OWNER shall give the CONTRACTOR a written Confirmation of Completion and Acceptance ("NCCA"), and shall release the retention money or any balance thereof, within five (5) days after receipt of a written request for release of retention money from the CONTRACTOR and after the CONTRACTOR has furnished the OWNER with a Guarantee Bond as provided for under Article IV Paragraph 4.05 hereof.
- f) ~~Should defects be found during this 180-day period, the OWNER shall notify the CONTRACTOR to undertake the required repairs and/or changes within the 180-day period.~~

~~If the required repairs and/or changes are fully and satisfactorily done, as determined by the OWNER, within the 180-day period, the OWNER shall issue the written NA, and shall release the Retention Money or any balance thereof within five (5) days from receipt of a written request for release of retention money from the CONTRACTOR, otherwise, the Retention Money shall be automatically forfeited in favor of the OWNER.~~



- g) ~~If defects are found after the 180-day period stated earlier, but prior to the receipt by the OWNER of the CONTRACTOR's written request for release of the retention money, all expenses for the repairs of the defects shall be deducted from said retention money or the balance thereof, and/or any receivable amount the CONTRACTOR has with the OWNER.~~
- h) After the structural topping off is achieved, the Contractor may submit a request for payment equivalent to 50% of the 10% retention to be released by the OWNER upon successful completion of structural package.

3.04 Final and full payment of the consideration earlier mentioned less the retention money, shall be made only upon the fulfillment by the CONTRACTOR of all the terms and conditions set forth in this CONTRACT and after the issuance by the OWNER of the NCC, subject to par. 3.05 hereof. However, it is agreed that no payment or payments made under this CONTRACT, except that made after the issuance of the written NA, shall be understood as performance of this CONTRACT, neither wholly or in part, and no payment shall be construed to be an acceptance of defective or improper work.

Moreover, the OWNER may deduct from any payment due the CONTRACTOR the following:

- a. The total cost of defective work' not remedied;
- b. The amount of substantiated and unpaid claims by sub-contractors employed in and suppliers of materials and labor for the Project unjustifiably withheld by the Contractor; and
- c. The amount which has accrued as liquidated damages.

3.05 No payment shall be made for materials or items not incorporated in the work, except where such immediate acquisition is made necessary due to shortages or import or transportation difficulties, in which case, payment shall be made conditioned upon the submission by the CONTRACTOR of bills of sale or upon compliance with such other procedures as will establish the OWNER's title to such material or item or otherwise adequately protect the OWNER's interest.

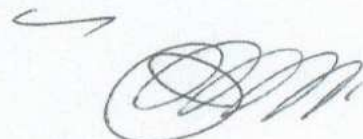
3.06 No payment shall be made in excess of ~~sixty five percent (65%)~~ ninety percent (90%) of the Contract Amount, unless a statement sworn to before any officer duly authorized to administer oaths is submitted by the CONTRACTOR to the effect that all bills for labor, other than current wages, all bills for materials, equipment, premiums and any monetary obligations incurred by the CONTRACTOR in connection with the Project, including all taxes due from the CONTRACTOR in connection with this Agreement, have been duly paid by the CONTRACTOR and its Sub-contractor, if any, excepting only such bills as may be enumerated in such sworn statement. The CONTRACTOR shall render the OWNER free and harmless from any claims and payment of such bills, and shall indemnify the OWNER the cost of defending himself against such claims.

3.07 In case the OWNER has reasonable grounds of belief that the CONTRACTOR has not remitted to the appropriate government agency the employer's and employee's contributions to the Social Security System or to Medicare, or the withholding tax on the employees' wages, the OWNER may require evidence of remittance of such contributions or withholding tax in addition to the sworn statement mentioned above, and withholding release of the amount sufficient to cover such payments until the evidence required by the OWNER is provided by the CONTRACTOR.

3.08 The acceptance by the CONTRACTOR of final payment shall constitute a waiver of all his claims against the OWNER, except the following: (a) a claim covered by a prior notice to the OWNER reserved by the CONTRACTOR to be filed in accordance with the Agreement; (b) a claim pending before and unresolved by the OWNER at the time the request for final payment is made; (c) a dispute referred to arbitration in accordance with Construction Industry Arbitration Boards rules, regulations, policies and procedures; and (d) a claim which the OWNER acknowledges with the payment not to be covered by it.

Article IV INSURANCE AND BONDS

4.01 Liability Insurance (Contractor's All-risk Insurance) - The Contractor OWNER shall secure and maintain insurance coverage from an insurance company as will protect itself, its contractors, and the OWNER from claims for bodily injury, death or property damage which may arise from work under the Agreement.



4.02 Accident Insurance for Workers - The CONTRACTOR shall, in addition to compulsory coverage of workers under the workmen's compensation law, obtain insurance coverage for accidental death or injury of its officers, employees and laborers without regard to their tenure of employment as permanent or regular workers, project workers or casual employees performing work at the project site in an amount of not less than P100,000.00 per officer, employee or laborer. The premiums to be paid on the insurance policy shall be paid by the CONTRACTOR and without cost to those covered by the policy.

4.03 Fire Insurance - In addition to such Fire Insurance as the CONTRACTOR elects to carry for its work, it shall secure and maintain the policies upon such structures and materials and in such amounts as shall be designated in the joint names of the CONTRACTOR and the OWNER as their respective interest may appear. These policies shall be secured from a company which is satisfactory to the OWNER and delivered to the OWNER.

4.04 Performance Bond -

- a) Upon signing of this Contract, the CONTRACTOR shall post a Performance and Payment Bond in favor of the OWNER equivalent to ~~THIRTY percent (30%) TWENTY percent (20%)~~ of the remaining Contract Amount of Pesos ONE HUNDRED EIGHTY SIX MILLION TWO HUNDRED THIRTY ONE FIVE HUNDRED SIXTY SEVEN (PHP186,231,567) ~~equivalent to Pesos THIRTY FIVE MILLION (PHP 35,000,000.00)~~ equivalent to Pesos **FIFTY FIVE MILLION EIGHT HUNDRED SIXTY NINE THOUSAND FOUR HUNDRED SEVENTY (PHP55,869,470.00)** THIRTY FIVE MILLION (PHP 35,000,000.00), in the form of cash, manager's check, cashier's check, or surety bond issued by a reputable bonding institution acceptable to the OWNER, to guarantee the continuous, full, satisfactory and faithful performance of all the CONTRACTOR's obligations and undertakings under this CONTRACT and the satisfaction of all obligations for materials and equipment used and labor employed in the work.
- c) The Performance Bond shall, in addition to the retention money, also answer for the liquidated damages set forth elsewhere in this Agreement, the unpaid cost of labor and/or any liability that may be suffered by the OWNER due to the act or omission of the CONTRACTOR in relation to the execution/implementation of this Agreement, including but not limited to any liability arising from the violation by the CONTRACTOR of the new Labor Code of the Philippines and other labor and social legislations. Provided, that, in the event of termination or rescission of this Agreement, or takeover of the Project by the OWNER by reason of the CONTRACTOR's violation of this Agreement, the Performance and Payment Bond shall be automatically forfeited in favor of, and become immediately payable to and collectible by the OWNER.
- d) The Performance Bond shall be effective upon signing of this Agreement by both parties hereto and shall remain effective two (2) months from the issuance of NCCA by the OWNER to the CONTRACTOR

4.05 Guarantee Bond

- a) Prior to the release of the RETENTION, the CONTRACTOR shall post a GUARANTEE BOND in favor of the OWNER equivalent ~~TEN (10) % of the total contract amount of the RETENTION~~ issued by a reputable bonding institution acceptable to the OWNER, to guarantee the amount received as RETENTION.
- b) Should the Contractor fail to initiate repair within the period of 30 days from receipt of a repair request, the Guarantee bond shall be automatically forfeited in favor of, and become immediately payable to and collectible by the OWNER.
- e) The Guarantee Bond shall be effective for the period of 12 months from date of issuance.

Article V
CONTRACT PERIOD

5.01 The CONTRACTOR shall perform and complete all items of work required in this CONTRACT within ~~the adjusted contract period of 14 MONTHS FROM THE ISSUANCE OF THE RESUMPTION NTP - FIVE HUNDRED FORTY DAYS (540) CALENDAR DAYS~~ (hereinafter referred to as, "CONTRACT PERIOD")



reckoned from the date provided in the **RESUMPTION of Notice to Commence Work (ANNEX L) /Notice to Proceed (Annex "D")**.

For projects/**other additional scope of work** involving several phases of work, commencement date shall be reckoned from the time the CONTRACTOR receives the Notice to Commence Work/Notice to Proceed for each phase as shall be necessary to enable the CONTRACTOR to execute the contract works in accordance with the schedule stipulated in the Agreement. **Additional extension period shall be agreed during the evaluation of Change Orders.**

5.02 The CONTRACTOR shall be entitled to an equitable adjustment of the Contract Period where the CONTRACTOR is obstructed or delayed in the prosecution or completion of the Project by -

- (a) the act, neglect, delay or fault of the OWNER, or any other contractor employed by the OWNER on the Project;
- (b) third-party strikes or lockouts or strikes by employees other than the CONTRACTOR's employees or a lockout by an employer other than the CONTRACTOR;
- (c) an act of God or force majeure;
- (d) Typhoon signal no. 3 or no.4 is hoisted in the area where the Property is located by the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) and a State of Calamity is declared
- (e) deterioration of peace and order conditions;
- (f) changes ordered or authorized by the OWNER or authorized under the Agreement; and
- (g) delay authorized by the OWNER pending arbitration of an unresolved dispute between the OWNER and the CONTRACTOR.
- (h) **delays in delivery of OSM items**
- (i) **delays due to time required by Designers/Consultants to approve shop drawings/RFAs and RFIs**

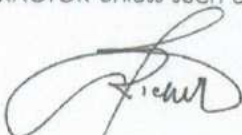
The CONTRACTOR shall be entitled to substantiated prolongation costs only in respect of Items [a],[c],[d],[f],[g], [h] and [i] when a Change Order by the OWNER caused the works to be executed in a period of inclement weather conditions as stated in Item [d] above.

5.03 It is expressly agreed that no claim for extension of the CONTRACT PERIOD provided herein can be entertained unless the CONTRACTOR has, prior to the expiration of the CONTRACT PERIOD and within three (3) days after the circumstances leading to such claim have arisen, delivered to the OWNER, a written notice in order that the OWNER could have the cause/reason for the request for extension investigated by the OWNER. On the basis of the surrounding facts and circumstances, the OWNER may either grant or deny the request for extension. The OWNER shall assess the length of the delay beyond the date or time aforesaid and in writing give a fair and reasonable extension of time for the completion of the construction works to which the CONTRACTOR's notice relates. The decision of the OWNER on this matter shall be final and binding upon the CONTRACTOR after assessment and mutual agreement between OWNER and Contractor.

5.04 Notwithstanding the foregoing, no extension of the period of completion shall be granted in any of the following instances: (a) ordinary unfavorable weather conditions; (b) non-availability of equipment or labor to be furnished by the CONTRACTOR; (c) labor problems or dispute; or (d) when the reason given for the request for the extension was considered in the determination of the original contract time; (e) work item delayed has no effect on the critical path as determined in the original contract time.

Article VI **EQUIPMENT AND MATERIALS**

6.01 The construction equipment and materials for the Project shall be supplied by the CONTRACTOR unless such equipment or materials is expressly agreed upon by the OWNER as OWNER



supplied. All expenses for losses, shortage, damage, deterioration, or defect of these construction materials due to the fault, negligence, and/or omission of the CONTRACTOR shall be for the latter's exclusive account. These shall include all OWNER supplied materials properly delivered to and transferred to the Contractor's responsibility and control.

Unless otherwise specified, all materials shall be new and their quality shall be of the best grade of their respective kinds considering the nature of the Project and requirements of this Agreement.

6.02 All materials and equipment must conform to all laws, ordinances and other governmental rules and regulations applicable to the Project and to its execution (hereafter, the "Laws") now or which may be in force and applicable during the period of construction. The CONTRACTOR shall bear all damages by reason of any delay in the Project arising from its failure to comply with this provision. Where any revision or amendment to such Laws is made during the construction period which affects the cost or time of completion of the Project, a constructive change in the Project shall be recognized and a corresponding Contract Amount and Contract Period adjustment shall be made.

6.03 Any quantity of construction materials over and above those stated in the Bill of Materials (Annex "B") needed or used by the CONTRACTOR in the PROJECT shall be for the CONTRACTOR's sole account. In which case, the CONTRACTOR, prior to the actual use or installation of any of these additional construction materials, shall secure the approval of the OWNER. The same requirement of prior approval from the OWNER shall apply in cases where replacement for lost or defective or damaged materials is the responsibility of the CONTRACTOR.

6.04 Prime Cost Sums

- a) ~~All Prime Cost shall be reserved for execution or supply by a person to be Nominated or appointed by the OWNER. The CONTRACTOR shall not without the written consent of the OWNER order work under such items identified as Prime Cost Sums. The OWNER reserves the right to order or pay for all or any part of such items direct, and to deduct these payments from the Contract Price less an amount in respect of CONTRACTOR's profit at the rate included in the Contract Bills adjusted pro-rata on the amount paid direct by the OWNER.~~
- b) ~~The sum to be paid by the OWNER in respect of any Prime Cost shall be the sum (inclusive of charges for packing, carriage and delivery to the Project Site) properly due to the Nominated Sub-Contractor or Supplier. Any resulting increase or decrease in the Prime Cost sum shall be added to or deducted from the Contract Amount. The CONTRACTOR shall provide the Quantity Surveyor with such quotations, invoices and bills (properly receipted) as may be necessary to show details of the actual sums paid by the CONTRACTOR.~~
- c) ~~The CONTRACTOR shall be entitled to payment for fixing items supplied by a Nominated Supplier in accordance with the rates, included in the Contract Bills. The payment for fixing shall cover unloading, distribution, unpacking, removal of packaging and other incidental expenses. The CONTRACTOR's profit shall be adjusted pro-rata on that inserted against the Prime Cost Sum in the Contract Bills.~~
- d) ~~The OWNER shall not require the CONTRACTOR to enter a Nominated Sub-Contract with any Sub-Contractor against whom the CONTRACTOR has made a reasonable objection except that the CONTRACTOR shall not object to any Sub-Contractor or Supplier identified in the Contract Bills. The CONTRACTOR shall respond within ten (10) days of the OWNER's Nomination Instruction. The CONTRACTOR shall provide such information as the Project Manager may reasonably require in relation to any objection which they make under this article. The decision of the OWNER as to whether any objection is reasonable shall be final and conclusive.~~
- e) ~~In addition, the OWNER may instruct the CONTRACTOR to enter the Sub-Contract notwithstanding any term validly objected to by the CONTRACTOR. In such event, no liability shall be imposed under the Agreement upon the CONTRACTOR in respect of the Nominated Sub-Contractor's or Supplier's work, goods or materials where or to the extent that the CONTRACTOR, because of the terms of the Sub-Contract objected to, are unable to impose a corresponding liability upon the Nominated Sub-Contractor or Supplier.~~



- ~~f) Once the CONTRACTOR has entered a Nominated Sub-Contract they shall not terminate or assign that Nominated Sub-Contract without the agreement of the OWNER. Where the OWNER has agreed to the termination of the Nominated Sub-Contract, the OWNER shall as soon as reasonably practicable either Nominated a replacement Sub-Contractor or Supplier or direct the CONTRACTOR to complete the work or supply in question with their own resources or by a sub-contractor of their own choice, approved by the OWNER.~~
- ~~g) If a Nominated Sub-Contractor or Supplier is terminated or assigned because the Nominated Sub-Contractor or Supplier is insolvent, the OWNER shall reimburse the CONTRACTOR an amount equal to the difference between: Any cost they have incurred in securing the completion of the Nominated Sub-Contract or Supply works which exceeds the cost to them of completing the works under the original Nominated Sub-Contract or Supply AND the amount, which, having used his best endeavours he has or should have recovered from the original Nominated Sub-Contractor or Supplier.~~
- ~~h) The CONTRACTOR shall submit with each application for payment evidence that Nominated Sub-Contractors or Suppliers included in earlier **Interim Certificates** have been paid their full entitlement. The OWNER reserves the right to make direct payment to the Nominated Sub-Contractors or Suppliers in the event the CONTRACTOR defaults on payment, or is late in paying or unreasonably withholds monies. Such sums shall be recovered by the OWNER from monies otherwise due to the CONTRACTOR.~~
- ~~i) The Nominated Sub-Contractor or Supplier shall indemnify the CONTRACTOR against loss and expense caused by delay, breach or failure to perform by the Nominated Sub-Contractor.~~
- ~~j) If the OWNER wishes to secure final payment to any Nominated Sub-Contractor or Supplier before final payment is due to the CONTRACTOR, and if such Sub-Contractor or Supplier has satisfactorily indemnified the CONTRACTOR against any defect or unsuitability subsequently appearing in their work, then the OWNER may, in an Interim Certificate, include an amount to cover such final payment, and upon payment by the OWNER, the CONTRACTOR shall pay the full amount so certified to the Nominated Sub-Contractor or Supplier. Upon such final payment the Limit of Retention under these conditions shall be reduced proportionately to the value of the Works so certified compared with the then estimated value of the whole of the Works. The OWNER's rights and remedies in relation to defective works shall remain unaffected.~~

6.05 No substitution of equipment, materials, article or processes shall be made unless approved in writing by the OWNER or by its Consultants. The CONTRACTOR's submissions and requests shall be acted upon by the OWNER within seven (7) working days from receipt thereof.

All requests for substitution of equipment shall be in writing, and for this purpose, the CONTRACTOR shall furnish the OWNER a complete list of proposed substitutions preferably prior to the signing of the Agreement together with such engineering and catalog data as the OWNER may require. The OWNER along with its Consultants will approve or disapprove the request in writing. The CONTRACTOR shall abide by the OWNER and Consultant's judgment as to which proposed substitute items of equipment are adjudged to be acceptable.

6.06 Materials requiring prior approval of the OWNER shall not be ordered until such approval in writing is given by the OWNER. The CONTRACTOR shall be responsible for materials and articles installed or used without such approval.

6.07 All materials not conforming to the Specifications shall be considered defective. The CONTRACTOR shall remove or replace defective materials when ordered to do so by the OWNER. Upon the CONTRACTOR's failure to do so, the OWNER may remove and replace them and deduct the cost of removal and replacement from any money due or to become due the CONTRACTOR. No materials, the defects of which have been subsequently corrected shall be used until the OWNER's approval is given.

Should the Specifications, Drawings, Special Provisions and Supplementary Specifications fail to provide any detail or description concerning the nature and quality of the work to be performed it should be understood that generally accepted construction practice shall be followed.



6.08 The CONTRACTOR shall pay all royalties and license fees on all patented materials and processes furnished by him. The CONTRACTOR shall defend all suits or claims corresponding thereto for infringement of any patent rights and shall save the OWNER harmless from loss on account thereof.

6.09 All manufactured articles, materials, equipment, appliances, fixtures and fittings supplied by the CONTRACTOR shall be applied, installed, connected, erected, used, cleaned, and conditioned by him, in accordance with manufacturer's printed directions. Where reference is made to the manufacturer's directions, the CONTRACTOR shall submit the specified number of copies of such directions to the OWNER.

6.10 Temporary or trial usage by the OWNER of any mechanical device, machinery, apparatus, equipment, or any work or materials supplied by the CONTRACTOR before final completion and written acceptance by the OWNER shall not be construed as evidence that the OWNER has accepted it.

Such test run shall be made by the OWNER for such reasonable length of time, as the OWNER shall deem necessary. The OWNER shall not be liable for injury to or breaking of any part of such work which may be caused by weakness or inaccuracy of structural parts or by defective material or workmanship. The CONTRACTOR may, at its own expense, make such trial usage with prior notice to and for the benefit of the OWNER.

6.11 It is agreed that the source of water which is necessary for the Project is the responsibility of the Contractor. The cost for water shall be for the sole account of the CONTRACTOR.

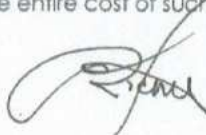
Article VII **LIABILITIES OF THE CONTRACTOR**

7.01 The CONTRACTOR shall have the sole right to employ such employees as it may deem necessary in the performance of the works contracted for in this Agreement. It being understood and hereby expressly agreed that the employees of the CONTRACTOR are not employees of the OWNER. In view thereof, the OWNER shall not in any way be liable and/or responsible for any disease contracted, personal injury including disability or death, or damage to property, sustained by or caused by any of the employees of the CONTRACTOR and/or his sub-contractors, agents, suppliers or consultants, whether or not occurring during the performance of their duties. The CONTRACTOR shall indemnify the OWNER for any and all injuries or damages the latter may suffer or incur due to the act, omission or fault, negligence or conduct of the CONTRACTOR and/or its sub-contractors, employees, agents and suppliers or consultants arising out of or in connection with or on the occasion of the performance of this CONTRACT.

7.02 The CONTRACTOR shall also have the sole right to discipline, suspend or dismiss any of its employees and shall be responsible for complying with all labor laws, rules and regulations with respect to any person it may employ, it being expressly understood that they are its employees and not those of the OWNER. Should any such worker or other person or entity sue the OWNER on the theory that the OWNER is the employer of such worker or other person or entity, the CONTRACTOR shall assist the OWNER in defending this Agreement as one which establishes between the OWNER and the CONTRACTOR the relation of an independent contractor and the CONTRACTOR shall hold the OWNER free and harmless against any judgment which may be rendered against the OWNER as the employer of said worker or other person or entity.

7.03 The CONTRACTOR shall render the OWNER free and harmless for the death of, the disease contracted or injury received by the CONTRACTOR or any of its employees or laborers, for any damage done by or to CONTRACTOR's plant or materials from any source or cause; and for damages caused by the CONTRACTOR or its employees to any property of the OWNER and adjoining property. The CONTRACTOR shall indemnify and save harmless the OWNER from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgement of every nature and description brought or recovered against him, for any act or omission of said CONTRACTOR, or of its agents or employees, in the execution of the Project or the guarding of it.

7.04 Claims for payment and repairs for damages for which the CONTRACTOR is liable shall be settled by the CONTRACTOR at its own expense. In the event of failure of the CONTRACTOR to repair such damages, and pay other claims, the OWNER may repair the same and pay the claims, and deduct the entire cost of such repairs and claims from the payments due the CONTRACTOR.



7.05 The CONTRACTOR shall, at all times, stand solely liable and/or responsible for the enforcement of, and compliance with all existing laws, rules and regulations and binds itself to save and hold the OWNER free and harmless from any and all liability in respect thereof and/or arising there from and/or by reason of this CONTRACT and/or its implementation.

7.06 The CONTRACTOR shall be liable to the OWNER for any hidden defect discovered and notified to the CONTRACTOR which the CONTRACTOR receives from the OWNER within the warranty period as provided in the Agreement, or in default of any provision fixing the warranty period, within one year from the posting of the Guarantee Bond.

7.07 Nothing herein shall be deemed to limit the liability of the CONTRACTOR to third persons due to any loss or damage resulting from the collapse of the Project due to defects in the construction or the use of materials of inferior quality or due to any violation of the terms of this Agreement in accordance with Article 1723 of the Civil Code of the Philippines.

In addition to the responsibility of a contractor under Article 1723 of the New Civil Code, the CONTRACTOR hereby guarantees the work stipulated in this Agreement and shall make good any defect in materials and/or workmanship due to the fault and/or negligence of the CONTRACTOR as well as that of its subcontractors which may make itself evident within one (1) year after the final and full completion and acceptance of the work.

Article VIII
RESPONSIBILITIES OF THE PARTIES

A. *Responsibilities of the CONTRACTOR –*

8.01 The CONTRACTOR shall assume full responsibility for the Scope of Work as detailed in of the Project until the issuance of the written NA by the OWNER, and shall be held responsible for any damages or destruction of works, except those that were caused by *force majeure*.

8.02 For the purpose of this Agreement, it is understood that *force majeure* shall mean any event beyond the reasonable control of the OWNER or the CONTRACTOR, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected and shall include, without limitation, the following:

- [a] war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy, civil war;
- [b] rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion, terrorist acts;
- [c] confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local or state or national government authority;
- [d] strike, sabotage, lock-out, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine, plague;
- [e] earthquake, landslide, volcanic activity, fire, flood, inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves, or other natural or physical disaster;
- [f] shortage of labor, materials or utilities where caused by circumstances that are themselves Force Majeure.

8.03 The CONTRACTOR shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties and the public at large, as well as the works, equipment, materials issued to it, installations and the like to be affected by the construction work. The CONTRACTOR shall adequately protect adjacent property as provided by Law and this Agreement. Any neighbouring property or building which may be jeopardized in any manner must be thoroughly and substantially



protected against damage during construction at the CONTRACTOR's expense. Likewise, the CONTRACTOR shall be liable for and pay for all damages to adjacent and existing utilities occasioned in any manner by his act or neglect, or by that of his agents, employees, or workmen.

In case of CONTRACTOR's default, the OWNER shall have the right to undertake reasonable safety and protection measures and charge the cost of such measures to the CONTRACTOR.

