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**Design, Manufacturing, Transport, and Commissioning of an Intermediate Containerized Data Centre at the CTAO-South Site Chile.**

**SPECIAL CONDITIONS OF CONTRACT**

**CTAO ERIC**

Via Piero Gobetti 93/3

40129 Bologna

Italy

(hereinafter “CTAO”)

and

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

(hereinafter “the Contractor“)

HEREWITH AGREE AS FOLLOWS:

**DEFINITIONS**

**CTAO** - Cherenkov Telescope Array Observatory.

**Days** - calendar days.

**Defect** - any part of the Goods not completed in accordance with the Contract, whether due to omission, non-compliance, error, or deviation from the specified requirements, standards, or performance criteria.

**Drawings** – the graphical presentations of the Goods. They include all supplementary details, shop drawings, calculations, and other information provided or approved for the execution of this Contract.

**Final Acceptance** – it is granted once the warranty period has expired and when all obligations of the Contractor have been fulfilled, including the implementation of remedial actions following possible reservations or open works from Provisional Acceptance as well as responses to warranty claims made during the warranty period. This is the formal recognition that the delivering party has fulfilled all its obligations as specified in the Contract.

**Intended Completion Date** - the contractually agreed date when the Works defined in this Contract shall be completed by the Contractor.

**Materials** are all supplies, including consumables, used by the Contractor for incorporation in the deliverables.

**Months** - calendar months.

**Provisional Acceptance** - the formal recognition by CTAO that the deliverable item subject to the acceptance process is compliant with the relevant requirements and interface specifications, and with safety regulations. Prior to Provisional Acceptance, all responsibilities related to the deliverable item remain with the Contractor. After the Provisional Acceptance is granted, the CTAO is responsible for operating and maintaining (except warranty) the deliverable items.

**Site** - CTAO-South Site, where the deliverables will be installed.

**Statement of Work (SoW)** – it defines all necessary activities and supplies required for the Design, Manufacturing, Transport, and Commissioning of an Intermediate Containerized Data Centre at the CTAO-South Site in Chile in accordance with the Technical Specifications.

**Start Date** - the date when the Contractor is obliged to commence execution of the performance.

**Subcontractor** - any person or organization to whom a part of the contract performance has been subcontracted by the Contractor.

**Warranty** - provided by the Contractor, serves the purpose of guaranteeing CTAO against all defects in Contractor’s manufacture or materials and any detected non-conformance of the delivered system with respect to the applicable requirement and specifications.

**Warranty Period** - two-year period from the Provisional Acceptance, during which CTAO can raise warranty issues (e.g., non-conformances, malfunctioning, performance issues, defects, etc.), which shall be addressed by the Contractor under its responsibility.

**Performance** - it refer to the activities to be executed by the Contractor in accordance with this Contract, including (i) the furnishing of all labor, materials, equipment and others incidental, necessary or convenient to the complete execution of the Contract; (ii) the passing of any tests before acceptance by the CTAO reference person; (iii) the carrying out of all duties and obligations of the Contractor imposed by this Contract.

**GENERAL INFORMATION**

**§1**

**Scope and Entry into force**

1. The scope of the contract is the Design, Manufacturing, Transport, and Commissioning of an Intermediate Containerized Data Centre at the CTAO-South Site (the “**Contract”**), in accordance with the terms and requirements set out in the Statement of Work and Specifications (Annex B to this Contract), which form an integral part of this Contract.
2. The performance of the contract cannot start before its entry into force. The Contract enters into force with the Contract signature by both parties.
3. The suspension of the performance of the contract due to force majeure will automatically extend the schedule of the execution of the contract by the duration of the suspension.

**§2**

**Contract documents**

1. The following documents shall be deemed to form and be read and construed as part of this Contract. If there is any conflict between the provisions of the special conditions, general conditions and Annexes of this Contract, the following order of precedence shall apply:

* These Special Conditions of Contract
* CTAO General Conditions of Contract (Annex A to this Contract)
* Statement of Work and Specifications (Annex B to this Contract)
* Contractor's offer (Annex C to this Contract)
* ESO Shipment Instructions (Annex D to this Contract).

