



obligations under this Clause 10 shall be the responsibility of the Ministry.

C. Payment

11. Contract Price 11.1 The Ministry hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: *US DOLLARS FIFTY THREE MILLION FOUR HUNDRED AND TWENTY FOUR THOUSAND NINE HUNDRED AND FOURTY. (US\$ 53,424,940.00)* The price of the Equipment manufactured by the Contractor and delivered from China is CIF port of Buenos Aires as specified in Price Schedule No. 4 (Grand Summary).

11.2 Unless indicated otherwise in the Contract, the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.

12. Terms of Payment

12.1 The Contract Price shall be paid as specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.

The terms and procedures of payment according to which the Ministry will reimburse the Contractor are given in the corresponding Appendix (Terms and Procedures of Payment) hereto.

The Ministry shall instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor. The credit shall be for the amount of the Total Contract Price less the advance payment; and shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, ICC Publication No. 600.

In the event that the amount payable under Price Schedules is adjusted in accordance with Sub-Clause 11.2 or with any of the other terms of the Contract, the Ministry shall arrange for the documentary credit to be amended accordingly.

12.2 In the event that the Ministry fails to make any payment by its respective due date or within the period set forth in the Contract, the Ministry shall pay to the Contractor interest on the amount of such delayed payment at the rate(s) shown in the corresponding Appendix (Terms and Procedures of Payment) to the Contract for the period of delay until payment has been made in full, whether

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before or after judgment or arbitration award, unless such judgment or arbitration award rules otherwise.

- 12.3 All payments shall be made in the currency or currencies specified in the corresponding Appendix (Terms and Procedures of Payment) to the Contract.

13. Securities

13.1 Issuance of Securities

The Contractor shall provide the securities specified below in favor of the Ministry at the times, and in the amount, manner and form specified below.

13.2 Performance Security

13.2.1 The Contractor shall provide a security for the due performance of the Contract. The amount of performance security, as a percentage of the Contract Price for the Facilities or for the part of the Facilities for which a separate time for Completion is provided, shall be five percent (5%).

13.2.2 The security shall be denominated in the currency or currencies of the Contract, and shall be in the form of bank guarantee provided in the Contract Appendix (form of Bank Guarantee). The Contractor may replace the Bank Guarantee for a surety bond for non-performance of Contract issued by Banco de la Nación Argentina.

13.2.3 The security shall automatically be reduced by half on the date of the Completion or the date when Ministry is making use of the Facilities, whichever occurs first, and shall become null and void at the end of the Defect Liability Period; The security shall be returned to the Contractor immediately after its expiration.

13.3 The Contractor shall furnish an unconditional advance payment bank guarantee in favor of the Ministry in the amount equal to the advance payment and at the Ministry's satisfaction upon receipt of the advanced payment. The bank guarantee shall become effective upon the Contractor's receipt of the advance payment.

13.3.1 The maximum amount of the bank guarantee shall be progressively reduced automatically and proportionately in value upon each shipment of the Equipment described in Schedule 1 of Appendix 7 (Price Schedules) and upon part of installation of the Equipment on the New Trains (Schedule 2 of Appendix 7 - Price Schedules).

14. Taxes and

14.1 The Ministry shall bear and promptly pay (a) all customs and

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Duties

import duties for the Equipment specified in Price Schedule No. 1; and (b) other domestic taxes such as, sales tax and value added tax (VAT) on the Equipment, Installation Service specified in Price Schedules No.1&2 and that are to be incorporated into the Facilities, and on the finished goods, imposed by the law of the Republic of Argentina.

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D. Intellectual Property**15. Copyright**

15.1 The copyright in all drawings, documents and other materials containing data and information furnished to the Ministry by the Contractor herein shall remain vested in the Contractor or, if they are furnished to the Ministry directly or through the Contractor by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

16. Confidential Information

16.1 The Ministry and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Ministry to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause 16.

16.2 The Ministry shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data and other information received from the Ministry for any purpose other than the design, procurement of Equipment, construction or such other work and services as are required for the performance of the Contract.