8.04 The CONTRACTOR shall be primarily responsible for all safety measures in prosecuting the Project in accordance with the safety manual approved by the Construction Industry Authority of the Philippines (CIAP).

8.05 Prior to commencement of the construction works, the CONTRACTOR shall, insofar as is legally and physically possible, survey and ascertain the condition of any existing adjacent properties or buildings and record the results thereof through photographic record or by any other means.

8.06 The CONTRACTOR also undertakes to be responsible for the conditions of the work site including the sanitary facilities for its workers, storage and location for materials issued to it, tools, equipment and other articles utilized about the Project. The CONTRACTOR shall take all reasonable measures to protect from damage (i) the Project, (ii) the OWNER's property, and (iii) the equipment, materials, appliances and fixtures supplied or paid for by the OWNER and shall make good any damage, injury or loss thereto, except such as may be caused by agents or employees of the OWNER, or due to causes considered as force majeure.

8.07 The CONTRACTOR shall maintain the Project site and adjoining roads and pavement in a clean and tidy condition, repairing any damage caused by or consequential to the execution of the Project. The CONTRACTOR agrees and obligates itself to immediately restore to its original condition, on its own account, any road pavement, street, open space and/or private property, which is excavated or in any manner used by the CONTRACTOR in connection with the performance of its obligations under this Agreement.

8.08 The CONTRACTOR shall at all time keep the working premises free from accumulations of waste materials or rubbish caused by its employees. The CONTRACTOR shall also clean the site as shown in the Drawings and all areas which the CONTRACTOR used in the execution of the project. If the CONTRACTOR fails to clean up after due notice at the completion of the Project, the OWNER may do so and the cost thereof charged to the CONTRACTOR.

8.09 In an emergency endangering life, the Project or the adjoining property, the CONTRACTOR, even without special instruction or authorization from the OWNER, shall act, at his discretion, to prevent or minimize such threatened loss or injury. Emergency work performed by the CONTRACTOR shall be treated as one performed under a Change Order unless the emergency was caused or brought about by his fault or negligence.

8.10 Contractor's Manager - The CONTRACTOR shall designate a responsible and competent person in-charge based on the Project Site, whose duty shall be the prevention of accidents and damage to the Project, the OWNER's property and adjoining property. The name and position of the person so designated shall be reported by the CONTRACTOR in writing to the OWNER.

B. Responsibilities of the OWNER -

8.10 The OWNER shall make an advance payment to the CONTRACTOR in a number of PESOS: ONE MILLION (PHP 1,000,000.00) **and TEN MILLION (PHP10, 000,000) for the resumption of the project,** ~~provided that the CONTRACTOR shall post an undated check of equivalent amount callable on demand and acceptable to the OWNER to guarantee its repayment.~~ The CONTRACTOR shall use the advance payment for mobilization, purchase of materials, and the like for the Project. The amount advanced shall be recouped pro rata in the progress billings.

8.11 The OWNER shall appoint and assign in writing a person or an entity as Construction Manager, who shall have the full authority to act for and on behalf of the OWNER in all matters which may arise under this Agreement.


Article IX

days, notify the OWNER of the alleged Change Order. Failure to do so shall prohibit the CONTRACTOR from any claim for extra cost based upon those instructions or drawings.

- c) Before issuing a Change Order the OWNER may require the CONTRACTOR to submit within fourteen days (14) days a detailed account of the time and cost implications of complying with a proposed instruction. Such time and cost implications are deemed to include all direct and indirect costs. Upon receipt of the detailed account from the CONTRACTOR, the OWNER may in writing accept or reject Change Order.
- d) The OWNER may at any time order extra work or make changes by altering, adding to or deducting from the CONTRACTOR's scope of work and within the general scope thereof; provided however that the resulting overruns or underruns from the quantities or costs in the contract quotation do not exceed twenty five percent (25%). Such changes shall be ordered by the OWNER in writing.
- e) The OWNER may likewise order changes in the Drawings and Specifications if during the progress of the construction works it was discovered that the sub-surface conditions of the site is materially different from those indicated in the Drawings and Specifications. If as a result of sub-surface conditions, additional or a different type of work be required, although no change in the Drawings or Specifications may be required, a Change Order shall be necessary and issued to the Contractor.
- f) The issuance by the OWNER of the revised Drawings or Supplemental Specifications changing the nature or work to be performed or of the materials, equipment, appliances or fixtures to be provided shall be treated as sufficient written instruction of the OWNER to the CONTRACTOR to execute the change.
- g) If changes in Project shall cause an increase or decrease in the amount due under the Agreement or in the time required for or manner of its performance, an equitable adjustment shall be made and the Agreement shall be modified accordingly. If the CONTRACTOR and the OWNER fail to arrive at any agreement as to the adjustment of Contract Price and/or Contract Period, the OWNER may award such extra work to another contractor.
- h) The value of any extra work or change shall be determined by the OWNER in any one or more of the following ways:
 - i. By a lump sum acceptable to the CONTRACTOR;
 - ii. By unit prices either stipulated in the Agreement or subsequently agreed upon, provided the aggregate value of changes does not exceed 25% of the original Contract Amount of the particular pay item.
 - iii. By actual direct cost plus value added tax, if any, Plus 10% CONTRACTOR's profit.
- i) In case where the OWNER initiates a deductive change order for the purpose of transferring certain work items or part of the scope of work to another party or for the OWNER to supply certain construction materials, then the CONTRACTOR shall be entitled to ~~TEN FIVE~~ percent (10%) (5%) of the amount deducted in the change order to recover his overhead and profit.

9.08 Construction Schedule - Immediately after the effectivity of this Agreement, the CONTRACTOR shall submit for approval a Manpower and Construction Schedule (Annex "E") in a form acceptable to the OWNER indicating the approximate date each pay item will be started and completed, the equipment to be used and number of men to be employed to complete it in accordance with the schedule. The progress of the work shall be at a rate sufficient to complete the Work in an acceptable manner within the Contract Period.

In case of 5% slippage, the OWNER may issue a written warning and call for meetings with the CONTRACTOR and other contractors involved to determine the possible cause/s contributing to the slow progress of the construction work, and if such slippage is due to the fault or negligence of the CONTRACTOR, the OWNER may require the CONTRACTOR to submit a catch-up schedule which shall be subject to approval by the OWNER.



9.09 The OWNER may order the acceleration of work to meet a desired completion date. Acceleration of work for the benefit or convenience of the OWNER or caused by the fault of or delay by the OWNER shall be treated as extra work for which a Change Order shall be issued and the CONTRACTOR shall be paid for the cost of such acceleration. However, where the reason for acceleration is due to the fault of the CONTRACTOR, such additional cost for acceleration shall be borne by the CONTRACTOR alone.

ARTICLE X
COMPLETION AND ACCEPTANCE OF WORK

10.01 Upon substantial completion of the work, the CONTRACTOR shall notify the OWNER of such fact in writing and the OWNER shall inspect the completed work and shall issue to CONTRACTOR a *Certificate of Substantial Completion* or *Certificate of Final Inspection and Acceptance* for the work completed within the said period.

There is substantial completion when the CONTRACTOR completes ~~ninety-five percent (95%)~~ **ninety percent (90%)** of the Project and all the utilities, such as, but not limited to the waterline, sewerline, elevator, lighting, and convenience outlet, are installed and ready to use; provided that the remaining construction works shall not prevent the normal use of the completed portion.

10.02 If the OWNER discovers that the work was not done in accordance with the plans and specifications, or that it was not properly performed, or that improper materials were used, the OWNER shall serve upon the CONTRACTOR a written *Statement of Deficiencies (Punchlist)* indicating in detail the specific portions of the work affected by each deficiency. The *Statement of Deficiencies* must be served upon the CONTRACTOR within sixty (60) days from the CONTRACTOR's formal notice of substantial completion. If the deficiency refers to failure to construct the work in accordance with the plan and specifications, the specific item or items of the particular plan or plans or of the specifications not complied with should be stated. If the deficiency refers to the use of improper contractor-supplied materials, the materials actually used and materials ought to have been used and the specific portions of the work affected thereby should be specified. If the deficiency refers to improper performance of the work, the detailed factual basis for said objection should be stated.

10.03 If the *Statement of Deficiencies* is served upon the CONTRACTOR within the aforesaid period of sixty (60) days, the CONTRACTOR shall undertake appropriate corrective measures to remedy the defects pointed out and after completion thereof, the OWNER shall inspect the completed works and should the OWNER or its representative find that there are still defects they shall notify the CONTRACTOR of the defects in writing and the CONTRACTOR shall proceed to remedy the defects pointed out and if the same is acceptable to the OWNER, the latter shall then issue the requisite *Certificate of Substantial Completion* or *Certificate of Final Inspection and Acceptance*.

10.04 If the *Statement of Deficiencies* is not served upon the CONTRACTOR within the aforementioned period of sixty (60) days from formal notice of substantial completion, the OWNER shall be conclusively presumed to have accepted the work or the phase or portion thereof mentioned in the Notice of the CONTRACTOR.

10.05 "*Period of Making Good of Known Defects or Faults*" - shall mean a period of not more than thirty (30) calendar days, calculated from the date of receipt by the CONTRACTOR of the *Statement of Deficiencies* during which the CONTRACTOR shall complete the corrective works. The CONTRACTOR shall execute at its own expense all works necessary for making good of known defects, imperfections or faults (wear and tear excepted) within the said thirty-day period.

If the CONTRACTOR shall fail to do any such corrective work, the OWNER shall, upon written notice to the CONTRACTOR, be entitled to carry out such work by its own workmen or by other contractors, and charge the cost thereof to the CONTRACTOR. The OWNER may withhold an amount not exceeding the CONTRACTOR cost of executing such work from the payment to the CONTRACTOR.

10.06 If the OWNER accepts defective or non-conforming work, instead of requiring its removal and correction, the OWNER shall issue to the CONTRACTOR a change order to reflect a reduction in the Contract Amount where appropriate by an amount not exceeding the value of the unfinished work. Such adjustment shall be effected whether or not final payment has been made.

10.07 The OWNER may take possession of and use any completed or partially completed portion of the Project, although the time for completing it or portions thereof may not have expired; but



CONSTRUCTION WORKS AND INSPECTION OF THE PROJECT

9.01 The CONTRACTOR shall employ only competent and duly qualified professionals, technical personnel, foremen, mechanics and workers to supervise or execute the construction works. Upon written request of the OWNER, the CONTRACTOR shall remove from the site an employee who is careless or incompetent or obstructs the progress of the work or acts contrary to instructions or conducts himself improperly.

9.02 The CONTRACTOR shall use such methods and appliances for the performance of the construction works as will ensure the completion of the Project of the required quality within the Contract Period. If, at any time before the commencement or during the progress of the construction works, such methods or appliances appear to the OWNER to be inefficient or inappropriate for producing the quality of work required, or insuring the required rate of progress, the OWNER may order the CONTRACTOR to increase the rate of their efficiency, or to improve their system of operation. The CONTRACTOR must comply with such order. Failure, however, of the OWNER to demand such increase of efficiency or improvement of the character or methods of work or of the appliances shall not relieve the CONTRACTOR from its obligation to turn out such quality of work and rate of progress as are called for in the Agreement.

9.03 Construction works that fails to comply with the Agreement is defective. Defective work shall be condemned by the OWNER upon discovery, and when such work has been condemned it shall be immediately removed by the CONTRACTOR and replaced in accordance with the Drawings and Specifications.

9.04 Inspection of the PROJECT shall be made by the OWNER while the contract work is in progress, to ascertain that the completed works comply in all respects, with the standards and requirements set forth in the CONTRACT DOCUMENTS. Notwithstanding such inspection, the CONTRACTOR shall be held responsible for the acceptability of the finished works. The CONTRACTOR, at its own expense, shall promptly replace and correct all works determined by the OWNER as failing to meet the agreed requirements.

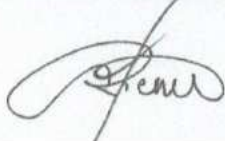
9.05 The OWNER shall have access, at all times, to the Project. The OWNER shall provide a sufficient number of inspectors while construction works are in progress to ensure its timely inspection. On the other hand, the CONTRACTOR shall furnish without additional charge all reasonable facilities, labor and materials necessary for the convenient inspection and tests that may be required by the inspectors.

All inspection and tests shall be performed in such a manner that the construction works shall not be unnecessarily delayed.

9.06 If there are indications that the work done is not in accordance with the Drawings and Specifications, the OWNER may at any time before final acceptance of the Project make an examination of the portion already completed by removing or tearing out the same. The CONTRACTOR shall, on request, furnish all necessary facilities, labor, and materials. If such work is found to be defective in any material respect due to fault of the CONTRACTOR or its sub-contractors, the CONTRACTOR shall defray all the costs of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Agreement, the actual cost of labor and materials necessarily involved in the examination and replacement plus 5 percent (5%), shall be allowed the CONTRACTOR and it shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time because the additional work involved.

9.07 Changes in the Project -

- a) Adjustments in working drawings to suit field conditions which cannot be foreseen at the time of calling for bids may be necessary during construction. The resulting change in quantities or the increase in the scope of work of the CONTRACTOR shall be covered by a Change Order. Work done by the CONTRACTOR without timely notice to the OWNER that an adjustment is required of Contract Amount and Contract Period shall be at the CONTRACTOR's own risk and expense. Under no circumstance shall the OWNER be held liable for the payment of any extra work or extra cost of work, or change of work, undertaken without prior written consent of the OWNER.
- b) If in the opinion of the CONTRACTOR, any instruction or drawing issued by the OWNER or its Consultants constitutes a Change Order, then the CONTRACTOR shall, within seven (7)



such taking of possession and use shall not be deemed an acceptance of any work not completed in accordance with the Agreement. Neither shall it be deemed a waiver by the OWNER of the right to claim damages due to delay in the completion of the Project. If such prior use increases the cost or delays the completion of uncompleted work or causes refinishing of completed work, the CONTRACTOR shall be entitled to extra compensation or extension of time or both.

In the event of the OWNER taking over any portion of the Project for its use prior to overall completion, then the OWNER shall issue a Certificate of Completion for such portion taken over and release retention as required by the Agreement, subject to the above Paragraphs 10.01, 10.02, 10.03, 10.04, 10.05 and 10.06.

10.08 Acceptance by the OWNER of the Project as indicated by the NCCA shall relieve the Contractor of liability for any defect in the Project unless [a] The defect is hidden and the OWNER could not have discovered the defect even with the exercise of reasonable diligence or [b] The OWNER accepted the Project with express reservations seasonably made as to the specific portion of the Project which was found defective and which requires replacement or correction. A reservation which fails to specify the portion which is alleged to be defective and state in as much detail as possible the nature and extent of the defect shall be considered a general reservation and shall be ineffective.

The foregoing exceptions shall apply notwithstanding the issuance of the final certificate of completion or of full payment.

10.09 Poor or inferior work or work which does not comply with the Drawings and Specifications which is apparent upon inspection by the OWNER or by the technical representatives and inspectors employed by the OWNER shall forthwith be condemned and the CONTRACTOR notified thereof to give the CONTRACTOR an opportunity without loss of time and without incurring unnecessary cost, to correct, remove and replace the defective work. Work not so condemned within one year from final payment cannot later be rejected by the OWNER. If the OWNER instructs the CONTRACTOR to remove or replace it thereafter, the instruction shall be treated as a change order.

Article XI ASSIGNMENT and SUB-CONTRACT

11.01 The CONTRACTOR shall not, without the prior written approval of the OWNER assign, transfer, pledge, sub-contract, or make any other disposition of interest in this Agreement, in whole or in part. Any unapproved assignment, transfer, pledge, subcontract or any other disposition, shall be void and ineffective.

The OWNER may nevertheless exact full compliance from both the CONTRACTOR and its assignee without waiving the OWNER's right at any time thereafter to reduce the CONTRACTOR's scope of work by removing from the Agreement the part of the work which was assigned and giving it to any other CONTRACTOR and/or terminating this Agreement *motu proprio*, in either case, without any further cause than the assignment.

11.02 Any contract, agreement or binding written commitment entered by the CONTRACTOR either before or after the execution of this Agreement, with any other person as co-operator, consortium member, joint venture member, or supplier of equipment, technology, materials or services for the joint execution of the Project, shall be provided to the OWNER at the latter's request. If the OWNER finds that the contract, agreement or binding written commitment is a disguised assignment of this Agreement, the OWNER shall so notify the CONTRACTOR and shall have the rights under Paragraph 11.01 above.

11.03 In case of sub-contracting, the OWNER reserves the right to require the CONTRACTOR to replace the sub-contractor, and the latter obligates itself to follow the instructions of the former regarding this matter. Moreover, The CONTRACTOR agrees that it shall be fully responsible to the OWNER for the acts and omissions of its sub-contractors and the persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

Moreover, the OWNER may require the CONTRACTOR as a condition for the approval of the subcontract that (i) the subcontract shall be submitted to the OWNER and the subcontract must require the subcontractor to obtain the same bonds and insurance coverage as are required of the

CONTRACTOR under this Agreement, and (ii) that the CONTRACTOR shall furnish the OWNER copies of these insurance policies and bonds.

Article XII
SEPARATE CONTRACTORS

12.01 The OWNER may perform work outside of the CONTRACTOR's scope of work or award separate contracts to other contractors. The CONTRACTOR shall do all that is reasonably required not to hinder the progress of the work to be done by the separately employed contractor/s. The CONTRACTOR shall properly connect and cooperate in the OWNER's effort to coordinate its work with that of other contractors so as to minimize interference or obstruction in the progress of the work performed by each of them.

12.02 If any part of the CONTRACTOR's work depends for proper execution or results upon the work of any other contractor, the CONTRACTOR shall inspect and promptly report it to the OWNER. The CONTRACTOR's failure to inspect and report it shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work, except as to defects which may develop in the other contractor's work after the execution of the CONTRACTOR's work. Hence, in order to insure the proper execution of the CONTRACTOR's subsequent work it shall verify the work already in place and shall at once report to the OWNER any discrepancy noticed between the executed work and the drawings.

12.03 The Contractor shall be compensated with an amount of PESOS: Two Million (PHP 2,000,000.00) as attendance fee for the services to suppliers or subcontractors but not limited to the following;

- A) MEPS Coordinator (All Work Shifts)
- B) Material handling
- C) Special and/or external scaffoldings
- D) Tower crane lifts
- E) Welfare facilities
- F) Temporary power and lightings
- G) Site security

With respect to temporary power and lighting, the monthly consumption of trade contractors shall be charged to their account based on the regular billing statements from the CONTRACTOR. The CONTRACTOR reserves the right to cut off the temporary supply of power and lighting if the trade contractors concerned fail to settle their monthly obligations relative to their utilities consumption.

12.04 Should the CONTRACTOR cause damage to the work of any separate contractor, the CONTRACTOR agrees to relieve the OWNER of any liability which may arise therefrom.

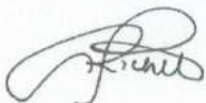
Should any separate contractor cause damage to the CONTRACTOR's work, the CONTRACTOR shall be relieved from any liability to the OWNER in respect thereof.

Article XIII
SUSPENSION OF WORK AND TERMINATION OF CONTRACT

13.01 Contractor's Right to Suspend Work or Terminate Contract -

A. The CONTRACTOR may suspend work or terminate this Agreement upon thirty-day written notice thereof to the OWNER for any of the following reasons:

- i) If an order of any court or other public authority caused the work to be stopped or suspended for an aggregate period of ninety (90) days through no act or fault of the CONTRACTOR or its employees.
- ii) If the OWNER fails to pay to the CONTRACTOR, without reasonable cause, the amount due on any certificate, less any sums which the OWNER may be entitled to set-off or deduct from the sum so due whether under this Agreement or otherwise, and continues such default for thirty (30) days after receipt of a notice from the CONTRACTOR stating that Notice of Termination under this Condition will be served if payment is not made within thirty (30) days from receipt thereof



- iii) If the OWNER suspends the work without just cause for more than the aggregate period of forty-five (45) days without the CONTRACTOR's consent.
- iv) If the whole or substantially the whole of the uncompleted works is suspended for a continuous period of (6) months by reason of the following:
 - a. Act of God or force majeure
 - b. Peace and order conditions
 - c. OWNER's instructions to suspend work.
 - d. The OWNER becomes bankrupt.

The Contractor shall be entitled to an equitable adjustment of Contract Period for suspension of work due to the above circumstances.

B. If the suspension is necessary for the proper execution of the Project or by reason of weather or other conditions affecting the safety of the works and/or the CONTRACTOR's workers, the CONTRACTOR may request the OWNER to suspend work in accordance with the applicable provisions hereof.

C. In case of termination, the CONTRACTOR may, by registered post or hand delivery, give Notice to the OWNER of its intention to terminate its own employment under this Agreement, provided that such notice shall not be given unreasonably. Such Notice shall be given at least thirty (30) days prior to the intended date of termination and shall specify the grounds upon which it is intended to terminate the CONTRACTOR's employment. Should the circumstances specified in the notice remain in existence at the end of the period of thirty (30) days, then the CONTRACTOR may forthwith terminate its employment by giving a further notice to the OWNER.

13.02 OWNER's Right to Suspend and Terminate the Project -

A. *JUST CAUSE FOR SUSPENSION OF WORK.* The OWNER, by a written order, may direct the CONTRACTOR to stop the work or any portion thereof, in any of the following cases until the cause for such order has been eliminated:

- i) Unsuitable weather or other conditions considered unfavorable for the prosecution of the work;
- ii) Failure of the CONTRACTOR to correct conditions which constitute a danger to its workers or the general public, or to correct defective work;
- iii) Failure of the CONTRACTOR to carry out valid orders issued by the OWNER or to comply with any provision of the Contract, or his persistent failure to carry out the Works in accordance with the Contract;
- iv) The necessity for adjusting the Drawings to suit site conditions found during construction, or in case of a change in Drawings and Specifications;
- v) Failure of the CONTRACTOR to supply sufficient skilled workmen or suitable materials or equipment;
- vi) Failure the OWNER to supply OWNER supplied/furnished materials on time, where such failure is due to causes beyond the reasonable control of the OWNER ;
- vii) Delay by the OWNER in obtaining a right-of-way, where such obligation is assumed by the OWNER under the Contract, and the delay is not due to the fault or negligence by the OWNER ;
- viii) Force majeure or fortuitous event;
- ix) Peace and order problems; or
- x) Any condition similar to the above beyond the control of the OWNER.




The CONTRACTOR shall immediately comply with such order to suspend the work or any part thereof for such period or periods and in such manner as the OWNER may direct, and during such suspension shall properly protect and secure the Project.

The CONTRACTOR shall be entitled to an equitable adjustment of Contract Period and Contract Amount for suspension of work due to Items [i], [iv], [vi], [vii], [viii], [ix] & [x]. However, for Item [a], no such adjustment shall be allowed if unsuitable weather conditions were taken into account in determining the Contract Period as provided for in this Agreement. If the actual number of days of unsuitable weather exceeds the period taken into account in the Agreement, the CONTRACTOR shall be entitled to an adjustment of Contract Period and Contract Amount.

B. TERMINATION WITH CAUSE. The OWNER may immediately terminate this Agreement, without prior notice to the CONTRACTOR, upon the occurrence of any of the following events:

- i) If the CONTRACTOR is bankrupt or insolvent;
- ii) If the CONTRACTOR makes a general assignment of its assets for the benefit of its creditors;
- iii) If a trustee or receiver is appointed for the CONTRACTOR or for any of the CONTRACTOR's property; or
- iv) If the CONTRACTOR files a petition for suspension of payments, or to reorganize under the bankruptcy or similar laws.

C. OTHER GROUNDS FOR TERMINATION WITH CAUSE. The OWNER may terminate this Agreement, with notice and without need of judicial intervention, upon the occurrence of any of the following events:

- i) The CONTRACTOR repeatedly fails to supply, based on the construction schedule, the sufficient number of skilled workmen or suitable materials or equipment;
- ii) The CONTRACTOR repeatedly fails to make without just cause prompt payments to subcontractors for labor, materials or equipment, and completion of the Project is being delayed;
- iii) The CONTRACTOR disregards the Laws or orders of any public body having jurisdiction;
- iv) The CONTRACTOR otherwise violates in any substantial way any provision of this Agreement; or
- v) Slippage of the CONTRACTOR in excess of 15% in the prosecution of work per agreed construction schedule and/or PERT/CPM plus any time adjustment duly granted to the CONTRACTOR. The CONTRACTOR shall be subject to warning only in case of 5% -10% slippage and termination shall ensue only in case of 15% slippage ~~without justifiable reason(s).~~

The OWNER may terminate the services of the CONTRACTOR after giving the CONTRACTOR and its Surety a fifteen (15)-day written notice. Such notice shall be final and binding on all parties of the Agreement.