1. The various documents making up the contract shall be deemed to be mutually explanatory; in cases of ambiguity or divergence, they shall prevail in the order in which they appear above. Addenda shall have the order of precedence of the document they are amending.
2. By submitting a proposal, the Contractor waived its own terms and conditions. All documents of this nature issued by the Contractor (end-user agreements, general terms and conditions, etc.) are held inapplicable, unless explicitly mentioned in the special conditions of the contract. In all circumstances, in the event of contradiction between this contract and documents issued by the Contractor, this Contract prevails, regardless of any provision to the contrary in the Contractor’s documents.
3. Any modification of contractual conditions spelled in this contract or in the during execution of the contract can only come in force via a signed contract amendment. Verbal communication is not considered sufficient as a contract amendment. Minutes of meeting implying any modification of conditions of delivery need to be confirmed by written agreement in order to constitute an agreed contractual change.

**§3**

**Governing language and Applicable law**

1. This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract which are exchanged by the parties shall be written in English.
2. This Contract shall be interpreted in accordance with the laws of Italy.
3. The law governing this Contract is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The application of the United Nations Convention on Contracts for the International Sales of Goods (CISG) is excluded.

**§4**

**Settlement of disputes**

1. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the Contract, the parties shall make a good faith endeavour to settle amicably, through direct negotiations between them, any dispute arising under or relating to this Agreement. All reasonable attempts shall be made to resolve such disagreements on a working level.
2. If the dispute cannot be resolved within the period of three (3) months, the matter shall be resolved through arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three arbitrators, one appointed by the CTAO ERIC, one appointed by the Contractor and the third arbitrator appointed by the other two arbitrators. The arbitration shall take place in Geneva, Switzerland, and the proceedings will be conducted in English. The parties agree to apply the Expedited Procedure Rules, provided the conditions for their application are met.

**§5**

**Communications and contact details**

1. For the purpose of this Contract, email communications must be sent to the following addresses.

CTAO

* Commercial questions: [ctao-procurement@cta-observatory.org](mailto:ctao-procurement@cta-observatory.org)
* Payments and issues concerning invoicing:  [ctao-accounting@cta-observatory.org](mailto:ctao-accounting@cta-observatory.org)
* Technical reference person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_@cta-observatory.org
* Contract manager: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_@cta-observatory.org](mailto:______________@cta-observatory.org)

CONTRACTOR

* Commercial questions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* Technical reference person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§6**

**Processing of Personal Data**

1. Processing of personal data by CTAO. For the purpose of this Contract:
2. for personal data processed in the context of the management of the contract, the data controller is CTAO ERIC.
3. the data protection notice is available at [www.ctao.org](http://www.ctao.org)
4. Processing of personal data by the Contractor. For the purpose of this Contract:
5. for personal data processed in the context of the management of the Contract, the data controller is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
6. the data protection notice is available at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**§7**

**Confidentiality**

1. The Contractor acknowledges that during the Contract, he will have access to Confidential Information as herein defined. “Confidential Information” are information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and/or finances of CTAO and trade secrets and IP rights including, without limitation, technical data and know-how relating to the business of CTAO or any of its suppliers, customers, shareholders, management or business contacts and including, but not limited to information that the Contractor creates, develops, receives or obtains in connection with the execution of the tasks foreseen by the Statement of Work whether or not such information is marked confidential.
2. The Contractor shall not, except in the proper course of his Services, either during the Contract or at any time after the termination date, use or disclose to any third party, and shall use his best endeavours to prevent the publication or disclosure of, any Confidential Information. This restriction does not apply to:
3. any use or disclosure authorised by CTAO or required by law;
4. any information which is already in, or comes into, the public domain otherwise than through the Contractor 's unauthorised disclosure.
5. This confidentiality obligation will continue to apply for a period of five (5) years after the expiry of this Contract.
6. The Contractor expressly acknowledges all the above-mentioned restrictions and formally accepts them.

**§8**

**Ownership of results**

1. All technical knowledge and information, especially including know-how, trade secrets, business secrets, data, software, reports, plans, diagrams, designs, formulas, and/or any other type of information in any form whatsoever, patented or not, needed in order to implement the Contract and belonging to or held by either Party prior to the date on which the Contract was signed and/or developed or acquired independently during the Contract (hereafter referred to as “Background”) shall remain its respective property. The other Party shall not, by virtue of this Contract, be entitled to any rights concerning such Background except otherwise agreed.
2. Results (data, software, reports, plans, diagrams, designs, etc.) developed by the Parties under this Contract (hereafter referred to as “Foreground”) shall become property of CTAO.

