

PARTICULAR CONDITIONS OF CONTRACT

Architectural and MEP Works

**SHERATON CASINO & UNDERGROUND PARKING
TBILISI, GEORGIA**

1 General Provisions

1.1 Definitions

The following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.3 Dates, Tests, Periods and Completion

Amend the following existing definition:

1.1.3.2 "Commencement Date" means the date when the contractor actually started work, which will be latest 5 days after signing of the Agreement.

1.1.5 Works and Goods

Insert new definitions:

1.1.5.9 "Good Industry Practice" means the exercise of that degree of skill, care and diligence which:

- (a) would reasonably and ordinarily be expected from a prudent and experienced, properly qualified and competent person engaged in the same type of undertaking; or
- (b) (where there is no equivalent type of undertaking) would be expected from a prudent and experienced properly qualified and competent person in order to implement the specific tasks set out in, and in accordance with the terms of this Contract)

1.1.5.10 "Prohibited Materials" means materials, goods or substances or any other goods, substances, products or materials which:

- (a) pose a hazard to the health or safety of any person who may come into contact with the Works (whether during their construction or after their completion); or
- (b) either by themselves or as a result of their use in a particular situation or in combination with other materials, would or are likely to have the effect of reducing the normal life expectancy of any other materials or structure in which the Materials are incorporated or to which they are affixed; or
- (c) are or become generally known within the international or national building, construction or engineering industries to be deleterious (either to health and safety or to the durability of the works); or
- (d) or do not conform to the Employer's Requirements or other plan or specification for the Works.

1.1.5.11 "Project Manual" means the document containing rules of conduct as included in the Contract.

1.1.6 Other Definitions

Amend the following existing definitions:

1.1.6.1 "Contractor's Documents"

After "Contractor" on the third line **insert**:

"(including documents created and stored on disks, diskettes, tapes or other electronically readable media)"

1.1.6.7 "Site"

At the end of the definition **insert**:

"with the cadastre code 01.17.01.125.001"

Insert new definitions:

1.1.6.10 "Intellectual Property Rights" means copyrights, moral rights, related rights, patents, trademarks, trade names, service marks, design rights, database rights, semi-conductor topography rights and any undisclosed or confidential rights such as know-how, trade secrets or inventions (whether patentable or not),

1.1.6.11 "Additional Access Requirements" means the obligations and constraints relating to access to and within the Site as set out in the Employers Requirements.

1.5 Priority of Documents

Delete Existing Sub-Clause and **replace** with new Sub-Clause:

"The documents forming the Contract are to be taken as mutually explanatory of one another. However, in the event of conflict or ambiguity, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement;
- (b) the Letter of Agreement;
- (c) the General Conditions - FIDIC Conditions of Contract for Plant and Design (Yellow Book);
- (d) the Employer's Requirements;
- (e) the Bills of Quantities, Schedules, the Contractor's Proposal or any other document forming part of the Agreement.

If any ambiguity or discrepancy is found within or between the documents and/or the Laws the Engineer may issue any necessary clarification or instruction. To avoid doubt any such instruction or clarification shall not entitle the Contractor to Cost and/or extension to the Time for Completion, except when such instruction or clarification is based on the modification of the priority of the above documents. In advance of issuing a clarification or instruction, the Contractor shall at the request of the Engineer provide details as to how the discrepancy or ambiguity may be resolved."

1.7 Assignment

Delete existing Sub-Clause and **replace** with:

"The Employer may assign the whole or any part of the Contract or any benefit or interest in or under the Contract to any person at any time. The Contractor shall not be entitled to assign the whole or any part of the Contract without the prior written agreement of the Employer."

1.9 Errors in the Employer's Requirements

Delete existing Sub-Clause and substitute with the following:

If the error occurs in the Employer's Requirements, the Contractor is obliged to notify the Engineer and provide Engineer with the proposal as to how such error may be resolved without increasing Cost and/or extension to the Time for completion of the works. If the Engineer declines the Contractor's proposal and suggests a different way of resolving such error, then provided an experienced contractor exercising due care would not have discovered the error, fault or other defect when examining the Site and the Employer's Requirements, the Contractor will be entitled for claim according to clause 20.1 for the time extension or additional costs in case the Contractor shall consider that such suggestion of the Engineer causes additional costs and extension to the Time for completion.