Upon the termination, cancellation and/or rescission of this Agreement, the OWNER shall exclude the CONTRACTOR from the Project site and take possession of the Project and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same and incorporate into the work all materials and equipment stored at the site including those stored elsewhere for which the OWNER has paid the CONTRACTOR, and finish the work as the OWNER may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished ~~except for the release of retention money on works that have been completed.~~

The OWNER may take-over PROJECT, and consequently, the contracts and agreements entered into by the CONTRACTOR with third-parties are hereby conclusively deemed assigned to the OWNER if the latter, in its discretion, wants to avail the same. For this purpose, the CONTRACTOR hereby agrees and obligates itself to incorporate or cause to be incorporated in any contract(s) and agreement(s) with third parties which is/are connected with or related to the performance of any or all of the CONTRACTOR's obligations and undertakings hereunder, a stipulation providing for the assignability to and assumption by the OWNER of said contract(s) and/or agreement(s), at the option of the OWNER. Within THIRTY (30) days after termination, cancellation or rescission of this Agreement or take-over of the Project, the parties shall settle their respective accountabilities as of the date of



termination, cancellation or rescission, or take-over, and the CONTRACTOR shall refund any and all advances made, plus legal interest thereon from date of receipt of the amount or amounts advanced.

C. **TERMINATION WITHOUT CAUSE.** The OWNER may, upon fifteen (15)-days written notice to the CONTRACTOR and without prejudice to any other right or remedy, elect to abandon the work and terminate the Agreement. In such case, the CONTRACTOR shall be paid for all work executed and any expense sustained plus reasonable termination costs.

Article XIV
TAKE-OVER OF THE PROJECT

14.01 The OWNER shall have the right to take-over the construction works in the event of the following:

- a) The CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment;
- b) The CONTRACTOR repeatedly fails to make prompt payments to subcontractors for labor, materials or equipment;
- c) The CONTRACTOR fails within a mutually agreed time after written notice of the OWNER to carry out remedial or repair work;
- d) The CONTRACTOR fails, despite repeated remedial work to rectify the defects or the result of remedial work does not conform to the specifications; and
- e) The CONTRACTOR fails to perform the Project in accordance with the Agreement.

14.02 In view of the take-over, the OWNER shall have the option to terminate this Agreement without prejudice to the right of the OWNER to forfeit the Performance Bond, Retention Money, and/or the C.A.R. Insurance proceeds.

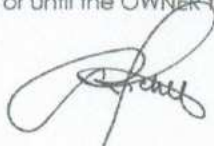
14.03 The CONTRACTOR, upon receiving notice of termination of the Agreement, shall vacate the site and deliver possession of the Project, or the parts thereof specified in the notice, to the OWNER. All materials, plant, appliances and other essential equipment as may be needed for the construction of the project, shall, at the option of the OWNER, remain on the site until the Project is completed and credit the CONTRACTOR a reasonable rental for the use the same.

14.04 Upon such take-over, the OWNER will ascertain and fix the value of the work completed by the CONTRACTOR and not paid for by the OWNER and of all usable materials of the CONTRACTOR taken over by the OWNER at the time of said termination, taking into consideration the charges against the Project prior to the termination of the Agreement and the suspension of construction works at the instance of the OWNER. No amount in excess of the combined value of the unpaid completed work, retained percentage and usable materials taken over by the OWNER at the time of the termination of this Agreement shall be paid to the CONTRACTOR until the completion of the work.

14.05 It is understood that when the OWNER exercises its right to take-over the Project, it can either undertake the Project itself or award the same to other contractors, and any additional expense(s) which may be incurred for the accomplishment and/or repairs of the Project, or any increase in the cost which the OWNER may incur as a result of its take-over of the Project shall be borne by and charged against the CONTRACTOR.

XV
LIQUIDATED DAMAGES

15.01 Time is of the essence of this CONTRACT. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the CONTRACT PERIOD, plus any time extension granted by the OWNER, the CONTRACTOR shall pay the OWNER, as liquidated damages, and not by way of penalty, an amount equivalent to one tenth of one percent (1/10 of 1%) of the Total Contract Amount for each calendar day of delay, Sundays and Holidays included, until the work is completed and accepted by the OWNER or until the OWNER takes-over the Project



It is understood that the liquidated damages herein provided are fixed and ascertained, and that to be entitled to such damages, the OWNER shall not be required to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the CONTRACTOR under the Agreement. The OWNER may collect such liquidated damages from the Retention Money or other securities posted by the CONTRACTOR, whichever is convenient to the OWNER.

15.02 If before the completion of the whole Project, any part or section thereof the Work has been certified by the OWNER as completed and occupied or used by the OWNER, the liquidated damages for delay shall be reduced in the proportion which the value of the part or section so certified bears to the value of the whole of the Project, unless a contrary provision is stipulated in the Agreement.

Article XVI
LIENS, DISPUTES AND ARBITRATION

16.01 As a condition to final payment and/or the release of the retention, the CONTRACTOR shall release the Project from any legal liens attaching therewith as a result of unpaid claims of subcontractors and/or suppliers for the supply of materials and/or equipment to the CONTRACTOR for the Project in the form of a sworn statement by the CONTRACTOR or its duly authorized officer stating that all such claims have been fully paid; and furnishing the OWNER, when required, with receipts or acknowledgments of payment issued by the subcontractors and/or suppliers. Should any of such claims remain unpaid as of the time of executing the sworn statement, or if the CONTRACTOR is unable to furnish the OWNER with proof of full payment to any subcontractor or supplier, the CONTRACTOR shall furnish the OWNER with an indemnity bond equal to the amount of the claims still unpaid. The indemnity bond may be issued by the surety who previously issued the CONTRACTOR's performance bond or any other bond required under this Agreement or by any other surety acceptable to the OWNER. The OWNER may recover against the CONTRACTOR and/or the surety, on the latter's indemnity bond, any amount paid by the OWNER to discharge such liens, including costs incurred incident thereto and a reasonable amount of attorney's fees.

16.02 All matters which under this Agreement shall be accepted, approved or decided by the OWNER may be entrusted by the OWNER to its authorized representative for determination within a period of fifteen (15) days. The latter shall in all such matters act as agent of the OWNER whose determination binds the OWNER.

16.03 Should there be any dispute or controversy in connection with this Agreement or difference between the parties arising from the diverse interpretations of this Agreement, the parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be brought before an adjudicator, who shall be jointly engaged by the OWNER and the CONTRACTOR, not later than fifteen (15) days before the commencement of the construction works to resolve conflicts arising from the foregoing determination by the OWNER or by its representative. If either of the party disagrees with the resolution of the adjudicator, such shall be deemed as a dispute which may be submitted to arbitration.

The submission of the dispute to arbitration proceeding shall be without prejudice to the right of the OWNER to rescind or terminate this Agreement in accordance with Article XIII Paragraph 13.02 hereof

16.04 Any dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination not resolved as provided above shall be referred to and finally resolved by arbitration under the Rules of Procedure Governing Construction Arbitration promulgated pursuant to Executive Order No. 1008 otherwise known as the *Construction Industry Arbitration Law* by panel of three (3) arbitrators appointed in accordance with such Rules. The place of arbitration shall be in Metro Manila, Philippines. Resort to arbitration shall be made by filing a claim with the *Construction Industry Arbitration Commission*.

16.05 The parties in this Agreement shall be deemed to be submitting themselves to the jurisdiction of the Construction Industry Arbitration Commission with regard to any dispute arising out or in connection with this Agreement.

16.06 Should the OWNER be constrained to resort to court action to enforce or safeguard its rights



and interests under this CONTRACT, the CONTRACTOR shall be liable to the OWNER for attorney's fees in an amount equivalent to twenty percent (20%) of the total sum claimed in the complaint, exclusive of other damages and expenses of litigation. Venue of such court action shall exclusively be in the proper court of Metro Manila.

16.07 It is hereby expressly understood that in case a dispute or disagreement arises between the OWNER and the CONTRACTOR regarding the manner by which the latter is performing the items of work, the CONTRACTOR shall follow the instructions of the OWNER relative thereto, otherwise, the CONTRACTOR shall have no right to ask for arbitration or go to court for relief.

Article XVII
GUARANTEES AND WARRANTIES

17.01 The CONTRACTOR shall, in case of work performed by its sub-contractors and where guarantees are required, secure guarantees from said sub-contractors and deliver copies of same to the OWNER upon completion of work. The term "guarantee" shall include "warranty".

17.02 The CONTRACTOR shall and thereby guarantees all work performed by him directly and for which guarantees are required.

17.03 The CONTRACTOR guarantees and warrants, for a period of one year, or for a longer period where so provided in the Specifications, the reliability, quality and availability of all materials, machinery, equipment, accessories and workmanship installed under this Agreement and that it is in accordance with the accepted construction standards and specifications for work items similar to the ones herein.

17.04 Should any defect develop in aforesaid work, within the guarantee period due to fault in material and/or workmanship, the CONTRACTOR shall make all repairs and do all necessary work to correct defective work to the OWNER's satisfaction. Such repairs and corrective works shall be done by the CONTRACTOR at its exclusive expense and shall be commenced within five (5) days after receipt of written notice by the OWNER.

17.05 In case the CONTRACTOR fails to commence or do the work so ordered, the OWNER may have the work done by another contractor and charge the cost thereof against monies retained as provided for in this Agreement and/or against his sureties.

17.06 The foregoing remedies shall be without prejudice to the rights of the OWNER under the New Civil Code and other laws now or hereafter that may be applicable.

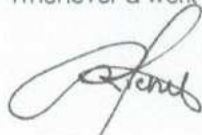
Article XVIII
OTHER COVENANTS and SPECIAL REPRESENTATIONS

18.01 Any collectible amount, including but not limited to liquidated damages, if any, in favor of the OWNER, arising from any act or omission of the CONTRACTOR under this Agreement, may be deducted from or set off against any money due or which may become due to the CONTRACTOR under this or any contract of the CONTRACTOR with the OWNER. The latter may also opt to get such collectible amount from the Performance Bond or CONTRACTOR's surety and/or C.A.R. insurance, whichever is convenient to the OWNER.

18.02 The CONTRACTOR shall provide and do everything necessary to perform its obligations under this Agreement with due regard to the true intent and meaning of all the CONTRACT DOCUMENTS taken together, whether the same may or may not be shown or described particularly in the drawings, plans, and specifications; provided, that the same can be inferred therefrom.

18.03 It is hereby expressly agreed and understood that any payment, or failure of the OWNER to demand compliance with the terms and conditions of this Agreement, or any act of liberality on the part of the OWNER, shall not be construed or considered as a waiver on the part of the OWNER of its right to enforce this Agreement, nor shall it relieve the CONTRACTOR of any of its obligations provided hereunder.

18.04 Whenever a work activity in the Project is not being done on schedule, the OWNER shall notify



and direct the CONTRACTOR to immediately undertake such work activity. If within three (3) days from receipt of such notice, the CONTRACTOR fails to start the work and/or show a satisfactory performance, the OWNER may take-over the Project in accordance with Article XIV hereof.

18.05 ~~The CONTRACTOR hereby represents that all documents it submitted which form integral parts hereof are authentic and duly executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentations in the documents or suppression of material facts therein, which if known, could have disqualified the CONTRACTOR such that this Agreement would not have been made and entered into, gives the OWNER the immediate right or recourse to *motu proprio* rescind, or terminate this Agreement without need of judicial intervention, pursuant to Article XIII Paragraph 13.02 hereof.~~

18.06 The CONTRACTOR hereby warrants that it, as well as its employees agents, sub-contractors, consultants, and suppliers, has not given nor promised to give any money, gift or any material favor/consideration to any officer or employee of the OWNER to secure this Agreement. Likewise, during the progress of the Project, the CONTRACTOR, including all those working under, for, or through it, warrants that it shall not engage in any form of corruption in connivance with any employee and/or officer of the OWNER. Any violation of these warranties shall be sufficient ground for the OWNER to revoke or cancel this Agreement extra-judicially or without need of judicial intervention in accordance with pursuant to Article XIII Paragraph 13.02 hereof.

Article XIX **TAXES, LICENSES, PERMITS AND FEES**

The CONTRACTOR's tax, licenses, permits and fees which may be due to the local and/or national government, and all notarial fees payable, as well as expenses incurred for the preparation of documents, on account of the performance and completion of the PROJECT, shall be for the CONTRACTOR's own account. Should the OWNER be compelled to advance the same, the OWNER is hereby authorized to deduct the amount advanced plus interest from whatever amount due to the CONTRACTOR. *ECC shall be secured by the OWNER under his own account.*

Article XX **GENERAL PROVISIONS**

20.01 No modification, alteration or waiver of any provision herein contained shall be binding on the parties hereto unless evidenced by a written amendment approved by the OWNER, and signed by both parties.

20.02 There shall be no escalation of Contract Amount within the Contract Period. Should extra works and time extension be required, extra works should be priced at current prices and escalation adjustment should be applicable only to the remaining works affected by the time extension.

In case of adjustment of prices due to ~~escalation or~~ reduction of costs, adjustment shall be made using the **engineering estimate formula** to be agreed upon by the parties. Such adjustment of prices shall be determined on the basis of the original contract unit prices of labor and materials and such unit prices in effect during the relevant period of work accomplishment.

20.03 It is the intent of this Agreement that all the documents, annexes and addenda forming part hereof, shall be read together, and that each and every provision or stipulation hereof be given full force, effect and applicability. However, in the event that one or more provisions or stipulations herein be declared null and void by the courts, or otherwise rendered ineffective, the remaining provisions and stipulations shall not be affected thereby.

20.04 It is hereby expressly agreed and understood that this is an entire CONTRACT for one whole complete Project, and that progress payments and/or the use of parts of the Project by the OWNER shall not constitute an acceptance of any part of the work before its entire completion and issuance of the written **NA** under Article III Paragraph 3.03(e) hereof.


20.05 This Agreement shall also bind herein parties' successors-in-interest, assignees, heirs, administrators, and/or executors.



20.06 This Agreement shall take effect upon signing hereof by the parties, subject to whatever addition, alteration, deletion and amendment that may be made later through mutual agreement.

IN WITNESS WHEREOF, the parties have hereunto signed this CONSTRUCTION AGREEMENT on the date and place herein above written.

OWNER




DR. JAMES ROBERTSONS C. PICHEL FERNANDO CARLOS

CONTRACTOR



ENGR. IBRAHIM M. NUNO

SIGNED IN THE PRESENCE OF :

 02 OCT 18

 10/02/18

MARJORIE S. PRADO
Area Manager
Metro Starwech Corporation

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
Zamboanga City) S.S.

BEFORE ME, this ___ day of OCT 03 2018 at Zamboanga City personally appeared:

Name	ID Number	Date & Place of Issuance
Dr. JAMES ROBERTSON C. PICHEL FERNANDO P. CARLOS	PRC 0092430	
Engr. IBRAHIM M. NUÑO	SSS 10-0 242055 -1	

known to me and to me known to be the same persons who executed the foregoing instrument consisting of _____ (___) pages including this page and annexes attached hereto, and who acknowledged to me that the same is their true and voluntary act and deed as well as those of the entities herein represented.

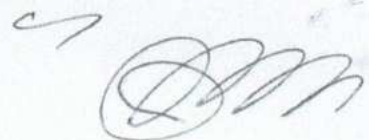
IN WITNESS, WHEREOF, I have hereunto signed and sealed these presents at the place and on the date above written.

ERNESTO S. GO
NOTARY PUBLIC

My commission expires on December 31, 2018
2nd Flr., 64 Tomas Claudio St., Zamboanga City
Notarial Commission No. 13-2017
IBP No. 30113; 01-10-2018; Z.C.
PTR No. 1633173; 01-03-2018; Z.C.
Roll of Attorney No. 26793
TIN 114-347-902

Doc. No. 75 ;
Page No. 16 ;
Book No. 70 ;
Series of 2018.





ANNEX H - GENERAL CONDITIONS (COMPARATIVE)

ACE CMT VERSION	MSC COMMENTS	FRED, RODEL AND DANNI's COMMENTS
<p>3.3 COORDINATION OF DRAWINGS AND SPECIFICATIONS: All Drawings and Models are intended to cooperate with the Specifications, to form a part thereof, and also to form a part of the Contract Documents. Where figures are given, they are to be followed in preference to measurements by scale. Anything shown on the Drawings but not mentioned in the Specifications, or vice versa, or anything not expressly set forth in either but which is reasonably implied, shall be furnished as though specifically shown and mentioned in both, without any extra charge.</p>	<p>MSC- This phrase should be deleted because it is difficult for the contractor to second-guess what is implied.</p>	<p>CONCUR OK ✓</p>
<p>A. Should a conflict occur between Drawings, or a conflict between specifications and Drawings, the Contractor shall be deemed to have estimated a more expensive way of doing work unless he shall have asked for and obtained a decision, in writing from the Owner before submission of proposals as to which method or materials will be required. If, after award, the less expensive work is done, the Contractor shall credit the Owner an amount equivalent to the difference between the more expensive and the less expensive work.</p>	<p>MSC - This phrase should be deleted. Instead, the following is proposed: "the Contractor shall ask for and obtain a decision, in writing from the Owner, before submission of proposals as to which method or materials will be required."</p>	<p>CONCUR OK ✓</p>
<p>10.1 MANUFACTURERS AND DEALERS: Names of proposed manufacturers, materials men, and dealers who are to furnish materials, fixtures, appliances or other fittings shall be submitted to the OWNER, Architect and/or Project Manager/Engineer for approval as early as possible, to afford proper investigation and checking.</p>	<p>MSC- This phrase should be deleted because it will subject the Contractor to undue influence by the Owner, Architect, and/or Project Manager/Engineer. The overriding consideration should be the quality of the materials being supplied and not the supplier. The contractor should be afforded the flexibility to choose the suppliers that he has arrangements with like credit terms, etc. Besides, Art. 10, Sec. 10.2 on Samples already provide adequate safeguards against defects in materials.</p>	<p>Retain phrase. It does not mention anything that limits the contractor to who their nominated suppliers are. OK w/ MSC ✓</p>
<p>A. No manufacturer will be approved for any materials to be furnished under this Contract unless he shall be of good reputation, shall have a plant of ample capacity and adequate quality control and shall have successfully produced similar products</p>	<p>MSC- This phrase should be deleted for the same reason.</p>	<p>Retain phrase. It does not mention anything that limits the contractor to who their nominated suppliers are provided they satisfy the OWNER's requirement OK w/ MSC ✓</p>
<p>R. All transactions with manufacturers or</p>	<p>MSC- Should be deleted for the same</p>	<p>Retain phrase. It does not</p>

Richard

DM

<p>sub-contractors, shall be through the Contractor with the approval of the Owner.</p>	<p>reason.</p>	<p>mention anything that limits the contractor to who their nominated suppliers are provided they satisfy the OWNER's requirement</p>
<p>C. As required; No other aggregate sand shall be utilized in the "Hospital Project" other than COTABATO SAND. The Contractor shall maintain adequate supply and stock of COTABATO SAND where the stock volume in M3 is equivalent to one (1) month volume of scheduled concreting works for the following month.</p>	<p>MSC- Again, this is a restrictive provision. Any equivalent sand that complies with quality standards should be accepted whether they come from Cotabato or not.</p> <p>MSC- Again, this is a restrictive provision. The Contractor should be well aware of his lead time schedules and should be allowed to determine what is a viable volume given the extent of concreting and the limitations of its staging area.</p>	<p>Retain phase. The OWNER has the prerogative and the approved adjusted contract price allows for Cotabato sand or equivalent</p> <p>OK w/msc</p>
<p>15.1 TEMPORARY OFFICE AND CONTRACTOR'S BUILDING</p> <p>The Contractor shall at all times provide and maintain adequate weather tight temporary office with water, light, telephone, and toilet facilities for the use of the Project Manager, engineers, and inspectors. The office shall be provided with tables, closet, blackboard, tack board, benches and racks for drawings. The Contractor shall provide the Project Management office with four (4) new or like new 2.5 HP Air conditioning units, One (1) office Printer with scanner and copier, (1) one mid size refrigerator, (1) one medium size electric fan. One (1) utility personnel, repair and maintenance of the PMT office, Office stationeries and supplies without cost to the OWNER until the completion of the project.</p>	<p>TEMPORARY OFFICE AND CONTRACTOR'S BUILDING</p> <p>The Contractor shall at all times provide and maintain adequate weather tight temporary office with water, light, telephone, and toilet facilities for the use of the Project Manager, engineers, and inspectors. The office shall be provided with tables, closet, blackboard, tack board, benches and racks for drawings. The Contractor shall provide the Project Management office with four (4) new or like new 2.5 HP Air conditioning units, One (1) office Printer with scanner and copier, (1) one mid size refrigerator, (1) one medium size electric fan. One (1) utility personnel, repair and maintenance of the PMT office, Office stationeries and supplies in reasonable quantities and related to the project's accomplishment without cost to the OWNER until the completion of the project.</p> <p>MSC- This qualifier should be added to prevent abuse.</p>	<p>CONCUR</p> <p>OK</p>
<p>15.3 TEMPORARY HOUSING FOR WORKERS: The temporary buildings for housing workers, or the erection of tents or other forms of protection will not be permitted unless approved by the Owner or his duly authorized representative(s). Nobody shall be allowed to sleep or cook within the building line of the project under construction.</p>	<p>Added: except in a location duly designated and approved by the Owner.</p> <p>MSC - It is possible that due to limitations in space, workers may have to be billeted within the building line.</p>	<p>CONCUR</p> <p>OK</p>

<p>20.11 CERTIFICATE OF COMPLETION OF WORK OR Notice of Confirmation Completion (NCC):</p> <p>Upon due notice from the Contractor that he has substantially completed the work, the Owner or his duly authorized representative(s) shall make an inspection of the Work and develop a "Punch List" that will cover all minor works, defects, imperfections, deficient, inadequacy or missing part to be completed to the satisfaction of the Owner. Substantial completion shall mean that the value of the work completed shall not be less than ninety eight percent (98%) of the contract amount and that the remaining unfinished work shall be of a minor nature only and will form part of the "PUNCH LIST ITEMS". If the contract covers the furnishing and/or installation of equipment, fixtures and utilities, said equipment, fixtures and utilities, shall be fully tested and test-run in order that the work can be considered as substantially completed.</p>	<p>MSC - Should be 90%, industry practice.</p>	<p>CONCUR</p> <p><i>gk</i></p>
<p>22.10 PAYMENTS OVER 65 PERCENT: No payment shall be made on contracts in excess of sixty five percent (65%) of the Contract Price, unless a statement sworn before an officer duly authorized to administer oath is submitted by the Contractor to the effect that all bills for labor, other than current wages, and all bills for materials have been duly paid by the Contractor and his Sub-contractor, if any, excepting only such bills as may be enumerated in such sworn statement. Provided, however, that should such sworn statement turn out false, the Owner and the work covered thereby shall not be liable for any claim or lien arising from the failure to pay and other causes, provided for in this clause. The Contractor does hereby bind itself solely answerable for any such lien should the same arise.</p>	<p>MSC - Should be 90% because industry practice dictates that payments can be made up to 90% in case the project is substantially completed.</p> <p>MSC - A sworn affidavit if found out to be false is a criminal offense, i.e. perjury, and therefore the OWNER is not liable. Hence, no need to emphasize this point.</p>	<p>Recommend to retain the 65%. This will indemnify the OWNER the cost of defending himself against any claims at the early stage of the project. This one is for only 65%</p> <p>CONCUR</p>

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<p>COORDINATION.</p> <p>The Contractor under this Contract shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs so as to minimize interferences or obstruction in the progress of the work.</p>	<p>COORDINATION.</p> <p>The Contractor under this Contract shall afford other contractors reasonable opportunity for the introduction and storage of their materials <i>subject to appropriate compensation if such materials are stored in the Contractor's premises,</i> and the execution of their work, and shall properly connect and coordinate his work with theirs so as to minimize interferences or obstruction in the progress of the work.</p>	<p>✓</p>
<p>The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent to the Architect/Owner.</p>	<p>The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent to the Architect/Owner.</p> <p><i>Likewise, the other contractors shall not do the same to the Contractor without his consent</i></p> <p><i>MSC- This should be added to be fair.</i></p>	<p>CONCUR</p> <p><i>ok</i></p> <p>✓</p>
	<p>24.5 DAMAGE CAUSED BY SEPARATE CONTRACTORS</p> <p><i>Should the separate contractors cause damage to the Contractor's work, they shall compensate the Contractor for such damage. Should they fail to do so, the OWNER shall deduct such costs against the contract amount of the separate contractor(s) causing the damage and duly compensate the Contractor. Should the separate contractor(s) object to such deductions, the dispute shall be settled amicably or through the OWNER's intercession.</i></p> <p><i>MSC - This provision should be added to be fair.</i></p>	<p>CONCUR</p> <p><i>ok</i></p> <p>✓</p>
<p>A. Declare bankruptcy, become insolvent or assign his assets for the benefit of his creditors.</p>	<p>A. Declare bankruptcy, become insolvent or assign his assets for the benefit of his creditors <i>except when such assignment is necessitated by a</i></p>	<p>To verify further</p> <p>✓ <i>ok of msc</i></p>