**CONTRACT VALUE AND PAYMENT**

**§9**

**Contract value**

1. For the execution of the Contract the Contractor will receive the price for:
   1. Design and Manufacturing of a Containerized Data Centre;
   2. Transport (Incoterm 2020 DPU) of the Containerized Data Centre and related equipment to the CTAO-South Site;
   3. Commissioning of the Containerized Data Centre.
2. The prices of the Goods and Services, as listed in the Contractor’s Offer are:
   1. For the Design and Manufacturing of a Containerized Data Centre: EUR \_\_\_\_\_\_\_\_\_(in words)
   2. For the Shipment and transport (Incoterm 2020 DPU) of the Containerized Data Centre and related equipment at the CTAO-South Site: EUR \_\_\_\_\_\_\_\_\_(in words)
   3. For the Commissioning of the Containerized Data Centre: EUR \_\_\_\_\_\_\_\_\_(in words)

TOTAL: EUR \_\_\_\_\_\_\_\_\_(in words)

1. Prices are net of VAT.
2. Price revision is not applicable to this Contract.

**§10**

**Payment scheme**

1. The Contractor may submit a request for payment when reaching the payment milestones defined in this Contract. Such requests shall be verified and approved by the CTAO contract manager. Once approved, the Contractor may issue the corresponding invoice.
2. Subject to any deduction which CTAO may be authorized to make under the Contract, or subject to any additions or deductions, the Contractor shall be entitled to payments as follows:
3. Advance payments (against submission of Advance payment guarantees):

* \_\_\_\_\_\_\_\_\_% at Start Date (*see §13 below*)

1. Provisional Acceptance payment:

* \_\_\_\_\_\_\_\_\_% after Provisional Acceptance

1. Final Acceptance payment:

* \_\_\_\_\_\_\_\_\_% after Final Acceptance

1. If the time at which either of the instalments due become payable there are minor defects in the substations, not originated by Force Majeure (*see §23 below*) that are not of such importance as to affect the full use of the substations, then CTAO shall be entitled to retain only such part of the instalment then due as represents the cost of address such minor defects and any sum so retained shall become due upon such minor defects being addressed.

**§11**

**Invoices**

1. Invoices. Payments are made upon submission of invoices, which shall be checked for correctness and certified by the CTAO contract manager. Invoices shall be sent to: [ctao-accounting@cta-observatory.org](mailto:ctao-accounting@cta-observatory.org)
2. CTAO shall pay the Contractor the amounts certified by CTAO within thirty (30) days from receipt of the invoice. No payment of interest for delayed payments and adjustments shall be made by CTAO.

**§12**

**Bank account and currency**

1. Bank account. Payments under the Contract shall be made in EUR to the bank account indicated below, as communicated by the Contractor, upon condition of satisfactory performance and submission of invoices.

* Beneficiary:
* Beneficiary tax identification number:
* Bank Address:
* Account nr.:
* SWIFT/BIC nr.:
* Account currency:

**OBLIGATIONS**

**§13**

**Obligations of the Contractor**

1. Besides the responsibilities defined in the Statement of Work, the Contractor shall carry out the performance properly and in accordance with this Contract. The Contractor shall provide all supervision, labor and materials which may be required.
2. The Contractor shall be responsible for the safety of all activities that the Contractor and/or Subcontractors perform on Site.
3. During Contract implementation, the Contractor and his subcontractors shall always abide by all labour laws and other relevant rules.
4. The Contractor shall cooperate and share the Site with other contractors, authorities, and CTAO of other contractors particularly when they shall require access to the Site.
5. The Contractor shall commence the performance on the day after the Contract signature by both parties (“**Start Date**”) and complete it by \_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Intended Completion Date**”).

**§14**

**Contractor’s liability**

1. The Contractor shall assume full responsibility for the Works from the time project construction commenced up to final acceptance by CTAO and shall be held responsible for any damage or destruction of the Works except those occasioned by force majeure. The Contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the Works, Equipment, installation, and the like to be affected by his work.
2. The defects liability period shall be twentyfour (24) months from Provisional Acceptance by CTAO.  Any defect detected during this period must be addressed by the Contractor, who shall undertake the repair works, at his own expense, of any damage to the Works on account of the use of materials of inferior quality within four (4) working weeks from the time CTAO has issued an order to undertake repair.  In case of failure or refusal to comply with this mandate, CTAO shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein.
3. Unless otherwise indicated in this Contract, in case the Contractor fails to comply with the preceding paragraph, CTAO shall forfeit its performance guarantee. All payables in his favour the Contractor’s favour shall be offset to recover the costs.
4. The above-mentioned provisions do not apply in case of force majeure.