1.10 Employer's Use of Contractor's Documents

Delete existing Sub-Clause and **replace** with:

- "1.10.1 The Contractor warrants that the provision, licensing, sale or use of the Contractor's Documents and the designs in them will not infringe or contribute to the infringement of any third party Intellectual Property Rights.
- 1.10.2 The Contractor undertakes to defend any claim for any alleged infringements of this Sub-Clause 1.10 which may be brought against the Employer and to pay all expenses and fees which shall be incurred in and about defending the same. The Contractor will not make any admissions or agree any settlement or otherwise compromise the defense of settlement of any claim without the prior written consent of the Employer.

- 1.10.3 Subject to the provisions of this Sub-Clause 1.10, any Intellectual Property Rights in any Contractor's Documents created by the Contractor in relation to the Works shall vest in the Employer absolutely upon entering into this Contract or if not created later, upon the creation of such Intellectual Property Rights and to the extent necessary to give effect to the foregoing the Contractor's assign (by way of present assignment of future rights in respect of rights not yet created) with full title guarantee all such Intellectual Property Rights to the Employer, or its nominee, to take effect immediately on their creation. Where a third party has created or created the Contractor's Documents on behalf of the Contractor the Contractor shall procure forthwith the assignment in favor of the Employer of all Intellectual Property Right's with full title guarantee.
- 1.10.4 The Contractor covenants with the Employer that it shall, both during and after the term of the Contract, at the request of the Employer, do all such further acts and execute all such documents as may from time to time be necessary to vest all Intellectual Property Rights as created in this Sub-Clause 1.10 in the Employer or its nominee.
- 1.10.5 To the extent that the Employer owns the Intellectual Property Rights in the Contractor's Documents pursuant to this Sub-Clause 1.10, the Employer grants to the Contractor an irrevocable license to use the Contractor's Documents solely for the purposes of performing its obligations under the Contract. The Contractor shall indemnify the Employer in relation to any indemnity, loss, claims, expenses and/or proceedings arising from a breach of this Sub-Clause 1.10 and/or any infringement of an Intellectual Property Right which arises in relation to (a) the Contractor's design, manufacture, construction or execution of the Works, (b) the use of the Contractor's Equipment and/or (c) the proper use of the Works". This Sub-Clause shall survive the termination of the Contract and if the Contract is terminated the Contractor shall forthwith deliver to the Employer two copies of all of the Contractor's Documents."

1.11 Contractor's Use of Employer's Documents

At the end of the Sub-Clause **insert**:

"The Employer gives no warranty that there are no errors or omissions in the Employer's Requirements or any other document provided to the Contractor and the Employer shall have no liability to the Contractor and the Contractor shall be responsible for the verification of this information."

1.12 Confidential Details

At the end of the Sub-Clause **insert** the following:

"The Contractor shall treat the details of the Contract and any information received from the Employer as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall disclose any other information which the Employer may require in order to verify the Contractor's compliance with the Contract and further the Contractor agrees that:

- (a) The Contractor shall not at any time, whether before or after the expiry or sooner termination of the Contract, without the consent of the Employer divulge or permit or suffer its officers employees agents contractors Subcontractors or other contractors to divulge to any person (other than to any of its or their advisers officers or employees who require it to enable them properly to carry out their duties) any of the details of the Contract or its performance (including information relating to costs, methods of construction, supervisory staff or numbers of labour) or any information concerning the business contracts or the commercial or financial affairs of the Employer or any parent or subsidiary company of the Employer;
- (b) The Contractor shall not without the prior written agreement of the Employer publish alone or in conjunction with any other person any article or other material including photographic relating the Contract and/or the Works nor impart to any radio or television programme or any other medium any such information (including in relation to disputes)."

The provisions of this Sub-Clause shall survive the expiry of termination of the Contract.

1.13 Compliance with Laws

In (b) after the word "Laws" **insert:**

"and any other consents and/or confirmations whether from public authorities or private persons and as indicated in the Employer's Requirements."