Richard

DM

	<p>insurance granting such arrangement to the Contractor under its standard credit terms.</p> <p>MSC - Banks normally require the assignment of the contract receivables as collateral for the credit facility granted.</p>	
<p>C. Fail to provide a qualified superintendent, competent workmen or sub-contractors, or proper materials.</p>	<p>C. Fail to provide a qualified superintendent, competent workmen or sub-contractors, or proper materials without justifiable cause</p> <p>MSC - There may be instances when an engineer can work in a concurrent capacity in the temporary absence of the required personnel, or the materials may not be available in the market due to certain importation problems for example.</p>	<p>MUST BE APPROVED BY THE OWNER</p> <p>gh</p>
<p>D. Fail to make prompt payment to sub-contractors, workmen or material dealers and/or suppliers.</p>	<p>D. Fail to make prompt payment to sub-contractors, workmen or material dealers and/or Suppliers without justifiable reasons.</p> <p>MSC - Sometimes there are subcontractors that fail to fulfill their obligation with the Contractor in which case payment to them may be withheld, or certain suppliers may have delivered defective items</p>	<p>CONCUR</p> <p>gh</p> <p>✓</p>
<p>29.4 OWNER'S RIGHT TO RECOVER LIQUIDATED DAMAGES</p> <p>The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.</p> <p>The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess cost includes cost of architectural managerial and administrative services, supervision and inspection from the start the Owner effectively took over the work by administration or by re-letting same.</p>	<p>The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.</p> <p>The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess cost includes cost of architectural managerial and administrative services, supervision and inspection from the start the Owner effectively took over the work by administration or by re-letting same.</p> <p>MSC - This provision should be deleted. Once the OWNER takes over and he has exacted the liquidated damages called for in the contract, then any further extra costs he may incur should already be for his account. This is but fair since the OWNER has full control of his costs once he takes over</p>	<p>Retain phrase. The total amount of LD is governed by Art 15.01 of the Contract</p> <p>✓</p> <p>LD should be max of 10% of original contract amount</p>

Richard

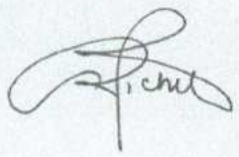
ARM

<p>In case the Contractor fails to do the work, so ordered, the Owner may have the work done and charge the cost thereof against moneys retained as provided for in the Agreement and, if said retained moneys shall be insufficient to pay such cost, or if no money is available, the Contractor and his sureties agree to pay to the Owner the cost of such work.</p>	<p>D. In case the Contractor fails to do the work, so ordered, for no justifiable reason the Owner may have the work done and charge the cost thereof against moneys retained as provided for in the Agreement and, if said retained moneys shall be insufficient to pay such cost, or if no money is available, the Contractor and his sureties agree to pay to the Owner the cost of such work.</p> <p>MSC - This qualifier should be inserted to be fair to the Contractor. ✓</p>	<p>CONCUR</p> <p><i>ok</i></p>
<p>34.4 DISPUTES:</p> <p>Except as otherwise specifically provided in the Contract, all disputes concerning questions of fact arising under the Contract shall be decided by the Owner or his duly authorized representative(s), whose decision shall be final and conclusive upon the parties thereto as to questions of fact.</p>	<p>b. Except as otherwise specifically provided in the Contract, all disputes concerning questions of fact arising under the Contract shall be discussed by both parties and settled amicably between them or failing that, through arbitration. decided by the Owner or his duly authorized representative(s), whose decision shall be final and conclusive upon the parties thereto as to questions of fact.</p> <p>MSC - This phrase should be added so that all disputes between the parties are amicably settled or arbitrated. ✓</p> <p>MSC - This phrase should be deleted. Questions of fact are not decided unilaterally. It is decided by a consideration of the evidence, both oral and written.</p>	<p>CONCUR</p> <p><i>ok</i></p>
<p>c. The Owner or his duly authorized representative(s) decisions shall be final, if within the terms of the Contract Documents.</p> <p>d. If however, the Owner or his duly authorized representative(s) fails to render a decision within fifteen (15) days after the parties have presented their evidence, either party may then demand arbitration. If the Owner or his duly authorized representative(s) renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties</p>	<p><i>These provisions should be deleted as they are one-sided.</i></p>	<p>Retain, to be consistent with MSC suggested changes in 34.4 DISPUTES</p> <p>✓ <i>ok w/ MSC</i></p>

Richard

W. J. ...

<p>34.5 ARBITRATION</p> <p>a. Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Contract, and a copy filed with the Owner or his duly authorized representative(s). The demand for arbitration shall be made within a reasonable time after the dispute has arisen; in no case however, shall the demand be made later than the time of final payment except as otherwise expressly stipulated in the contract.</p>	<p>MSC-This provision should be deleted since the final payment may not be the full settlement of the contract. Hence, if the Contractor is aggrieved, then arbitration can be resorted to after the final payment.</p>	<p>Retain</p> <p>OK w/ MSC</p> <p>✓</p>
<p>c. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The Contractor shall not cause a delay of the work during any arbitration proceedings, except by agreement with the Owner.</p>	<p>MSC - This sentence should be deleted. When there is an arbitration it means that there is a dispute that should be resolved. The Contractor cannot be forced to continue with the work if say for instance the dispute is due to the Owner's failure to pay his obligation to the Contractor.</p>	<p>Retain</p> <p>OK w/ MSC</p> <p>✓</p>
<p>35.3 DISPUTES:</p> <p>In case of any dispute arising between the Project Manager, Project Engineers, Engineers, or Construction Inspector, and the Contractor, the Project Management Team shall have authority to reject materials or suspend the work until the question at issue can be referred to and decide by the Owner.</p>	<p>MSC - This phrase should be deleted because it is already covered under a separate provision on Samples. Only the work should be suspended if there is a dispute.</p>	<p>Retain</p> <p>OK w/ MSC</p> <p>✓</p>




OWNER: _____

CONTRACTOR: _____

ANNEX H - GENERAL CONDITIONS - Table of Contents

		PAGES
SECTION I	DEFINITIONS AND DOCUMENTS	
ARTICLE 1	DEFINITIONS	3-4
ARTICLE 2	EXECUTION, CORRELATION AND INTENT OF DOCUMENTS	5
ARTICLE 3	DRAWINGS AND SPECIFICATIONS	5
ARTICLE 4	DETAIL DRAWINGS AND INSTRUCTIONS	6
ARTICLE 5	SHOP DRAWINGS	7-8
SECTION II	LAWS, REGULATIONS, SITE CONDITIONS, PERMITS AND TAXES	
ARTICLE 6	LAWS, REGULATIONS AND SITE CONDITIONS	8
ARTICLE 7	PERMITS, TAXES AND SURVEYS	8-9
SECTION III	EQUIPMENT AND MATERIALS	
ARTICLE 8	GENERAL	9
ARTICLE 9	EQUIPMENT	9-10
ARTICLE 10	MATERIALS, FIXTURES, APPLIANCES AND FITTINGS FURNISHED BY THE CONTRACTOR	10-12
ARTICLE 11	MATERIALS, EQUIPMENT, FIXTURES, APPLIANCES AND FITTINGS FURNISHED BY THE OWNER	12
ARTICLE 12	ROYALTIES AND PATENTS	12
ARTICLE 13	MANUFACTURER'S DIRECTIONS	13
SECTION IV	PREMISES AND TEMPORARY STRUCTURES	
ARTICLE 14	USE OF PREMISES	13
ARTICLE 15	TEMPORARY STRUCTURES AND FACILITIES	13-15
SECTION V	PROTECTION OF WORK AND PROPERTY	
ARTICLE 16	PROTECTION OF WORK AND OWNER'S PROPERTY	15
ARTICLE 17	PROTECTION OF ADJACENT PROPERTY AND EXISTING UTILITIES	15-16
ARTICLE 18	PROTECTION OF LIFE, WORK AND PROPERTY DURING AN EMERGENCY	16
SECTION VI	LABOR, WORK AND PAYMENTS	
ARTICLE 19	LABOR	16
ARTICLE 20	WORK	16-20
ARTICLE 21	TIME OF COMPLETION OF WORK	21-22
ARTICLE 22	PAYMENTS	22-25
SECTION VII	CONTRACTOR-SEPARATE CONTRACTORS SUB-CONTRACTORS RELATIONS	
ARTICLE 23	SEPARATE CONTRACTS TO OTHER CONTRACTORS	25-26
ARTICLE 24	CONTRACTOR-SEPARATE CONTRACTORS RELATIONS	26
ARTICLE 25	SUB-CONTRACTS	26-27
ARTICLE 26	CONTRACTOR-SUB-CONTRACTORS RELATIONS	27
SECTION VIII	SUSPENSION OF WORK AND TERMINATION OF CONTRACT	
ARTICLE 27	CONTRACTOR'S RIGHT TO SUSPEND WORK OR TERMINATE CONTRACT	28
ARTICLE 28	OWNER'S RIGHT TO TERMINATE CONTRACT	28
ARTICLE 29	OWNER'S RIGHT TO PROCEED WORK AFTER TAKE OVER FROM CONTRACTOR	28-29

OWNER: _____

CONTRACTOR: _____

SECTION IX	RESPONSIBILITIES AND LIABILITIES OF CONTRACTOR AND OF OWNER	
ARTICLE 30	CONTRACTOR'S RESPONSIBILITY FOR ACCIDENT AND DAMAGES	29-30
ARTICLE 31	CONTRACTOR'S SAFETY AND HEALTH	30
ARTICLE 32	CONTRACTOR'S INSURANCE AND BONDS	30-31
ARTICLE 33	OWNER'S RESPONSIBILITIES AND LIABILITIES	31-32
ARTICLE 34	LIENS, DISPUTE AND ARBITRATION	32-33
SECTION X	AUTHORITY OF ENGINEERS AND PROJECT MANAGER/ENGINEERS AND REPRESENTATIVES	
	AUTHORITY AND DUTIES OF THE PROJECT MANAGER REPRESENTATIVES, ENGINEERS, CONSTRUCTION INSPECTORS	33-34
SECTION XI	QUALITY ASSURANCE AND QUALITY CONTROL	34

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<p>understood that this is an entire CONTRACT for one whole complete Project, and that progress payments and/or the use of parts of the Project by the OWNER shall not constitute an acceptance of any part of the work before its entire completion and issuance of the written NA under Article III Paragraph 3.03(e) hereof.</p>		
<p>20.06 This Agreement shall take effect upon signing hereof by the parties, subject to whatever addition, alteration, deletion and amendment that may be made later.</p>	<p>This Agreement shall take effect upon signing hereof by the parties, subject to whatever addition, alteration, deletion and amendment that may be made later through mutual agreement.</p>	<p>Concur</p>



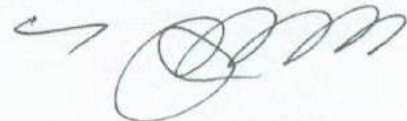
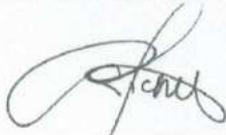
OWNER: _____

CONTRACTOR: _____

SECTION I: DEFINITIONS AND DOCUMENTS

ARTICLE 1: DEFINITIONS

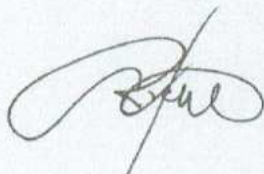
- 1.1 **CONTRACT DOCUMENTS:** The Contract consists of the following documents, including but not limited to all additions, deletions and modification incorporated therein before the execution of the Contract:
- A. Agreement and its Annexes
 - B. NOA and NTP and Other Instructions
 - C. Special Provisions
 - D. Bill of Quantities (Contract Bills)/Materials Specifications
 - E. Plans/Drawings/Technical Specifications
- 1.2 **OWNER:** Refers to **Allied Care Experts Medical Center-Zamboanga, Inc.**, the entity ordering the Project for execution, including duly appointed successors, or authorized representatives.
- 1.3 **PROJECT MANAGER/PROJECT ENGINEER:** The Full-time Project manager / Engineer hired by the Owner duly authorized in writing to supervise the work.
- 1.4 **CONTRACTOR:** The person or firm whose proposal has been accepted and to whom the Contract was awarded.
- 1.5 **ARCHITECT:** The Designer of the "Hospital Project" hired by the OWNER duly authorized to provide design, specifications and technical support.
- 1.6 **SUB-CONTRACTOR/SUPPLIER OF SERVICE(S):** Anyone having a direct Contract with the Contractor who acts for or in behalf of the Contractor in executing any part of the Contract, not including one who merely furnishes materials without labor.
- 1.7 **WORKS:** The scope of work to be performed under the Contract Documents and/or directed by the Owner or his duly authorized representative(s) needed in the satisfactory performance and completion of the Project.
- 1.8 **SURETY** is the person, firm or corporation who provides the guarantee for the Contractor's Bonds.
- 1.9 **OFFER:** The proposal of the Contractor to perform the work described by the Contract Documents when made out properly signed, guaranteed, and submitted to the Owner.
- 1.10 **PERFORMANCE BOND** is the approved form of security furnished by the Contractor and his Surety as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the terms and conditions of the Contract.
- 1.11 **GUARANTEE BOND** is the approved form of security furnished by the Contractor and as Surety to guarantee the quality of the materials installed, equipment installed and the workmanship performed by the Contractor.
- 1.12 **AGREEMENT** is the contract between the Owner and the Contractor undertaking the Project described in the Contract Documents including all supplemental agreements thereto and all general and special provisions pertaining to the work, materials or equipment therefore.
- 1.13 **DRAWINGS** are graphical presentations of the work involved in the project. They include all supplementary details and shop drawings approved for construction.
- 1.14 **GENERAL CONDITIONS** as printed documents stipulating the procedural and the administrative aspects of the contract.
- 1.15 **SPECIAL PROVISIONS** are instructions which may be issued to supplement and/or modify Drawings, Specifications, and/or General Conditions of the Contract.
- 1.16 **SPECIFICATIONS**, Detailed description of technical requirements written or printed description of work to be done describing qualities of material and mode of construction.
- 1.17 **SUPPLEMENTARY SPECIFICATIONS** are additional information which may be issued as an addition or amendment to the provisions of the Specifications.



OWNER: _____

CONTRACTOR: _____

- 1.18 *SCHEDULE OF MATERIALS AND FINISHES* is a specification enumerating the type or trade names of materials to be used.
- 1.19 *CONTRACT BILLS* are listing of the different parts of the work indicating in each part of the corresponding value in materials, labor and equipment, including an allowance for profit and overhead.
- 1.20 *WRITTEN NOTICE*. Written notice means information, advice or notification pertinent to the project delivered in person, sent by registered mail or sent by E-mail to the individual, firm or corporation at the last known business address or email address of such individual firm or corporation.
- 1.21 *ACTS OF GOD OR FORCE MAJEURE* includes earthquakes, flood, typhoon, cyclone & other cataclysmic phenomena of nature and all misfortunes and accidents which human prudence could not foresee or prevent. It also includes all provisions as stated in Article 8.02 of the Contract Agreement.
Rain, wind, flood or other natural phenomenon of inconsequential degree for the locality shall not be construed as an Acts of God or Force Majeure and no reparation shall be made to the Contractor for the damages to the work resulting thereof.
- 1.22 *CONTRACT PERIOD*. The duration of time allowed by the Contract for the completion of the Project in any stipulated portions thereof.
- 1.23 *LOCAL LAWS*. Apply to all laws ordinances and other governmental regulations applicable to the project and its undertaking.
- 1.24 *WORK*: The term "work" of the Contractor or Sub-Contractor includes labor or materials or both as well as equipment, transportation, or other facilities necessary to commence and complete the construction called for in the Contract.
- 1.25 *SUPPLY*: The word "supply" shall be understood to mean "Purchase and/or fabricate and deliver to the jobsite or other location when so designated". It shall also include all Owner Supplied Materials properly delivered to and transferred to the Contractor's responsibility and control.
- 1.26 *INSTALL*: The word "install" shall mean to build in, mount in positions, connect or apply any object specified ready for the intended use.
- 1.27 *PROVIDE*: The word "provide" shall be understood to mean "furnish or supply and install".
- 1.28 *REQUIRED OR NECESSARY*: The words "required or necessary" shall mean as required or necessary for the complete execution of that portion of the work
- 1.29 *APPROVED/ DIRECTED AND ACCEPTABLE*: The words "approved", "directed" and "acceptable", or words of like import shall mean approved, directed by or acceptable to the Project Manager/Engineer unless otherwise stipulated in the Contract.
- 1.30 *SINGULAR OR PLURAL*: In all cases where a device, item or part of equipment is referred to in the singular number, it is intended that such reference shall apply to as many such devices, items or parts as are required to complete the work.



OWNER: _____

CONTRACTOR: _____

ARTICLE 2: EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

- 2.1 *SIGNATURE ON DOCUMENTS*: The Contract Documents shall be signed in Seven (7) copies by the Owner and the Contractor duly witnessed.
- 2.2 *INTENT OF CONTRACT DOCUMENTS*: The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intent of the Drawings and the Specifications is to prescribe the complete work that the Contract is to undertake to comply with the Contract. The intention is to include all labor and materials, equipment, testing and commissioning and transportation necessary for the proper execution of the work.
- 2.3 *CONFORMITY TO THE CONTRACT DOCUMENTS*: All work shall conform to the Contract Documents.
 - A. Refer to Articles 1.01 to 1.08 of the Construction Agreement for the detailed provisions of Contract Documents
 - B. The Contractor shall furnish/submit for approval additional detail drawings essential to the proper execution of the work for approval of Project Manager/Engineer and/or Architect (7) days after submission. All the additional drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. All such additional drawings and instruction are to be considered of equal force as those which originally accompany the specifications.
 - C. The Contractor shall develop, plan, schedule and submit a level 3 Construction Schedule in MS Project Format for approval of Project Manager/Project Engineer, subject to change from time to time in accordance with the progress of the work, fixing dates at which the various detail drawings shall be required and the OWNER shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of material, and for the completion of the various parts of the work. The approved schedule shall be the basis of aligning the MEPS schedule that will become the overall schedule known as "Baseline Schedule" of the project.
- 2.4 *CONTRACTOR DOCUMENTS AT SITE OF WORK*. The Contractor shall provide two (2) sets and in good order of all drawings, Specifications, Breakdown of work or Quantities, **Schedule of Construction Work and including all instructions and graphs available to the** Owner or his duly authorized representative(s).
- 2.5 *OWNERSHIP OF CONTRACT DOCUMENTS AND MODELS*. The Drawings, Specifications and Models, including all additional instructions, and copier thereof, furnished for this work by the Contractor are the property of the Owner and shall be returned to the OWNER at the completion of the Project. They are not to be used on any other work and with the exception of the signed Contract. The Original plan and an "As-built plan" are to be returned and submitted to the Owner in both hard copies (1 set in each plans) and in CAD files (1 file in each CAD files) at the completion of the work, before Final Payment to the Contractor is made. Refer to additional Contract provision Article 1.02 of the Construction Agreement.

ARTICLE 3: DRAWING AND SPECIFICATIONS

- 3.1 *PLANS, DRAWINGS AND SPECIFICATIONS*: The OWNER shall provide the Design, Plans and Specifications



OWNER: _____

CONTRACTOR: _____

- 3.2 *COPIES OF DRAWINGS AND SPECIFICATIONS.* The OWNER shall provide one (1 set) at his own expense the approved and necessary sets of Drawings and Specifications of the Work to the Contractor.
- 3.3 *COORDINATION OF DRAWINGS AND SPECIFICATIONS:* All Drawings and Models are intended to cooperate with the Specifications, to form a part thereof, and also to form a part of the Contract Documents. Where figures are given, they are to be followed in preference to measurements by scale. Anything shown on the Drawings but not mentioned in the Specifications, or vice versa, ~~or anything not expressly set forth in either but which is reasonably implied,~~ shall be furnished as though specifically shown and mentioned in both, without any extra charge.
- 3.4 *CLARIFICATION OF MEANING OF DRAWINGS AND SPECIFICATIONS:* The Contractor or his duly authorized representative(s) shall carefully examine, verify the furnished Drawings and Specifications. Any doubt as to the meaning of the Drawings (including notes thereon) or of the Specifications or any obscurity as to the wording of the Specifications will be explained, and all directions and explanations necessary and proper to make more definite and certain any requirements of the Drawings (including notes thereon) or of the provision of the Specifications and give them due effect, will be given by the OWNER or his representative.
- A. Should a conflict occur between Drawings, or a conflict between specifications and Drawings, ~~the Contractor shall be deemed to have estimated a more expensive way of doing work unless he shall have asked for and obtained a decision, in writing from the Owner before submission of proposals as to which method or materials will be required. If, after award, the less expensive work is done, the Contractor shall credit the Owner an amount equivalent to the difference between the more expensive and the less expensive work.~~ **the Contractor shall ask for and obtain a decision, in writing from the Owner, before submission of proposals as to which method or materials will be required.**
- B. If, in the Contractor's opinion, any work indicated on the Drawings, or specified in such manner as will make it impossible to produce a first-class work, he shall refer same to the Owner or the Project Manager/Engineer/Architect for interpretation before proceeding with work. If the Contractor fails to make such reference, no excuse will thereafter be entertained for failure to carry out work in the most satisfactory manner.
- 3.5 *DISCREPANCIES IN DRAWING:* In case of discrepancy in the figures or drawings, the matter shall be submitted immediately to the OWNER or his representative, before any adjustment shall be made by the Contractor save only at the latter's own risk and expense. The decision of the Owner or his duly authorized representative(s) on the adjustment of discrepancies so as to conform to the real intent of the drawings and specifications shall govern and shall be followed by the Contractor.

ARTICLE 4: DETAIL DRAWINGS AND INSTRUCTIONS

- 4.1 *SUPPLEMENTARY DRAWINGS AND INSTRUCTIONS:* The drawings referred to in these Specifications will be further supplemented by additional detail drawings and instructions essential to the proper interpretation of the Drawings and the proper execution of the work. The Contractor shall furnish with reasonable promptness such additional detail drawings and instructions for approval prior to implementation at site.
- All such detail drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. All such additional drawings and instructions are to be considered of equal force as those which originally accompany the specifications. The work shall be executed in conformity with such detail drawings and instructions, and the Contractor shall do no work without proper drawings and instructions.



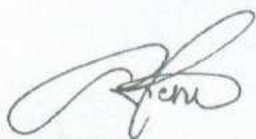
OWNER: _____

CONTRACTOR: _____

- 4.2 *SCHEDULE FOR SUBMISSION OF DETAIL AND SHOP DRAWINGS*: The Contractor shall prepare a schedule subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Contractor shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for submission of the shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

ARTICLE 5: SHOP DRAWINGS

- 5.1 *CONDITIONS IN THE PREPARATION OF SHOP DRAWINGS*: The Contractor shall prepare at his own expense and submit with such promptness as to cause no delay in his own work or in that of any other Contractor doing work on the same building, two (2) copies of all shop or setting drawings, templates, patterns and models as well as schedule required for the work of the various trades, and the Project Manager/Engineer/Architect shall pass upon them with reasonable promptness, making desired corrections. The Project Manager/Engineer/Architect shall make any corrections as required and file with him original corrected copies and furnish such other copies to the Contractor.
- 5.2 *INTERFACE - CHECKING DRAWINGS OF SUB-CONTRACTORS*. The Contractor shall coordinate with all assigned/nominated sub-contractors anticipated clashes in interface between disciplines. The OWNER will provide all approved installation drawings of other disciplines not part of construction agreement.
- 5.3 *IDENTIFICATION*: Shop drawings shall be numbered consecutively and represent:
- A. All working and erection dimensions.
 - B. Arrangement and sectional views.
 - C. Necessary details, including complete information for making connections with other work.
 - D. Kinds of materials and finishes.
 - E. Shop drawings shall be dated and contain (i:e) name of project, (b) descriptive names of equipment, materials, and classified item numbers, (c) location at which materials or equipment are to be installed in work.
- 5.4 *LETTER OF TRANSMITTAL*: Submission of shop drawings shall be accompanied by a letter of transmittal in duplicate, containing name of project, Contractor's name, number of drawings, titles, and other pertinent data.
- 5.5 *CORRECTION CHANGES AND VARIATIONS*: The Contractor shall submit two (2) sets of prints of shop drawings to the OWNER or his representative for approval. Satisfactory shop drawings will be so identified dated, and one (1) copy thereof returned to the Contractor. Should shop drawings be disapproved by the Project Manager/Engineer/Architect, one (1) set of such shop drawings will be returned to the Contractor with necessary corrections and changes to be made as indicated.
- A. The Contractor shall make required corrections and changes and resubmit shop drawings, in duplicate until the Project Manager/Engineer/Architect approval is obtained.
 - B. Upon receipt of approval, the Project Manager/Engineer/Architect shall insert date of approval and promptly returned to the Contractor the approved drawings.
 - C. No work called for by shop drawings shall be executed until the Project Manager/Engineer/Architect approval is given.
 - D. If shop drawings show variations from Contract requirements because of standard shop practice or other reasons, the Contractor shall make specific mention of such variations in his letter of submittal.
- 5.6 *RESPONSIBILITY FOR ACCURACY*: Approval of shop drawings will be general. It shall not relieve the Contractor of responsibility for accuracy of such shop drawings,



OWNER: _____

CONTRACTOR: _____

nor for proper fitting and construction of work, nor for furnishing of materials or work required by the Contract and not indicated on shop drawings. The **Project Manager/Engineer/Architect** approval of such drawings or schedule shall not relieve the Contractor from responsibility for deviations from Drawings or Specifications, unless he has in writing, called Project Manager/Engineer/Architect attention to such deviations at the time of submission and secure his written approval, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

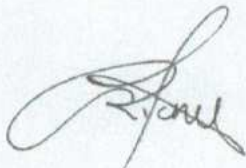
SECTION II: LAWS, REGULATIONS, SITE CONDITIONS, PERMITS AND TAXES

ARTICLE 6: LAWS, REGULATIONS AND SITE CONDITIONS

- 6.1 **LAWS AND REGULATIONS:** In general, the Contractor shall comply with all the laws, City and Municipal ordinances, and all Building Codes, rules and regulations, in so far as they are binding upon or affect the parties hereto, the Work, or those engaged thereon. He shall also comply with regulations of firms furnishing utilities such as water, telephone and electricity for the project.
If the Contractor performs any work contrary to such laws, ordinances, rules and regulations and without such notice to the Owner or his duly authorized representative(s), he shall bear all costs arising therefrom.
- 6.2 **SITE CONDITIONS:** Before the bidding and the awarding of the contract, the Contractor is expected to have visited the locality of the work and made his own estimates of the facilities and difficulties attending to the execution of the proposed contract, including local conditions and all other contingencies. No extra compensation and extension of time will be given due to negligence or inadvertence of the Contractor.

