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|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 35 of 44<br><br>Fecha _16/10/2012 |
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which have an environmental impact, and include environmental matters in the training given to its staff: Solid Urban Waste, Solid Inert Waste, Hazardous Waste.

The SUBCONTRACTOR must comply with the:

- Final Environmental Impact Study presenting a monthly monitoring report for that Plan
- Permits & Plans
- Weap

The SUBCONTRACTOR is obliged to comply with all provisions and demands regarding environmental matters, being responsible for the implementation thereof and any consequences derived from a breach thereof affecting both its activities and those of the CONTRACTOR or other Subcontractors which may arise. All Managers, Supervisors, Foremen, Team Leaders, etc., must accept responsibility for ensuring that the staff working under them comply with environmental standards. This compliance shall not lead to any extra cost for the CONTRACTOR.

The CONTRACTOR shall accept no claim from the SUBCONTRACTOR on the basis of lost time, as a result of interruptions to work, through a breach by it of Environmental Legislation or the regulations set out in the Site Environmental Plan.

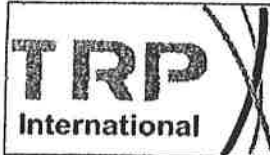
The SUBCONTRACTOR undertakes to remove from the site all industrial waste and packaging generated by its activities and to process these in accordance with Environmental Legislation.

Any penalties or sanctions which the Competent Environmental Authorities may impose on the CONTRACTOR as a result of a breach of Environmental Protection measures by the staff of the SUBCONTRACTOR shall be passed on to it in the corresponding payments.

## 27 LIENS

The SUBCONTRACTOR shall keep the Works free from all liens, charges, claims and judgments, security interests and encumbrances (hereinafter referred to as "Liens") arising out of the performance of the Works under this Contract and shall indemnify, defend and hold harmless the CONTRACTOR from any such Liens on the Works arising out of the performance of the Work under this Agreement.

If the CONTRACTOR seeks indemnification by the SUBCONTRACTOR for any Lien, the CONTRACTOR shall give the SUBCONTRACTOR prompt notice of any Lien of which it has knowledge and cooperate in the defense of the Lien at SUBCONTRACTOR's expense; provided that SUBCONTRACTOR shall promptly confirm in writing its obligation to indemnify the CONTRACTOR with respect to all costs and expenses with respect to the Lien. The SUBCONTRACTOR shall take prompt steps to discharge or bond over any Lien filed against the Works by any of its subcontractor and suppliers based on a claim for payment in connection with the Works. If SUBCONTRACTOR fails to discharge promptly any Lien, CONTRACTOR shall have the right, upon notifying SUBCONTRACTOR in writing, to take any reasonable action to satisfy, defend, settle or otherwise remove the Lien at SUBCONTRACTOR's expense, including reasonable attorneys' fees, costs and expenses.

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CONTRACTOR shall have the right to deduct and offset, or otherwise recover, any expenses so incurred from any payment due, or which may become due, to SUBCONTRACTOR under this Contract.

If it is required by the CONTRACTOR, the SUBCONTRACTOR shall each month present the CONTRACTOR a report in whose content declares that the Works are free for any Liens.

## 28 CONTRACT TRANSFER

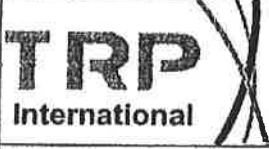
None of the Parties may transfer rights and / or obligations assumed by virtue of this Contract without previous written authorization from the other Party.

In accordance with the previous paragraph, the SUBCONTRACTOR authorizes the CONTRACTOR expressly so that the CONTRACTOR may transfer the CONTRACT freely to any of the entities that form part of the CONTRACTOR's Group or any other entity, with or without its own legal frame, in which the CONTRACTOR or any other entity or companies within the CONTRACTOR's Group may be a member.


## 29 TERMINATION OF THE CONTRACT

a) In addition to the terms established in the General Purchasing Conditions, CONTRACTOR may terminate this Contract in the event of any of the following:

- 1) If SUBCONTRACTOR fails to comply with or perform any obligation under this Contract and/or breaches in whole or in part of all or any of the clauses set out herein, the CONTRACTOR may terminate the Contract if the SUBCONTRACTOR fails to remedy the breach of the Contract within 30 days from the prior notice of such breach from CONTRACTOR; or
- 2) If any representation or warranty made by SUBCONTRACTOR in this Contract shall prove to have been false, or
- 3) If the SUBCONTRACTOR shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Applicable Law now or hereafter in effect, or (ii) seek the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (iii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (iv) make a general assignment for the benefit of creditors, or (v) admit in writing it is, or be, generally unable to pay its debts as they become due, or (vi) take any corporate action to authorize any of the foregoing; or
- 4) If an involuntary case or other proceeding shall be commenced against the SUBCONTRACTOR seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; or
- 5) If SUBCONTRACTOR shall be terminated, dissolved or liquidated, or any proceeding shall be commenced by any person seeking such termination, dissolution or liquidation; or

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- 6) If SUBCONTRACTOR fails to comply with its obligations to obtain or maintain the insurance required by this Contract; or
  - 7) If SUBCONTRACTOR has discontinued or abandoned the Works for a period exceeding fifteen (15) days.
  - 8) If SUBCONTRACTOR suspends performance of the work for more than ten Business Days and such suspension is not on account of a Force Majeure event; or
  - 9) A lack of technical or professional capacity on the part of the SUBCONTRACTOR observed during execution of the contracted tasks; or
  - 10) If the subcontractor does not present the required State of Nevada Contractors License
  - 11) The CONTRACTOR, given its responsibility before the OWNER, expressly reserves the right to terminate this Contract at any time if in its judgement or that of the OWNER implementation or execution of the Works, Installations or materials being executed or installed by the SUBCONTRACTOR do not comply with the agreed pace, the SUBCONTRACTOR in such cases being entitled to no form of compensation for damages on the basis of any works which it as a result does not execute, or for any other reason; or
  - 12) In the event of termination of the Main Contract between the OWNER and the CONTRACTOR.
- b) The SUBCONTRACTOR may terminate this Contract for any of the following reasons:
- 1) If CONTRACTOR fails to comply with or perform any obligation under this Contract and/or breaches in whole or in part of all or any of the clauses set out herein, the SUBCONTRACTOR may terminate the Contract if the CONTRACTOR fails to remedy the breach of the Contract within 30 days from the prior written notice of such breach from SUBCONTRACTOR; or
  - 2) If any representation or warranty made by the CONTRACTOR in this Contract shall prove to have been false or misleading.
  - 3) If the CONTRACTOR shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Applicable Law now or hereafter in effect, or (ii) seek the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (iii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (iv) make a general assignment for the benefit of creditors, or (v) admit in writing it is, or be, generally unable to pay its debts as they become due, or (vi) take any corporate action to authorize any of the foregoing; or
  - 4) If an involuntary case or other proceeding shall be commenced against the CONTRACTOR seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; or

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5) If CONTRACTOR shall be terminated, dissolved or liquidated, or any proceeding shall be commenced by any person seeking such termination, dissolution or liquidation; or

c) Either Party may terminate this Contract where the Works has been suspended for more than three hundred sixty five consecutive days for reasons of Force Majeure.

d) Mutual agreement by the Parties, with the effects herein established. In this case the SUBCONTRACTOR shall be entitled to claim the CONTRACTOR the incurred demobilization costs provided such incurred demobilization costs have been duly justified to the CONTRACTOR.

e) In the event of termination of this Contract by the CONTRACTOR, the SUBCONTRACTOR shall be liable for the damages incurred because of the occurrence of the event leading to the termination, including all reasonable costs and expenses incurred in connection with the completion of the Works, any liquidated damages that have been incurred prior to such termination and any proceeding to enforce CONTRACTOR's rights. To this end, CONTRACTOR may proceed with the execution of the bank guarantees, where appropriate, and/or the deduction of any pending amount to be paid by CONTRACTOR in order to recover damages caused by SUBCONTRACTOR.

The SUBCONTRACTOR expressly recognizes the CONTRACTOR's right regarding the applicability of termination as set out above.

f) In the event of termination of the Main Contract between the OWNER and the CONTRACTOR, the SUBCONTRACTOR shall be entitled only to receive payment for the works actually executed and recognised and paid for by the OWNER to the CONTRACTOR, being entitled to no other form of compensation or claim.


### 30 FORCE MAJEURE

Neither Party shall be liable for any breach of its obligations under this Contract where such breach is caused by Force Majeure event.

For purposes hereof, "Force Majeure" means any event, condition or circumstance which occurs subsequent to the works scope of this contract and before the termination or expiration of this Contract that causes a demonstrable, material and adverse delay or disruption on the performance of any obligation imposed by this Contract, but only if and to the extent:

- such event is not within the reasonable control, directly or indirectly, of the affected Party;
- the affected Party has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on its ability to perform its obligations under this Contract and which by the exercise of due diligence the affected Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome; and
- such event is not the direct or indirect result of the negligence or the fault or the failure of, or caused by, the affected Party;



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including, to the extent meeting the requirements set forth above, acts of God, acts of any Governmental Authority (for this purpose governmental Authority means any Federal, state, regional, municipal, local or other governmental, regulatory or administrative agency, commission, department, board or other government subdivision, court, tribunal, arbitral body or any other government or quasi government authority, fire, flooding, earthquake including unseasonable extreme weather conditions, explosion, riot or civil insurrection, acts of terrorism, landslide, hurricane, tornado, any industry or trade-wide or union-wide national strike and action or inaction of a third party (other than SUBCONTRACTOR's suppliers and/or subcontractors) that prevents or hinders the timely completion of each Party's obligations under this Contract.

Notwithstanding the foregoing, Force Majeure shall not include


- (i) shortages, cost increases, delays, breakage, improper handling, failures or unavailability of equipment or materials, except to the extent directly resulting from any cause described in the previous two paragraphs
- (ii) shortages, unavailability or cost increases of labor or manpower,
- (iii) financial problems of the Party (including its subcontractors) claiming the Force Majeure or acts, events or conditions to the extent arising therefrom,
- (iv) strikes, labor disputes, boycotts or lockouts directed against SUBCONTRACTOR or any of its suppliers and/or subcontractors on Site or otherwise, except as part of a national or regional strike, or
- (v) unfavorable weather, except as described in the previous paragraph.