1.15 Survival

Insert a new Sub-Clause:

"The cancellation, expiration or earlier termination of this Contract shall not relieve the Contractor of its obligations under Clauses 1.3 [Communications], 1.12 [Confidential Details], 1.10 [Employer's Use of Contractor's Documents], 4.2 [Performance Security], 16.3 [Cessation of Work and Removal of Contractor's Equipment], 17.1 [Indemnities], 17.5 [Intellectual and Industrial Property Rights] and 17.6 [Limitation of Liability]"

2 The Employer

2.1 Right of Access to the Site

In the first paragraph in the second line after "Tender" **insert:**

"but subject to any other constraints in this Contract regarding access/possession "

At the end of (a) **insert:**

"but subject to any other constraints in this Contract regarding access/possession (including but not limited to the Additional Access Requirements."

At the end of (b) **insert:**

"The Contractor shall carry out the Works in accordance with the Additional Access Requirements as detailed in the Employers Requirements."

2.2 Permits, Licences or Approvals

After "position to do so)" at the end of the first paragraph **insert:**

"and subject to payment by the Contractor of any costs expenses reasonably incurred by the Employer, except the expenses related to obtaining or amending of the construction permit (including permit for demolition, if any)."

2.4 Employer's Financial Arrangements

Delete this Sub-Clause

2.5 Employer's Claims

Delete the final paragraph and **insert**:

"The Employer may deduct this amount from any moneys due, or to become due, to the Contractor."

3 The Engineer

3.3 Instructions of the Engineer

At the end of the first paragraph **insert**:

"The Contractor shall notify the Employer as soon as reasonably possible in any case where in his reasonable opinion such instructions are likely to constitute a Variation."

At the end of the Sub-Clause **insert**:

"Engineer may require all project parties to participate in meetings where Contractor's representatives shall be ready to discuss ongoing activities and related issues as well as report on preparation for future works. The meetings shall be minuted by the Engineer's representative and must be signed by all meeting participants. In case the meeting participant has remarks to the minutes they shall be presented to the Engineer in writing within *three working days* after minutes has been issued to the project parties."

4 The Contractor

4.1 Contractor's General Obligations

On the first line after "design" **insert**:

"the Works using the standard of reasonable skill care and diligence to be expected of a competent contractor familiar with work of a similar size scope and complexity to the Works, and furthermore shall"

On the third line after "defined in" **insert**:

"or implied"

At the end of the Sub-Clause **insert**:

"and the Contractor having received the consent of the Employer to such alteration"

At the end of the Sub-Clause **insert**:

The Parties acknowledge and agree that the Contractor shall start Works immediately after signing of the Contract , but latest within 5 days.

4.2 Performance Security

In the second paragraph **delete** “28 days” **and insert** “10 days”.

4.3 Contractor’s Representative

At the end of the Sub-Clause **insert**:

"The Contractor shall, upon reasonable request of the Employer, replace the Contractor's Representative."

4.6 Co-operation and the work of others

Delete existing Sub-Clause and **replace** with:

"The Contractor shall, as instructed by the Engineer, co-ordinate access to, and activities on, the Site and allow appropriate opportunities for carrying out work or inspecting the Works or the Site to any other contractors employed by the Employer and/or who may be employed in the execution on or near the Site of any work not included in the Contract.

The Contractor shall, as instructed by the Engineer, permit the execution of work not forming part of the Contract by the Employer and/or any persons authorized or licensed by the Employer to carry out work on those parts of the Site in the Contractor's possession and the Employer and/or any such persons may at any time re-enter those parts of the Site and any part of the Works or any Section thereof for the purposes of executing any work or installing any goods, equipment or other articles. The execution of the work referred to in this Sub-Clause shall not in any way be deemed to be or treated as taking possession of part or parts of the Works or any Section thereof by the Employer.

Services for these personnel and other contractors shall include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor to the extent this does not impede the activities of the Contractor.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable Cost.

The Contractor shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of the other parties."

4.7 Setting Out

Delete all text after paragraph 1 of this Sub-Clause and **insert**:

"The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works."

4.8 Safety Procedures

Amend the Sub-Clause as follows:

Delete (a) and insert:

"(a) comply with all applicable health and safety laws and shall liaise as necessary with any relevant health and safety authority;"

At the end of (b) **insert:**

"and shall keep a record of all health and safety issues;"

In (c) **delete:**

"use reasonable efforts to"

In (d) after "provide" **insert:**

"and maintain at its own cost all"

At the end of the Sub-Clause **insert:**

"the Contractor shall indemnify the Employer in respect of any liability, loss, claim, expenses and/or proceedings of whatsoever nature arising out of or in connection with any breach of the duties and obligations referred to in this Sub-Clause. Any breach of HSE regulations and/or negligence towards verbal or written instructions issued by the Engineer will provoke the sanctions as per clause 8.13 Penalties, and/or stoppage of works, delay from which will not cause extension of time for completions and will all circumstances will remain solely under the Contractors' responsibility".