ARTICLE 7: PERMITS, TAXES AND SURVEYS:

- 7.1 **PERMITS AND LICENSES.** All construction permits and licenses necessary for the execution of the work or of any temporary work and easements in relation thereto should be secured, and the corresponding required fees paid for by the OWNER. The cost of such permits and licenses may, however, be reimbursed by the Owner to the Contractor if specifically stipulated in the prior instructions of the Owner or part of Contract Bills.
The Contractor shall also secure the final occupancy permit but he shall not be responsible for the non-issuance or the delay in the issuance thereof through no fault of the Contractor.
- 7.2 **TAXES:** Wherever the law of the place of building requires sales, consumer, use, or other similar tax related or pertinent only to the construction of the project the Contractor shall pay such tax.
- 7.3 **CONSTRUCTION STAKES AND REFERENCE MARK:** The Owner shall be responsible for the establishment of lot lines, boundary lines, easements, and benchmarks by a certified surveyor. The Owner may relegate this responsibility to the Contractor provided the Owner shall pay for the cost of said services. All other grades, lines, levels, and benchmarks necessary for the prosecution of the work shall be established and maintained by the Contractor.
- A. The Contractor shall verify all grades, lines, levels and dimensions as indicated on the Drawings. He shall report any error or inconsistency to the Project Manager/Engineer before commencing work.
- B. The Contractor shall provide and maintain well-built batter boards at all corners. He shall establish benchmarks in not less than two widely separated places.



OWNER: _____

CONTRACTOR: _____

As work progresses, he shall establish benchmarks at each floor giving exact levels of various floors.

- C. As work progresses, the Contractor shall lay out exact location of all partitions as a guide to all trades.
- 7.4 **SERVICES OF SURVEYOR:** The Contractor shall pay for services of a licensed surveyor when so required to confirm and certify the location column centers, piers, walls, pits, trenches, pipe work, culvert work, utility lines and work of similar nature required by the Contract. A copy of such certification shall be furnished the Project Manager/Engineer. It is the intention that the Surveyor's Certification shall represent an independent and disinterested verification of such lay-out.
- A. The Contractor shall furnish certifications from licensed surveyor that all portions of work are located in accord with Contract requirements and at elevations required thereby.
- B. The surveyor shall promptly verify and certify to lines and levels of any portion of subdivision of work at any time it may be deemed necessary by the Project Manager/Engineer. Any deviation from the Drawings shall be certified to the Project Manager/Engineer within twenty four (24) hours of discovery of same.
- 7.5 **FINAL CERTIFICATION.** Final certification shall be submitted upon completion of work, or upon completion of any section of work, if required by the Project Manger/Engineer, and before final payment is made. Any exception or deviations from the Drawings shall be noted on final certificate, and there shall be included any maps, plots, notes, and the like necessary in the opinion of the Project Manager/Engineer to constitute a full and complete report.

SECTION III: EQUIPMENT AND MATERIALS

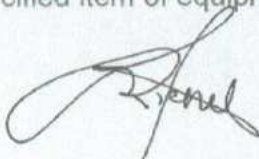
ARTICLE 8: GENERAL

Notwithstanding anything herein specified or provided that may be construed to the contrary, all materials and equipment must conform to all laws, ordinances, regulations and building codes now or hereafter may be in force and applicable during the period of construction, and the Contractor shall obtain the necessary permits and pay the required fees therefore to the proper authorities.

The Contractor shall bear any and all damage by reason of any delay in the work arising from his failure to comply with the provisions of this clause. Provided, however, that should any revision or amendments to such laws, ordinances, regulations and building codes made during the construction period affect the cost or time of completion of the contract, a corresponding adjustment shall be made.

ARTICLE 9: EQUIPMENT

- 9.1 **QUALITY OF EQUIPMENT:** In order to establish standards of quality, the Contractor have in the detailed Specifications, referred to certain equipment by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.
- A. The Contractor shall furnish the complete list of proposed substitutions prior to the signing of the Contract, together with such engineering and catalog data as the Owner or his duly authorized representative(s) may require.
- B. The Contractor shall abide by the OWNER and/or his representative's judgments when proposed substitute items of equipment are judged to be acceptable and shall furnish the specified item of equipment in such case.



OWNER: _____

CONTRACTOR: _____

C. All proposals for substitutions shall be submitted in writing by the Contractor and not by individual trades or material suppliers. The Owner or his duly authorized representative(s) will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute equipment shall be used unless approved in writing.

9.2 **EQUIPMENT APPROVAL DATA:** The Contractor shall furnish three (3) copies of complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific brand name, catalog number, and general type.

A. This submission shall be compiled by the Contractor and approved by OWNER or his representative before any of the equipment is ordered.

B. Each data sheet or catalog in the submission shall be indexed according to specification section and paragraph for easy reference.

C. After written approval, this submission shall become a part of the Contract, and may not be deviated from except upon written approval of the Owner or his duly authorized representative(s).

D. Catalog data for equipment approved does not in any case supersede the Contract Documents. The approval of the Owner or his duly authorized representative(s), shall not relieve the Contractor from responsibility for deviations from Drawings or Specifications, unless he has written and called the attention to such deviations on the time of submission, nor shall it relieve him from responsibility for errors of any sort in the items submitted. The Contractor shall check the work described by the catalog data with the Contract Documents for deviations and errors.

a. It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. He shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Drawings and Specifications.

b. Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install equipment to operate properly, and in harmony with the intent of the Drawings and Specifications, and to make all changes in the work required by the different arrangement of connections.

ARTICLE 10: MATERIALS, FIXTURES, APPLIANCES, AND FITTING FURNISHED BY THE CONTRACTOR

10.1 **MANUFACTURERS AND DEALERS:** Names of proposed manufacturers, materials men, and dealers who are to furnish materials, fixtures, appliances or other fittings shall be submitted to the OWNER, Architect and/or Project Manager/Engineer for approval as early as possible, to afford proper investigation and checking.

A. No manufacturer will be approved for any materials to be furnished under this Contract unless he shall be of good reputation, shall have a plant of ample capacity and adequate quality control and shall have successfully produced similar products

B. All transactions with manufacturers, or sub-contractors, shall be through the Contractor with the approval of the Owner.

C. In asking for prices for materials, the Contractor shall provide manufacturer or dealer with complete information from Specifications and Drawings and shall inform manufacturer or dealer of all pertinent contract requirements



OWNER: _____

CONTRACTOR: _____

- D. The manufacturer or dealer shall have the materials, equipment, fixtures, appliances or other fittings supplied by him properly coded or identified in accordance with the existing standards for same to indicate class grade or quality.

10.2 SAMPLES OF MATERIALS. The Contractor shall furnish for approval, with such promptness as to cause no delay in work, samples as specified or required. Work shall be in accordance with approved samples.

- A. Unless otherwise specified, three (3) samples shall be submitted, and of adequate size to show quality, type, color, range, finish and texture of material.
- B. Each sample shall be labeled, bearing material name and quality, the Contractor's name, date project name, and other pertinent data.
- C. Where specifications require manufacturer's printed installation directions, such directions shall accompany samples submitted for approval.
- D. A letter of transmittal in triplicate from the Contractor requesting approval shall accompany all sets of samples.
- E. Transportation charges to the Owner office must be prepaid on all samples forwarded.
- F. Materials shall not be ordered until approval is received in writing from the Owner or his duly authorized representative(s). All materials shall be furnished substantially equal in every respect to approved samples.

10.3 TRADE NAME MATERIALS AND SUBSTITUTES:

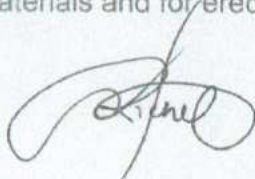
- A. No substitution shall be made for any material, article, or process required under Contract unless approved in written by the Owner or his duly authorized representative(s).
- B. Materials and articles installed or used without such approval shall be at the risk of subsequent rejections. Samples of materials supplied by the Contractor for use in reinforced concrete work such as steel bars, cement, aggregate and their certificates of origin are to be approved by the Owner or his duly authorized representative(s).
- C. As required; No other aggregate sand shall be utilized in the "Hospital Project" other than COTABATO SAND. The Contractor shall maintain adequate supply and stock of COTABATO SAND where the stock volume in M3 is equivalent to one (1) month Volume of scheduled concreting works for the following month.

10.4 TESTING SAMPLES OF MATERIALS: The Contractor shall submit to the Project Manager/Engineer as many samples as may be needed for purposes of testing. Testing of all samples shall comply with the Specifications and government standards and shall be performed by a competent entity or testing laboratory with calibrated testing equipment approved by Owner and his duly authorized representative(s). All costs for shipment, delivery, handling and testing of samples are to be paid by the Contractor.

10.5 QUALITY OF MATERIALS: Unless otherwise specified, all materials shall be new. The quality of materials shall be of the best grade of their respective kinds for the purpose. The work shall be performed in the best and most acceptable manner in strict accordance with the requirements of the Drawings and Specifications. The decision of the Owner or his duly authorized representative(s) as to quality and quantity of work and materials shall be final and precedent to the Contractor's right to receive any money hereunder.

10.6 STORAGE AND STOCKPILING OF MATERIALS:

- A. The Contractor shall allot suitable space to sub-contractors for storage or their materials and for erection of their sheds and tool houses.



OWNER: _____

CONTRACTOR: _____

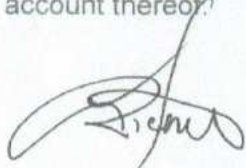
- B. All cement, and other materials affected by moisture shall be stored on platforms and protected from weather. Materials shall be stored as to insure the preservation of their quality and fitness for the work. Stored materials shall be located so as to facilitate prompt inspection.
 - C. Should it be necessary at any time to move materials, sheds, or storage platforms, the Contractor shall do so at his own expense.
 - D. No Owner Supplied Materials shall be brought offsite without the written approval of the OWNER.
 - E. The storage and stockpiling of materials shall also be in accordance with Article 6.01 and Article 8.06 of the Construction Agreement.
- 10.7 DEFECTIVE MATERIALS: All materials not conforming to the requirements of these Specifications shall be considered as defective. No defective materials, the defects of which have been subsequently corrected, shall be used until approval has been given. Upon failure on the part of the Contractor to comply forthwith with any order of the Owner or his duly authorized representative(s) made pursuant to the provisions of this article, the Owner or his duly authorized representative(s) shall have authority to remove and replace defective materials and to deduct the cost of removal and replacement from any money due or to become due the Contractor.
- A. The apparent silence of the Specifications, Drawings, Special Provisions and Supplementary Specifications, as to any detail or description concerning any point shall be regarded as meaning that only the best general practice is to prevail and that only materials and workmanship of first class quality are to be used.
 - B. Failure or neglect on the part of the Owner or his duly authorized representative(s), to condemn or reject bad or inferior materials shall not be construed to imply an acceptance of the materials if said bad or inferior materials are discovered at any time prior to the final acceptance of the work by the Owner and the release of the Contractor.
- 10.8 IMPORTED MATERIALS, FIXTURES AND EQUIPMENT. The Contractor shall take cognizance of the time element of the Contract. He shall make early arrangements for the purchase and delivery of all specified imported materials, fixtures, appliances and equipment in order to avoid delay in the completion of the work. No extension of time or substitution of materials shall be allowed due to negligence or inadvertence of the Contractor.

**ARTICLE 11: MATERIALS, EQUIPMENT, FIXTURES, APPLIANCES AND FITTINGS
FURNISHED BY THE OWNER**

Materials, equipment, fixtures, appliances and fittings specifically indicated shall be furnished by the Owner in accordance with schedule of delivery agreed upon between the Owner and the Contractor. The fact that the Owner is to furnish materials is conclusive evidence of its acceptability for the purpose intended, and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defect in material furnished by Owner, he shall notify the Owner or his duly authorized representative(s). The Contractor shall be responsible for material loss or damage after receipt of any material, equipment, fixture, appliance or fitting unless the same has been installed and accepted for safe keeping by the Owner or his representative.

ARTICLE 12: ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees on all patented materials and processes furnished by him. He shall defend all suits or claims corresponding thereto for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.



ARTICLE 13: MANUFACTURER'S DIRECTIONS

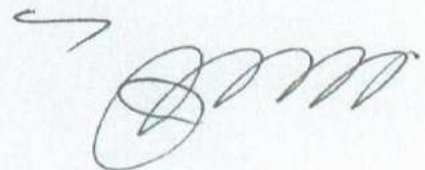
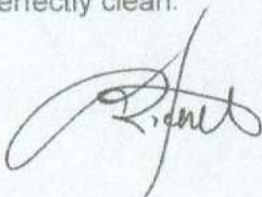
All manufactured articles, materials, equipment appliances, fixtures and fittings shall be applied, installed, connected, erected, used, cleaned, and conditioned, in accordance with manufacturer's printed directions, unless herein specified to the contrary. Where reference is made to manufacturer's directions, the Contractor shall submit specified number of copies of such directions to the Owner or his duly authorized representative(s).

SECTION IV: PREMISES AND TEMPORARY STRUCTURES**ARTICLE 14: USE OF PREMISES**

- 14.1 **LIMITATION OF USE.** The contractor shall confine his apparatus, the storage of materials, and the operations of his workmen to limits indicated by the law, ordinances, permits, or directions of the Project Manager/Engineer and shall not unreasonably encumber materials.
- 14.2 **SAFEGUARD FOR STRUCTURE.** The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The Contractor shall enforce the Project Manager/Engineer's instructions regarding signs, advertisements, fires and smoking.

ARTICLE 15: TEMPORARY STRUCTURES AND FACILITIES


- 15.1 **TEMPORARY OFFICE AND CONTRACTOR'S BUILDING.** The Contractor shall at all times provide and maintain adequate weather tight temporary office with water, light, telephone, and toilet facilities for the use of the Project Manager, engineers, and inspectors. The office shall be provided with tables, closet, blackboard, tack board, benches and racks for drawings. The Contractor shall provide the Project Management office with four (4) new or like new 2.5 HP Air conditioning units, One (1) office Printer with scanner and copier, (1) one mid size refrigerator, (1) one medium size electric fan. One (1) utility personnel, repair and maintenance of the PMT office, Office stationeries and supplies without cost to the OWNER in reasonable quantities and related to project operations until the completion of the project.
- 15.2 Contractor shall submit the existing location plan of Temporary Facilities for approval and no additional use of the property unless approved by the Owner
- 15.3 **TEMPORARY HOUSING FOR WORKERS:** The temporary buildings for housing workers, or the erection of tents or other forms of protection will not be permitted unless approved by the Owner or his duly authorized representative(s). Nobody shall be allowed to sleep or cook within the building line of the project under construction except in location duly designated and approved by the OWNER.
- 15.4 **TEMPORARY SANITARY FACILITIES AND FIRST AID STATION.** The Contractor shall provide, construct and maintain for the duration of the contract, ample sanitary toilet accommodation and other necessary conveniences including water connections for the use of personnel and laborers on the work, properly secluded from public observation, in such manner and at such points as shall be approved by the Owner or his duly authorized representative(s), and their use shall be strictly enforced. He shall keep such places clean and free from flies; remove all connections and appliances connected therewith prior to the completion of the contract; and leave the premises perfectly clean.



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- 15.5 TEMPORARY BARRICADES, CONSTRUCTION FENCE, SAFETY NETS AND GUARD LIGHTS: The Contractor shall furnish and put up all temporary barricades, construction fence, safety nets and guard light necessary for the proper prosecution and completion of work. The guard lights at the top of the falsework tower, barricades, railings, etc., shall be provided and maintained by the Contractor throughout in the prosecution of the project.
- 15.6 TEMPORARY WATER/ POWER AND TELEPHONE FACILITIES: The Contractor shall make all necessary arrangements with the local utility companies in order that temporary facilities for water, power, and telephone are sufficiently provided till the completion of the work. All expenses incurred in connections therewith shall be paid by the Contractor.
- 15.7 TEMPORARY SIGNS: No signs or advertisements will be allowed to be displayed without the Owner or his duly authorized representative(s) approval. The Contractor may erect one painted sign as approved by the Owner or his duly authorized representative(s), giving names and addresses of the Contractor and various sub-contractors. The Owner or his duly authorized representative(s), shall approve size, color, lettering, and sign location.
- 15.8 TEMPORARY ACCESSWAY: The Contractors shall construct and properly maintain temporary access way within and adjacent to site in order to provide proper access to the building. Temporary access way shall be properly maintained and must be free of debris, dust, mud at all times.
- 15.9 TEMPORARY STAIRS, LADDERS, RAMPS, RUNWAYS: The Contractor shall furnish and maintain all equipment such as temporary stairs, ladders, ramps, scaffolds, runways, derricks, chutes, and the like, as required for proper execution of work in all trades. All such apparatus, equipment, and construction shall meet all requirements of Labor Law and other local laws applicable thereto.
- 15.10 TEMPORARY ELEVATORS AND HOISTS: If required, the Contractor shall install and operate an adequate number of hoists and elevators. No hoists shall be constructed at such locations as will interfere with or affect construction of floor arches (or work of other Contractors). They may be located at exterior sides of structure and extend upward adjacent to line of window openings. They shall be located at a sufficient distance from exterior walls and be so protected as to prevent damage, staining, or marring the permanent work.
- 15.11 TEMPORARY ENCLOSURES: The Contractor shall provide temporary weather tight enclosure for all exterior openings as soon as walls and roof are built so as to protect all work from weather. All exterior doors shall be equipped with self-closing hardware and, padlocks. All exterior windows shall be provided with temporary sash frames securely fastened in place but removable when required. Such sash frames shall be covered in approved manner.
- 15.12 TEMPORARY OR TRIAL USAGE: Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any work or materials supplied under Contract before final completion and written acceptance by Owner or his duly authorized representative(s) shall not be construed as evidence of the Owner or his duly authorized representative(s) acceptance of same.
- The Owner shall have privilege of such temporary or trial usage, for such reasonable length of time as the Contractor shall deem to be proper. No claim for damage shall be made by the Contractor for injury to or breaking of any parts of such work which may be caused by weakness or inaccuracy of structural parts or by defective material or workmanship.
- Should the Contractor so elects, he may, at his own expense place persons satisfactory to the Owner or his duly authorized representative(s) to make such trial usage.



- 15.13 REMOVAL OF TEMPORARY STRUCTURES: The Contractor shall remove all temporary work form premises, erected by him and shall clean the premises as a condition for completing the work and before acceptance of the work by the Owner.

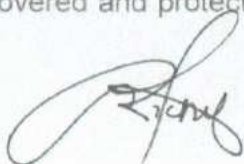
SECTION V: PROTECTION OF WORK AND PROPERTY

ARTICLE 16: PROTECTION OF WORK AND OWNER'S PROPERTY

- 16.1 SAFEGUARD MEASURES: The Contractor shall put up and continuously maintain adequate protection of all his work from damage and shall protect the Owner's property, as well as all materials furnished and delivered to him by the Owner. He shall make good any such damage, injury or loss, except such as may caused by agents or employees of the Owner, or due to causes considered as Acts of God.
- A. The Contractor shall provide reliable and competent watchmen to guard the site and premises, from commencement of operations until building is fully completed. Provide all doorways with locks under control of the Contractor who shall lock doors at the close of each day's work. In the event that the Owner or his duly authorized representative at any time deems watchmen service inadequate or incompetent, the Contractor shall increase or change the watchmen personnel to the Owner's satisfaction.
 - B. Smoking on premises shall be strictly prohibited. Fires shall not be built on premises except by express consent of the Owner or his duly authorized representative(s).
 - C. The Contractor shall provide and maintain barrels of water and fire buckets on premises for fire protection. Such equipment shall not be used for any other purpose.
 - D. The Contractor shall provide and maintain in good working order an adequate number of fire extinguishers.
- 16.2 OLD MATERIALS: All old materials of value found by the Contractor upon the work, shall be carefully piled where designated by Owner or his duly authorized representative(s); and the Contractor shall be responsible for the same until final acceptance of the work.
- 16.3 TREES AND OTHER PLANTS: Existing trees, plants, shrubs, etc., which are to remain shall be boxed and otherwise protected from damage. No trees within site or located outside building lines shall be cut or removed without specific approval from the Owner.
- a. All trees and other plants that need to be transplanted elsewhere, if practicable and/or feasible shall be done by the Contractor at his own expense in accordance with instructions from the Owner or from the authorities concerned.
 - b. Undue damage to trees, plants, shrubs, streets, sidewalks, etc., resulting from and in connection with the construction work shall be made good and/or replaced by the Contractor at his own expense to the satisfaction of the Owner.
- 16.4 DRAINAGE; if it is necessary in the prosecution of the work shall be provided by the Contractor during the progress of the work in such a way that no damage shall result to either public or private interests. For any neglect to provide for other natural or artificial drainage which he may have interrupted, he shall solely be held liable for all damages which may result therefrom during the progress of the work.

ARTICLE 17: PROTECTION OF ADJACENT PROPERTY AND EXISTING UTILITIES

- 17.1 CONTRACTOR'S SOLE RESPONSIBILITY: The Contractor shall adequately protect adjacent property as provided by law and the Contract Documents. The construction building or work, in addition to any neighboring property or building which maybe jeopardized in any manner, must be thoroughly and substantially braced against winds, floods, setting, falling, or like similar occurrences, and when necessary, covered and protected from sun and rain at the Contractor's expense. The Contractor



OWNER: _____

CONTRACTOR: _____

shall solely be liable and pay for all damages occasioned in any manner by his acts or neglect, or of his agents, employees, or workmen.

17.2 *EXISTING UTILITIES*: Existing utilities, if damaged due to negligence or fault of the Contractor, shall be repaired by the Contractor at his expense.

ARTICLE 18: PROTECTION OF LIFE, WORK AND PROPERTY DURING AN EMERGENCY

18.1 *AUTHORIZATION TO CONTRACTOR*: In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor, without special instruction or authorization from the Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work, shall be determined by consensus and/or mutual agreement.

SECTION VI: LABOR, WORK AND PAYMENTS

ARTICLE 19: LABOR

19.1 *CHARACTER OF WORKMEN*. The Contractor shall employ only experience, competent and efficient engineers, superintendents, foremen, mechanics, laborers, or artisans. Whenever, in the opinion of the Owner and/or Project Manager/Engineer, any employee is careless or incompetent or obstructs the progress of the work or acts contrary to instructions or conducts himself improperly, the Contractor shall, upon written request of the Owner or his duly authorized representative(s), discharge or otherwise remove him from the work and not employ him again upon it.

Should the Contractor fail to remove unsatisfactory workmen or fail to furnish suitable and sufficient equipment or personnel for the proper prosecution of the work, the Owner, at the recommendation of the Project Manager/Engineer may withhold payment which are or may become due, or may suspend the work until such orders are complied with.

19.2 *SUPERINTENDENCE AND SUPERVISION*. The Contractor must have in his employ a Licensed and Experienced Project Manager/Engineer or Architect acceptable to the Owner or his duly authorized representative(s).


The Contractor shall keep in the Project site, during the work's progress, a experience and competent Construction Engineer and Assistant Construction Engineer and any other necessary assistants, all satisfactory to the Owner or his duly authorized representative(s).

The Construction Engineer shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. He shall have full authority to execute the orders or directions of the Owner or his duly authorized representative(s) without delay and to promptly supply such materials, tools, plants, equipment, and labor a may be required.

ARTICLE 20: WORK

20.1 *METHODS AND EQUIPMENT*: The Contractor shall use such methods and equipment for the performance of all the operations connected with the work embraced under this Contract as will produce a satisfactory quality of work and rate of progress which, in the opinion of Owner or his duly authorized representative(s), will insure the completion of the work within the contract time.