The Party affected by Force Majeure event shall notify the other Party in writing within three (3) Business Days after the Party affected by Force Majeure event became aware or reasonably should have been aware of the occurrence of such Force Majeure. Such notice must contain:

- a description of such Force Majeure event and the potential impact it may have on the Work including the partial or total suspension of the Works;
- the estimated duration of such Force Majeure event; and
- the affected Party's intended response to protect the Works from such Force Majeure event.

The Party notified of such Force Majeure event shall, within seven (7) days after receiving such notice, provide any comments it deems appropriate in respect of such Force Majeure event to the affected Party. During the duration of any Force Majeure, SUBCONTRACTOR and CONTRACTOR shall meet weekly to discuss the status of such Force Majeure and, in mutual agreement with the CONTRACTOR, SUBCONTRACTOR shall take the measures necessary to protect the Works, and allow, where appropriate, its partial operation.

### 31 NON-WAIVERABILITY AND AMENDMENTS

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The fact that either of the Parties should fail to demand compliance with any of the clauses of this Contract or any of the rights connected therewith may not be interpreted as a waiver of that condition or right, nor shall it affect the validity of the Contract as a whole.

Should any of the Clauses of the Contract or enforceability thereof on any person or circumstances be declared invalid: this invalidity shall not affect the other Clauses which may be fulfilled without the invalidated terms.

The spirit of the Contract shall be analysed and the Parties shall proceed by mutual consent to amend the same, for the purpose of its execution as faithfully in accordance with the Intention of the Invalidated application or Clause as possible.


### 32 INTELLECTUAL PROPERTY

SUBCONTRACTOR warrants that no infringement of any intellectual property right of any kind will result from the performance of the Works. SUBCONTRACTOR shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into or used in the development of the Works. In performing the Works, SUBCONTRACTOR shall not use or incorporate any materials, methods, processes or systems that involve any confidential information, intellectual property or other proprietary rights that SUBCONTRACTOR does not have the right to use in connection with the performance of the Works or that may reasonably be expected to result in a loss by the CONTRACTOR or SUBCONTRACTOR arising out of claims of infringement, misappropriation or other violation of any domestic or foreign rights in Patents, Copyrights, Software, Know-How, confidential information or other proprietary rights, or applications for any such rights. SUBCONTRACTOR shall pay all royalties, license and other fees payable under or in respect of, and shall defend, indemnify and hold harmless the CONTRACTOR from and against any loss arising out of, resulting from, or reasonably incurred in contesting, any claim (a) for unauthorized disclosure by the SUBCONTRACTOR or any of its subcontractors and suppliers or use of any Know-How, (b) for any other intellectual property infringement or other violation (including Patent, Copyright, Trademark Infringement or other violation) arising from the SUBCONTRACTOR's performance, or that of its subcontractors, under this Contract.

### 33 ADVERTISING AND CONFIDENTIALITY

a) ADVERTISING: The SUBCONTRACTOR may not make reference, describe or employ as an illustration for advertising purposes any of the materials, equipment or constructions covered by the CONTRACT, nor the installations of the OWNER, without the prior authorisation in writing of the CONTRACTOR.

b) CONFIDENTIALITY: Any information relating to the Crescent Dunes Thermosolar Power Plant or the performance of the Works, verbal or written, or which has been provided by a Party or by a third party on behalf of a Party, is confidential and the exclusive property of the Party that disclosed or delivered it to the other Party. For the avoidance of doubt, nothing in this Clause shall prevent the communication or use of any information that is owned by a Party by such Party as it deems appropriate or desirable and any photographs or video recordings of the Works, Land or Crescent Dunes Thermosolar Power Plant by the SUBCONTRACTOR shall be considered exclusive property of Contractor under this Clause. Therefore, each

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Party agrees that such Information, including any such photographs or video recordings of the Work, Land or Power Plant, may not be disclosed to third parties or used for purposes other than those under this Contract except as otherwise provided in this Clause. Nothing in this Clause shall prevent the communication of information contained in this Contract as may be requested or required by any governmental authority or required by applicable law, or to any employee, subcontractor or consultant of either party in order to fulfill its obligations under this Contract; provided that (a) prior to disclosing such Information as required by a governmental authority or applicable law, such Party shall use reasonable efforts to provide prompt notice thereof to the other Party and (b) such employee, Subcontractor or consultant of either Party is subject to a confidentiality agreement containing a prohibition on disclosure substantially similar to and in furtherance of the provisions of this Clause.

The provisions related to Confidentiality shall remain in force (i) for all information that has been made available to a Party, directly or indirectly, that relates to Intellectual property, for a period of ten years from the end of the warranty period and (ii) for all other Information, five years from the date of the Final Acceptance hereunder. The provisions of Section 38.1 shall not apply to information that:

at the time of its disclosure to a Party or any time thereafter was available to the public (unless such availability was the result of unauthorized disclosure);


at the time of its disclosure to a Party was known by such Party or was acquired by such Party independently without violating its obligations under this Contract;

Except as may be required by applicable law or by a governmental authority, any press release, notice or communication of any kind relating to the transactions contemplated by this Contract shall require the prior approval of the other Party. Any press release, notice or communication of any kind relating to the transactions contemplated by this Contract that is required by a governmental authority or applicable law shall include only information that is required to be disclosed by such governmental authority or applicable law.

Following termination or expiration of this Contract, upon the request of the disclosing party, the receiving party shall return or destroy all documents and other embodiments in any form then in the possession of the receiving party that contain confidential information of the disclosing party.

### 34 INTERPRETATION AND ARBITRATION

Should any Issue, dispute or disagreement arise at any time between the CONTRACTOR and the SUBCONTRACTOR with regard to the CONTRACT, its application or interpretation, the Party holding itself to have been affected shall immediately serve written notice on the other of the existence of that issue, dispute or disagreement, expressing its argumentation and including the documentation which the Party considers enough to support its arguments. Should the issue not be resolved by the Parties within a thirty (30) days period, they agree to submit the matter before arbitration in law, waving any other legal forum to which they might have been entitled, and undertaking to fulfil the arbitration award as Issued. Submission of disputes between the Parties for arbitration shall not entitle either of them to suspend performance of their obligations under the terms of the CONTRACT.

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Arbitration in law shall be performed in Madrid in the Spanish language and under Spanish law and according the rules of the Civil and Mercantile Court of Arbitration (CIMA), to whom is entrusted the administration of the arbitration and the appointment of the sole arbitrator.

Likewise, the Parties expressly agree that the arbitral decision will be compulsory for the Parties.

### 35 LEGISLATION AND COURTS

The CONTRACT throughout its scope of application shall be governed by Spanish law and be interpreted in accordance therewith.

On a subsidiary basis to the arbitration arrangements established, the CONTRACTOR and the SUBCONTRACTOR expressly agree to be bound by the jurisdiction of the Courts of Madrid, expressly waiving any other legal forum or domicile to which they might have been entitled.

### 36 TAXES

All Taxes, Levies or Duties, except VAT, which may apply to this Contract or execution of the works to which it refers, and all expenses derived from any possible registration of this Contract in a public deed, shall be borne by the SUBCONTRACTOR, except for the Works Licence and, excluding sales taxes on permanent material.

### 37 OBSERVANCE OF THE LAW.

The SUBCONTRACTOR should have knowledge of and obey the law, ordinances and other legal dispositions that may affect the development of its activity and in all phases of same (Including Design and Construction).


The CONTRACTOR is exempt from any responsibility that may arise from SUBCONTRACTOR's non-compliance of the law, ordinances or legal dispositions that affect the development of work of the same.

### 38 INVALID PROVISIONS

In the event that any section, clause or provision of this Contract or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder

### 39 LIST OF ANNEXES

The following Annexes shall together constitute the Contract between the CONTRACTOR and the SUBCONTRACTOR.

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Signing this contract means the acceptance by the SUBCONTRACTOR of each document referred to in the following annexes.

- The present document.
- Annex I Technical Clarifications-Minutes of meeting March 30th 2012
- Annex II Technical Documents
  - o Assembly in Plant (CDS-10-UWA-OIP-TMP-001\_Rev. E)
  - o Solar Field Assembly (CDS-10-UWA-OIP-TMP-002\_Rev. D)
- Annex III Commercial Documents
  - o General Purchasing Conditions CDS-COM-GPC-CPI-0001 General Purchasing Conditions USA Cobra Thermosolar Plants
  - o Terms and conditions on site CDS-COM-GPC-CPI-0002 Terms and Condition on site works
- Annex VI Administration documents:
  - o Davis Bacon Act Requirements
  - o Sales Tax Abatement Requirements
  - o Documents SUBCONTRACTOR has to present with each invoice
  - o Documents SUBCONTRACTOR has to present with the sign of the present document.
  - o Documents to present with the provisional turnover.
- Annex V Plan of Development
  - o Final Environmental Impact Study
  - o Geotech & Geological study
  - o Form of Monthly Progress Report
- Annex VI Permits & Plans:
  - o Construction Stormwater
  - o Groundwater Discharge



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- Working Waterways
- Air Quality Class II
- Surface Area Disturbance
- Encroachment Permit
- Flood Damage Prevention Permit
- SWPP Plan
- SPCC Plan
- H&S Plan
- Lighting Plan
- Traffic Management Plan
- Waste Management Plan
- Hazardous Materials Program
- Facility Emergency Action Plan
- Annex VII Quality Documentation.
  - CDS-COM-PRO-CPI-007-REV2 Vendor Quality Procedure
- Annex VIII WEAP
- Annex IX SUBCONTRACTORS QUOTE

In case of conflict between Contract Documents, the order of precedence shall be:

First: This Contract

Second: Its Annexes, prevailing Annex 1 over Annex 2, Annex 2 over Annex 3

# EXHIBIT C

> --- Original message ---  
> From: Ignacio Arboleya (mailto:iarboleya@trpmetal.es) Sent:  
> Tuesday December 04, 2012 at 9:38 a.m.  
> To: jmsola@grupomara.com; 'Juan A. Martinez – GRUPO MARA'  
> CC: 'Jose Manuel Rodriguez de la Cruz'  
> Subject: FW: CDS-CPI-TRP-EML-0068 RE:  
> CDS-TRP-CPI-EML-0140- Authorization, Proimtu Subcontracting  
>  
> COBRA is asking us for you all to deal with this documentation, in order to authorize the subcontracting.  
> Please, this is very urgent.  
> If you have any questions, feel free to contact me, and I will try to answer them.  
> Regards,  
>  
> Ignacio Arboleya  
>  
>  
> --- Original message ---



> From: Tonopah (mailto:tonopah@grupocobra.com) Sent: Monday  
> December 03, 2012 at 8:34 a.m.  
> To: iarboleya@trpmetal.es; Daniel.marin@grupocobra.com;  
> tonopah@grupocobra.com; alba.recio@grupocobra.com;  
> cpelaez@grupocobra.com; saioa.lopez@grupocobra.com;  
> asserrats@grupocobra.com; bruno.pereira@grupocobra.com;  
> jegonzalez@grupocobra.com  
> CC: jmrodriguez@trpmetal.es; kbadawi@trpmetal.es; lsevillano@rospa.es;  
> afernandez@trpmetal.es; jfernandez@trpmetal.es; 'Francisco Vizcaino Gonzalez'  
> Subject: CDS-CPI-TRP-EML-0068: RE: CDS-TRP-CPI-EML-0140 – Authorization,  
> Proimtu Subcontracting

>  
>  
> \*\*Please consider this email with the correct coding number. Our  
> apologies for any inconvenience.\*\*

> CDS-CPI-TRP-EML-0068

> Hello Ignacio,

> Please have Proimtu complete our approval documentation.  
> If there are any questions, please contact Saioa Lopez.