4.10 Site Data

Insert the following as a new second paragraph:

"The Contractor shall be responsible for verifying and interpreting all such data. The Employer shall have no responsibility for the accuracy, sufficiency or completeness of such data.

Delete the following from the existing second paragraph:

First Sentence **delete** "To the extent which was practicable (taking account of cost and time)"

Second Sentence **delete** "To the same extent the"

Insert the following into the existing second paragraph:

After "Site" on Line 5 **insert** "the existing building" and in (a) after "sub-surface conditions" **insert** "and the condition of the existing building"

Insert a new paragraph at the end of the Sub-Clause as follows:

"No failure on the part of the Contractor to discover or foresee any condition, risk, contingency or circumstance at or affecting the Site, whether the same ought reasonably to have been discovered or foreseen, shall relieve the Contractor of any of its obligations under the Contract or entitle the Contractor to an additional payment or to an extension of the Time for Completion."

4.12 Unforeseeable Physical Conditions

Delete the text of this Sub-Clause and **insert:**

"Except as otherwise stated in the Contract:

- (a) the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- (b) by signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- (c) the Contract Price and/or the Time for Completion shall not be adjusted to take account of any unforeseen difficulties or costs, except the difficulties and costs which reasonably could not have been discovered and/or foreseen by the experienced Contractor deemed to have the knowledge set forth in sub-paragraph (a)."

4.14 Avoidance of Interference

"At the end of the Sub-Clause **insert**:

Without prejudice to the provisions of this clause 4.14 The Contractor shall, at all times, prevent any public or private nuisance (including, without limitation, any such nuisance caused by noxious fumes, noisy working operations or the deposit of any material or debris on the public highway, private highways) or other interference with the rights of any adjoining or neighbouring landowner, tenant, occupier, any other contractor/s and shall assist the Employer in defending any action or proceedings which may be instituted in relation thereto.

The Contractor shall ensure that there is no trespass on or over any adjoining or neighbouring property arising out of or in the course of or caused by the carrying out of the Works. If the carrying out of the Works is likely to necessitate any interference (including, without limitation, the oversailing of tower crane jibs) with the rights of adjoining or neighbouring owners or occupiers, then the Contractor shall, at no cost to the Employer, obtain the prior written agreement of such owners and/or occupiers thereto, and such agreement shall be subject to the approval of the Employer before execution. The Contractor shall comply in every respect with any conditions contained in any such agreement.

4.15 Access Route

On the second line, after "route to" **insert** "and through"

4.18 Protection of the Environment

At the end of the Sub-Clause **insert**:

"The Contractor shall indemnify and hold the Employer harmless against and from all liability, loss, claims, expenses and/or proceedings resulting from any breach of this Sub-Clause 4.18 which is the fault of or caused by or contributed to by any act or negligence of the Contractor."

4.19 Electricity, Water and Gas

At the end of the third paragraph insert:

"within 10 days of a written request."

At the end of the Sub-Clause insert:

The Contractor shall indemnify and hold the Employer harmless against and from all liability, loss, claims, expenses and/or other proceedings resulting from any breach of this Sub-Clause 4.19 which is the fault of or caused by or contributed to by any act or negligence of the Contractor."

4.21 Progress Reports

In paragraph 1 at the end of first sentence **delete** “six copies” and **insert** “three copies”

In Paragraph 3 after "Each report shall" **insert**:

"be in the form required by the Employer and unless otherwise agreed by the Employer or the Engineer shall"

In (g) at the end **insert**:

"any accidents and any property damage"

4.25 Open Book and Management

Insert new Sub-Clause 4.25:

"4.25.1 Without prejudice to the Contractor's other obligations under this Contract, the Contractor shall operate the Contract on an "open-book basis" which shall mean full and complete disclosure to the Employer and its advisors by the Contractor and Subcontractors of all information (including, without limitation, disclosure of elemental costs, overheads, profit margins, Subcontractor's cost's and all discounts and rebates or other incentives that may impact on the risks, prices, fees or other monies due to the Contractor and/or any Subcontractor) and full access to records wheresoever stored, clarification or further information reasonably requested and copies of all relevant documents with respect to the items set forth in chapter named “Open Book management Items”.