16.3 The obligation of a party under Sub-Clauses 16.1 and 16.2 above, however, shall not apply to that information which

- (a) now or hereafter enters the public domain through no fault of that party
- (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto
- (c) otherwise lawfully becomes available to that party from a

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third party that has no obligation of confidentiality.

(d) must be revealed by any party pursuant to the applicable law.

16.4 The above provisions of this Clause 16 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Facilities or any part thereof.

16.5 The provisions of this Clause 16 shall survive termination, for whatever reason, of the Contract.

E. Execution of the Facilities

17. Representatives

17.1 Within fourteen (14) days of the Effective Date, the Ministry shall appoint and notify the Contractor in writing of the name of the Project Manager. The Ministry may from time to time appoint some other person as the Project Manager in place of the person previously so appointed, and shall give a notice of the name of such other person to the Contractor without delay. No such appointment shall be made at such a time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Contractor. The Project Manager shall represent and act for the Ministry at all times during the performance of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.

All notices, instructions, information and other communications given by the Contractor to the Ministry under the Contract shall be given to the Project Manager, except as herein otherwise provided.

17.2 Contractor's Representative & Construction Manager

17.2.1 Within fourteen (14) days of the Effective Date, the Contractor shall appoint the Contractor's Representative and shall request the Ministry in writing to approve the person so appointed. If the Ministry makes no objection to the appointment within fourteen (14) days, the Contractor's Representative shall be deemed to have been approved. If the Ministry objects to the appointment within fourteen (14) days giving the reason therefor, then the Contractor shall appoint a replacement within fourteen (14) days of such objection, and the foregoing provisions of this Sub-Clause 17.2.1 shall

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apply thereto.

The Project Manager may, subject to the approval of the Contractor (which shall not be unreasonably withheld), at any time delegate, to any person, any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Project Manager, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Contractor and the Contractor's Representative. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this Sub-Clause shall be deemed to be an act or exercise by the Project Manager.

- 17.2.2 The Contractor's Representative shall represent and act for the Contractor at all times during the performance of the Contract and shall give to the Project Manager all the Contractor's notices, instructions, information and all other communications under the Contract. All notices, instructions, information and all other communications given by the Ministry or the Project Manager to the Contractor under the Contract shall be given to the Contractor's Representative or, in its absence, its deputy, except as herein otherwise provided. The Contractor shall not revoke the appointment of the Contractor's Representative without the Ministry's prior written consent, which shall not be unreasonably withheld. If the Ministry consents thereto, the Contractor shall appoint some other person as the Contractor's Representative, pursuant to the procedure set out in Sub-Clause 17.2.1.
- 17.2.3 The Contractor's Representative may, subject to the approval of the Ministry (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the Contractor's Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Ministry and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance

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with this Sub-Clause 17.2.3 shall be deemed to be an act or exercise by the Contractor's Representative.

17.2.4 From the commencement of installation of the Facilities at the Site until Completion, the Contractor's Representative shall appoint a suitable person as the construction manager (hereinafter referred to as "the Construction Manager"). The Construction Manager shall supervise all work done at the Site by the Contractor and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.

18. Work Program 18.1 Contractor's Organization

The Contractor shall supply to the Ministry and the Project Manager a chart showing the proposed organization to be established by the Contractor for carrying out work on the Facilities. The Contractor shall promptly inform the Ministry and the Project Manager in writing of any revision or alteration of such an organization chart.

18.2 Program of Performance

Within twenty-eight (28) days after the Effective Date, the Contractor shall prepare and submit to the Project Manager a detailed program of performance of the Contract, such program shall show the sequence in which it proposes to design, manufacture, transport, assemble, install and test the Facilities, as well as the date by which the Contractor reasonably requires that the Ministry shall have fulfilled its obligations under the Contract so as to enable the Contractor to execute the Contract in accordance with the program and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The program so submitted by the Contractor shall accord with the Time Schedule included in the corresponding Appendix (Time Schedule) to the Contract and any other dates and periods specified in the Contract. The Contractor shall update and revise the program as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given in the Contract and any extension granted in accordance with Clause 36, and shall submit all such revisions to the Project Manager.