> Regards.

>  
> Francisco VIZCAÍNO GONZÁLEZ  
> Purchasing Manager

>  
> Cobra Thermosolar Plants, Inc.  
> Cell.: +34 609 556 012  
> US Cell.: + 1 702 305 5775  
> E-mail: fvizcaino@grupocobra.com  
> www.grupocobra.com

> --- Original message ---

> From: Ignacio Arbolea (mailto:iarboleya@trpmetal.es) Sent:  
> Friday November 30, 2012 at 7:02 a.m.  
> To: Daniel.marin@grupocobra.com; Tonopah@grupocobra.com;  
> alba.recio@grupocobra.com; cpelaez@grupocobra.com;  
> saioa.lopez@grupocobra.com; asserrats@grupocobra.com;  
> bruno.pereira@grupocobra.com; fvizcaino@grupocobra.com;  
> tonopah@grupocobra.com; jegonzalez@grupocobra.com  
> CC: jmrodriguez@trpmetal.es; kbadawi@trpmetal.es; lsevillano@rospa.es;  
> afernandez@trpmetal.es; jfernandez@trpmetal.es  
> Subject: CDS-TRP-CPI-EML-0140 – Authorization, Proimtu Subcontracting

> Dear Sirs,

> Pursuant to that which has been established in the contract between TRP and CPI, we are requesting your authorization for contracting the company Proimtu to provide assembly-related labor services at the Tonopah plant.

> Proimtu is a company specializing in field assembly of thermal-solar projects, with a great deal of international experience. They have experience in the U.S.A., South Africa, and the Middle East, where they have successfully completed assembly projects.

> They have satisfactorily completed projects in all these countries, where they have qualified personnel who have the experience necessary to execute these sorts of operations and who will be used for the Project.

> TRP fully trusts in their experience and their ability to perform assembly and construction work. Of course, TRP will continue to be in charge of the key tasks of quality control, line maintenance and production control, as well as the coordination of the project and intermediary communication regarding it.

>

> If you consider it appropriate, we are more than willing to meet with you to clarify any details which you would like to examine in greater detail.

>

> Cordial regards,

>

> Ignacio Arboleya

>

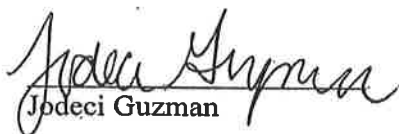
> <US Subcontractors CTP Bid requirements Packet.zip.zip>




TRANSPERFECT

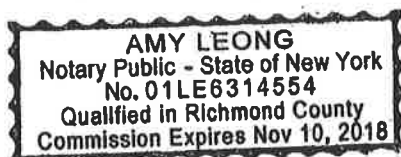
City of New York, State of New York, County of New York

I, Jodeci Guzman, hereby certify that the document "Natalia Authorisation" and "TRP 27.11.14" is, to the best of my knowledge and belief, a true and accurate translation from Spanish into English.

  
Jodeci Guzman

Sworn to before me this  
January 30, 2015

  
Signature, Notary Public



Stamp, Notary Public

LANGUAGE AND TECHNOLOGY SOLUTIONS FOR GLOBAL BUSINESS  
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> -----Mensaje original-----  
> De: Ignacio Arboleya [mailto:iarboleya@trpmetal.es] Enviado el:  
> martes, 04 de diciembre de 2012 9:38  
> Para: jmsola@grupomara.com; 'Juan A. Martínez - GRUPO MARA'  
> CC: 'José Manuel Rodríguez de la Cruz'  
> Asunto: RV: CDS-CPI-TRP-EML-0068: RE:  
> CDS-TRP-CPI-EML-0140-Autorización Subcontratación Proimtu  
>  
> Nos piden desde COBRA que atendáis a esta documentación a fin de poder autorizar la  
subcontratación.  
> Por favor es muy Urgente.  
> Si tenéis alguna duda, contactad conmigo, trataré de resolverla.  
> Saludos,  
>  
> Ignacio Arboleya  
>  
>  
>  
> -----Mensaje original-----

> De: Tonopah [mailto:tonopah@grupocobra.com] Enviado el: lunes, 03 de  
> diciembre de 2012 8:34  
> Para: iarboleya@trpmetal.es; daniel.marin@grupocobra.com;  
> tonopah@grupocobra.com; alba.recio@grupocobra.com;  
> cpelaez@grupocobra.com; saioa.lopez@grupocobra.com;  
> asserrats@grupocobra.com; bruno.pereira@grupocobra.com;  
> jegonzalez@grupocobra.com  
> CC: jmrodriguez@trpmetal.es; kbadawi@trpmetal.es; lsevillano@rospa.es;  
afernandez@trpmetal.es; jfernandez@trpmetal.es; 'Francisco Vizcaino Gonzalez'  
> Asunto: CDS-CPI-TRP-EML-0068: RE: CDS-TRP-CPI-EML-0140-Autorización  
> Subcontratación Proimtu

>  
> \*\*Please consider this email with the correct coding number. Our  
> apologies for any inconvenience.\*\*

>  
> CDS-CPI-TRP-EML-0068

>  
> Buenas Ignacio,

>  
> Por favor que Proimtu complete nuestra documentación de homologación.  
> Cualquier duda consultar a Saioa Lopez.

>  
> Saludos.

>  
> Francisco VIZCAÍNO GONZÁLEZ  
> Purchasing Manager

>  
> Cobra Thermosolar Plants, Inc.  
> Cell.: +34 609 556 012  
> US Cell.:+ 1 702 305 5775  
> E-mail: fvizcaino@grupocobra.com

>  
> www.grupocobra.com

>  
> -----Mensaje original-----

> De: Ignacio Arbolea [mailto:iarboleya@trpmetal.es] Enviado el:  
> viernes, 30 de noviembre de 2012 7:02  
> Para: daniel.marin@grupocobra.com; tonopah@grupocobra.com;  
> alba.recio@grupocobra.com; cpelaez@grupocobra.com;  
> saioa.lopez@grupocobra.com; asserrats@grupocobra.com;  
> bruno.pereira@grupocobra.com; fvizcaino@grupocobra.com;  
> tonopah@grupocobra.com; jegonzalez@grupocobra.com  
> CC: jmrodriguez@trpmetal.es; kbadawi@trpmetal.es; lsevillano@rospa.es;  
> afernandez@trpmetal.es; jfernandez@trpmetal.es  
> Asunto: CDS-TRP-CPI-EML-0140-Autorización Subcontratación Proimtu

>  
> Muy señores nuestros,

>  
> De acuerdo a lo establecido en el contrato entre TRP y CPI, les solicitamos autorización  
para contratación de la empresa Proimtu para la prestación de servicios de mano de obra de  
montaje en la planta de Tonopah.

>  
> Proimtu es una empresa especializada en montaje en campo en proyectos termosolares, con  
gran experiencia internacional, tienen presencia en EEUU, Sudafrica, Oriente Medio donde  
han acometido con éxito proyectos de montaje.

>  
> Han acometido satisfactoriamente proyectos en todos estos países, tienen personal  
cualificado y con experiencia para ejecutar este tipo de operaciones, que será desplazado  
a la Obra.

> TRP confía plenamente en sus capacidades y experiencia para la realización de las tareas de ensamblaje y montaje. No obstante las tareas clave de control de calidad, mantenimiento de la línea y control de producción, así como la coordinación e interlocución de proyecto continuarán siendo asumidas por TRP.

>

> Si lo estiman oportuno, estamos a su disposición para mantener una reunión para aclaración de los diferentes aspectos que quieran profundizar.

>

> Reciban un cordial saludo,

>

> Ignacio Arboleya

>

> <US Subcontractors CTP Bid requirements Packet.zip.zip>

# EXHIBIT D

**DOC # 823637**

Official Records Nye County Nevada  
Deborah Beatty - Recorder  
11/12/2014 12:16:06 PM  
Requested By: FENNEMORE  
Recorded By: tc RPTT:\$0  
Recording Fee: \$20.00  
Non Conformity Fee: \$0.00  
Page 1 of 7



APN 012-031-04, 012-131-03,  
APN 012-131-04,4  
APN , 012-141-01,  
APN , 012-151-01, and 612-141-01

**Recording Requested By:**

Name Fennemore Craig Jones Vargas  
Address 300 South Fourth St. 14th Floor  
City / State / Zip Las Vegas, NV 89101

**Notice of Lien**

(Print Name Of Document On The Line Above)



I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.