A. If, at any time before the commencement or during the progress of the work, such methods or equipment appear to the Owner to be inefficient or inappropriate for producing the quality of work required, or ensuring the required rate of progress, the Owner or his duly authorized representative(s) may order the Contractor to increase



the rate of their efficiency, or to improve their system of operation. The Contractor must comply with such order. Failure, however, of the Owner to demand such increase of efficiency or improvement of character of methods and appliances shall not relieve the Contractor from his obligation to turn out such quality of work and rate of progress as are called for in this Contract.

- B. The Contractor shall, if required, furnish to the Project Manager/Engineer/Architect for approval full information and satisfactory evidence as to the name of the manufacturer of machinery, mechanical or other equipment which he contemplates using together with the performance capacities and other pertinent information.

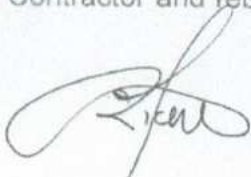
20.2 *LAYING OUT THE WORK*: The Contractor shall lay out the lines and grades of the work as per conditions set forth under Article 7.3 (Construction Stakes and Reference Mark) of the General Conditions.

All stakes, benchmarks, etc., placed by the Contractor in laying out the work, approved by the Project Manager/Engineer, shall be carefully guarded and preserved by the Contractor. In case such stakes or marks are displaced or rendered useless through the carelessness or neglect of the Contractor or of his agents, employees, or workmen, they should be replaced by the Contractor at his own expense.

20.3 *INSPECTOR OF WORK*: The Owner or his duly authorized representative(s), shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

- A. If the specifications, the Project Manager/Engineer's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the Contractor shall give the Owner or his duly authorized representative(s) and other parties required to make the inspection, timely notice of its readiness for inspections, and the date fixed for such inspection. Inspections by Owner or his duly authorized representative(s), shall be promptly made and where practicable, at the source of supply. If any work should be covered up without approval or consent of the Project Manager/Engineer/Architect, it must, if required, be uncovered for examination at the Contractor's expense.
- B. Re-examination of questioned work may be ordered by the Project Manager/Engineer/Architect and is so ordered the work must be uncovered by the Contractor. If such work be found not in accordance with the Contract Documents, the Contractor shall pay the cost.
- C. The Contractor shall furnish promptly without additional charge all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the inspectors. All inspection and tests shall be performed in such manner as not to unnecessarily delay the work.
- D. If there are indications that the work done 'are not in accordance with plans and specifications, the OWNER and/or the Project Manager/Engineer/Architect may at any time before the final acceptance of the entire work make an examination of the work already completed. By removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and materials. If such work is found to be defective in any material respect due to fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of 'the Contract, the actual cost of labor and materials necessarily involved in the examination and replacement plus five percent (5), shall be allowed the Contractor and he shall in addition, if completion of the war has been delayed hereby, be granted a suitable extension of time on account of the additional work involved.

20.4 *DEFECTIVE WORK*: Defective work may be condemned by the OWNER and/or Project Manager/Engineer/Architect at any time before the final acceptance of the work, and when such work has been condemned it shall be taken out immediately by the Contractor and rebuilt in accordance with the Drawings and Specifications. Failure



OWNER: _____

CONTRACTOR: _____

or neglect on the part of the Owner or his duly authorized representative(s) or any of his agents to condemn or reject bad or inferior work, shall not be construed to imply an acceptance of the work of the same if such bad or inferior work is discovered at any time prior to the final acceptance of the work by the Owner and the release of the Contractor.

20.5 WORK DURING AN EMERGENCY: The Contractor shall perform any work and shall furnish and install all materials and equipment necessary during emergency endangering life or property. In all cases he shall notify the Owner or his duly authorized representative(s) of the emergency as soon as practicable, but he shall not wait for instructions before proceeding to property protect both life and property.

20.6 INCREASED OR DECREASED QUANTITIES OF WORK: Adjustments of Drawings to suit field conditions which cannot be foreseen may be necessary during construction. It is the essence of the Contract to recognize such changes in Drawings as constituting a normal and expected margin of adjustment, and not involving nor permitting change or modification of Contract Prices, provided only, that resulting overruns or under runs from the quantities in the Proposal do not exceed five percent (5%). In case of discrepancy, the matter shall be submitted immediately to the Owner or his duly authorized representative(s) before any adjustment shall be made by the Contractor, otherwise it shall be at his own risk and expense.

20.7 CHANGES IN THE WORK

A. CHANGE ORDERED BY OWNER: The Owner may at any time, without invalidating the Contract and without notice to the sureties, order extra work or make changes by altering, adding to or deducting from the work, as covered, by the Drawings and Specifications of this Contract and within the general scope thereof. Such changes shall be ordered by the Owner in writing, and no change or omission from the Drawings and Specifications shall be considered to have been authorized without written instructions signed by the Owner.

B. ADJUSTMENT OF CONTRACT: All such work shall be executed under the conditions of the original Contract. If such changes cause an increase or decrease in the amount due under this Contract, or in the time required for its performance, an equitable adjustment shall be made and the Contract should be modified in writing accordingly. The express consent of the sureties shall be obtained in writing. In the event that the work involved is increased by such changes, the Contractor shall furnish proportionate additional performance bond, unless waived by the Owner.


C. VALUE OF EXTRA WORK: The value of extra work or change shall be determined in any one or more of the following ways:

(1) By estimate and acceptance in a lump sum.

(2) By unit prices stipulated in the Contract or subsequently agreed upon, provided the extra or credit does not exceed twenty five percent (25%) of original contract of the particular work involve.

(3) By actual direct cost plus Fourteen Percent (14%) plus 12% VAT for contractor's profit, overhead and contractor's tax. Under case (3), he shall keep and present in such form as the Owner or his duly authorized representative(s) may direct, a correct account of the cost, together with vouchers. In any case, the Owner or his duly authorized representative(s) shall certify to the amount including the Fifteen Percent allowance for overhead and profit due the Contractor.

E. PERIOD FOR WHICH CLAIM FOR ADJUSTMENT HAS TO BE ASSERTED. Any claim for adjustment involving questions of fact must be asserted within fourteen (14) days from the date the change is ordered unless the Project Manager/Engineer shall for proper cause extend such time. Except as otherwise specifically provided in this Contract, all disputes concerning questions of fact arising under this Contract shall be decided the Owner or his duly authorized representative. Nothing, however, as



OWNER: _____

CONTRACTOR: _____

provided for in Article 20.7 of General Provisions, shall excuse the Contractor from proceeding with the prosecution of the work so changed.

F. **CHANGES ORDERED BY THE OWNER:** In giving instructions, the Owner or his duly authorized representative(s) have the authority to make minor changes in the work, not involving extra cost, and not inconsistent with the design concept of the building.

G. **AWARD OF EXTRA WORK TO OTHER CONTRACTORS:** In case any extra work shall be required in the proper performance of the work contemplated under this Contract, it is understood that if the Contractor and the Owner fail to arrive at any agreement as to the price of such extra work, the Owner reserves the right to have such extra work done by any other person, firm, or corporation than said Contractor.

20.8 **CLAIMS FOR EXTRA COST:** If the Contractor claims that any instructions by drawings or otherwise involve extra cost under this Contract, he shall give the Owner or his duly authorized representative(s) written notice thereof within fifteen (15) days after the receipt of such instruction, and, in any event, before proceeding to execute the work, except in emergency endangering life or property, and the procedure shall then be as provided for in Article 20.5 of the General Conditions (Work During An Emergency) of the General Conditions. No such claim shall be valid unless so made.

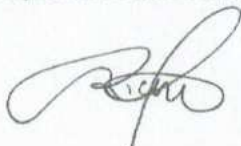
In like manner, if the Contractor incurs a delay, in the mobilization and/or in the progress of his work for reasons attributable to the Owner, e.g., Owner-supplied materials not arriving on time, movements or work executed by the Owner which interfere with the progress of the Contractor's work, delayed decisions and other matters related thereto, he shall give the Owner or his duly authorized representative(s), written notice thereof within fifteen (15) days after recognition, of such delay and proceed to claim for extra cost that may arise from such delays. No claim shall be valid unless such written notice has been executed.

20.9 **CLEANING UP AT COMPLETION OF WORK:** The Contractor shall at all times keep the premises free from accumulations of waste materials or rubbish caused by his employees or work. At the completion of the work, he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and turn over the work for occupancy with:

- A. All dirt, stains and the like on all finishing of floors, walls and ceiling, decorative work, finishing hardware and fixtures, removed;
- B. All woodwork, finishing hardware and all metal works, cleaned and polished;
- C. All glazing, marble and tile work, washed and polished. The Contractor shall so clean the building site as shown in the Drawings and all areas which the Contractor used in the operation of the Project.
- D. At no time shall any rubbish be thrown from windows or other parts of the building without the use of rubbish chutes.

20.10 **USE OF COMPLETED PORTIONS OF WORK:** The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. Neither shall it be deemed a waiver by the Owner of the rights to claim for damages due to delays in the completion of the work. If such prior use increase the cost of or delays the completion of uncompleted work, the Contractor shall be entitled to such extra compensation, or extension of time or both, as agreed upon prior to the occupancy.

20.11 **CERTIFICATE OF COMPLETION OF WORK OR Notice of Confirmation Completion AND ACCEPTANCE (NCCA):** Upon due notice from the Contractor that he has substantially completed the work, the Owner or his duly authorized representative(s) shall make an inspection of the Work and develop a "Punch List" that will cover all minor works, defects, imperfections, deficient, inadequacy or missing part to be completed to the satisfaction of the Owner. Substantial completion shall mean that the



OWNER: _____

CONTRACTOR: _____

value of the work completed shall not be less than ninety percent (90%) of the contract amount and that the remaining unfinished work shall be of a minor nature only and will form part of the "PUNCH LIST ITEMS". If the contract covers the furnishing and/or installation of equipment, fixtures and utilities, said equipment, fixtures and utilities, shall be fully tested and test-run in order that the work can be considered as substantially completed.

However, should the Contractor, through no fault of his, be unable to test run in order that the work can be considered as substantially completed. Moreover, should the Contractor, through no fault of his be unable to test run the equipment at the time of substantial completion, he shall be given the necessary time extension for that portion of the work.

As soon as, in the opinion of the Owner or his duly authorized representative(s), the work shall have been substantially completed and shall have satisfactorily passed any final test of materials that may be prescribed by the Contract, the Owner or his duly authorized representative(s), shall issue a Certificate of Completion in respect to the work. Even before the completion of the whole work, upon written application of the Contractor, the Owner or his duly authorized representative(s) may likewise issue such a Certificate of Completion with respect to any substantial part of the work which has been completed to the satisfaction of the Owner or his duly authorized representative(s) and occupied or used by the Owner.

In all cases, prior to the issue of said Certificate of Completion, the Contractor shall execute a written undertaking to finish and close any outstanding work listed in the "PUNCH LIST" during the Period of Making Good of Known Defects or Faults as defined in Article 20.12 hereof.

20.12 PERIOD OF MAKING GOOD OF KNOWN DEFECTS OR FAULTS: The expression "Period of Making Good of Known Defects or Faults" shall mean a period of not more than Thirty (30) calendar days, unless otherwise expressly named in the contract, calculated from the date of issue of the Certificate of Completion of the whole work or of any part thereof, in accordance with Article 20.11 of General Conditions.

20.13 MAKING GOOD OF KNOWN DEFECTS OR FAULTS: The Contractor shall execute at his own expense all work necessary for making good of known defect, imperfections or faults (fair, wear and tear expected) within the period of Thirty (30) days after the issuance of Certificate of Completion or within fifteen (15) days after its expiration as a result of an inspection made by or on behalf of the Owner or his duly authorized representative(s) prior to its expiration.

If, in the opinion of the Owner or his duly authorized representative(s), the defect or fault is due to the Owner or Owner's representative, the value of such work shall be ascertained and paid for as it were additional work. If the Contractor shall fail to do any such work as aforesaid, the Owner shall upon written notice to the contractor be entitled to carry out such work by his own workmen or by other contractors, and if such work which the Contractor should have carried out is at the Contractor's cost, the Owner shall be entitled to recover from the Contractor the cost thereof, or may deduct the same from any monies due or may become due to the Contractor.

20.14 SEARCH FOR CAUSES OF DEFECTS OR FAULTS: The Contractor shall, if required by Owner or his duly authorized representative(s) in writing, search for the cause of any defect, imperfection of fault shall be one for which the Contractor is not liable under the Contract, the cost of the work carried out by the Contractor in searching for said defect shall be borne by the Owner. But if such defect, imperfection of fault shall be one for which the Contractor is liable, the costs of the work carried out in searching said defects shall be borne by the Contractor and he shall, in such case, repair, rectify and make good such defect, imperfection or fault at his own expense, in accordance with the provisions of Article 20.13 hereof.

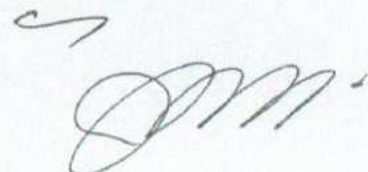
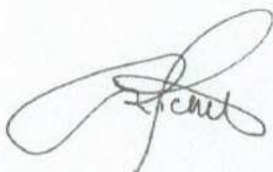


OWNER: _____

CONTRACTOR: _____

ARTICLE 21: TIME OF COMPLETION OF WORK

- 21.1 **NOTICE TO PROCEED:** Following the execution of the Contract Agreement by the Owner, written Notice to Proceed with the work shall be given to the Contractor. The Contractor shall begin and shall prosecute the work regularly and uninterruptedly thereafter (unless otherwise directed in writing by the Owner) with such force as to secure the completion of the work within the time stated in the Contract. If the Contractor undertakes actual construction on the proposed work including the delivery of equipment or materials (in the case for furnishing materials) or the performance of any other kind of work whatsoever, before he receives a copy of the duly executed Contract or Notice to Proceed, he does so at his own risk.
- 21.2 **CONTRACT TIME:** The Contractor shall complete, in an acceptable manner, all of the work contracted for in the time stated in the Contract. Computation of Contract Time shall commence on the seventh (7th) day from receipt of the Notice to Proceed, unless otherwise stipulated in the Contract, and every calendar day following, shall be counted as a working day.
- 21.3 **SCHEDULE OF COMPLETION:** The Contractor shall develop and submit, for approval, the revised Schedule of Construction Work in MS Project form acceptable to the Owner or his duly authorized representative(s).
- A. Contractor shall develop the schedule in hierarchal manner The Schedule shall be thorough and complete.
 - B. Contractor shall also include a time-scaled Bar Chart Schedule estimated times by activities planned to be completed.
 - C. Contractor shall develop and submit for approval the equipment to be used and number of men (Manpower histogram) to be employed to complete the work, in accordance with the approved construction schedule.
 - D. The progress of the work shall be at a rate sufficient to complete the Contract in an acceptable manner within the period of time specified. If it appears that the rate of progress is such that the Contract will not be completed within the time limit, the Owner or his duly authorized representative(s) may order the Contractor to take such steps as he considers necessary to complete the Contract within the period provided.
 - E. The Contractor's approved schedule shall be the basis of aligning the schedule of MEPS that will become the overall schedule known as the BASELINE SCHEDULE.
- 21.4 **EXTENSION OF TIME:** The Contractor will be allowed an extension of time based on the following conditions:
- A. Should the Contractor be obstructed or delayed in the prosecution or completion of the work by the act, neglect, delay, or default of the Owner or any other contractor employed by the Owner on the work; by strikes or lockouts, by an Act of God or Force Majeure as defined in Article 1.21 of the General Conditions by delay authorized by the Owner or his duly authorized representative(s) pending arbitration; then the Contractor shall within fifteen (15) days from the occurrence of such delay file the necessary request for extension. The Owner or his duly authorized representative(s) may grant the request for extension for such period of time as he considers reasonable.
 - B. However, no such extension of time shall be granted for any alleged failure of the Owner to furnish materials or information unless they be required in the proper prosecution of the work in the order prescribed by the Owner or his duly authorized representative(s) and unless the Contractor shall have made written request for them at ten (10) days before they are actually needed.



OWNER: _____

CONTRACTOR: _____

- C. The *WRITTEN CONSENT OF THE BONDSMEN* must be attached to any request of the Contractor for an extension of time and submitted to the Owner for consideration.
- D. If the satisfactory fulfillment of the Contract shall require the performance of work in greater quantities than those set forth in the Contract, the time allowed for performance shall be increased in the same ratio that the total cost of work actually performed shall be to the total cost in the Contract. However, if in the opinion of the Owner or his duly authorized representative(s), the nature of the increase work is such that the new Contract Time as computed above is unreasonably short, the time allowance for any extension and increases shall be as agreed upon in writing.
- E. If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay shall be allowed on account of failure to furnish drawings until two (2) weeks after demand for such drawings and unless such, claim be reasonable.
- F. If the work is interrupted for any reason, it must be promptly resumed on the removal or cessation of the cause of delay.
- G. The Contractor shall give written notice to the Owner or his duly authorized representative(s) at least ten (10) days prior to beginning, suspending (Except in case of accident), or resuming the work to the end that the Owner or his duly authorized representative(s) may make the necessary preparation for inspection without delaying the work. All delays or losses resulting from failure of the Contractor to give such notice will be at the Contractor's risk; and all extra costs to the Owner for such delay (said costs to be determined by the Project Manager/Engineer) shall be deducted from the Final Payment.

21.5 *LIQUIDATED DAMAGES*: It is understood that time is an essential feature of this Contract, and that upon failure to complete the said Contract within the contract time, the Contractor shall be required to pay the Owner the liquidated damages in the amount stipulated in the Contract Agreement, the said payment to be made as liquidated damages, and not by way of penalty.


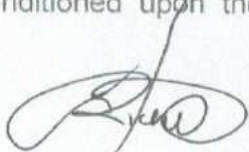
The Owner may deduct from any sum due or to become due the Contractor any sums accruing for liquidated damages as herein stated. For purposes of calculating, the actual completion date shall be the date certified by the Project Manager/Engineer under Article 20.11 hereof.

ARTICLE 22: PAYMENTS

22.1 *DETAILED BREAKDOWN OF CONTRACT AMOUNT*: All Requests for Payment shall be based on the approved Breakdown of Work and Corresponding Value of the Contract Amount (Contractor Bills) showing the value assigned to each part of the work, including the allowance for profit and overhead.

22.2 *REQUESTS FOR PAYMENT*: The Contractor may submit periodically but not more than once each month a Request for Payment for work done. The Contractor shall furnish the Owner or his duly authorized representative(s) all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Each Request for Payment shall be computed from the work completed on all items listed in the Breakdown of Work and Corresponding Value (Contractor Bills), less the ten percent (10%) retention unless otherwise agreed upon and less previous payments. When ninety five percent (95%) of the Contract has been accomplished, no further retention shall be made on the balance of the Contract.

In general, no payment shall be made for materials or items not incorporated in the work. However, exception to this condition may be made in the case of materials or items which may require immediate acquisition and compensation due to shortages or import or transportation difficulties. In the event of such exceptions, payment shall be conditioned upon the submission by the Contractor of bills of sale or such other



OWNER: _____

CONTRACTOR: _____

procedures as will establish the Owner's title to such material or item or otherwise adequately protect the Owner's interest.

22.3 PROGRESS PHOTOGRAPHS TO ACCOMPANY REQUEST FOR PAYMENT: The Contractor at his own expense shall furnish the Owner or his duly authorized representative(s) progress photographs which shall be taken monthly, starting when the work begins and continuing so long as the work is in progress, on the outside of the building, from station points designated by the Owner or his duly authorized representative(s).

22.4 UPDATED CONSTRUCTION SCHEDULE TO ACCOMPANY REQUEST FOR PAYMENT: The Contractor shall also include a copy of the updated approved Construction Schedule showing the actual progress status of the project as of the payment request period.

No partial payment shall be considered for approval without the above mentioned prints, updated schedule accompanying the Request for Payment.

22.5 ACTION ON A REQUEST FOR PAYMENT: Within Five (5) Working Days after receipt of Progress Billing or Request for Payment by the Contractor, the Project Manager/Engineer shall either issue a Certificate of Accomplishment of Work or withhold the Request for Payment. When the Project Manager/Engineer decides to withhold the Request for Payment, he shall inform the Contractor in writing the reasons for withholding it. If the Contractor and the Project Manager/Engineer cannot agree on a revised amount, the Project Manager/Engineer will issue a Certificate of Accomplishment for the amount for which he is able to make representation to the Owner.

The Certificate of Accomplishment shall include the value of work accomplished by the Contractor during the period covered by the certificate and recommendation to the Owner for payment in an amount the Project Manager/Engineer decides to be properly due.

22.6 APPROVAL WITHHELD: The Project Manager/ Engineer may recommend withholding of payment in whole or in part on any approved Request for Payment on Account of any of the following reasons:

- a. Defective work not remedied
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to sub-contractors or for material or labor.
- d. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- e. Damage to another Contractor.

When the above grounds are removed, payments shall be made for amounts withheld.

22.7 CONDITIONS RELATIVE TO CERTIFICATES OF PAYMENTS:

The Project Manager/Engineer shall estimate the value of work accomplished by the Contractor using as a basis the schedule stipulated in the Breakdown of Work and Corresponding Value (Contractor Bills). Such estimates shall be final and conclusive evidence of the amount of work performed, and shall be taken as the basis for the full measure of compensation to be received at the time by the Contractor. Such Preliminary estimates of amount and quantity shall not be required to be made by strict measurement or with exactness, but they may, at the option of the Project Manager/Engineer, be approximate only.

22.8 OWNER'S ACTION ON AN APPROVED REQUEST FOR PAYMENT OR CERTIFICATE OF PAYMENT: Within Five (5) Working Days from the date of approval of a Request for Payment or of issuance of a Certificate of Payment, the Owner shall pay the amount as certified by the Project Manager/Engineer or pay such other amount



OWNER: _____

CONTRACTOR: _____

as he shall decide what is due the Contractor, informing the Contractor and the Owner in writing of his reasons for paying the amended amount.

Owner's failure to pay the amount involved would be subject to payment of interest based on banking loan rates prevailing at the time of the signing of the Contract.

22.9 PAYMENT OF CONTRACTOR'S OBLIGATIONS: The Contractor shall pay punctually all workmen employed by him on his project at such rates as are provided by existing laws. He shall also pay promptly all materials and equipment used by him on his project, and all taxes due from him. He shall remit as required by law all amount withheld from the salaries or wages of his employees or workmen.

If required he shall furnish the Owner with a statement sworn to before an officer duly authorized to administer oath that all persons who have done work or furnished materials under this Contractor have been duly paid. If such written evidence is not furnished before the final payment under the Contract falls due, said Owner may after due notice to and clearance by the Contractor pay such lawful claims in whole or in part to any person, firm, or corporation claiming the same, and charge the amount thus paid to said Contractor, who will accept the same as payment from the amount due on the Contract.

22.10 PAYMENTS OVER 65 PERCENT: No payment shall be made on contracts in excess of sixty five percent (65%) of the Contract Price, unless a statement sworn before an officer duly authorized to administer oath is submitted by the Contractor to the effect that all bills for labor, other than current wages, and all bills for materials have been duly paid by the Contractor and his Sub-contractor, if any, excepting only such bills as may be enumerated in such sworn statement. ~~Provided, however, that should such sworn statement turn out false, the Owner and the work covered thereby shall not be liable for any claim or lien arising from the failure to pay and other causes, provided for in this clause. The Contractor does hereby bind itself solely answerable for any such lien should the same arise.~~

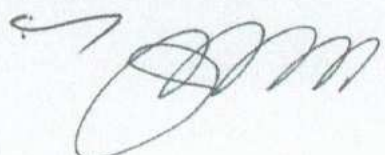
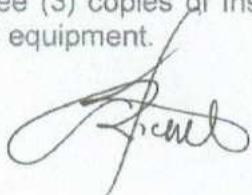
22.11 CORRECTION OF WORK BEFORE FINAL PAYMENT: The Contractor shall promptly remove from the premises all work condemned by the Project Manager/Engineer as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expenses of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor.

If the Contractor does not pay the expenses of such removal within ten (10) days' time thereafter, the Owner may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

22.12 CERTIFICATE OF FINAL BUILDING OCCUPANCY unless such certificate cannot be obtained through no fault of the Contractor.

- b. Certificate of Final Inspection of electrical, telephone, sanitary, mechanical, water, gas, safety and other utilities unless such certificate cannot be obtained through no fault of the Contractor.
- c. Original and three (3) sets of prints of "As-Built Drawings" of Electrical, Sanitary, Gas, Telephone and Mechanical works, if such works are within the scope of the Contract. "As-Built Drawings" are the working drawings showing the system and actual locations of outlets, fixtures, services and equipment that were installed.
- d. Three (3) copies of Directory of Panel Boards and list of circuits.
- e. Three (3) copies of Instructions and Manual for operating and maintaining of fixtures and equipment.