18.3 Progress Report

The Contractor shall monitor the progress of all the activities specified in the Contract and supply a progress report to the

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Project Manager every month.

The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the program, giving comments and likely consequences and stating the corrective action being taken.



19. Design and Engineering

19.1 Specifications and Drawings

19.1.1 The Contractor shall execute the design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.

The Contractor shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Contractor by or on behalf of the Ministry.

19.1.2 The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Ministry, by giving a notice of such disclaimer to the Project Manager.

19.2 Codes and Standards

Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of signing the Contract shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Ministry and shall be treated in accordance with Clause 35.

19.3 Approval/Review of Technical Documents by Project Manager

19.3.1 The Contractor shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the corresponding Appendix (List of Documents for Approval or Review) to the Contract for its approval or review as specified

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and in accordance with the requirements of Sub-Clause 18.2 (Program of Performance). Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager's approval thereof. Sub-Clauses 19.3.2 through 19.3.5 shall apply to those documents requiring the Project Manager's approval, but not to those furnished to the Project Manager for its review only.

- 19.3.2 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager's approval in accordance with Sub-Clause 19.3.1, the Project Manager shall either return one copy thereof to the Contractor with its approval endorsed thereon or shall notify the Contractor in writing of its disapproval thereof and the reasons therefor and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) days, then the said document shall be deemed to have been approved by the Project Manager.
- 19.3.3 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.
- 19.3.4 If the Project Manager disapproves the document, the Contractor shall modify the document and resubmit it for the Project Manager's approval in accordance with Sub-Clause 19.3.2. If the Project Manager approves the document subject to modification(s), the Contractor shall make the required modification(s), whereupon the document shall be deemed to have been approved.
- 19.3.5 The Contractor shall not depart from any approved document unless the Contractor has first submitted to the Project Manager an amended document and obtained the Project Manager's approval thereof, pursuant to the provisions of this Sub-Clause 19.3. If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of Clause 35 shall apply to such request.

20. Procurement

20.1 Equipment

Subject to Sub-Clause 14.1, the Contractor shall manufacture or procure and transport all the Equipment in an expeditious and

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orderly manner to the Site in accordance to the Time Schedule set forth in Appendix (Time Schedule).



20.2 Ministry-Supplied Equipment, and Materials

If pursuant to the corresponding Appendix (Scope of Works and Supply by the Ministry), the Ministry shall furnish any specific items to the Contractor, the following provisions shall apply:

20.2.1 The Ministry shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Contractor at the time specified in the program furnished by the Contractor, pursuant to Sub-Clause 18.2, unless otherwise mutually agreed.

20.3 Transportation

20.3.1 Before dispatch of each shipment of the Equipment and the Contractor's Equipment, the Contractor shall notify the Ministry of the description of the Equipment and of the Contractor's Equipment, the point and means of dispatch, and the estimated time and point of arrival in the country where the Site is located, if applicable, and at the Site. The Contractor shall furnish the Ministry with relevant shipping documents to be agreed upon between the parties.

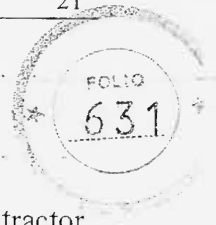
20.3.2 The Contractor shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Contractor's Equipment to the Site. The Ministry shall use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining such approvals, if requested by the Contractor. The Contractor shall indemnify and hold harmless the Ministry from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Equipment and the Contractor's Equipment to the Site.

20.4 Customs Clearance

The Ministry shall, at its own expense, handle all imported Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Ministry's obligations under Sub-Clause 14.1, provided that if applicable laws or regulations require any application or act to be made by or in the name of the Ministry, the Ministry shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Contractor, the Contractor shall be entitled to an extension in

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the Time for Completion, pursuant to Clause 36.

21. Installation

21.1 Contractor's Equipment

21.1.1 All Contractor's Equipment brought by the Contractor to the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Contractor shall not remove such Contractor's Equipment from the Site without the Project Manager's consent that such Contractor's Equipment is no longer required for the execution of the Contract.