APN: # 012-141-01, 012-151-01  
612-141-01, 012-031-04  
012-131-03, 012-131-04

Recording requested by and mail documents to:

Proimtu MMI LLC  
c/o Christopher H. Byrd, Esq.  
Fennemore Craig Jones Vargas  
300 South Fourth St. 14<sup>th</sup> Floor  
Las Vegas, NV 89101

---

NOTICE OF LIEN  
(Mechanic Lien)

Notice is Hereby Given:

1. That PROIMTU MMI, LLC, hereinafter known as "Claimant," hereby claims a lien pursuant to the provisions of N.R.S. 108.221 to 108.246 inclusive, on the property located in Nevada described in Exhibit "A" (the "Land") and upon any improvements constructed on the Land, including but not limited to the improvements identified as the assembly line and heliostats (the "Improvement") for the Crescent Dunes Solar Project.
2. The amount of the original contract is: \$8,746,125.
3. The total amount of all charges and additions, if any, is \$3,792,104
4. The total amount of payments received to date is \$10,180,252
5. The total amount of the lien, after deducting all credits and offsets is \$2,357,977
6. The name of the owner of the Improvement is: Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (the "Owner"). Upon information and belief the Owner's principal address is believed to be 2425 Olympic Boulevard, Suite 500 East, Santa Monica, California, 90404. The interest of the Owner in the Improvement is as a lessee of a leasehold estate.
7. The name of the owner of the Land is: Bureau of Land Management ( "BLM"). Upon information and belief the BLM's principal address is 1340 Financial Blvd., Reno, Nevada, 89502.
8. The name of the person whom the lien claimant was employed or to whom the lien claimant furnished work, material, or equipment is TRP International, Inc. ("TRP"). Upon information and belief TRP's principal address is 9550 S. Eastern Ave, Suite 253, Las Vegas, Nevada, 89123.

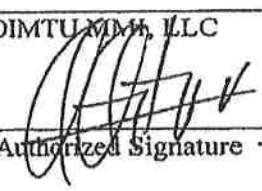
9. Terms of payment of the lien claimant's contract: In accordance with Nevada law but no later than 90 days after receipt of the invoice and the approved application.

10. That the claimant herein is entitled to a reasonable attorney's fee, collections costs, bank fees, statutory interest on the amount of this lien claim, and costs incurred in perfecting this lien claim.

11. A description of the Improvement and Land to be charged: See Exhibit "A".

In Witness Whereof, I/We have hereunto set my hand/our hands this 11<sup>th</sup> day of NOVEMBER, 2014.

666  
\_\_\_\_\_  
PROIMTUMM, LLC

By:   
Authorized Signature - Gabriel Gonzalez

STATE OF NEVADA)  
COUNTY OF CLARK)

PROMTU MM LLC, being first duly sworn on oath according to law, deposes  
and says:

I have read the foregoing Notice of Lien claim, know the contents thereof and state the same is  
true of my own personal knowledge, except those matters stated upon information and belief,  
and, as to those matters, I believe them to be true.

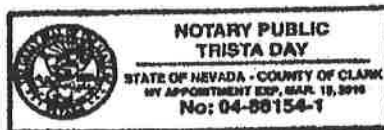
[Signature]  
Authorized Signature of Claimant - Gabriel Gonzalez

Subscribed and sworn to before me this 11<sup>th</sup> day of NOVEMBER, 2014.

[Signature]  
NOTARY PUBLIC

My Commission expires: 3-15-16

Notice of Lien  
Initials bbb



**EXHIBIT A**

**(Legal Description of the Property)**

Nye County Assessor Parcels: APN 012-141-01, APN 012-151-01, APN 612-141-01, APN 012-031-04, APN 012-131-03, and APN 012-131-04

**AND MORE PARTICULARLY DESCRIBED BY DOCUMENTS PREPARED BY OR FOR TONOPAH SOLAR ENERGY, LLC AS FOLLOWS:**

All that land situated in the County of Nye, State of Nevada, more particularly described as follows:

**PARCEL 1:**

**GEN-TIE LINE (NVN-087933)**

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the official Plat thereof, described as follows:

- Section 2:     The SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ ;
- Section 11:    The W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;
- Section 14:    The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;
- Section 15:    The E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 22:    The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 27:    The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$ ;
- Section 28:    The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;
- Section 33:    The NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

**PARCEL 2:**

**SOLAR ENERGY PROJECT (NVN-086292)**

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 33: The SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 34: The W  $\frac{1}{2}$ , the SE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

Section 35: The SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

All that property lying within Township 4 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

Section 2: Lot 4 and the W  $\frac{1}{2}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

Section 3: The N  $\frac{1}{2}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{2}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the N  $\frac{1}{2}$  S  $\frac{1}{2}$  SW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 4: The NE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  of Lot 4 and the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

PARCEL 4-1:

The North one Half (N  $\frac{1}{2}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) and the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 12 in Township 6 North, Range 40 East, M.D.B. & M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel 4 of Parcel Map recorded July 25, 1980, as File No. 26731, Nye County, Nevada Records.

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 18, Township 6 North, Range 41 East, M.D.B. & M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel Two (2) of Parcel Map recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

Together with an easement for the purpose of installing and maintaining an irrigation well, more particularly described as follows:

Commencing at the Northeast corner of Section 13, Township 6 North, Range 40 East, M.D.B. & M.,;

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

Thence Easterly for 20 feet, at the true point of beginning.

PARCEL 4-3:

East Half (E ½) of the Northwest Quarter (NW ¼) of Section 18, Township 6 North Range 41 East, M.D.B. & M., according of the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel One (1) of Parcel Maps, recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

PARCEL 5:

All land defined as "Servient Property," described and depicted in that certain document entitled "Grant of Generation Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE 1/3), of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.

# EXHIBIT E



[logo:] POSTAL SERVICE

## CERTIFICATE OF DELIVERY

[logo: website of postal service]



**www.correos.es**

**902 197 197**

1159102

29/11/2014 03:31



AA00000000111473439250A

**MARIMON ATTORNEYS**

MARIMÓN ABOGADOS.

BALBINO MARRÓN 3, 5º-17. EDF. VIAPOL,

41018 SEVILLA

Ref.:

**Sociedad Estatal de Correos y Telégrafos, S.A. Vía de Dublín 7. 28042 Madrid.**

[State Postal and Telegraph Service, Inc.]

Volume 16,665, Book 0, Folio 20, Section 8, Page 2843223, Registry 1, Taxpayer Identification Code:

A83052407



Your Burofax [a unique Spanish service; certified fax sent from a post office] number NB00029577587,  
received on November 27, 2014,  
To: TRP INTERNATIONAL INC.ANT. GUSTAVO CALZADO, ATTORNEY

DOBLON, 5,  
11591 GUADALCACIN DEL CAUDILLO

Has been: Delivered on November 28, 2014 at 1:01 p.m.  
Recipient's information: ROSA SANCHEZ MARTINEZ  
Document: 31662301H

[logo:] postal service



CERTIFIED COPY OF TELEGRAM, BUROFAX AND FAX

Mr. / Ms. JOSE MARIA RIVERO FERNANDEZ

With Personal Identification Number 355492, on behalf of Sociedad Estatal Correos y Telegrafos S.A. [State Mail and Telegraph Company], in the position of Director of the Office of Mail and Telegraphs 4123194 SEVILLA SUC 22

CERTIFIES that, according to the documentation held by this Office, a **DOMESTIC BUROFAX** is registered as having been sent, with the following information:

**Origin number:** NB00029577587

**Date sent:** November 27, 2014

**Time:** 10:38 a.m.

**Sender:** MARIMON AGOBADOS –

**Residing in:** SEVILLA

**Address:** BALBINO MARRON 3 5-17 EDF VIAPOL

**Addressee:** TRP INTERNATIONAL INC. ANT. GUSTAVO CALZADO, ATTORNEY

**Residing in:** GUADALCACIN DEL CAUDILLO

**Address:** DOBLON 5

**Service instructions:** PC

TEXT: Photocopies of the cover sheet and the 2 page(s) making up the original DOMESTIC BUROFAX NB00029577587 described above have been provided along with this certification, which have been properly verified with the date, signature, and seal.

And, in order to attest to this fact and at the request of MARIMON ABOGADOS –

as the Sender

this certification is being issued in SEVILLA SUC 22

on November 27, 2014

(Signature and seal)



[seal:] SOCIEDAD ESTATAL CORREOS Y TELEGRAFOS, S.A.

[State Mail and Telegraph Company]

SUC. 22 VIAPOL – CENTER – SEVILLA



Tracking Number: NB00029577587

(Former ET Fax)



[logo:] postal service

November 27, 2014 10:38 a.m.: DOMESTIC BUROFAX

|   |   |   |
|---|---|---|
|  | Number of pages, not including cover sheet: 2<br>Date / time received / type<br>November 27, 2014 / 10:38:35 a.m. / NB<br>Received by office: 4123194 | SENDER<br>MARIMON ABOGADOS<br>BALBINO MARRON 3 5º-17. EDF. VIAPOL<br>41018 SEVILLA<br>SEVILLA   |
|   | Fax number of addressee:<br>RICO 26666<br>Contract number:<br>Client number:<br>Attachment:   | <br>NB00029577587<br><input checked="" type="checkbox"/> Confirmation of receipt<br><input checked="" type="checkbox"/> Certified copy<br><br>ADDRESSEE<br><br>TRP INTERNATIONAL INC.<br>ANT. GUSTAVO CALZADO, ATTORNEY<br>DOBLON 5<br>111591 GUADALCACIN DEL CAUDILLO<br>CADIZ |

*In the event that unsatisfactory original documents are provided, the letters ASR (At Sender's Risk) must be written.*

*The postal service may ONLY send text certifications for documents which are received by offices at the time of receipt of the Burofaxes.*

Approval

[signature]



[seal:] SOCIEDAD ESTATAL CORREOS Y TELEGRAFOS, S.A.

[State Mail and Telegraph Company]

SUC. 22 VIAPOL – CENTER – SEVILLA

NOV. 27, 2014

MARIMÓN  
ABOGADOS

TRP International Inc.  
c/ Doblon, 5  
11591 – Guadalcazin (Cadiz)

Attention: Mr. Gustavo Calzado, Attorney

Seville, November 27, 2014

Dear Mr. Calzado,

As I have indicated to you in the past, I am not a party to arguments via correspondence or rhetorical fights. For this reason, I would like to get directly to the matter at hand, at the risk of appearing abrupt—which is precisely my intention. I have the utmost respect for you as a colleague.

1. I also confirm that all corresponding previous correspondence, between us in addition to the correspondence of others, has been reproduced.