OWNER: _____

CONTRACTOR: _____

- f. Three (3) copies of keying Schedule.
 - g. Guarantee Bond equivalent to one hundred percent (100%) of the Retention Amount covering a period of one (1) year after the Final Acceptance of the work which guarantee the quality of the contract work and materials installed. The Guaranteed Bond shall be in the form of securities as approved by the Owner. The Guarantee Bond will be required only if the Owner, upon acceptance of the building, releases to the Contractor the Retention Amount.
- 22.13 ACCEPTANCE AND FINAL PAYMENT: Whenever this Contract, in the opinion of the Owner or his duly authorized representative(s) shall be completely performed on the part of the Contractor, the Owner or his duly authorized representative(s) shall proceed to verify the work, shall make the final estimates, shall certify as to the completion of the work, and accept the same.
- a. The Owner shall then, excepting for causes herein specified, pay to the Contractor promptly, after the execution of said certificate, the remainder which shall be bound due, excepting therefrom such sum or sums as may be lawfully retained under any of the provision of the Contract; PROVIDED THAT FINAL PAYMENT ON THE CONTRACT SHALL NOT BE MADE UNTIL THE CONTRACTOR HAS SUBMITTED A STATEMENT SWORN TO BEFORE AN OFFICER DULY AUTHORIZED TO ADMINISTER OATH, SHOWING THAT ALL TAXES DUE FROM HIM, AND ALL OBLIGATIONS FOR MATERIALS USED AND LABOR EMPLOYED IN CONNECTION WITH THIS CONTRACT HAVE BEEN DULY PAID; AND PROVIDED, FURTHER that nothing here contained shall be construed to waive the right of the Owner or his duly authorized representative(s) hereby reserved to reject the whole or any portion of the aforesaid work, should the same be found to have been constructed in violation of the Drawings and Specifications or of any of the conditions or covenants of this Contract within the guarantee period.
 - b. The making and acceptance of the final payment shall constitute a waiver of all claims by the Contractor.
- 22.14 CORRECTION OF WORK AFTER FINAL PAYMENT:
- a. Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and, he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of acceptance of work by the Owner.
 - b. Neither foregoing nor any provision in the contract documents, nor any special-guarantee limit, shall be held to limit the Contractor's liability for defects and damages and the right of the Owner under the provisions of the New Civil Code, and all laws, regulations and ordinances applicable to the plans and construction of the building.
 - c. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this article shall be decided by the Owner or his duly authorized representative(s) whose decision shall be subject to arbitration.
- 22.15 RELEASE OF RETENTION: The amount retained by the Owner under the provision of the Contract shall be released in a manner upon the submission of the Guarantee Bond by the Contractor as stipulated in the Articles 22.12g and 31.4 of the General Conditions.

SECTION VII: CONTRACTOR-SEPARATE CONTRACTOR-SUB-CONTRACTORS RELATIONS

ARTICLE 23: SEPARATE CONTRACTS TO OTHER CONTRACTORS



OWNER: _____

CONTRACTOR: _____

23.1 OWNER'S RIGHT TO LET OTHER CONTRACTS: The Owner reserves the right in connection with this work. See amended contract Article XII for details.

ARTICLE 24: CONTRACTOR-SEPARATE CONTRACTORS RELATIONS

24.1 STORAGE OF MATERIALS AND WORK COORDINATION. The Contractor under this Contract shall afford other contractors reasonable opportunity for the introduction and storage of their materials **subject to appropriate compensation if such materials are stored in the Contractor's premises** and the execution of their work, and shall properly connect and coordinate his work with theirs so as to minimize interferences or obstruction in the progress of the work.

24.2 CUTTING, PATCHING AND DIGGING: The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and he shall make good after them as the Owner or his duly authorized representative(s) may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.

The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent to the Architect/Owner. **Likewise, the other contractors shall not do the same to the Contractor without this consent.**

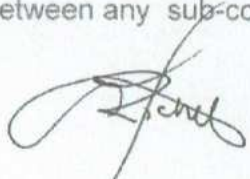
24.3 DEFECTIVE WORK BY SEPARATE CONTRACTORS: If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor shall inspect and promptly report to the Project Manager/Engineer any defect in such work that renders it unsuitable for such proper execution and result. His failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work.

To insure the proper execution of his subsequent work the Contractor shall verify work already in place and shall at once report to the Project Manager/Engineer any discrepancy between the executed work and the drawings.

24.4 DAMAGE CAUSED BY CONTRACTOR TO SEPARATE CONTRACTORS: Should the Contractor cause damage to any separate contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement or arbitration and to relieve the Owner of any liability which may arise therefrom. **Should the separate contractors cause damage to the Contractor's work, they shall compensate the Contractor for such damage. Should they fail to do so, the OWNER shall deduct such costs against the contract amount of the separate contractor(s) causing the damage and duly compensate the Contractor. Should the separate contractor(s) object to such deductions, the dispute shall be settled amicably or through the OWNER's intercession.**

ARTICLE 25: SUB-CONTRACTS

25.1 GENERAL: It is understood and agreed that the entire work called for by this Contract shall not be sublet or sub-contracted. It is also understood that should there be a need or it becomes necessary to employ or hire a sub-contractor, the same shall be undertaken only upon the prior expressed and written approval of the Owner or his duly authorized representatives. However, any part thereof or any specialty work therein, may be sublet or sub-contracted, subject to the provision of Article 25.2. Nothing contained in the Contract Documents shall create any contractual relation between any sub-contractor and the Owner.



OWNER: _____

CONTRACTOR: _____

25.2 **COMPETENCY OF SUB-CONTRACTOR:** At least fifteen (15) days prior to the date of bidding, the Contractor shall seek the Owner or his duly authorized representative(s) clarification as to the particular areas or parts of the work for which the competence of the sub-contractor shall be subject to evaluation by the Owner or his duly authorized representative(s). Immediately thereafter, the Contractor shall submit to the Owner or his duly authorized representative(s) a list of his prospective sub-contractors for approval.

25.3 **CONTRACTOR'S RESPONSIBILITY:** The Contractor agrees that he is as fully responsible to the Owner for the acts and omission of his sub-contractors and the persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

ARTICLE 26: CONTRACTOR-SUB-CONTRACTORS RELATIONS

26.1 THE CONTRACTOR AGREES:

- A. To be bound to the Sub-contractor by all the obligations that the Owner assumes to the Contractor under the Agreement, General Conditions, the Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.
- B. To pay the Sub-contractor, upon the payment of certificates if issued under the schedule of values described in Article 22 (Payments) of the General Conditions, the amount allowed to the Contractor on account of sub-contractor's work to the extent of the Sub-contractor's interest therein.
- C. To pay the Sub-contractor, to such extent as maybe provided by the Contract Documents or the sub-contract.
- D. To pay the Sub-contractor on demand for his work or materials as far as executed and fixed in place less the retained percentage, at the time the certificate should be issued, even though the Owner or his duly authorized representative(s) fails to issue it for any cause not the fault of the Sub-contractor.
- E. To pay the Sub-contractor a just share of any fire insurance money received by him, the Contractor, under Article 31 (Contractor's Insurance and Bonds) of the General Conditions.
- F. To make no demand to the Sub-contractor for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the sub-contract. To give the Sub-contractor an opportunity to present and to submit evidence in any arbitration involving his rights.

26.2 THE SUB-CONTRACTOR AGREES:

- A. To be bound to the Contractor by the Terms of Agreement, General Conditions of the Contract, the Drawings and Specifications, and to assume toward him all the obligations and responsibility that he, by those documents, assumes toward the Owner.
- B. To submit to the Contractor application for payment in such reasonable time as to enable the Contractor to apply for payment under Article 22 (Payments), of the General Conditions.
- C. To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions of the Contract for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one (1) week.

26.3 **THE CONTRACTOR AND THE SUB-CONTRACTOR AGREE THAT:** In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in the contract; provided, however, that a decision by the Owner or his duly authorized representative(s) shall not be a condition precedent to arbitration.



OWNER: _____

CONTRACTOR: _____

SECTION VIII: SUSPENSION OF WORK AND TERMINATION OF CONTRACT

ARTICLE 27: CONTRACTOR'S RIGHT TO SUSPEND WORK OR TERMINATE CONTRACT:

The Contractor may suspend work or terminate Contract upon Thirty (30) Working Days' Written Notice to the Owner and/or his duly authorized representative(s) or through the Project Manager/Engineer on any of the following reasons:

- A. If an order of any court or other public authority caused the work to be stopped or suspended for a period of ninety (90) days through no act or fault of the Contractor or his employees.
- B. If the Project Manager/Engineer should fail to act upon any Request for Payment within thirty (30) days after it is presented in accordance with the General Condition of the Contract.
- C. If the Owner should fail to act upon any Request for Payment or certificate of payment within fifteen (15) days after the evaluation and recommendation by the Project Manager/Engineer.
- D. If the Owner should fail to pay the Contractor any sum within thirty (30) days after its award by arbitration.
- E. If the Contractor is compelled to suspend work due to hardships or difficulties under B, C, and D above, then the Contract sum shall be increased by the amount of the contractor's reasonable costs of shutdown delay and start up, which shall be effected by appropriate change order.

ARTICLE 28: OWNER'S RIGHT TO TERMINATE CONTRACT

The Owner, upon the Certificate of Project Manager/Engineer that sufficient cause exists to justify his action, may without prejudice to any other right or remedy and after giving the Contractor and his surety if any, fifteen (15) days' Written Notice, terminate the contract with the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish work by whatever method he may deem expedient. Sufficient cause to justify termination of the Contract shall exist whenever the Contractor does any of the following:

- A. Declare bankruptcy, become insolvent or assign his assets for the benefit of his creditors.
- B. Disregard or violate provisions of the Contract Documents or Project Manager/Engineer's instructions, or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof.
- C. Fail to provide a qualified superintendent, competent workmen or sub-contractors, or proper materials **without justifiable reason**.
- D. Fail to make prompt payment to sub-contractors, workmen or material dealers and/or suppliers.

ARTICLE 29: OWNER'S RIGHT TO PROCEED WORK AFTER TAKEOVER FROM CONTRACTOR

- 29.1 *USE OF MATERIALS AND EQUIPMENT AT SITE:* The Contractor, upon receiving notice of the termination of contract, shall vacate possession and deliver the said work, or the parts thereof specified in said notice, peaceable to the Owner. All materials, plant, appliances and other essential equipment as may be needed by the construction of the project shall, at the option of the Owner or his duly authorized representative(s) remain on the work until completed, at such rental as may be considered reasonable. In case such material and/or equipment do not belong to the Contractor, then the Owner or his duly authorized representative(s) shall have the option to retain them for

OWNER: _____

CONTRACTOR: _____

use in the project at the cost of the failing Contractor, or pay reasonable rent for the use, chargeable against the Contractor.

29.2 *OWNER TO COMPLETE WORK*: The Owner shall then take over the work and proceed to complete the same by administration or otherwise, and use such tools, appliances and materials of every description as may be found upon the line of said work, or at point where materials are built or framed for the work and also procure such other tools and materials for the completion of the work as may be required.

29.3 *EVALUATION OF COST OF WORK*: It is agreed and understood that, upon such termination of this Contract, the Owner or his duly authorized representative(s) will ascertain and fix the value of the work completed by the Contractor and not paid for by the Owner and of all usable materials on the line of the work taken over by the Owner at the time of said termination.

A. In the event that the total expenditures of the Owner on completion of the work, including all charges against the project prior to termination of the Contract and compensation for additional architectural managerial and administrative services, are not in excess of the Contract Price, then the difference between the said total expenditures of the Owner and Contract Price may be applied to settle claims filed, and the balance, if any, may be paid to the Contractor.

B. No amount in excess of the combined value of the unpaid completed work, retained percentage and usable materials taken over by the Owner at the time of the Termination of the Contract shall be paid, nor shall any claim for prospective profits on the work done after termination of the Contract be considered or allowed.

C. In case of suspension of work, all unpaid work executed including expenses incurred during suspension shall be evaluated by the Owner or his duly authorized representative(s) and charged to the Owner.

29.4 *OWNER'S RIGHT TO RECOVER LIQUIDATED DAMAGES*: Neither the taking over by the Owner of the work for completion by administration nor the re-letting of the same to another Contractor shall be construed as a waiver of the Owner's rights to recover damages against the original Contractor and/or his sureties for the failure to complete the work as stipulated

In such case, the full extent of the damages for which the Contractor and/or his sureties shall be liable:

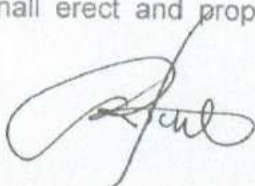
The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.

The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess cost includes cost of architectural managerial and administrative services, supervision and inspection from the start the Owner effectively took over the work by administration or by re-letting same.

SECTION IX: RESPONSIBILITIES AND LIABILITIES OF CONTRACTOR AND OF OWNER

ARTICLE 30: CONTRACTOR'S RESPONSIBILITY FOR ACCIDENTS AND DAMAGES

30.1 *SAFEGUARDS TO BE UNDERTAKEN BY CONTRACTOR*: The Contractor shall take all necessary precautions for the safety of employees and workmen on the work, and comply with all applicable provisions of city, municipal and national safety laws and building codes and all government rules and regulations, to prevent injury to persons on about or adjacent to the premises where work being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and



OWNER: _____

CONTRACTOR: _____

progress of the work, such barriers, shoring, supports, braces, lights, danger signs and necessary safeguards, as will protect workmen and the public and as will effectually prevent any accident and damage to property in consequence of his work.

The Contractor shall designate a responsible member of his organization on the work, whose duty shall be the prevention of accidents and damage to the Owner's property and adjoining property. The name and position of the person so designated shall be reported to the Owner or his duly authorized representative(s) by the Contractor.

30.2 *CONTRACTOR'S RESPONSIBILITY*: The Owner shall not be responsible for the death of disease contracted, or injury received by the Contractor or any employee or laborers of the Contractor, for the Contractor's plant or materials, for any damage done by or o them from any source or cause; and damages caused by the Contractor or his employees to any property of the Owner and adjoining property. All damages shall be the responsibility of the Contractor.

30.3 *INDEMNITY*: The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgment of every nature and description brought or recovered against him, by reason of any act or omission of said Contractor, his agents or employees, in the execution of the work or the guarding of it.

Claims for payment and repairs for damages shall be settled by the Contractor at his own expense and to the satisfaction of the Owner or his duly authorized representative(s) and the parties concerned. In the event of failure of the Contractor to repair at once such damages, and pay other claims, the Owner may repair the same and pay the claims, and deduct the entire cost of such repairs and claims from the payments due the Contractor.

ARTICLE 31: SAFETY, SECURITY AND HEALTH

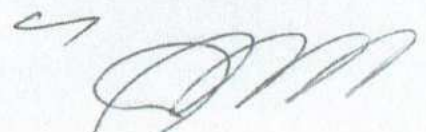
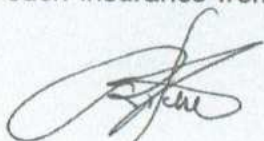
31.1 *CONTRACTOR SAFETY AND HEALTH*: The Owner recognizes that the Contractor have existing safety programs and will work collaboratively the Contractor and Subcontractor to continuously improve the safety culture as the work progresses. The Contractor is required to submit a worksite safety plan within 15 days after Notice To Proceed for approval by the Owner or his duly authorized representative(s) and shall maintain one (1) qualified full time Safety Personnel/Engineer. A weekly joint (Contractor and the Owner or his duly authorized representative(s)) shall be conducted.

31.2 *CONTRACTOR SECURITY*: The Contractor is required to submit for approval the Site Security Plan within 15 days after Notice to Proceed that shall address the specific components as follows;

- A. Emergency Response
- B. Security Incident Reporting
- C. Access Control
- D. Visitor Screening
- E. Delivery Screening
- F. Security Personnel
- G. Security boundaries

ARTICLE 32: CONTRACTOR'S INSURANCE AND BONDS

32.1 *CONTRACTOR'S LIABILITY INSURANCE*: The Contractor shall secure and maintain such insurance from an insurance company acceptable to the Owner as will protect



OWNER: _____

CONTRACTOR: _____

himself, his sub-contractors, and the Owner from claims for bodily injury, death or property damage which may arise from operations under this Contract. The Contractor shall not commence work under the Contract until he has obtained all insurance required under this section and shall have filed the certificate of insurance or the certified copy of the insurance policy with the Owner. Such insurance policy shall contain a clause providing that it shall not be cancelled by the insurance company without ten (10) days' written notice to the Owner of intention to cancel. The amounts of such insurance shall be as agreed upon.

32.2 *CONTRACTOR'S FIRE INSURANCE*: In addition to such Fire Insurance as the Contractor elects to carry for his work protection, he shall secure and maintain in the name of the Owner policies upon such structures and materials and in such amount as shall be designated. These policies shall be secured from a company which is satisfactory to the Owner and delivered to the Owner.

32.3 *CONTRACTOR'S PERFORMANCE AND SURETY BONDS*: The Contractor, prior to signing the Contract, shall furnish a Performance Bond equal to Thirty Percent (30%) of the Total Contract Amount for the faithful performance of his work and Surety Bond in an amount equivalent to the Down Payment and/or Mobilization. Such bonds shall be in the forms of sureties as approved by the Owner.

32.4 *CONTRACTOR'S GUARANTEE- WARRANTY*:

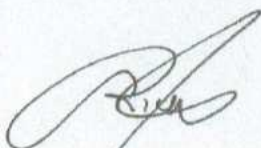
- A. The Contractor shall, in case of work performed by his sub-contractors and where guarantees are required, secure warranties from said sub-contractors and deliver copies of same to the Owner upon completion of work.
- B. The Contractor shall and thereby warrants and/or guarantees for a period of one (1) year, or for longer periods where so provided in Specifications, as evidenced by date of final certificate issued by the Owner or his duly authorized representative(s), all materials and workmanship installed under Contract to be of good quality in every respect and to remain so for periods described herein.
- C. Should any defects develop in aforesaid work, within the specified periods, due to faults in material and/or workmanship, the Contractor thereby agrees to make all repairs and do all necessary work to correct defective work to the Owner or his duly authorized representative(s) satisfaction. Such repairs and corrective works shall be done without cost to the Owner and at entire cost and expense of the Contractor within five (5) days after written notice to the Contractor by the Owner.
- D. In case the Contractor fails to do the work, **for no justifiable reason so ordered**, the Owner may have the work done and charge the cost thereof against moneys retained as provided for in the Agreement and, if said retained moneys shall be insufficient to pay such cost, or if no money is available, the Contractor and his sureties agree to pay to the Owner the cost of such work.
- E. All the foregoing are without prejudice to the right of the Owner under the New Civil Code, and other laws now or hereafter that may be applicable.

ARTICLE 33: OWNER'S RESPONSIBILITIES AND LIABILITIES

33.1 *PROTECTION OF EMPLOYEES AND PROFESSIONALS PERFORMING SERVICES FOR THE OWNER*: The Owner shall be responsible for and shall maintain such insurance as will protect him for personal injury including disease and death of persons under his employ or services, temporary or permanent in status, that are assigned for the project.

Prior to the start of the construction, the Owner shall give a list of personnel assigned to the project who need to be covered by insurance and with the corresponding amount of coverage.

33.2 *OWNER'S OPTIONAL INSURANCE*: The Owner at his option may maintain such insurance as will protect him from his contingent liability for damages, for personal



OWNER: _____

CONTRACTOR: _____

injury, including death, which may arise from the operations under this Contract, and any other liability for damages which the Contractor is required to insure under any provision of this Contract.

ARTICLE 34: LIENS, DISPUTES AND ARBITRATION

34.1 *LIENS*: Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and materials for which a lien could be filed; but the Contractor may, if any sub-contractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any lien. If any lien remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be completed to pay in discharging such lien, including all costs and a reasonable attorney's fee.

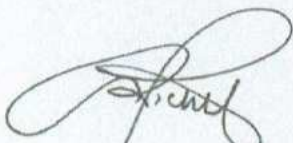
34.2 *ASSIGNMENT*:

- A. This Contract shall not be assigned in whole or in part by the Contractor nor shall any part of the work be sublet by the Contractor without the prior written consent of the Owner and such consent shall not relieve the Contractor from full responsibility for the work hereunder and for the due performance of all the terms and conditions of the Contract.
- B. The Owner's consent to any subletting of work hereunder shall not be granted in any event until the Contractor has furnished the Owner with satisfactory evidence that the sub-contractor is carrying ample insurance to the same extent and in the same manner as is herein provided to be furnished by the Contractor.
- C. If the Contract is assigned or any part thereof is sublet, the Contractor shall exonerate, indemnify and save harmless the Owner from and against and all loss or expense caused thereby.
- D. In case of any such transfer without the previous written consent of the Owner, the Owner may refuse to carry out the Contract either with the transferor or transferee; but all rights of action for any breach of this Contract by the Contractor shall be reserved to and remain within said Owner.

34.3 *DAMAGES*: Should either party to this Contra suffer damages because of any wrongful act or neglect of the other party or of anyone employed by him, claim shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement or arbitration.

34.4 *DISPUTES*:

- a. The Owner or his duly authorized representative(s) shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all matters relating to the execution and progress of the work or the interpretation of the Contract Documents.
- b. Except as otherwise specifically provided in the Contract, all disputes concerning questions of fact arising under the Contract shall be **discussed by both parties and settled amicably between them or, failing that, through arbitration.** ~~decided by the Owner or his duly authorized representative(s), whose decision shall be final and conclusive upon the parties thereto as to questions of fact.~~



OWNER: _____

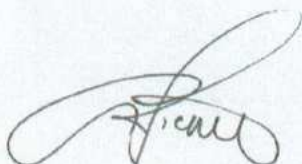
CONTRACTOR: _____

Nothing in the provision of this article will relieve the Contractor from the responsibility of performing the work in accordance with the Drawings, Specifications and other Contract Documents.

SECTION XI: QUALITY ASSURANCE AND QUALITY CONTROL

ARTICLE 36: QUALITY ASSURANCE AND QUALITY CONTROL

- 36.1 Contractor shall submit Quality Control Plan to OWNER's or his representative for review and approval, seven (7) working days after the issuance of Notice to Proceed. This document outlines the plan of the Quality Control activities to be performed at the Construction Site for ACE Hospital Project.
- 36.2 Quality Control is defined as activities that will provide a means to control and measure the characteristics of an item, work or performance to an establish standard. Contractor will perform quality control by means of checks, tests, and inspections in accordance with plans and specifications.
- 36.3 The OWNER or his representative may at its discretion, monitor and have the right to witness or review Contractor's quality control activities, checks, tests, and inspections at anytime.
- 36.4 The OWNER or his representative may at its discretion, witness inspections or tests with Contractor's inspectors/supervisors for the item shown in the relevant specifications and the Inspection and Test Plan.



OWNER: _____

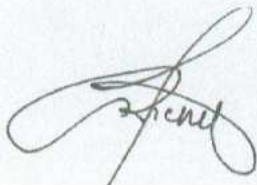
CONTRACTOR: _____

- c. The Owner or his duly authorized representative(s) decisions shall be final, if within the terms of the Contract Documents.
 - d. If however, the Owner or his duly authorized representative(s) fails to render a decision within fifteen (15) days after the parties have presented their evidence, either party may then demand arbitration. If the Owner or his duly authorized representative(s) renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.
- 34.5 *ARBITRATION*: All disputes, claims or question subject to arbitration under this Contract shall be settled in accordance with the provision of this article.
- a. Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Contract, and a copy filed with the Owner or his duly authorized representative(s). The demand for arbitration shall be made within a reasonable time after the dispute has arisen; in no case however, shall the demand be made later than the time of final payment except as otherwise expressly stipulated in the contract.
 - b. When formal arbitration is requested, a Board of Arbitration shall be formed in the following manner. The Owner and the Contractor shall each appoint one (1) member of this board and these members shall appoint a third member who shall act as chairman. No one with a financial interest in the subject under arbitration will be permitted to serve on this board. This board may engage experts to act in an advisory capacity. Minutes shall be kept of all meeting and signed by all members of this board. Decisions of the board shall require only a simple majority and all interested parties shall be informed thereof. Expenses of the Board shall be paid in accordance with the agreement set forth before the proceedings of the board.
 - c. It is mutually agreed that the decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other. The Contractor shall not cause a delay of the work during any arbitration proceedings, except by agreement with the Owner.

**SECTION X: AUTHORITY OF PROJECT MANAGER/ENGINEER
& REPRESENTATIVES**


**ARTICLE 35: AUTHORITY, DUTIES OF THE PROJECT MANAGER/ENGINEER &
REPRESENTATIVES**

- 35.1 *EMPLOYED BY THE OWNER*: Technically qualified men referred to as Project Manager, Construction Engineers, Engineers or Construction inspectors employed by the Owner may be stationed on the Project to conduct, inspect, assist in the general supervision and direction of the Work.
- 35.2 *DUTIES*: The duties of the Project Manager, Construction Engineers, Engineers and Construction Inspectors shall include as OWNER's representative to ensure that the project shall proceed safely, within the time specified frame period, according to plan and specifications and budget.
- 35.3 *DISPUTES*: In case of any dispute arising between the Project Manager, Project Engineers, Engineers, or Construction Inspector, and the Contractor, the Project Management Team shall have authority to reject materials or suspend the work until the question at issue can be referred to and decide by the Owner.