21.1.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Contractor shall remove from the Site all Contractor's Equipment brought by the Contractor onto the Site and any surplus materials remaining thereon.

21.1.3 The Ministry will, if requested, use its best endeavors to assist the Contractor in obtaining any local, state or national government permission required by the Contractor for the export of the Contractor's Equipment imported by the Contractor for use in the execution of the Contract that is no longer required for the execution of the Contract. The Contractor shall bear all taxes and duties corresponding to the export of the Contractor's Equipment.

21.2 The Contractor shall arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors.

21.3 The Ministry shall ensure that the Contractor can occupy the Site not less than five (5) hours per day for equipment installation and test.

21.4 The Contractor shall lead and supervise the installation of the Equipment on the Existing Trains and of the Way Side Equipment providing the directions and requirements for the proper installation of the Equipment.

22. Test and Inspection

22.1 The Contractor shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Equipment and any part of the Facilities necessary for conforming the proper functioning of the Facilities.

22.2 The Ministry and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Ministry shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging

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expenses. Ministry and Project Manager or their designated representatives shall attend for the sole purpose of confirming that the Facilities are in conformity with Technical Specifications.

22.3 Whenever the Contractor is ready to carry out any such test and/or inspection, the Contractor shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Contractor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Ministry and the Project Manager (or their designated representatives) to attend the test and/or inspection.

22.4 The Contractor shall provide the Project Manager with a certified report of the results of any such test and/or inspection.

If the Ministry or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Contractor may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.

22.5 If any Equipment or any part of the Facilities fails to pass any test and/or inspection, the Contractor shall either rectify or replace such Equipment or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under Sub-Clause 22.3.

23. Completion of the Facilities

23.1 As soon as the Facilities (or a specific part thereof where specific parts are specified in the **Contract** as being capable of independent Completion) has, in the opinion of the Contractor, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, the Contractor shall notify the Project Manager in writing that the Facilities or any part thereof is ready for commissioning.

24. Commissioning and Operational Acceptance

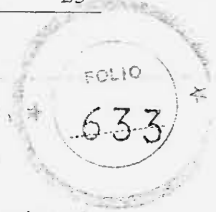
24.1 Commissioning

24.1.1 Commissioning of the Facilities (or a specific part thereof where specific parts are specified in the Contract as being capable of independent Commissioning) shall be commenced by the Contractor immediately seven (7) days after the notice provided to the Project Manager by the Contractor, under Sub-Clause 23.1, except in case both parties agree to commence it before such date.

24.1.2 The Ministry shall provide the items required for Commissioning, as set forth in Appendix (Scope of

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Works and Supply by the Ministry).

24.2 Operational Acceptance

24.2.1 Subject to Sub-Clause 24.3 below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when

- (a) the Functional Test has been successfully completed; or
- (b) the Functional Test has not been successfully completed or has not been carried out for reasons not attributable to the Contractor if the term for test and commissioning is over and previous notice has been given by the Contractor to the Ministry; or
- (c) the Ministry makes use of the Facilities or part thereof once both phases are completed.

24.2.2 At any time after any of the events set out in Sub-Clause 24.2.1 have occurred, the Contractor may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.

24.2.3 The Project Manager shall, after consultation with the Ministry, and within seven (7) days after receipt of the Contractor's notice, issue an Operational Acceptance Certificate.

24.2.4 If within seven (7) days after receipt of the Contractor's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Contractor in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Contractor's said notice.

24.3 Partial Acceptance

If the Contract specifies that Completion and Commissioning can be carried out in respect of parts of the Facilities independently, the provisions relating to Completion and Commissioning including the Functional Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such

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part of the Facilities.

F. Guarantees and Liabilities

25. Completion Time Guarantee

- 25.1 The Contractor guarantees that it shall attain Completion and Commissioning of the Facilities within the Time for Completion specified in the Contract pursuant to Sub-Clause 8.2, or within such extended time to which the Contractor shall be entitled under Clause 36 hereof.
- 25.2 If the Contractor fails to attain Commissioning of the Facilities or any part thereof within the Time for Completion or any extension thereof under Clause 36, the Contractor shall pay to the Ministry liquidated damages. The applicable rate shall be one-half percent (0.5%) per week, and the maximum shall be five percent (5%) of the Contract Price.