**GUARANTEES AND WARRANTY**

**§15**

**Advance Payment guarantee**

1. The Contractor shall provide CTAO with an unconditional, irrevocable, first demand guarantee, as a security for theadvance payments. The guarantee must fulfil the following conditions:
   1. shall be issued by a first-class international bank or insurance company and
   2. shall have the effect of making the bank or financial institution provide irrevocable collateral security or stand as first-call guarantor of the Contractor's obligations without requiring that CTAO has recourse against the principal debtor (the Contractor).
2. The guarantee shall be stated in EUR and shall be in the amount of the advance payment requested. The Contractor bears the cost of providing such guarantee.
3. The Advance Payment guarantee shall be released following the Provisional Acceptance by CTAO.

**§16**

**Performance guarantee**

1. The Contractor shall provide CTAO with an unconditional, irrevocable, first demand guarantee, issued by a first-class international bank or insurance company as a security for the Contractor’s performance of its obligations.
2. The performance guarantee shall be stated in EUR and shall be in the amount of ten (10)% of the Contract value. The Contractor bears the cost of providing such guarantee.
3. The Performance guarantee shall be forfeited by CTAO in the event it is established that the Contractor is in default in any of its obligations under the Contract and shall be released by CTAO and returned to the Contractor following the Provisional Acceptance, subject to the following conditions:
4. there are no pending claims against the Contractor filed by CTAO,
5. the Contractor has no pending claims for materials filed against him,
6. Other terms specified in this Contract.
7. The Contractor shall post an additional performance guarantee to cover any cumulative increase of more than ten (10)% over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be.  The Contractor shall cause the extension of the validity of the performance guarantee to cover approved Contract Time Extensions.
8. In case of a reduction in the Contract value or for partially completed deliveries under the Contract, which are usable and accepted by CTAO and the use of which will not affect the structural integrity of the entire project, CTAO shall allow a proportional reduction in the original performance guarantee, provided that any such reduction is more than ten (10)% and that the aggregate of such reductions is not more than fifty (50)% of the original Performance guarantee.

**§17**

**Warranty**

1. The supplies must be guaranteed by the Contractor against all defects in manufacture or materials and any detected non-conformance of the delivered system with respect to the applicable requirement and specifications for two (2) years from the date of Provisional Acceptance.
2. The Contractor must guarantee that any permits and licenses required for manufacturing and selling the supplies have been obtained.
3. The Contractor must replace at its own expense, within a reasonable time and without any significant inconvenience to CTAO, taking account of the nature of the supplies and the purpose for which they are required, any items which become damaged or defective in the course of normal use during the guarantee period. If applicable, the Contractor shall also cover costs related to travel of personnel and/or transportation of parts necessary to correct the warranty issue.
4. The Contractor is responsible for any non-conformance of the delivered system with respect to the applicable requirement and specifications which exists at the time of delivery, even if this defect does not appear until a later date. The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with its obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.

**§18**

**Insurance**

The Contractor shall, under his name and at his own expense, obtain and maintain, for the duration of this Contract, the following insurance coverage:

1. Contractor’s All Risk Insurance;
2. Transport Insurance to the project Site of Equipment, Machinery, and Supplies owned by the Contractor;
3. Personal injury or death of Contractor’s employees; and
4. Comprehensive insurance for third party liability to Contractor’s direct or indirect act or omission causing damage to third parties.

The Contractor shall provide evidence, at CTAO’s request, that the insurances required under this Contract have been activated and shall provide copies of the insurance policies to CTAO.

The Contractor shall notify the insurers of changes in the nature, extent, or program for the execution of the Works and always ensure the adequacy of the insurances in accordance with the terms of this Contract and shall produce to the CTAO reference person the insurance policies in force including the receipts for payment of the current premiums.

If the Contractor fails to obtain and keep in force the insurances referred to herein or any other insurance which he may be required to obtain under the terms of this Contract, CTAO may obtain and keep in force any such insurances and pay such premiums as may be necessary for the purpose. CTAO may deduct the amount it shall pay for said premiums including twentyfive percent (25%) therein from any due payment, or which may become due, to the Contractor, without prejudice to CTAO exercising its right to impose other sanctions against the Contractor pursuant to the provisions of this Contract.