2. I have verification of the fact that a copy of the document which has kindly been sent along with your last Burofax was presented. I am not going to delve into the style and contents of said document, although there is much that could be said regarding its style and contents and what they reveal. I will confine myself to notifying you that, as my clients have confirmed for me, said document has not been signed by the legal representative of Proimtu Montaje y Mantenimiento Internacional, S.L. and Proimtu MMI LLC. For this reason, TRP International Inc. and its parent company are hereby asked to immediately inform this party of who has certified the signature of Mr. Juan Antonio Martinez Cano on the document whose copy has been sent to me and the seal which appears superimposed over said signature. My clients, as well as Mr. Martinez Cano himself, reserve the right, if and when applicable, to initiate the corresponding criminal proceedings, while effort will be made, in any case, to avoid the danger of said proceedings interfering prejudicially with the continuation of the actions initiated—and any actions that may be initiated—in order to obtain payment by TRP International Inc. of the sums owed to Proimtu MMI LLC.

3. Proimtu MMI LLC has, in its files, numerous documents containing the original signature of the representative of TRP International Inc., dated long after the date of the document whose copy you have sent me, which openly recognize the proper payment of additional costs beyond the 600,000 euro that were paid in December 2013, as well as the existence of amounts due payment which were pending payment, records in dispute, prices pending confirmation, units pending recount, etc. This recognition is made on not one, but several documents. If any doubt should remain regarding the document whose copy you have attached to your communiqué, these other documents would suffice to attest to its complete lack of validity and authenticity.

Avenida Ortega y Gasset 7, 2º  
Ed. Santiago 40  
28003 Madrid  
T +34 913 101 456  
F +34 917 028 856

Paseo de Gracia 118, 5º  
08008 Barcelona  
T +34 934 157 575  
F +34 934 156 011



Balduino Marrón 3, 5º 17  
Edificio Viapol  
41018 Sevilla  
T +34 954 657 895  
F +34 917 023 705

www.marimon-advogados.com

27 NOV 2014

[seal:] SOCIEDAD ESTATAL CORREOS Y TELEGRAFOS, S.A.  
[State Mail and Telegraph Company]  
SUC. 22 VIAPOL – CENTER – SEVILLA, NOV. 27, 2014

MARIMÓN  
ABOGADOS

4. For all the reasons stated above, TRP International Inc. has no option other than to meet their obligations, paying the amounts demanded by Proimtu MMI LLC, returning the sums which were improperly retained and expressly accepting the project, pursuant to the provisions of the contract signed previously. I am requesting this all of you, in your representative role which you hold.

Regards,

[signature:] Javier Dominguez

José Ortega y Gasset 7, 2º  
Ed. Serrano 49  
28006 Madrid  
T +34.913 100 456  
F +34.917 023 636

Paseo de Gracia 118, 5º  
08008 Barcelona  
T +34.934 157 575  
F +34.934 158 311

[www.marimón-aliados.com](http://www.marimón-aliados.com)



27 NOV 2014

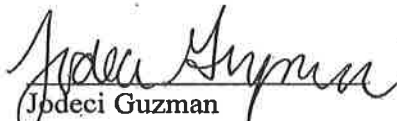
[seal:] SOCIEDAD ESTATAL CORREOS Y TELEGRAFOS, S.A.  
[State Mail and Telegraph Company]  
SUC. 22 VIAPOL – CENTER – SEVILLA  
[illegible] NOV 2014,  
NOV. 27, 2014



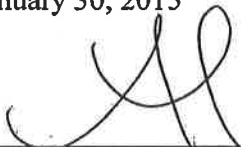
TRANSPERFECT

City of New York, State of New York, County of New York

I, Jodeci Guzman, hereby certify that the document "Natalia Authorisation" and "TRP 27.11.14" is, to the best of my knowledge and belief, a true and accurate translation from Spanish into English.

  
Jodeci Guzman

Sworn to before me this  
January 30, 2015

  
Signature, Notary Public



Stamp, Notary Public

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AA00000000111473439250A

MARIMÓN ABOGADOS.

BALBINO MARRÓN 3, 5º-17. EDF. VIAPOL,

41018 SEVILLA

Ref.:

Sociedad Estatal de Correos y Telégrafos, S.A. Vía de Dublín 7. 28042 Madrid.  
Tomo 16.665, Libro 0, Folio 20, Sacc 8, Hoja 2843223, Inscrtp.1, CIF. A83052407

---

Su envío Burofax NB00029577587 admitido el 27/11/2014

Para: TRP INTERNATIONAL INC.ANT. GUSTAVO CALZADO, LETRADO

DOBLÓN, 5 ,  
11591 GUADALCACIN DEL CAUDILLO

Ha resultado: Entregado el 28/11/2014 13:01

Datos del receptor: ROSA SÁNCHEZ MARTÍNEZ

Documento: 31662301H





Nº SOLICITUD: 4123194-2014-001116

COPIA CERTIFICADA DE IMPOSICIÓN DE TELEGRAMAS, BUROFAX Y FAX

Don / Doña JOSE MARIA RIVERO FERNANDEZ

con N.I.P. 355492 , en nombre de la Sociedad Estatal Correos y Telégrafos S.A., en calidad

de Director de la Oficina de Correos y Telégrafos de 4123194 SEVILLA SUC 22

CERTIFICA que, de acuerdo con la documentación existente en esta Oficina, figura la imposición de un

**BUROFAX NACIONAL** con los siguientes datos:

Número de origen..... NB00029577587

Fecha de Imposición..... 27 de noviembre de 2014

Hora 10:38

|                      |   |
|----------------------|---|
| <b>Remitente:</b>    | MARIMON ABOGADOS -                                  |
| <b>Residente en:</b> | SEVILLA   |
| <b>Calle:</b>        | BALBINO MARRON 3 5-17 EDF VIAPOL                    |
| <b>Destinatario:</b> | TRP INTERNATIONAL INC. ANT. GUSTAVO CALZADO LETRADO |
| <b>Residente en:</b> | GUADALCACIN DEL CAUDILLO                            |
| <b>Calle:</b>        | DOBLÓN 5  |

**Indicaciones de servicio:** PC

TEXTO: De la carátula y de lo(s) 2 folio(s) que conforman el original del

**BUROFAX NACIONAL** NB00029577587 descrito anteriormente, se unen a esta certificación  
fotocopias debidamente adveradas con la fecha, firma y sello.

Y para que conste y a petición de MARIMON ABOGADOS -

en calidad de Remitente

se expide la presente certificación en SEVILLA SUC 22

a 27 de noviembre de 2014





CORREOS

Nº Envío: NB00029577587

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27/11/2014 10:38:

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Fecha / hora de admisión / tipo

27/11/2014 / 10:38:35 / NB

Oficina admisión 4123194

Nº de fax destino RICO 26668

Nº contrato

Nº cliente

Anexo

EXPEDIDOR

MARIMÓN ABOGADOS .

BALBINO MARRÓN 3 5º-17. EDF. VIAPOL

41018 SEVILLA

SEVILLA



NB00029577587



Acuse de recibo



Copia certificada

DESTINATARIO

TRP INTERNATIONAL INC.

ANT. GUSTAVO CALZADO LETRADO

DOBLÓN 5

11591

GUADALCACIN DEL CAUDILLO

CADIZ

En caso de presentarse originales deficientes se deberán consignar las siglas: RE (Riesgo Expedidor)  
Correos SOLO podrá emitir certificaciones de texto de los documentos que queden depositados en las oficinas en el momento de la  
admisión de los burofax.

Conforme



TRP International Inc.  
c/Doblón, 5  
11591 - Guadalcaín (Cádiz)

Atn. D. Gustavo Calzado, Letrado

Sevilla, 27 de noviembre de 2014

Estimado Sr. Calzado,

Como ya le he señalado en otras ocasiones, no soy partidario de duelos epistolares y figuras retóricas. Permítame pues ir directo al asunto, aun a riesgo de parecer brusco, cosa que en absoluto pretendo. Le tengo en la mayor consideración como compañero.

1. También yo doy por reproducidas cuantas anteriores comunicaciones, tanto propias como ajenas, corresponda.
2. Tengo constancia de la exhibición de copia del documento que amablemente acompaña a su último burofax. No voy a entrar en su estilo y contenido, aun cuando mucho podría decirse sobre ello y lo que revelan. Me limitaré a notificarle que, según me confirman mis clientes, dicho documento no ha sido firmado por el legal representante de Proimtu Montaje y Mantenimiento Internacional, S.L. y Proimtu MMI LLC. Es por ello que mediante la presente se requiere a TRP International Inc y a su matriz para que informen inmediatamente a esta parte de quién ha hecho constar la firma de D. Juan Antonio Martínez Cano en el documento cuya copia me ha remitido y el sello que aparece sobrepuesto a dicha firma. Tanto mis clientes como el propio Sr. Martínez Cano se reservan el inicio en su momento de las actuaciones penales correspondientes, si bien se evitará en todo caso el peligro de que las mismas estorben por razón de prejudicialidad la continuación de las acciones iniciadas -y las que se puedan iniciar- para conseguir el pago por TRP International Inc de las cuantías debidas a Proimtu MMI LLC.
3. Proimtu MMI LLC tiene en sus archivos numerosos documentos con la firma original de representante de TRP International Inc, de fechas muy posteriores al documento cuya copia Vd. me remite, en los que se reconoce abiertamente el pago debido de extracostes más allá de los 600.000 euros que fueron liquidados en diciembre de 2013, así como la existencia de reclamaciones pendientes de liquidar, partidas discutidas, precios pendientes de confirmación, unidades pendientes de recuento, etc. Y no es uno, sino que son múltiples los documentos en que dicho reconocimiento se hace. Si alguna duda se mantuviera acerca del documento cuya copia Vd. adjunta a su comunicación, estos otros documentos bastarían para acreditar su total falta de validez y de correspondencia con la realidad.

José Ortega y Gasset 7, 2º  
Ed. Serrano 49  
28006 Madrid  
T +34.913 100 456  
F +34.917 023 636

Paseo de Gracia 118, 5º  
08008 Barcelona  
T +34.934 157 575  
F +34.934 158 311



Balbino Marrón 3, 5º-17  
Edificio Viapol  
41018 Sevilla  
T +34.954 657 896  
F +34.917 023 636

27 NOV 2014

# MARIMÓN

ABOGADOS

4. Por todo lo anterior, TRP International Inc no tiene sino que cumplir con sus obligaciones, pagando los importes reclamados por Proimtu MMI LLC, devolviendo los importes que indebidamente retiene y aceptando expresamente la obra conforme a lo previsto en el contrato firmado en su día, todo lo cual le requiero, en la representación que Vd. ostenta.