Bill of Quantities, forming part of this agreement, contains special chapter “Open Book Management Items”, enlisting the main equipment and/or major materials necessary for this job. Before signing of the agreement, Contractor will be requested to disclose costs for the materials listed and in case if the Employer decides to switch them, substitute with other material of different technical specifications, capacity and/or quality, Contractor remains obliged to suggest open book costs for the new items as well, replacing items listed in the mentioned list. In case if Employer is not satisfied with the replacement suggested by the Contractor, the Employer shall be authorized to instruct the Contractor to use any Plant and Materials it chooses to use instead of Plant and Materials disclosed under the Requested Information. The Contractor may not refuse to use such Plant and Materials unless it proves that they reduce the safety or suitability of the Works. The Parties agree that any such will not affect any part of the agreed Contract Price except for the price for such Plant and Materials.

In case of ANY Variations, each and every items or services for which rates per unit or services has not been set forth in the Bills of Quantities the contractor should operate under the “Open Book Management” principle. The information and documents requested shall be provided by the Contractor within 7 days of receiving such request and in case of Variation together with the relevant proposal.

The Employer shall be authorized to instruct the Contractor to use any Plant and Materials it chooses to use instead of Plant and Materials disclosed under the Requested Information. The Contractor may not refuse to use such Plant and Materials unless it proves that they reduce the safety or suitability of the Works. The Parties agree that any such changes to the Plant and Materials will not affect any part of the agreed Contract Price except for the price for such Plant and Materials."

4.25.2 The Contractor shall allow the Employer, the Engineer and the Employer's agents to inspect at any time within working hours the accounts and records which he is required to provide as set forth in Sub-Clause 25.1 provided that the Contractor is provided with 48 hours prior notice of such inspection or such other reasonable notice period having regard to the nature of the documentation requested."

5 Design

5.1 General Design Obligations

At the end of the first paragraph, **insert**:

The Employer has prepared design drawings included in the Employer's Requirements. The parties agree and acknowledge that the Contractor shall prepare the shop drawings and any other design needed for the Works The Parties acknowledge and agree that the Employer may intend to make amendments to certain parts of the concept design, accordingly the Contractor shall start working only on the parts of the design that will not change as indicated by the Engineer in writing.

Such concept design drawings shall be considered accepted by the Contractor unless it notifies the Employer within 15 calendar days of receipt that it needs further information and/or drawings, specifying such necessary additional information and drawings and grounds for the request.

Delete the 3rd and 4th Paragraph and **insert**:

"The Contractor shall check the accuracy and completeness of the Employer's Requirements (including design criteria, specifications, plans and calculations) and other information provided to him by the Employer and shall be responsible for the designs in the Employer's Requirements."

5.2 Contractor's Documents

In Paragraph 1, after "approvals," on Line 2 **insert**:

"the design documents set forth in Sub-Clause 5.1"

5.3 Contractor's Undertaking

At the end of the Sub-Clause **insert**:

"(c) Good Industry Practice; and

(f) the Contractor has not, and shall not, specify for use or permit to be used any materials which at the time the Works are being carried out are generally accepted or suspected of being Prohibited Materials, and shall, when requested, issue to the Employer and to such persons as the Employer may require a certificate that no such materials have been specified for use or permitted be used; and

5.4 Technical Standards and Regulations

In Paragraph 2, after "Laws" on Line 1 **insert**:

", standards and regulations"

In Paragraph 2, after "Clause 10 [Employer's Taking Over] **delete** all the remaining text

Insert New Paragraph:

"To avoid doubt the Contractor shall not be entitled to any Cost or extension to the Time for Completion as a consequence, except in case the amendments to the laws and regulations result in substantial additional works which were not envisaged by laws and regulations in force at the time of execution of this Contract."

Working Hours

Insert new (d) as follows:

- 6.5** the Contractor has obtained all necessary consents and approvals and is satisfied that the work does not constitute a breach of any Laws as to noise, other forms of nuisance, or otherwise. The Employer agrees to provide reasonable assistance to the Contractor in obtaining any such consent or approval."