In the event the Contractor fails to observe the above safeguards, CTAO may, at the Contractor’s expense, take whatever measure is deemed necessary for its protection and that of the Contractor’s personnel and third parties. In addition, CTAO may refuse to make the payments until the Contractor complies with this clause.

The Contractor shall immediately replace the insurance policy obtained as required in this Contract, without need of CTAO’s demand, with a new policy issued by a new insurance company acceptable by CTAO for any the following grounds:

1. The issuer of the insurance policy to be replaced has:

* become bankrupt;
* been placed under receivership or under a management committee;
* been sued for suspension of payment; or

1. Where reasonable grounds exist that the insurer may not be able, fully and promptly, to fulfill its obligation under the insurance policy.

**REMEDIES**

**§19**

**Termination for default of the Contractor**

1. CTAO shall terminate this Contract for default when any of the following conditions attend its implementation:
2. Due to the Contractor’s fault and while the project is on-going, it has incurred negative slippage of fifteen percent (15%) or more, regardless of whether or not previous warnings and notices have been issued for the Contractor to improve his performance.
3. Due to its own fault and after this Contract time has expired, the Contractor incurs delay in the completion of the Work after this Contract has expired; or
4. If the Contractor:

* abandons the contract Works, refuses or fails to comply with a valid instruction of CTAO or fails to proceed expeditiously and without delay despite a written notice by CTAO;
* does not execute the Works in accordance with this Contract or persistently or flagrantly neglects to carry out its obligations under this Contract;
* neglects or refuses to remove materials or to perform a new Work that has been rejected as defective or unsuitable; or
* sub-contract any part of this Contract without approval by CTAO.

1. All materials on the Site purchased under the Contract shall be deemed to be the property of CTAO if this Contract is rescinded because of the Contractor’s default.

**§20**

**Termination for default of CTAO**

1. The Contractor may terminate this Contract with CTAO if the works are completely stopped for a continuous period of at least ninety (90) calendar days through no fault of its own, due to any of the following reasons:
2. Failure of CTAO to deliver, within a reasonable time, materials, right-of-way, or other items it is obligated to furnish under the terms of this Contract; or
3. The prosecution is disrupted by force majeure.

**§21**

**Procedures for termination of Contract**

1. Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, CTAO shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached.
2. CTAO shall terminate this Contract only by a written notice to the Contractor conveying the termination of this Contract. The notice shall state:
3. that this Contract is being terminated for any of the ground(s) afore mentioned, and a statement of the acts that constitute the ground(s) constituting the same.
4. the extent of termination, whether in whole or in part; an instruction to the Contractor to show cause as to why this Contract should not be terminated. The Notice to Terminate shall be accompanied by a copy of the Verified Report.
5. Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Contractor shall submit to CTAO a verified position paper stating why the contract should not be terminated. If the Contractor fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, CTAO shall issue an order terminating the Contract.
6. CTAO may, at any time before receipt of the Contractor’s verified position paper described above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Contractor’s receipt of the notice.
7. Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, CTAO shall decide whether or not to terminate this Contract. It shall serve a written notice to the Contractor of its decision and, unless otherwise provided in the said notice, this Contract is deemed terminated from receipt of the Contractor of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate.

**§22**

**Express Termination Notice**

1. Either Party may terminate this Contract at any time, without notice, in writing, if there is a fundamental breach of this Contract, without prejudice to the right to claim for damage compensation.
2. Fundamental breaches of Contract include, but shall not be limited to, the following:
3. The Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Statement of Work and the stoppage has not been authorized by CTAO.
4. The Contractor is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Contractor, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to CTAO and/or the Contractor. In the case of the Contractor's insolvency, any Contractor's Equipment which CTAO instructs in the notice is to be used until the completion of the Works.
5. A payment certified by the CTAO contract manager is not paid by CTAO to the Contractor within eighty-four (84) days from the date of the CTAO contract manager’s certificate.
6. The CTAO reference person gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the CTAO contract manager.
7. The Contractor does not maintain a guarantee that is required.
8. The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid; and
9. In case it is determined *prima facie* by CTAO that the Contractor has engaged, before or during the implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation, such as, but not limited to, the following:

* corrupt, fraudulent, collusive, coercive, and obstructive practices;
* drawing up or using forged documents; using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
* any other act analogous to the foregoing.

1. If this Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
2. In case of anticipated termination, the Contractor will receive the compensation accrued until the termination date, calculated on the basis of the pro rata temporis principle in relation to the days actually worked.