Atentamente,



Javier Domínguez

José Ortega y Gasset 7, 2º  
Ed. Serrano 49  
28006 Madrid  
T +34.913 100 456  
F +34.917 023 636

Paseo de Gracia 118, 5º  
08008 Barcelona  
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27 NOV 2014

# EXHIBIT F

PROIMTU MMI, LLC

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F

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## TONOPAH SOLAR ENERGY, LLC

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### Business Entity Information

|                          |                                   |                              |               |
|--------------------------|-----------------------------------|------------------------------|---------------|
| <b>Status:</b>           | Active                            | <b>File Date:</b>            | 2/27/2008     |
| <b>Type:</b>             | Foreign Limited-Liability Company | <b>Entity Number:</b>        | E0123652008-7 |
| <b>Qualifying State:</b> | DE                                | <b>List of Officers Due:</b> | 2/29/2016     |
| <b>Managed By:</b>       |                                   | <b>Expiration Date:</b>      |               |
| <b>NV Business ID:</b>   | NV20081379573                     | <b>Business License Exp:</b> | 2/29/2016     |

### Additional Information

**Central Index Key:**

### Registered Agent Information

|                           |   |                           |                       |
|---------------------------|---|---------------------------|-----------------------|
| <b>Name:</b>              | CSC SERVICES OF NEVADA, INC.              | <b>Address 1:</b>         | 2215-B RENAISSANCE DR |
| <b>Address 2:</b>         |   | <b>City:</b>              | LAS VEGAS             |
| <b>State:</b>             | NV  | <b>Zip Code:</b>          | 89119                 |
| <b>Phone:</b>             |   | <b>Fax:</b>               |                       |
| <b>Mailing Address 1:</b> |   | <b>Mailing Address 2:</b> |                       |
| <b>Mailing City:</b>      |   | <b>Mailing State:</b>     | NV                    |
| <b>Mailing Zip Code:</b>  |   |                           |                       |
| <b>Agent Type:</b>        | Commercial Registered Agent - Corporation |                           |                       |
| <b>Jurisdiction:</b>      | NEVADA                                    | <b>Status:</b>            | Active                |

[View all business entities under this registered agent](#)

### Financial Information

|                            |   |                        |      |
|----------------------------|---|------------------------|------|
| <b>No Par Share Count:</b> | 0 | <b>Capital Amount:</b> | \$ 0 |
|----------------------------|---|------------------------|------|

No stock records found for this company

### Officers

☐ Include Inactive Officers

Managing Member - TONOPAH SOLAR ENERGY HOLDINGS II, LLC

|                   |                                |                   |    |
|-------------------|--------------------------------|-------------------|----|
| <b>Address 1:</b> | 2425 OLYMPIC BLVD STE 500 EAST | <b>Address 2:</b> |    |
| <b>City:</b>      | SANTA MONICA                   | <b>State:</b>     | CA |
| <b>Zip Code:</b>  | 90404                          | <b>Country:</b>   |    |

|                                    |                        |                   |                |
|------------------------------------|------------------------|-------------------|----------------|
| <b>Status:</b>                     | Active                 | <b>Email:</b>     |                |
| <b>Manager - BOB KLEIN</b>         |                        |                   |                |
| <b>Address 1:</b>                  | 2425 OLYMPIC BLVD      | <b>Address 2:</b> | SUITE 500 EAST |
| <b>City:</b>                       | SANTA MONICA           | <b>State:</b>     | CA             |
| <b>Zip Code:</b>                   | 90404                  | <b>Country:</b>   |                |
| <b>Status:</b>                     | Active                 | <b>Email:</b>     |                |
| <b>Manager - STEPHEN MULLENNIX</b> |                        |                   |                |
| <b>Address 1:</b>                  | 2425 OLYMPIC BOULEVARD | <b>Address 2:</b> | SUITE 500E     |
| <b>City:</b>                       | SANTA MONICA           | <b>State:</b>     | CA             |
| <b>Zip Code:</b>                   | 90404                  | <b>Country:</b>   |                |
| <b>Status:</b>                     | Active                 | <b>Email:</b>     |                |
| <b>Manager - KEVIN B SMITH</b>     |                        |                   |                |
| <b>Address 1:</b>                  | 2425 OLYMPIC BOULEVARD | <b>Address 2:</b> | SUITE 500E     |
| <b>City:</b>                       | SANTA MONICA           | <b>State:</b>     | CA             |
| <b>Zip Code:</b>                   | 90404                  | <b>Country:</b>   |                |
| <b>Status:</b>                     | Active                 | <b>Email:</b>     |                |

**Actions\Amendments**  
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## Newsroom: Photo & Video Library

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#### Crescent Dunes Solar Energy Plant [See all ↓](#)



crescent-01  
(14-07-28)



crescent-02  
(14-07-28)



crescent-03  
(14-07-28)



crescent-04  
(14-07-28)



crescent-05  
(14-07-28)

Contact:

Kas  
President of Communications  
5-2274  
[kas@solarreserve.com](mailto:kas@solarreserve.com)

### Lesedi PV Project

Download logo (EPS or JPG format)



Aerial of Lesedi  
from January 2014



Aerial of Lesedi  
from December  
2013



Aerial of Lesedi  
from December  
2013



View from the south  
of Lesedi site  
December 2013



Aerial of Lesedi  
from August 2013

Technology Fast 500™  
2014 Recipient Awarded by  
Deloitte LLP  
#1 Fastest growing  
cleantech company  
#20 Fastest growing  
technology company

### Letsatsi PV Project



Aerial of Letsatsi  
from December  
2013



Aerial of Letsatsi  
from April 2014



Panels at Letsatsi  
December 2013



Aerial of Letsatsi  
from December  
2013



Installing panels at  
Letsatsi

ENR Southwest Regional  
Best Projects 2014:  
Best Energy Project and  
#1 Project of the Year

Solar Industry Award 2013:  
Solar Award for  
Excellence: Technology



2013 CSP Today  
Award: Increased  
Dispatchability Solution

PFI Awards 2012: African  
Renewables Deal of the  
Year – Lesedi & Letsatsi  
Projects

2012 Platts Global Energy  
Awards:

Award of Excellence  
Rising Star Award

2012 CSP Today: Industry  
Choice Award

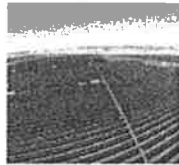
2011 CSP Today Award:  
Increased Dispatchability  
Solution

Platts Global Energy  
Awards 2011 Finalist:

Sustainable Technology  
Innovation of the Year  
Rising Star Award

2009 TIE50 Top Startups  
Winner: Cleantech

## Jasper PV Project



Jasper-01



Jasper-02



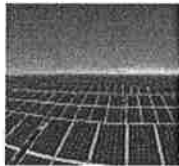
Jasper-03



Jasper-04



Jasper-05



Jasper-06

## Videos



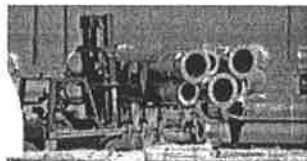
SolarReserve Technology Animation –  
Spanish Language Version  
Download QT video (0:48)



CNN – SolarReserve South Africa Solar  
Projects  
Download QT video (0:50)



Crescent Dunes Solar Plant  
October 2013  
Download QT video (2:41)



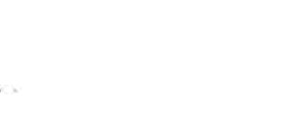
Crescent Dunes Construction Update –  
April 2013  
Download QT video (4:53)



Questions & Answers with CEO Kevin  
Smith  
Download QT video (2:26)



Turning the Sun into the Sol  
Download QT video (4:00)



Technology Animation  
Download QT video (2:41)



Community Effect  
Download QT video (1:52)



Crescent Dunes Tower Construction  
Download QT video (1:27)



Crescent Dunes Tower Time  
Download QT video (1:44)

## Executive Team



**Kevin Smith**  
Chief Executive Officer



**Tim Rosenzweig**  
Chief Financial Officer



**Bill Gould**  
Chief Technology Officer



**Allstair Jessop**  
Senior Vice President,  
Development



**Stephen Mullennix**  
Senior Vice President,  
Operations



**Sumeet Bidani**  
Vice President, Asset  
Management



**Mary Grikas**  
Vice President of  
Communications



**Joel Link**  
Vice President,  
Development



**Chris Gerlach**  
Vice President, Finance

# EXHIBIT H

## Board Members

### Lee Bailey

**Chairman of the Board**  
**Managing Director**  
**US Renewables Group**



Lee Bailey is a founder and Managing Director of US Renewables Group (USRG), a private equity firm based in Los Angeles that invests in renewable power and clean fuel companies and projects. Prior to founding USRG, he was a partner with Rustic Canyon Partners, a venture capital fund based in Los Angeles, where he led their clean energy practice. Subsequent to the formation of USRG, Bailey continues with Rustic Canyon as an advisory partner on energy opportunities.

Bailey started his career as an attorney. In 1986, he became General Counsel for Energy Conversion Devices, Inc. (ECD; NASDAQ: ENER), a publicly traded renewable energy development company, serving in a number of senior management positions with ECD and its subsidiaries. In 1994, he was appointed founding director of the US Israel Fund, a \$60 million joint US/Israeli government fund to commercialize technology in the areas of energy, information and biotechnology. In 1995, he was appointed the White House Director of International Science and Technology Commercialization initiatives for Russia, Egypt, Jordan, Israel and South Africa. In 1997, Bailey was the founding CEO of the Rural Health Care Corporation. In 2001, he joined Rustic Canyon Partners.

Bailey received his law degree from Washington University School of Law, an MS degree from Northwestern University and a BA degree from St. Lawrence University.

### Quentin Van Doosselaere

**Co-CEO**  
**Bregal Group**



**BregalEnergy**

Quentin Van Doosselaere joined Bregal in January 2009. Following his business school graduation in 1984, he moved to New York and began his career at Drexel Burnham Lambert. He then joined Bankers Trust Co. as a Managing Director and ran various global capital markets businesses. In the mid-nineties, he held executive positions in a number of non-profit organizations before going into academia. He was affiliated with Columbia University and Oxford University when he joined Bregal.