Records of Contractor's Personnel and Equipment and Subcontractors

"(d) On Line 2 after "Contractor's Equipment" **insert**:

- 6.10** "and of the Subcontractors"

Disorderly Conduct

On Line 2 after "Contractor's Personnel" **insert**:

- 6.11** "and/or Subcontractors"

Commencement, Delays and Suspension

8 Commencement of Work

- 8.1** **Delete** first paragraph text of this Sub-Clause and **insert**:

"The Commencement Date is latest within 5 (five) calendar days after signing of the Agreement.

8.3 Programme

On the 1st Line of the first paragraph **delete** "28 days after receiving the notice under Sub-Clause 8.1 Commencement of Works" and **insert**:

"5 days after the date of the Contract."

In Line 4 after the second sentence **insert**:

"The Contractor is required to provide all necessary particulars and explanations sufficient to demonstrate an entitlement to an extension of Time for Completion and the amount of the delay or disruption likely to be suffered or otherwise and to suggest mitigation methods."

8.4 Extension of Time for Completion

at the end of the list (a) to (e) **insert**:

"(i) the Contractor has made reasonable and proper efforts to mitigate such delay, and

(ii) any such delay which is concurrent with another delay for which the Contractor is responsible shall not be taken into account."

8.7 Delay Damages

Delete second paragraph.

8.8 Suspension of Work

At the end of the Paragraph 1 **insert**:

"and any Materials stored on or off Site against any deterioration, loss or damage and (unless otherwise instructed by the Employer) shall maintain the Contractor's Plant, Contractor's Equipment and Contractor's Personnel ready to resume normal working on receipt of an instruction from the Employer to proceed according to the following terms and conditions:

- (a) If the suspension does not exceed 30 (thirty) calendar days, the Contractor shall resume the works in 1 (one) working day;
- (b) If the suspension exceeds 30 (thirty) calendar days, the Contractor shall resume the works in 15 (fifteen) calendar days."

The parties agree that in case the suspension lasts more than 30 (thirty) calendar days, the provisions set forth in Sub-Clause 8.9 shall apply."

8.10 Payment for Plant and Materials in the Event of Suspension

Delete Sub-Clause 8.10

8.12 Resumption of Work

On Line 3 after "make good" **insert**:

"at its cost."

8.13 Penalties

"The Employer is entitled to impose the following penalties on the Contractor:

- (a) USD 300 per each case of the breach of laws regarding health and safety on the Site;
- (b) USD 150 per each day of delay for provision of: updated time programme or monthly report;

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

At the end of the final paragraph **insert**:

"In the event that the application is rejected the Contractor shall forthwith attend to any such items of work as shall have been notified by the Engineer (and shall, if necessary, give the Engineer a further notice, in accordance with Sub-Clause Clause 10.1), so that the procedures in Sub-Clause 10.1 are repeated as often as may be necessary."

11 Defects Liability

11.2 Cost of Remedying Defects

Delete the remaining text in (a) after "Works"

Insert a new (e):

"(e) damage caused by the Contractor."

11.3 Extension of Defects Notification Period

In Paragraph 2, on line 3 after "*Suspend Work*" **insert**:

"for a cause which was not the responsibility of the Contractor"

11.4 Failure to Remedy Defects

Delete (a) and **insert**:

"(a) carry out the work himself or by others, at the Contractor's cost"

11.9 Performance Certificate

In paragraph 2 on line 4 after "remedying any defects" **insert**:

"and complied with any other requirements under the Contract which are to be complied with in advance of issue"

Delete Paragraph 3 and **insert**:

"Notwithstanding the provisions of Sub-Clause 11.9, the Performance Certificate shall not constitute conclusive evidence that the Works are in accordance with the Contract in case the Employer has any claims against the Contractor with respect to Works during or after the Defects Notification Period. The issue of the Performance Certificate by the Employer will be without prejudice to the Employer's rights under the Contract and the Employer's rights in relation to the Works during, and following the expiry, of the Defects Notification Period."

11.11 Clearance of Site

At the end of the Paragraph 1 **insert**:

"and clean up the entire Site to the satisfaction of the Employer. The Employer acknowledges that any materials from the demolition or Site clearance belongs to the Contractor."