**§23**

**Force Majeure**

1. For purposes of this Contract the terms “force majeure” and “fortuitous event” may be used interchangeably. In this regard, a fortuitous event or force majeure shall be interpreted to mean an event which the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor.
2. If this Contract is discontinued by an outbreak of war or by any other event entirely outside the control of either CTAO or the Contractor, the CTAO contract manager shall certify that this Contract has been discontinued. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any Work carried out afterwards to which a commitment was made.
3. If the event continues for a period of eighty-four (84) days, either party may then give notice of termination, which shall take effect twenty-eight (28) days after the giving of the notice.
4. After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the materials and Plant reasonably delivered to the Site, adjusted by the following:
5. any sum to which the Contractor is entitled;
6. the cost of his suspension and demobilization;
7. any sum to which CTAO is entitled.
8. The net balance due shall be paid or repaid within a reasonable period from the time of the notice of termination.

**§24**

**Delays and Liquidator damages**

1. The Contractor shall pay liquidated damages to CTAO for each day that the Completion Date is later than the Intended Completion Date. The applicable liquidated damages are 0.1% (1/10 of a percent) of the total contract value defined in §8 for every day of delay, up to a maximum of 10% of the total contract value. CTAO shall deduct liquidated damages from payments due to the Contractor.
2. Payment of liquidated damages shall not affect the Contractor’s liabilities. Once the cumulative amount of liquidated damages reaches ten (10) % of the amount of this Contract, CTAO may rescind or terminate this Contract, without prejudice to other courses of action and remedies available under the circumstances.
3. If the Intended Completion Date is extended after liquidated damages have been paid, CTAO shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

**§25**

**Payment on Termination**

1. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the CTAO contract manager shall issue a certificate for the value of the works done and materials ordered, less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the Work not completed. Additional Liquidated Damages shall not apply. If the total amount due to CTAO exceeds any payment due to the Contractor, the difference shall be a debt payable to CTAO.
2. If the Contract is terminated because of a fundamental breach of Contract by CTAO, the CTAO contract manager shall issue a certificate for the value of the Work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor’s personnel employed solely on the Works, and the Contractor’s costs of protecting and securing the Works, less advance payments received up to the date of the certificate.
3. The net balance due shall be paid or repaid within thirty (30) days from the notice of termination.
4. If the Contractor has terminated the Contract, CTAO shall promptly return the Performance Guarantee to the Contractor.

**§26**

**Extension of the Intended Completion Date**

1. The CTAO contract manager shall extend the Intended Completion Date if a Variation is issued which makes it impossible for the Intended Completion Date to be achieved by the Contractor without taking steps to accelerate the remaining work, which would cause the Contractor to incur additional costs. No payment shall be made for any event which may warrant the extension of the Intended Completion Date.
2. The CTAO contract manager shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking for a decision thereto after fully submitting all supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

**§27**

**Early Warning**

1. The Contractor shall warn the CTAO contract manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work or delay the execution of the Works. The CTAO contract manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Intended Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
2. The Contractor shall cooperate with the CTAO contract manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the CTAO contract manager.
3. All Variations shall be included in the updated Program of Work produced by the Contractor.

**§28**

**Instructions, inspections and audits**

1. CTAO personnel shall at all reasonable times be entitled to examine and inspect, measure and test the materials and workmanship.
2. If the CTAO contract manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no defect, the test shall be a Compensation Event.
3. The Contractor shall permit CTAO to inspect the Contractor’s accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by CTAO.

**§29**

**Defects identification**

1. The CTAO contract manager shall check the Contractor’s work and notify the Contractor of any defects that are found. Such checking shall not affect the Contractor’s responsibilities. The CTAO contract manager may instruct the Contractor to search uncover defects and test any work that the CTAO contract managers considers below standards and defective.
2. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor’s cost if the loss or damage arises from the Contractor’s acts or omissions.

**§30**

**Correction of defects**

1. The CTAO contract manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period.
2. Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified in CTAO contract manager’s notice.
3. The Contractor shall correct the defects which he notices himself before the end of the Defects Liability Period.
4. CTAO shall certify that all defects have been corrected. If CTAO considers that correction of a defect is not essential, the CTAO contract manager can request the Contractor to submit a quotation for the corresponding reduction in the Contract Price. If CTAO accepts the quotation, the corresponding change is a Variation.
5. CTAO shall give the Contractor at least fourteen (14) days’ notice of his intention to use a third party to correct a Defect. If the Contractor does not correct the Defect himself within the period, CTAO may have the Defect corrected by a third party. The cost of the correction will be deducted from the Contract Price.
6. The use of a third party to correct defects that are uncorrected by the Contractor will in no way relieve the Contractor of its liabilities and warranties under the Contract.