The above rate and maximum apply to the price of the part of the Facilities, as quoted in the Price Schedule, for that part for which the Contractor fails to achieve Commissioning within the particular Time for Completion.

Once the "Maximum" is reached, the Ministry may consider termination of the Contract, pursuant to Sub-Clause 38.2.2. However, the payment of liquidated damages shall not in any way relieve the Contractor from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Contractor under the Contract.

26. Defect Liability

- 26.1 The Contractor warrants that the Facilities or any part thereof shall be new and free from defects in the design, engineering, materials and workmanship of the Equipment supplied and of the work executed.

The Contractor states that the signaling system foreseen under the Contract is suitable and will properly work under the current conditions of the Sarmiento and Mitre Lines from which the Contractor is aware.

- 26.2 The Defect Liability Period shall be (i) twelve (12) months after Operational Acceptance of the Facilities or any part thereof, or (ii) twenty-four (24) months after arrival of Equipment Port of Buenos Aires in case the Completion is not achieved on time for reasons not attributable to the Contractor

If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Equipment supplied or of the work executed by the Contractor, the Contractor shall promptly, in consultation and agreement with the Ministry regarding appropriate remedying of the

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defects, and at its cost, repair, replace or otherwise make good (as the Contractor shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Contractor shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:

- (a) improper operation or maintenance of the Facilities by the Ministry
- (b) operation of the Facilities outside specifications provided in the Contract
- (c) normal wear and tear.

26.3 The Contractor's obligations under this Clause 26 shall not apply to

- (a) any materials that are supplied by the Ministry under Sub-Clause 20.2, are normally consumed in operation.
- (b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Ministry or any matters for which the Contractor has disclaimed responsibility herein
- (c) any other materials supplied or any other work executed by or on behalf of the Ministry.

26.4 The Ministry shall give the Contractor a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Ministry shall afford all reasonable opportunity for the Contractor to inspect any such defect.

26.5 The Ministry shall afford the Contractor all necessary access to the Facilities and the Site to enable the Contractor to perform its obligations under this Clause 26. The Contractor may, with the consent of the Ministry, remove from the Site any Equipment or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.

26.6 If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Ministry may give to the Contractor a notice requiring that tests of the defective part of the Facilities shall be made by the Contractor immediately upon completion of such remedial work, whereupon the Contractor shall carry out such

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tests.

If such part fails the tests, the Contractor shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Ministry and the Contractor.

- 26.7 If the Contractor fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Ministry may, following notice to the Contractor, proceed to do such work, and the reasonable costs incurred by the Ministry in connection therewith shall be paid to the Ministry by the Contractor or may be deducted by the Ministry from any monies due the Contractor or claimed under the Performance Security.
- 26.8 If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Ministry because of any of the aforesaid reasons.
- 26.9 Except as provided in Clauses 26 and 31, the Contractor shall be under no liability arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Equipment, design or engineering or work executed that appear after issuance of the Operational Acceptance Certificate of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Contractor.

27. Patent Indemnity

- 27.1 The Contractor shall indemnify and hold harmless the Ministry and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Ministry may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Contractor or the use of the Facilities in the country where the Site is located; and (b) the sale of the products produced by the Facilities in any country.

Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any

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products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Contractor, pursuant to the Contract.

27.2 The Ministry shall indemnify and hold harmless the Contractor and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Ministry.

28. Limitation of Liability

- 28.1 Except in cases of gross negligence, fraud, criminal or willful misconduct,
- (a) the Contractor shall not be liable to the Ministry, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Ministry and
 - (b) the aggregate liability of the Contractor to the Ministry, whether under the Contract, in tort or otherwise, shall not exceed the ten percent of the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Ministry with respect to patent infringement.

G. Risk Distribution

29. Transfer of Ownership

- 29.1 Ownership of the Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Ministry when the Equipment is imported in Argentina.
- 29.2 Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.