In Paragraph 2 Line 1 **delete** "If all...removed" and **insert**:

"In the event that the Contractor does not comply with the provisions of this Sub-clause 11.11"

13 Variations and Adjustments

13.1 Right to Vary

In paragraph 2 **delete** "(i) the Contractor cannot readily obtain the Goods required for Variation, (ii)" and "or (iii) it will have an adverse impact on the achievement of the Schedule of Guarantees".

13.3 Variation Procedure

At the end of the Sub-Clause **insert** the following paragraphs:

"In determining the adjustments to the Contract Price as a result of Variation the Contractor expressly agrees to the use of rates per unit or service that shall not be higher than the rates per unit or service provided in the Bills of Quantities. In case Variation envisages Works for which rates per unit or service has not been provided by the Contractor, the Contractor shall provide the Employer with information and documents in accordance with Sub-Clause 4.25 and the applicable overheads and profit margin should be maintained as indicated in the contractor's budget.

The Employer shall be authorized to instruct the Contractor to use any Plant and Materials it chooses to use for the execution of Variations and the Contractor may not refuse to use such Plant and Materials unless it proves that they reduce the safety or suitability of the Works."

13.8 Adjustment for Changes in Cost

Delete Sub-Clause 13.8.

14 Contract Price and Payment

14.3 Application for Interim Payments

In paragraph 1 **delete** "six copies" and **insert** "three copies"

At the start of (c) **insert** "subject to Sub-clause 14.9"

14.5 Plant and Materials intended for the Works

Delete this Sub-Clause and **Insert**:

14.6 Issue of Interim Payment Certificates

On the 2nd Line of first paragraph **delete** "28 days" and **insert**:

"14 days"

14.7 Payment

In (a) **delete** entire text after the word "within" and **insert**:

"10 days of submission of Performance Security and advance payment guarantee"

In (b) **delete** "56 days" and **insert**:

"28 days"

15 Termination by Employer

15.5 Employer's Entitlement to Termination

Delete First Paragraph and **insert**:

"The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the Contractor receives this notice. The Parties agree that the Employer shall not be liable to the Contractor for any damages suffered as a result of termination."

17 Risk and Responsibility

17.1 Indemnities

On Line 3 of (a) **delete** "unless" and **insert**:

"save to the extent that it was"

On Line 1 of (b) (ii) **delete** "wilful"

17.6 Limitation of Liability

Delete First Paragraph and **insert**:

"The Employer shall not be liable to the Contractor for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the Contractor in connection with the Contract."

Delete words "Accepted Contract Amount" on line 5 of the second paragraph and **insert**:

"Contract Price"

18 Insurance

18.1 General Requirements for Insurances

Delete the third, fourth, fifth, seventh, ninth and tenth paragraphs.

Delete the second and third sentences of eleventh paragraph and **insert**:

"The Contractor acknowledges that the terms and conditions of the insurances to be maintained by the Employer under this Contract shall be at the discretion of the Employer, therefore if it considers that insurances are not sufficient for its purposes it may affect any relevant insurance itself and it shall have no claims or demands against the Employer with respect to the terms of the insurance or their sufficiency for the purposes of the Works, Contract or otherwise."

19 Force Majeure

19.2 Notice of Force Majeure

At the end of the First Paragraph **insert**:

"The Contractor shall as a condition precedent to any Extension of Time as set out in Sub-Clause 19.4 below give notice of the relevant event or circumstance constituting Force Majeure to the Employer within five days of becoming aware of the same and giving all necessary particulars sufficient to clearly demonstrate the amount of the delay or disruption likely to be suffered and particulars of causation including a revised programme."

20 Claims, Disputes and Court Proceedings

20.1 Contractor's Claims

Delete the First and Second paragraph and **insert**:

"If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim and give all necessary particulars and explanation sufficient to demonstrate the amount of the delay or disruption likely to be suffered and the amount of any additional cost likely to be incurred together with a revised programme showing changes from the previous programme. The notice particulars, programme and explanation shall be given as soon as practicable, and not later than 7 days after the Contractor became aware, or should have become aware, of the event or circumstance. The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

If the Contractor fails to give notice of a claim together with the particulars, programme and explanation within such period of 7 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply."

Signed by the parties:

AUTHORISED SIGNATURE(S) OF CLIENT

Signature:

Mr. Gary DUNKLEY
RAS AL KHAIMAH
Investment Authority Georgia LLC

AUTHORISED SIGNATURE(S) OF CONTRACTOR

Signature:

Mr. _____

Company _____