**§31**

**Variation orders**

1. The CTAO contract manager may instruct Variations, up to a maximum cumulative amount of ten percent (10%) of the original contract cost. Variations shall be valued as follows:
2. At a lump sum price agreed between the parties; where appropriate, at rates in this Contract.
3. in the absence of appropriate rates, the rates in this Contract shall be used as the basis for valuation; or failing which
4. at appropriate new rates, equal to or lower than current industry rates and to be agreed upon by both parties and approved by CTAO.
5. Variation Orders may be issued by CTAO to cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the preconstruction plans used for purposes of bidding and the “as staked plans” or construction drawings prepared after a joint survey by the Contractor and CTAO after award of the contract, provided that the cumulative amount of the Variation Order does not exceed ten percent (10) % of the original project cost.
6. The addition/deletion of Works should be within the general scope of the project. The scope of work shall not be reduced to accommodate a positive Variation Order. A Variation Order may either be in the form of a Change Order or Extra Work Order:

A Change Order may be issued by CTAO to cover any increase/decrease in quantities of original Work items in the contract.

An Extra Work Order may be issued by CTAO to cover the introduction of new work necessary for the completion, improvement or protection of the project which were not included as items of Work in the original contract, such as, where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the Work or character provided for in the contract.

1. Any cumulative Variation Order beyond ten (10) % shall be subject of another contract to be subject to tendering if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, CTAO may authorize a positive Variation Order go beyond ten (10) % but not more than twenty (20) % of the original contract price, provided, however, that appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten (10) %.
2. In claiming for any Variation Order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after the circumstances leading to such condition(s) leading to the extra cost, and within twenty-eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at that time. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the contractor for any claim.

**§32**

**Suspension of Work**

1. CTAO shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the Contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by CTAO or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The Contractor shall immediately comply with such order to suspend the work wholly or partly.
2. The Contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the Contract Manager due to the following:
3. There exist right-of-way problems which prohibit the Contractor from performing work in accordance with the approved construction schedule.
4. Requisite construction plans which must be owner-furnished are not issued to the Contractor precluding any work called for by such plans.
5. Peace and order conditions make it extremely dangerous, if not possible, to work.
6. Delay in the payment of Contractor’s claim for progress billing beyond fortyfive (45) calendar days from the time the Contractor’s claim has been certified to by the procuring entity’s authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the Contractor.
7. In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the Contractor, the elapsed time between the effectivity of the order suspending operation and the order to resume work shall be allowed the Contractor by adjusting the contract time accordingly.

**§33**

**Extension of Contract time**

1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, CTAO shall determine the amount of such extension; provided that CTAO is not bound to take into account any claim for an extension of time unless the Contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to CTAO notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. Upon receipt of full and detailed particulars, CTAO shall examine the facts and extent of the delay and shall extend the contract time completing the contract work when, in CTAO‘s opinion, the findings of facts justify an extension.
2. No extension of contract time shall be granted the Contractor due to:
3. ordinary unfavorable weather conditions and
4. inexcusable failure or negligence of Contractor to provide the required equipment, supplies or materials.
5. No extension of contract time shall be granted when the reason given to support the request for extension was already considered in the determination of the original contract time during the conduct of detailed engineering and in the preparation of the contract documents as agreed upon by the parties before contract perfection.

**§ 34**

**Final Provisions**

1. The validity of amendments and/or supplements to this Contract is subject to them being made in writing. Verbal subsidiary agreements to this agreement will not apply.
2. Any conflicts between any clause set out herein and mandatory provisions of law will determine the automatic substitution of said clause with the applicable provisions of law but will not determine the invalidity of the entire Contract.

Both the Contractor and CTAO have received a copy of this Contract.

**Annexes:**

1. Annex A – CTAO General Conditions of Contract
2. Annex B - Statement of Work and Specifications
3. Annex C - Contractor's offer
4. Annex D - ESO Shipment Instructions

**For CTAO gGmbH**

Dr. Stuart McMuldroch,

Managing Director

**For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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