30. Care of Facilities

- 30.1 The Ministry shall be responsible for the care and custody of the Facilities or any part thereof after the Equipment is imported in Argentina, and shall make good at its own cost any loss or damage that may occur to the Facilities or the relevant part thereof from any

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cause whatsoever during such period. The Contractor shall also be responsible for any loss or damage to the Facilities caused by the Contractor or its Subcontractors in the course of any work carried out, pursuant to Clause 26. Notwithstanding the foregoing, the Contractor shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of Sub-Clauses 30.2 and 35.1.

- 30.2 If any loss or damage occurs to the Facilities or any part thereof by reason of
- (a) (insofar as they relate to the country where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under Clause 32 hereof
 - (b) any use or occupation by the Ministry or any third party (other than a Subcontractor) authorized by the Ministry of any part of the Facilities
 - (c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Ministry.

The Ministry shall pay to the Contractor all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged.

- 30.3 The Contractor shall be liable for any loss of or damage to any Contractor's Equipment, or any other property of the Contractor used or intended to be used for purposes of the Facilities, except where such loss or damage arises by reason of any of the matters specified in Sub-Clauses 30.2 (b) and (c).

**31. Loss of or
Damage to
Property;
Accident or
Injury to
Workers;
Indemnification**

- 31.1 Subject to Sub-Clause 31.3, the Contractor shall indemnify and hold harmless the Ministry and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and

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installation of the Facilities and by reason of the negligence of the Contractor or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Ministry, its contractors, employees, officers or agents.

31.2 If any proceedings are brought or any claim is made against the Ministry that might subject the Contractor to liability under Sub-Clause 31.1, the Ministry shall promptly give the Contractor a notice thereof and the Contractor shall at its own expense and in the Ministry's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim, subject to the Ministry's prior approval.

If the Contractor fails to notify the Ministry within twenty-eight (28) days after receipt of such notice or in a reasonable period of time that shall in any case exceed half of the time stated in the applicable laws or regulations for answering such proceeding or claim that it intends to conduct any such proceedings or claim, then the Ministry shall be free to conduct the same on its own behalf. Unless the Contractor has so failed to notify the Ministry within the above-mentioned period, the Ministry shall make no admission that may be prejudicial to the defense of any such proceedings or claim.

The Ministry shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.

31.4 The party entitled to the benefit of an indemnity under this Clause 31 shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be correspondingly reduced.

32. Insurance

32.1 The Contractor shall at its expense hire and maintain in effect, during the performance of the Contract, the insurances set forth below.

(a) Contractor's Personnel All Risks Insurance

Covering bodily injury or death suffered by its personnel and any and all professionals or consultants hired by the contractor to serve under this Contract.

33. Change in Laws and Regulations

33.1 If, after the date twenty-eight (28) days prior to the date of Contract signing, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application

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by the competent authorities) that subsequently affects the costs and expenses of the Contractor and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

34. Force Majeure

34.1 "Force Majeure" shall mean any event beyond the reasonable control of the Ministry or of 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 and civil war,
- (b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and 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 state or national government authority,
- (d) strike, sabotage, lockout, 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 and plague,
- (e) earthquake, landslide, volcanic activity, fire, flood or 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.

34.2 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.

34.3 The party who has given such notice shall be excused from the

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performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with Clause 36.

34.4 The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under Sub-Clauses 34.6 and 35.5.

34.5 No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall

- (a) constitute a default or breach of the Contract,
- (b) give rise to any claim for damages or additional cost or expense occasioned thereby

if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.

34.6 If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract.

34.7 In the event of termination pursuant to Sub-Clause 34.6, the rights and obligations of the Ministry and the Contractor shall be as specified in Sub-Clauses 38.1.2 and 38.1.3.

34.8 Notwithstanding Sub-Clause 34.5, Force Majeure shall not apply to any obligation of the Ministry to make payments to the Contractor herein.

H. Change in Contract Elements

35. Change in the Facilities

35.1 Introducing a Change

35.1.1 Subject to Sub-Clauses 35.2.5 and 35.2.7, the Ministry shall have the right to propose, and subsequently require, that the Project Manager order the Contractor from time to time during the performance of the

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Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called "Change"), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.