Quentin serves as a member on the investment committees of Bregal Capital, Bregal Sagemount, Bregal Partners, Bregal Energy, Bregal Private Equity Partners, Ranch Capital Investment and Birchill Exploration.

Quentin holds a degree from the Solvay Business School and a PhD from Columbia University.

## Vincent P. Fandozzi

**Managing Director  
Seven Mile Capital Partners**



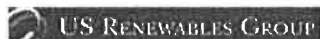
Vincent Fandozzi is the managing partner of Seven Mile Capital Partners, having founded the firm in 2011. Seven Mile Capital Partners heritage originates from a core group of professionals that worked together at Citigroup, investing and managing a global portfolio of over \$6.0 billion in assets and over 100 distinct private equity investments that spanned North America, Asia, Europe and the Middle East.

Prior to Seven Mile Capital Partners, Fandozzi was Global Head of Private Equity and Alternative Investments at Citi Holdings since 2009. Prior to this, he was Global Head of M&A for all of Citigroup's corporate M&A activities. Before taking on an executive role at Citigroup, he spent 9 years in the Citigroup Investment Banks' M&A group advising clients in a number of different industries including telecom & technology, retail & consumer products and the health care sectors.

Prior to joining Citigroup, Fandozzi worked in Corporate Finance at Bear Stearns & Co. and at Ernst & Young.

## Jim McDermott

**Managing Director  
US Renewables Group**



Prior to joining US Renewables Group, Jim McDermott started his career as a public power banker with Credit Suisse First Boston's Municipal Finance Group in New York City. Working in a variety of roles including new issue refinancing, capital markets and derivatives, he covered several of CSFB's clients in the western United States. Clients included Southern California Public Power Authority (SCCPA), Los Angeles Department of Water and Power (LADWP), Washington Public Power Supply System (WPPSS) and Salt River Project (SRP), Intermountain Power Authority (IPA) and several other West Coast municipal utilities. During his tenure at CSFB, he structured refinanced and issued over \$3 billion in corporate, general obligation, revenue-backed, industrial development and tax-anticipation bonds. In addition to his time as a public finance banker, McDermott has also worked in private equity and as an entrepreneur. As a private equity investor, McDermott interned for Allen & Company, Inc. and Prudential's Private Capital Group. McDermott focused on development stage energy projects, early-stage software technologies and private placements for independent power producers.

As an entrepreneur, McDermott founded several software startups and invested in numerous others. He founded, conceived, launched and ran Stamps.com, Inc. (NASDAQ: STMP). He grew the company to over 300 employees in three years, raising in excess of \$400 million of debt and equity financing, negotiating major relationships with 3M, Deluxe, ZDNet, Westvaco, OfficeDepot and America Online, overseeing company business development efforts and setting corporate strategy.

McDermott holds a BA in Philosophy from Colorado College and an MBA from the Anderson School at UCLA.

## Oscar Yunta

**Asset Management  
Cobra Concessions**



Oscar Yunta is Chief Executive Officer of Cobra Concesiones, the Asset Management division of Cobra Group. As HoldCo of all of Cobra Group's infrastructure concessions (Energy, Line Transmission, Water Desalination and Treatment Plants, Industrial Facilities) this division acts as an internal investment fund overseeing all major investment decisions of our project companies. Currently Cobra Concesiones manages a portfolio of infrastructure projects of more than 5 billion dollars value in the whole world.

Yunta began his professional career at the Legal Department of Cobra Group from where he incorporated to the Financial Department. In 2006 he left the Cobra Group and was involved in the development of construction and real estate projects. In 2011 he returned to Cobra and was appointed to lead the Concessions division in 2012.

has broad experience in the development, structuring and financing of great infrastructure projects in Europe, America and Africa.

He holds degrees in Law and Business Administration from the University Carlos III of Madrid.

## Kevin Smith

**SolarReserve**

CEO

## SOLARRESERVE

Kevin Smith is Chief Executive Officer at SolarReserve where he leads the company's efforts to develop and build large-scale solar energy projects. SolarReserve's leading technology includes integrated energy storage that can deliver clean renewable electricity on demand, day or night. SolarReserve has more than 3,000 megawatts of projects in development across the United States and internationally.

Smith has 25 years of experience in the energy industry and has held senior executive positions in numerous successful energy companies that develop solar and wind energy projects as well as natural gas and biomass fueled electricity facilities. He has actively led the successful development, acquisition, financing and construction of energy projects that total more than 5,000 megawatts and long-term electricity sales contracts approaching \$5 billion, including projects located in the United States and more than a dozen countries around the world.

Prior to joining SolarReserve at its formation in 2008, Smith was Senior Vice President at Invenergy LLC where he led the development of Invenergy Wind from a startup in 2004 to one of the largest privately owned renewable energy businesses in the world with more than \$2 billion of projects in operation. Prior to Invenergy, he was President of Insight Energy and Chief Operating Officer of London-based Rolls-Royce Power Ventures.

Smith earned an MBA in Finance from the University of Chicago, a Mechanical Engineering degree from Purdue University and is a licensed Professional Engineer. In 2008, he received the Outstanding Mechanical Engineer Award from Purdue University.

emap | Contact ©2014 SolarReserve, LLC. All rights reserved.

# EXHIBIT I



FOR IMMEDIATE RELEASE

## **SOLARRESERVE'S CRESCENT DUNES SOLAR POWER PLANT WITH ENERGY STORAGE AWARDED BEST PROJECT BY ENR SOUTHWEST**

*U.S.-developed technology at Crescent Dunes Solar Energy Project  
leads energy storage revolution for solar industry*

**SANTA MONICA, California, December 1, 2014** – SolarReserve, a leading global developer of utility-scale solar power projects and advanced solar thermal technology, is pleased to announce the receipt of two *Engineering News Record (ENR) Southwest* “Best Project” Awards for its landmark Crescent Dunes Solar Energy Project in Nevada. The award-winning project was named Best Overall as well as Best Energy/Industrial construction project. ENR’s Best Projects Awards honor the teams that created the best projects of 2014 nationwide. These extraordinary projects are selected by regional juries of prominent industry professionals. Categories awarded cover a variety of building and highway/heavy categories - from Best Green Project to Best Highway Project.

SolarReserve’s 110 MW Crescent Dunes Solar Energy Plant located in Nevada is the first utility-scale facility in the world to feature advanced molten salt power tower energy storage capabilities. The project has completed construction, is currently in the commissioning phase, and will generate more than 500,000 megawatt-hours per year. This annual output is more than twice that of other technologies per MW of capacity, such as photovoltaics (PV) or direct steam solar thermal. Utilizing next generation storage technology, the project design includes 10 hours of full-load energy storage providing efficient and cost effective storage capabilities for 1,100 megawatt-hours of electricity. The storage technology also eliminates the need for any backup fossil fuels, such as natural gas, which are needed with other solar thermal technologies to keep the system operating during times of reduced solar resource. Nevada’s largest electric utility, NV Energy, will purchase 100 percent of the electricity generated by the Crescent Dunes project under a 25-year power purchase agreement and is expected to dispatch the project to generate solar generated electricity until 12 midnight in order to meet its peak energy demand periods.

“The Crescent Dunes project will set industry standards for solar energy storage and will prove U.S. developed technology to be the world’s leading solution to efficiently and cost effectively store solar energy, so electricity can be dispatched to meet demand whenever it’s needed – day and night,” said SolarReserve’s chief executive officer, Kevin Smith. “The recognition of the project by the distinguished Engineering News Record is an honor as well as a tribute to the project team’s success in building this first-of-its-kind project.”

SolarReserve is joined as investors in the project by ACS Cobra, a worldwide leader in the engineering and construction of power plants and thermal solar facilities, and the equity capital practice of Santander, a global financial services and banking leader. ACS Cobra’s Nevada-based affiliate, Cobra Thermosolar Plants Inc., is constructing the facility as the general contractor while utilizing Nevada and regional subcontractors to perform the work.

# SOLARRESERVE®

## About SolarReserve

SolarReserve, LLC – headquartered in Santa Monica, California – is a leading developer of utility-scale solar power projects and advanced solar thermal technology with more than \$1.8 billion of projects in construction and operation worldwide. SolarReserve's experienced team of power project professionals has assembled an extensive 5,000 MW worldwide development portfolio of large-scale solar projects. The company's diverse portfolio of solar power projects is comprised of advanced solar thermal technology (CSP), photovoltaic (PV) technology, and hybrid (combined CSP and PV) solutions that can deliver solar energy that is cost competitive with conventional energy sources, including projects that can provide reliable solar energy 24-hours per day .

In addition to its headquarters in the US, SolarReserve has offices in Chile, South Africa, Turkey, Spain, Australia and the United Arab Emirates, with activities underway in the Middle East, Africa, Australia, China, India and Latin America.

**U.S. Media Contact:** Mary Grikas, SolarReserve, +1.310.315.2274, [Mary.Grikas@SolarReserve.com](mailto:Mary.Grikas@SolarReserve.com)

**For more information:** [www.SolarReserve.com](http://www.SolarReserve.com)

1 Becky A. Pinter, Esq.  
 Nevada State Bar # 7867  
 2 Bryan L. Albiston, Esq.  
 Nevada State Bar # 12679  
 3 PINTAR ALBISTON LLP  
 6053 S. Fort Apache Road, Suite 120  
 4 Las Vegas, Nevada 89148  
 (702) 685-5255  
 5 (702) 202-6329 fax  
 BPinter@beckypintarlaw.com  
 6 BALbiston@beckypintarlaw.com

7 Attorneys for Plaintiff  
 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**

**NYE COUNTY, NEVADA**

11 TRP INTERNATIONAL, INC., a foreign  
 corporation,

12 Petitioner,

13 v.

14 PROIMTU MMI LLC, a Nevada limited liability  
 company,

15 Respondent.

Case No.: CV-36431  
 Dept.: I

**REPLY TO OPPOSITION TO PETITION  
 TO EXPUNGE LIEN**

Hearing Date: February 12, 2015  
 Hearing Time: 10 am

17 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their  
 18 attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Reply to Opposition  
 19 to Petition to Expunge Lien. This Reply is based upon NRS Chapter 108, the attached affidavit,  
 20 pleadings and papers on file herein, and the oral argument of counsel during the hearing on this  
 21 matter.