ACE CMT VERSION	MSC COMMENTS	Fred, Rodel and Danni COMMENTS
	ANNEX M	OK
1.07 Unless specified to the contrary or unless the CONTRACTOR's submission is deficient, shop drawing approval by the OWNER shall be made within seven (7) working days of submission by the CONTRACTOR.	(5) Working days	7 days is just <i>MSC</i> <i>ok</i>
3.01 Contract amount on price escalation <i>The total contract amount is not subject to price escalation.</i>	<i>-This should be deleted. Industry practice dictates that minimum wage adjustment by the government would necessitate a price escalation for labor.</i>	OK but on labor works only. <i>ok</i>
3.03 d. If at the end of the completion time and extension granted, if any, the CONTRACTOR has duly-accomplished the Project, the OWNER shall give the CONTRACTOR a written Notice of Confirmation of Completion and Acceptance (NCCA). Otherwise, the OWNER may take over the Project and in which case, the Retention Money shall be forfeited automatically in favor of the OWNER to guarantee completion of the project.	The Notice of Confirmation of Completion should also denote Acceptance. Otherwise, there is no logic to the next sentence where Owner takes over the project.	CONCUR <i>ok</i>
3.03 e. If the whole Project remains free from any kind of defect within one hundred eighty days (180) from the date of issuance of NCC. After the issuance of an NCCA the OWNER shall give the CONTRACTOR a written Notice of Acceptance (NA), and shall release the retention money or any balance thereof, within five (5) days after receipt of a written request for release of retention money from the CONTRACTOR and after the CONTRACTOR has furnished the OWNER with a Guarantee Bond as provided for under Article IV Paragraph 4.05 hereof.	The issuance of the NCCA should trigger the request for and release of the retention money. <i>-This phrase should be deleted</i>	CONCUR <i>ok</i>
3.03 f. Should defects be found during the guaranty period of one (1) year this <i>the OWNER shall notify the CONTRACTOR to undertake the required repairs and/or changes within that some period the [redacted] to the satisfaction of the Owner</i>	<i>-The guaranty period of 1 year should be invoked to make rectification works rather than splitting the calendar into 2 180-day periods as reckoning for issuance of Notice of Acceptance. These should be deleted</i>	Guaranty period for defects should be 1 year <i>ok</i>
3.03 f. if the required repairs and/or changes are fully and satisfactorily done, as determined by the OWNER, within the 180-day period, the OWNER shall issue the written NA, and shall release the Retention Money or any balance thereof within five (5) days from receipt of a written request for release of retention money from the CONTRACTOR, otherwise, the Retention Money shall be automatically forfeited in favor of the OWNER.	<i>These provisions should be deleted.</i>	Retain this provisions <i>Deleted</i> <i>ok</i>
3.03 G. If defects are found after the 180-day period stated earlier, but prior to		





<p>CONTRACTOR's written request for release of the retention money, all expenses for the repairs of the defects shall be deducted from said retention money or the balance thereof, and/or any receivable amount the CONTRACTOR has with the OWNER.</p>	<p>✓</p>	
<p>3.03 h. After the structural topping off is achieved, the CONTRACTOR may submit a request for payment of 5% retention to be released by the OWNER upon successful completion of the structural works package</p>	<p><i>This should be added since industry practice allows release of 50% of the 10% retention.</i></p> <p>✓</p>	<p>Provide proof that it is industry practice. This is the prerogative of the OWNER. 10% Retention should be released upon issuance of NCCA and guarantee bond by the contractor.</p> <p>OK</p>
<p>3.04 Final and full payment of the consideration earlier mentioned less the retention money, shall be made only upon the fulfillment by the CONTRACTOR of all the terms and conditions set forth in this CONTRACT and after the issuance by the OWNER of the NCCA, subject to par. 3.05 hereof. However, it is agreed that no payment or payments made under this CONTRACT, except that made after the issuance of the written NA, shall be understood as performance of this CONTRACT, neither wholly or in part, and no payment shall be construed to be an acceptance of defective or improper work.</p>	<p><i>"of the consideration earlier mentioned less the retention money,"</i> <i>Should be deleted.</i></p> <p>✓</p>	<p>Should be retained</p> <p>OK</p>
<p>3.06 No payment shall be made in excess of sixty five percent (65%) ninety ninety percent (90%) (90%) of the Contract Amount, except as indicated in Section 3.03 above, unless a statement sworn to before any officer duly authorized to administer oaths is submitted by the CONTRACTOR to the effect that all bills for labor, other than current wages, all bills for materials, equipment, premiums and any monetary obligations incurred by the CONTRACTOR in connection with the Project, including all be enumerated in such sworn statement. The CONTRACTOR shall render the OWNER free and harmless from any claims and payment of such bills, and shall indemnify the OWNER the cost of defending himself against such claims.</p>	<p><i>"sixty five percent (65%)"</i> <i>- Should be deleted. Normal practice is up to 90%, and even 95% in case of release of 5% retention.</i></p> <p>✓</p>	<p>Recommend to retain the 65%. This will indemnify the OWNER the cost of defending himself against any claims at the early stage of the project. This one is for only 65%</p> <p>✓</p>
<p>4.01 Liability Insurance (Contractor's All-risk Insurance) – The Contractor OWNER shall secure and maintain insurance coverage from an insurance company as will protect itself, its contractors, and the OWNER from claims for bodily injury,</p>	<p>4.01 Liability Insurance (Contractor's All-risk Insurance) – The Contractor OWNER shall secure and maintain insurance coverage from an insurance company as will protect itself, its contractors, and the OWNER from</p>	<p>Checked BOQ and this is a pay item to the contractor (4.5M). Current bonds expired Feb 2018, balance of 6 months. In this revised contract for 14</p> <p>✓</p>

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[Handwritten signature]

<p>from work under the Agreement.</p>	<p>property damage which may arise from work under the Agreement. Premium fees for CARI shall be reimbursed by the OWNER to the CONTRACTOR.</p>	<p>contractor, 8 months by owner.</p>
<p>4.03 Fire Insurance – In addition to such Fire Insurance as the CONTRACTOR elects to carry for its work, it shall secure and maintain the policies upon such structures and materials and in such amounts as shall be designated in the joint names of the CONTRACTOR and the OWNER as their respective interest may appear. These policies shall be secured from a company which is satisfactory to the OWNER and delivered to the OWNER.</p>	<p>4.03 Fire Insurance – In addition to such Fire Insurance as the CONTRACTOR elects to carry for its work, it shall secure and maintain the policies upon such structures and materials and in such amounts as shall be designated in the joint names of the CONTRACTOR and the OWNER as their respective interest may appear. These policies shall be secured from a company which is satisfactory to the OWNER and delivered to the OWNER. Fire insurance premium fees shall be reimbursed by the OWNER to the CONTRACTOR.</p>	<p>Checked BOQ and this is a pay item to the contractor (4.5M). Current bonds expired Feb 2018, balance of 6 months. In this revised contract for 14 months, 6 months paid by contractor, 8 months by owner.</p>
<p>4.04 a.) Upon signing of this Contract, the CONTRACTOR shall post a Performance and Payment Bond in favor of the OWNER equivalent to THIRTY percent (30%) TWENTY percent (20%) of the Contract Amount or Pesos SIXTY ONE MILLION SEVEN HUNDRED TEN THOUSAND (PHP61,710,000.00) THIRTY FIVE MILLION (PHP 35,000,000.00), in the form of cash, manager's check, cashier's check, or surety bond issued by a reputable bonding institution acceptable to the OWNER, to guarantee the continuous, full, satisfactory and faithful performance of all the CONTRACTOR's obligations and undertakings under this CONTRACT and the satisfaction of all obligations for materials and equipment used and labor employed in the wok.</p>	<p>a) Upon signing of this Contract, the CONTRACTOR shall post a Performance and Payment Bond in favor of the OWNER equivalent to THIRTY percent (30%) TWENTY percent (20%) of the Contract Amount or Pesos SIXTY ONE MILLION SEVEN HUNDRED THIRTY THOUSAND THREE HUNDRED TEN (PHP61,730,310.00) THIRTY FIVE MILLION (PHP 35,000,000.00), in the form of cash, manager's check, cashier's check, or surety bond issued by a reputable bonding institution acceptable to the OWNER, to guarantee the continuous, full, satisfactory and faithful performance of all the CONTRACTOR's obligations and undertakings under this CONTRACT and the satisfaction of all obligations for materials and equipment used and labor employed in the wok. Performance bond premium fees shall be reimbursed by the OWNER to the CONTRACTOR.</p>	<p>Checked BOQ and this is a pay item to the contractor (4.5M). Current bonds expired Feb 2018, balance of 6 months. In this revised contract for 14 months, 6 months paid by contractor, 8 months by owner.</p>
<p>4.05 b) Should the Contractor fail to repair within the period of 30 days from receipt of a repair request, the Guarantee bond shall be automatically forfeited in favor of, and become immediately payable to and collectible by the OWNER.</p>	<p>b) Should the Contractor fail to initiate repair within the period of 30 days from receipt of a repair request, the Guarantee bond shall be automatically forfeited in favor of, and become immediately payable to and collectible by the OWNER. "initiate" - This should be the operative word because repair may take more than 30 days.</p>	<p>CONCUR <i>jk</i></p>

The CONTRACTOR shall perform and complete all items of work required in this CONTRACT within the adjusted contract period of ONE THOUSAND THIRTY THREE DAYS (1,033) FIVE HUNDRED FORTY DAYS (540) CALENDAR DAYS (hereinafter referred to as, "CONTRACT PERIOD") reckoned from the date provided in the Original issued Notice to Commence Work/Notice to Proceed (Annex "D"). For projects/other scope of work involving several phases of work, commencement date shall be reckoned from the time the CONTRACTOR receives the Notice to Commence Work/Notice to Proceed for each phase as shall be necessary to enable the CONTRACTOR to execute the contract works in accordance with the schedule stipulated in the Agreement.

complete all items of work required in this CONTRACT within the adjusted contract period of 14 MONTHS FROM THE ISSUANCE OF THE RESUMPTION NTP FIVE HUNDRED FORTY DAYS (540) CALENDAR DAYS (hereinafter referred to as, "CONTRACT PERIOD") reckoned from the date provided in the RESUMPTION of Notice to Commence Work (ANNEX 1) /Notice to Proceed (Annex "D"). For projects/other scope of work involving several phases of work, commencement date shall be reckoned from the time the CONTRACTOR receives the Notice to Commence Work/Notice to Proceed for each phase as shall be necessary to enable the CONTRACTOR to execute the contract works in accordance with the schedule stipulated in the Agreement or within the period needed to complete the additional scope of work, whichever comes later.
This provision is necessary because the additional scope of work may lead to the completion of the project beyond the agreed original time table.

shall be negotiated.
having submission of CO

5.02 The CONTRACTOR shall be entitled to substantiated prolongation costs only in respect of Items [a], [f] and [g], and when a Change Order by the OWNER caused the works to be executed in a period of inclement weather conditions as stated in Item [d] above.

[h] delays in delivery of QSM items;
 [i] delays incurred due to time required by Designers/Consultants to approve shop drawings/RfAs and RFIs.
-This should be added.
 The CONTRACTOR shall be entitled to substantiated prolongation costs only in respect of Items [a], [c], [d], [f] and [g], [h] and [i] and when a Change Order by the OWNER caused the works to be executed in a period of inclement weather conditions as stated in Item [d] above.

Concur but must be documented.

ok

5.03 It is expressly agreed that no claim for extension of the CONTRACT PERIOD provided herein can be entertained unless the CONTRACTOR has, prior to the expiration of the CONTRACT PERIOD and within three (3) days after the circumstances leading to such claim have arisen, delivered to the OWNER, a written notice in order that the OWNER could have the cause/reason for the request for extension investigated by the OWNER. On the basis of the surrounding facts and

"three (3)" - Delete. Three days is too restrictive and denies the CONTRACTOR the right to claim what is a legitimate time extension since the justifications may have to be prepared in detail. Changed to "thirty (30) days."
"The decision of the OWNER on this matter shall be final and binding upon the CONTRACTOR."
This should be deleted since the decision becomes unilateral to detriment of the

The 3 days mentioned is only to inform owner. Assessment and mutual agreement between owner and contractor shall be final and binding.

ok

[Signature]

[Signature]

[Signature]

<p>grant or deny the request for extension. The OWNER shall assess the length of the delay beyond the date or time aforesaid and in writing give a fair and reasonable extension of time for the completion of the construction works to which the CONTRACTOR's notice relates. The decision of the OWNER on this matter shall be final and binding upon the CONTRACTOR.</p>		<p>✓</p>
<p>6.04 "Prime Cost Sums"</p>	<p><i>This ENTIRE section should be deleted as they appear to be unwarranted, ambiguous, and without rationale.</i></p>	<p>Concur. However this is part of the original contract. ✓</p>
<p>8.10 The OWNER shall make an advance payment to the CONTRACTOR in a number of PESOS: ONE MILLION (PHP 1,000,000.00) and TEN MILLION (PHP10,000,000) for the resumption of the project, provided that the CONTRACTOR shall post an undated check of equivalent amount callable on demand and acceptable to the OWNER to guarantee its repayment. The CONTRACTOR shall use the advance payment for mobilization, purchase of materials, and the like for the Project. The amount advanced shall be recouped pro rata in the progress billings.</p>	<p><i>This should be deleted since these amounts have already been recouped by way of work accomplishments.</i></p>	<p>Callable cheque may be waived, but the 11M downpayment shall be recouped. OK ✓</p>
<p>9.07 i) In case where the OWNER initiates a deductive change order for the purpose of transferring certain work items or part of the scope of work to another party or for the OWNER to supply certain construction materials, then the CONTRACTOR shall be entitled to FIVE percent (5%) of the amount deducted in the change order to recover his overhead and profit.</p>	<p><i>"Five percent (5%)" - Delete. Should be 10%. 5% is too low for overhead and profit.</i></p>	<p>Retain 5% as this per original contract. But 10% is normal in the industry. OK ✓</p>
<p>9.08 In case of 5% slippage, the OWNER may issue a written warning and call for meetings with the CONTRACTOR and other contractors involved to determine the possible cause/s contributing to the slow progress of the construction work, and if such slippage is due to the fault or negligence of the CONTRACTOR, the OWNER may require the CONTRACTOR to submit a catch-up schedule which shall be subject to approval by the OWNER.</p>	<p><i>"5% slippage" - The slippage should be 15% instead of 5% to warrant a written warning.</i></p>	<p>This is the OWNER's prerogative to give a warning to the contractor when 5% and 10% slippage is attained to remind and induce progress. motivation OK ✓</p>
<p>9.09 The OWNER may order the acceleration of work to meet a desired completion date. Acceleration of work for the benefit or convenience of the OWNER</p>	<p><i>Acceleration cost shall be computed for additional manpower deployment, additional equipment, overtime rendered, and additional</i></p>	<p>Concur with MSC ✓ OK</p>

Richard

[Signature]

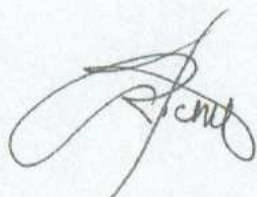
<p>OWNER shall be treated as extra work for which a Change Order shall be issued and the CONTRACTOR shall be paid for the cost of such acceleration. However, where the reason for acceleration is due to the fault of the CONTRACTOR, such additional cost for acceleration shall be borne by the CONTRACTOR alone.</p>		
<p>10.01 There is substantial completion when the CONTRACTOR completes ninety-five percent (95%) of the Project and all the utilities, such as, but not limited to the waterline, sewerline, elevator, lighting, and convenience outlet, are installed and ready to use; provided that the remaining construction works shall not prevent the normal use of the completed portion.</p>	<p><i>"ninety-five percent (95%)" - Industry practice is 90% to merit substantial completion.</i></p> <p style="text-align: center;">✓</p>	<p>Concur. 90% could be declared substantial completion.</p> <p style="text-align: center;">ok</p>
<p>10.08 Acceptance by the OWNER of the Project shall relieve the Contractor of liability for any defect in the Project unless [a] The defect is hidden and the OWNER could not have discovered the defect even with the exercise of reasonable diligence or [b] The OWNER accepted the Project with express reservations seasonably made as to the specific portion of the Project which was found defective and which requires replacement or correction. A reservation which fails to specify the portion which is alleged to be defective and state in as much detail as possible the nature and extent of the defect shall be considered a general reservation and shall be ineffective.</p>	<p>Acceptance by the OWNER of the Project as indicated by an NCCA shall relieve the Contractor of liability for any defect in the Project unless [a] The defect is hidden and the OWNER could not have discovered the defect even with the exercise of reasonable diligence or [b] The OWNER accepted the Project with express reservations seasonably made as to the specific portion of the Project which was found defective and which requires replacement or correction. A reservation which fails to specify the portion which is alleged to be defective and state in as much detail as possible the nature and extent of the defect shall be considered a general reservation and shall be ineffective.</p> <p style="text-align: center;">✓</p>	<p>CONCUR</p> <p style="text-align: center;">ok</p>
<p>12.03 The Contractor shall be compensated equivalent to 1% of the separate Contract's Amount as attendance fee for the services to suppliers or subcontractors but not limited to the following:</p> <ul style="list-style-type: none"> A) Material Handling B) Special and/or external scaffoldings C) Tower cranes lifts D) Welfare facilities E) Temporary power and lightings F) Site security 	<p>The Contractor shall be compensated with an amount of PESOS: Three Million (P3,000,000) Two Million (P2,000,000.00) as attendance fee for the services to suppliers or subcontractors but not limited to the following:</p> <ul style="list-style-type: none"> A) MEPS Coordinator (All Work Shifts) B) Material handling C) Special and/or external scaffoldings D) Tower crane lifts E) Welfare facilities F) Temporary power and lightings G) Site security <p><i>With respect to temporary power and lighting, the monthly consumption of</i></p> <p style="text-align: center;">✓</p>	<p>Initially, MSC accepted 2M. Can be negotiated. We start negotiation at 2M Meeting halfway may be accepted.</p> <p style="text-align: center;">2M ok</p>

Richard

MM

	<p>their account based on the regular billing statements from the CONTRACTOR. The CONTRACTOR reserves the right to cut off the temporary supply of power and lighting if the trade contractors concerned fail to settle their monthly obligations relative to their utilities consumption. "Two Million (PHP 2,000,000.00)" - Should be deleted since too low to compensate the CONTRACTOR. ✓</p>	
<p>13.02 v) Slippage of the CONTRACTOR in excess of 10% in the prosecution of work per agreed construction schedule and/or PERT/CPM plus any time adjustment duly granted to the CONTRACTOR. The CONTRACTOR shall be subject to warning only in case of 5% 10% slippage and termination shall ensue only in case of 10% 15% slippage.</p>	<p>v) Slippage of the CONTRACTOR in excess of 15% in the prosecution of work per agreed construction schedule and/or PERT/CPM plus any time adjustment duly granted to the CONTRACTOR. The CONTRACTOR shall be subject to warning only in case of 15% 10% slippage. and termination shall ensue only in case of 15% slippage. Should be deleted. Termination should only be resorted to if the CONTRACTOR is negligent or deliberately delays the completion of the project for no valid reason. ✓</p>	<p>This is as per original contract. 5% Slippage – Warning 10% Slippage – Warning 15% Slippage – Termination of contract "if no justifiable reason". Recommend to add "if no justifiable reason" and retain all others. ✓</p> <p>OK! MF MSC</p>
<p>13.02 Upon the termination, cancellation and/or rescission of this Agreement, the OWNER shall exclude the CONTRACTOR from the Project site and take possession of the Project and of all the CONTRACTOR 's tools, appliances, construction equipment and machinery at the site and use the same and incorporate into the work all materials and equipment stored at the site including those stored elsewhere for which the OWNER has paid the CONTRACTOR, and finish the work as the OWNER may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the work is finished.</p>	<p>Added "except for the release of retention money on works that have been completed." - The contractor should be entitled to that portion of the retention on works that were already completed. ✓</p>	<p>As stipulated in Art. 3.03 d) If at the end of the completion time and extension granted, if any, the CONTRACTOR has duly-accomplished the Project, the OWNER shall give the CONTRACTOR a written Notice of Confirmation of Completion and Acceptance (NCCA). Otherwise, the OWNER may take over the Project and in which case, the Retention Money shall be forfeited automatically in favor of the OWNER to guarantee completion of the project. ✓</p> <p>To be fair with the CONTRACTOR, they are entitled to claim the remaining amount of the Retention Money after deducting all expenses incurred in doing the remaining works. CONCUR</p>

<p>The OWNER may take-over PROJECT, and consequently, the contracts and agreements entered into by the CONTRACTOR with third-parties are hereby conclusively deemed assigned to the OWNER if the latter, in its discretion, wants to avail the same. For this purpose, the CONTRACTOR hereby agrees and obligates itself</p> <p>to incorporate or cause to be incorporated in any contract(s) and agreement(s) with third parties which is/are connected with or related to the performance of any or all of the CONTRACTOR's obligations and undertakings hereunder, a stipulation providing for the assignability to and assumption by the OWNER of said contract(s) and/or agreement(s), at the option of the OWNER. Within THIRTY (30) days after termination, cancellation or rescission of this Agreement or take-over of the Project, the parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission, or take-over, and the CONTRACTOR shall refund any and all advances made, plus legal interest thereon from date of receipt of the amount or amounts advanced.</p>	<p>specified.</p>	<p>✓</p>
<p>15.01 Time is of the essence of this CONTRACT. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the CONTRACT PERIOD, plus any time extension granted by the OWNER, the CONTRACTOR shall pay the OWNER, as liquidated damages, and not by way of penalty, an amount equivalent to one tenth of one percent (1/10 of 1%) of the Contract Amount for each calendar day of delay, Sundays and Holidays included, until the work is completed and accepted by the OWNER or until the OWNER takes-over the Project.</p>	<p>Time is of the essence of this CONTRACT. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the CONTRACT PERIOD, plus any time extension granted by the OWNER, the CONTRACTOR shall pay the OWNER, as liquidated damages, and not by way of penalty, an amount equivalent to one tenth of one percent (1/10 of 1%) of the <u>remaining</u> Contract Amount for each calendar day of delay, Sundays and Holidays included, until the work is completed and accepted by the OWNER or until the OWNER takes-over the Project <u>but shall not exceed 10% of the remaining contract amount.</u></p>	<p>Retain CMT version. 1% of the remaining works as suggested by MSC mean nothing at the back end of the project</p> <p>original Ok ✓</p>
<p>17.04 Should any defect develop in aforesaid work, within the guarantee period due to fault in material and/or workmanship, the CONTRACTOR shall make all repairs and do all necessary work to correct defective work to the OWNER's satisfaction. Such repairs and corrective works shall be done by the CONTRACTOR</p>	<p><i>"within a reasonable period five (5) days" - expense and shall be commenced within a reasonable period five (5) days after receipt of written notice by the OWNER.</i></p>	<p>This is part of the original contract. "5" days is just to inform the owner when they can start.</p> <p>OK ✓</p>




<p>commenced within five (5) days after receipt of written notice by the OWNER.</p>		
<p>18.05 The CONTRACTOR hereby represents that all documents it submitted which form integral parts hereof are authentic and duly-executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentations in the documents or suppression of material facts therein, which if known, could have disqualified the CONTRACTOR such that this Agreement would not have been made and entered into, gives the OWNER the immediate right or recourse to motu proprio rescind, or terminate this Agreement without need of judicial intervention, pursuant to Article XIII Paragraph 13.02 hereof.</p>	<p><i>Should be deleted. Sounds like a quo warranto. Does the OWNER really want the CONTRACTOR to do the project or would it rather that the OWNER does it himself.</i></p>	<p>Part of Original Contract</p>
<p>The CONTRACTOR's tax, licenses, permits and fees which may be due to the local and/or national government, and all notarial fees payable, as well as expenses incurred for the preparation of documents, on account of the performance and completion of the PROJECT, shall be for the CONTRACTOR's own account. Should the OWNER be compelled to advance the same, the OWNER is hereby authorized to deduct the amount advanced plus interest from whatever amount due to the CONTRACTOR.</p>	<p>The CONTRACTOR's tax, licenses, permits and fees which may be due to the local and/or national government, and all notarial fees payable, as well as expenses incurred for the preparation of documents, on account of the performance and completion of the PROJECT, shall be for the CONTRACTOR's own account, <i>except for the documents indicated in the succeeding provisions.</i> Should the OWNER be compelled to advance the same, the OWNER is hereby authorized to deduct the amount advanced plus interest from whatever amount due to the CONTRACTOR. <i>ECC, building permit and other local government permits shall be secured by the OWNER for his own account.</i></p>	<p>Concur with MSC only with ECC expenses. Other permit expense is a pay item in the original BOQ.</p>
<p>In case of adjustment of prices due to escalation or reduction of costs, adjustment shall be made using the engineering estimate formula to be agreed upon by the parties. Such adjustment of prices shall be determined on the basis of the original contract unit prices of labor and materials and such unit prices in effect during the relevant period of work accomplishment.</p>	<p>In case of adjustment of prices due to escalation or deductive works reduction of costs, adjustment shall be made using the engineering estimate formula to be agreed upon by the parties. Such adjustment of prices shall be determined on the basis of the original contract unit prices of labor and materials and such unit prices in effect during the relevant period of work accomplishment.</p>	<p>Concur</p>