35.1.2 The Contractor may from time to time during its performance of the Contract propose to the Ministry (with a copy to the Project Manager) any Change that the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Ministry may at its discretion approve or reject any Change proposed by the Contractor.

35.1.3 Notwithstanding Sub-Clauses 35.1.1 and 35.1.2, no change made necessary because of any default of the Contractor in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.

35.2 Changes Originating from Ministry

35.2.1 If the Ministry proposes a Change pursuant to Sub-Clause 35.1.1, it shall send to the Contractor a "Request for Change Proposal," requiring the Contractor to prepare and furnish to the Project Manager as soon as reasonably practicable a "Change Proposal," which shall include the following:

- (a) brief description of the Change
- (b) effect on the Time for Completion
- (c) estimated cost of the Change
- (d) effect on any other provisions of the Contract.

35.2.2 Prior to preparing and submitting the "Change Proposal," the Contractor shall submit to the Project Manager an "Estimate for Change Proposal," which shall be an estimate of the cost of preparing and submitting the Change Proposal.

Upon receipt of the Contractor's Estimate for Change Proposal, the Ministry shall do one of the following:

- (a) accept the Contractor's estimate with instructions

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to the Contractor to proceed with the preparation of the Change Proposal

- (b) advise the Contractor of any part of its Estimate for Change Proposal that is unacceptable and request the Contractor to review its estimate
- (c) advise the Contractor that the Ministry does not intend to proceed with the Change.

35.2.3 Upon receipt of the Ministry's instruction to proceed under Sub-Clause 35.2.2 (a), the Contractor shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with Sub-Clause 35.2.1.

35.2.4 The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.

35.2.5 If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Contractor under this Clause 35 would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Contract by more than fifteen percent (15%), the Contractor may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Ministry accepts the Contractor's objection, the Ministry shall withdraw the proposed Change and shall notify the Contractor in writing thereof.

The Contractor's failure to so object shall not affect its right to object to any subsequent requested Changes or Change Orders herein.

35.2.6 Upon receipt of the Change Proposal, the Ministry and the Contractor shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Ministry shall, if it intends to proceed with the Change, issue the Contractor with a Change Order.

If the Ministry is unable to reach a decision within fourteen (14) days, it shall notify the Contractor with details of when the Contractor can expect a decision.

If the Ministry decides not to proceed with the Change

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for whatever reason, it shall, within the said period of fourteen (14) days, notify the Contractor accordingly. Under such circumstances, the Contractor shall be entitled to reimbursement of all costs reasonably incurred by it, and properly proven in writing, in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Contractor in its Estimate for Change Proposal submitted in accordance with Sub-Clause 35.2.2.

35.3 Changes Originating from Contractor

35.3.1 If the Contractor proposes a Change pursuant to Sub-Clause 35.1.2, the Contractor shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in Sub-Clause 35.2.1. Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in Sub-Clauses 35.2.6. However, should the Ministry choose not to proceed, the Contractor shall not be entitled to recover the costs of preparing the Application for Change Proposal.

36. Extension of Time for Completion

36.1 The Time(s) for Completion specified in the contract shall be extended if the Contractor is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:

- (a) any Change in the Facilities as provided in Clause 35
- (b) any occurrence of Force Majeure as provided in Clause 34, unforeseen conditions as provided in Clause 33, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of Sub-Clause 30.2
- (c) any suspension order given by the Ministry under Clause 37 hereof or reduction in the rate of progress pursuant to Sub-Clause 37.2 or
- (d) any changes in laws and regulations as provided in Clause 33 or
- (e) any default or breach of the Contract by the Ministry, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Ministry) to the Contract, or any activity, act or omission of any other contractors employed by the Ministry or

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- (f) delays attributable to the Ministry or caused by customs or
(g) any other matter specifically mentioned in the Contract

by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Contractor.

- 36.2 Except where otherwise specifically provided in the Contract, the Contractor shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Ministry and the Contractor shall agree upon the period of such extension.
- 36.3 The Contractor shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.

37. Suspension

- 37.1 The Ministry may request the Project Manager, by notice to the Contractor, to order the Contractor to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons therefor. The Contractor shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.

If, by virtue of a suspension order given by the Project Manager, other than by reason of the Contractor's default or breach of the Contract, the Contractor's performance of any of its obligations is suspended for an aggregate period of more than twenty-eight (28) days, then at any time thereafter and provided that at that time such performance is still suspended, the Contractor may give a notice to the Project Manager requiring that the Ministry shall, within seven (7) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with Clause 35, excluding the performance of the suspended obligations from the Contract.

If the Ministry fails to do so within such period, the Contractor may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with Clause 35 or, where it affects the whole of the Facilities, as termination of the Contract

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under Sub-Clause 38.1.

37.2 If

- (a) the Ministry has failed to pay the Contractor any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Contract, or commits a substantial breach of the Contract, the Contractor may give a notice to the Ministry that requires payment of such sum, with interest thereon as stipulated in Sub-Clause 12.2, requires approval of such invoice or supporting documents, or specifies the breach and requires the Ministry to remedy the same, as the case may be. If the Ministry fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Contractor's notice or 37,
- (b) the Contractor is unable to carry out any of its obligations under the Contract for any reason attributable to the Ministry, including but not limited to the Ministry's failure to provide possession of or access to the Site or other areas in accordance with Sub-Clause 10.2, or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities, then the Contractor may by fourteen (14) days' notice to the Ministry suspend performance of all or any of its obligations under the Contract, or reduce the rate of progress.

37.3 If the Contractor's performance of its obligations is suspended or the rate of progress is reduced pursuant to this Clause 37 then the Time for Completion shall be extended in accordance with Sub-Clause 36.1, and any and all additional costs or expenses incurred by the Contractor as a result of such suspension or reduction shall be paid by the Ministry to the Contractor in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Contractor's default or breach of the Contract.

37.4 During the period of suspension, the Contractor shall not remove from the Site any Equipment, any part of the Facilities or any Contractor's Equipment, without the prior written consent of the Ministry.

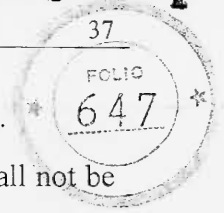
38. Termination

38.1 The Ministry or the Contractor may terminate the Contract if the



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other party causes a fundamental breach of the Contract.

38.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within twenty-eight (28) days;
- (c) a payment certified by the Project Manager is not paid by the Ministry to the Contractor within fifty-six (56) days of the date of the Project Manager's certificate;
- (d) the Project Manager 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 Project Manager; or
- (e) the Contractor has delayed the completion of the Facilities by the number of days for which the maximum amount of liquidated damages can be paid.

38.3 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

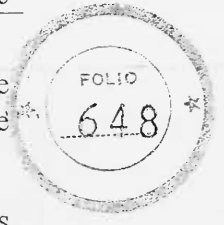
38.4 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed. If the total amount due to the Ministry exceeds any payment due to the Contractor, the difference shall be a debt payable to the Ministry.

38.5 If the Contract is terminated because of a fundamental breach of Contract by the Ministry, the Ministry shall pay to the Contractor the following amounts:

- (a) the Contract Price, properly attributable to the parts of the Facilities executed by the Contractor as of the date of termination
- (b) the costs reasonably incurred by the Contractor in the removal of the Contractor's Equipment from the Site and in the repatriation of the Contractor's and its Subcontractors' personnel

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- (c) costs incurred by the Contractor in protecting the Facilities and leaving the Site in a clean and safe condition.
- (d) the cost of satisfying all other obligations, commitments and claims that the Contractor may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.

39. Assignment

39.1 Neither the Ministry nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

40. Statement

40.1 The Contractor hereby declares that China Railway Signal & Communication Corporation Limited is a Chinese company wholly owned by the Chinese state, as evidenced in the documents listed in Appendix 10.

41. Ratification

This Contract is executed at referendum of the signature of a ratification decree by the Argentine President.

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