**POINTS AND AUTHORITIES**

**A. Proimtu was a Subcontractor**

25 In its Opposition, PROIMTU MMI LLC ("Proimtu") states certain facts that are undisputed  
 26 and other alleged facts that are simply unsupported. TRP and Proimtu, both licensed contractors in  
 27  
 28

1 the state of Nevada, entered into a contract for heliostat assembly and field erection.<sup>1</sup> Proimtu now  
2 argues that the Contract was for labor only. This is an absurd argument and should be dismissed by  
3 this Court. That assertion is wholly unsupported and simply false.

4 First, pursuant to NRS 624.020, a contractor is defined as:

5 2. A contractor is any person, except a registered architect or a licensed  
6 professional engineer, acting solely in a professional capacity, who in any capacity  
7 other than as the employee of another with wages as the sole compensation,  
8 undertakes to, offers to undertake to, purports to have the capacity to undertake to, or  
9 submits a bid to, or does himself or herself or by or through others, **construct, alter,**  
10 **repair, add to, subtract from, improve, move, wreck or demolish any building,**  
11 **highway, road, railroad, excavation or other structure, project, development or**  
12 **improvement,** or to do any part thereof, including the erection of scaffolding or other  
13 structures or works in connection therewith. **Evidence of the securing of any permit**  
14 **from a governmental agency or the employment of any person on a construction**  
15 **project must be accepted by the Board or any court of this State as prima facie**  
16 **evidence that the person securing that permit or employing any person on a**  
17 **construction project is acting in the capacity of a contractor pursuant to the**  
18 **provisions of this chapter.**

19 3. **A contractor includes a subcontractor** or specialty contractor, but  
20 does not include anyone who merely furnishes materials or supplies without  
21 fabricating them into, or consuming them in the performance of, the work of a  
22 contractor.

23 (emphasis added) Therefore, because Proimtu employed persons on this Project, it is undisputed that  
24 Proimtu was acting in the capacity of a subcontractor, and not just supplying labor, which required  
25 compliance with NRS 108.245 requiring a preliminary notice for a valid lien.

26 Proimtu, in its own Opposition, sites a multitude of duties that Proimtu was responsible for  
27 that extend way beyond "labor." Moreover, the reference of Proimtu as Subcontractor in the 44 page  
28 Contract, clearly established that Proimtu did not just supply labor for the Project but acted as a  
subcontractor.

To the contrary, the scope of work for Proimtu included monitoring, inspections, testing,  
installation, establishing protocols and procedures, transportation, providing equipment, preparation  
of reports, implementation of facilities to meet OSHA requirements and providing lighting.  
Moreover, on page 24 of the Contract, Proimtu avers that it is an "independent contractor." In fact,

---

<sup>1</sup> See Contract, attached to Petition as Exhibit 1.

no where in the Contract does it ever state that Proimtu was only supplying “labor only.” Therefore, that argument is invalid.

It is clear that Proimtu did not just supply labor but was acting as a subcontractor performing work and services.

1. Except as otherwise provided in subsection 5, **every lien claimant**, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, **shall**, at any time after the first delivery of material or **performance of work or services under his contract, deliver in person or by certified mail to the owner of the property a notice of right to lien** in substantially the following form:

...

3. **No lien for materials or equipment furnished or for work or services performed**, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, **unless the notice has been given.**

4. The notice need not be verified, sworn to or acknowledged.

5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.

(emphasis added) Proimtu has failed to comply, or even substantially comply, with mandatory statutory requirements for a valid lien by failing to serve a notice of right to lien pursuant to NRS 108.245. Therefore, TRP respectfully requests that the Court enter an order expunging the lien recorded by Proimtu.

#### **B. Proimtu was Required to Serve a Preliminary Notice to Record a Valid Lien**

Proimtu, in its Opposition, states that NRS 108.245(5) provides that a preliminary notice is not required if the contractor contracts directly with the owner. TRP agrees. However, NRS 108.245(5) is inapplicable as Proimtu has no direct contract with the owner.

Next, Promitu makes the argument that substantial compliance with lien requirements is sufficient to enforce its lien claim. However, as previously stated, while there is some case law to support that substantial compliance may suffice in certain circumstances, the Supreme Court of Nevada has stated that, “...we do not think that a notice of lien may be so liberally construed as to condone the total elimination of a specific requirement of the statute.”<sup>2</sup> “The general rule is that ...

<sup>2</sup> *Schofield v. Copeland Lumber Yards*, 101 Nev. 83, 84-85, 692 P.2d 519, 520 (1985)

1 the failure to give a prelien notice is fatal."<sup>3</sup> In this case, there was no preliminary notice provided by  
2 Proimtu. The total elimination of a requirement does not meet substantial compliance standard  
3 established in *Schofield v. Copeland Lumber Yards*, 101 Nev. 83, 84-85, 692 P.2d 519, 520 (1985).

4 While Proimtu argues that *Hardy Cos. v. SNMARK, LLC*, 126 Nev. Adv. Rep. 49, 245 P.3d  
5 1149 (2010) applies, the facts of that case still support that Proimtu's lien should be expunged.

6 Substantial compliance, however, requires notice to be given to the party whose  
7 interest the lien claimant is seeking to affect. Notice to one owner is not sufficient to  
8 affect the interest of other owners. We further conclude that the actual knowledge  
exception requires the owner to have actual knowledge of the identity of the lien  
claimant.

9 *Id.* at 1159

10 First, the argument and purported facts of Proimtu that the owners of the Project had actual  
11 knowledge of Proimtu on the Project is wholly not demonstrated. While the article that TRP attached  
12 as Exhibit 5 imputes knowledge of the Owners of Promitu due to a labor complaint by the  
13 Department of Labor, this knowledge came long after Promitu commenced work and possibly after  
14 the work had been completed. Promitu cannot establish that the owners had actual knowledge of the  
15 identity of Proimtu on the Project, such as is required in *Hardy*. Moreover, Cobra is not the owner's  
16 agent but the general contractor. Cobra acts pursuant to the Contract and not at the direction or  
17 authority of the owner.

18 Moreover, NRS 108.245(6) requires that lien claimant required to give a notice of right to  
19 lien to an owner has a right to lien for materials or equipment furnished or for work or services  
20 performed in the 31 days before the date the notice of right to lien is given and for the work or  
21 services performed anytime thereafter until the completion of the Project. Therefore, not only would  
22 Proimtu have to prove that the owner had actual notice of its identity, but also as to when that actual  
23 knowledge arose. Promitu has provided neither.

24 Exhibit C to Promitu's Opposition is an email chain between Cobra and TRP. Cobra is not an  
25 agent for the owner but the general contractor acting under the terms of a contract. There is nothing  
26 to indicate the owner had knowledge. Exhibit E is a letter written long after Proimtu completed its  
27

28 <sup>3</sup> *In re Stanfield*, 6 B.R. 265, 268 (9th Cir. 1980).

1 work. The two videos, Exhibit F, prove nothing related to Proimtu, as does Exhibits G through I.  
2 Promitu had to prove that the owner had direct knowledge of its identity. There was no such proof  
3 provided. Therefore, Proimtu has not proved actual knowledge of its identity as required under  
4 *Hardy*.

5 **C. TRP is entitled to all Costs and Fees for bringing the Action to Expunge the Lien**  
6 **NRS 108.2275(6) provides:**

7 If, after a hearing on the matter, the court determines that:

8 (a) The notice of lien is frivolous and was made without reasonable cause,  
9 the court shall make an order releasing the lien and awarding costs and reasonable  
attorney's fees to the applicant for bringing the Petition.

10 Therefore, should TRP prevail, then it respectfully request its attorney fees and costs incurred.

11 **III. CONCLUSION**

12 Plaintiff respectfully requests, pursuant to NRS 108.2275, that the mechanic's lien Proimtu  
13 wrongfully recorded against the Real Property be expunged for the following reasons:

- 14 1. Promitu contracted with TRP to provide skilled work for heliostat erection on the Crescent  
15 Dunes Solar Project.
- 16 2. Proimtu recorded a lien without complying with NRS 108.245 by providing a notice of right  
17 to lien.
- 18 3. Promitu has failed to establish substantial compliance with NRS 108.245.
- 19 4. Proimtu has failed to establish that any owner had actual knowledge of its identity prior to it  
20 performing work or within 31 days of when it last performed work
- 21 5. Plaintiffs also request reasonable attorney fees and costs be awarded, pursuant to NRS  
22 108.2275(6).

23 DATED: February 3, 2015


PINTAR ALBISTON LLP

24  
25 By: Becky A. Pinta  
26 Becky A. Pinta, Esq., NSB # 7867  
27 Bryan L. Albiston, Esq., NSB # 12679  
28 6053 S. Fort Apache Rd. #120  
Las Vegas, Nevada 89148  
Attorney for Petitioner TRP INTERNATIONAL, INC.

**CERTIFICATE OF SERVICE**

The undersigned, an employee of the law firm of PINTAR ALBISTON LLP, hereby certifies that on February 3, 2015, she served a copy of the foregoing **Reply to Opposition to Petition to Expunge Lien** by placing said copy in an envelope, postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

Christopher H. Byrd, Esq.  
FENNEMORE CRAIG JONES VARGAS  
300 S. Fourth St., Suite 1400  
Bank of America Plaza  
Las Vegas, NV 89101  
cbyrd@fclaw.com

  
An employee of  
PINTAR ALBISTON LLP



1 Becky A. Pinter, Esq.  
Nevada State Bar # 7867  
2 Bryan L. Albiston, Esq.  
Nevada State Bar # 12679  
3 PINTAR ALBISTON LLP  
6053 S. Fort Apache Road, Suite 120  
4 Las Vegas, Nevada 89148  
(702) 685-5255  
5 (702) 202-6329 fax  
BPinter@beckypinterlaw.com  
6 BAlbiston@beckypinterlaw.com

7 Attorneys for Plaintiff  
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**

**NYE COUNTY, NEVADA**

11 TRP INTERNATIONAL, INC., a foreign  
12 corporation,

13 Petitioner,

14 v.

15 PROIMTU MMI LLC, a Nevada limited liability  
16 company,

Respondent.

Case No.: CV-36431  
Dept.: I

**DISCLOSURE OF SUPPLEMENTAL  
DOCUMENTS TO SUPPORT THE  
PETITION TO EXPUNGE**

Hearing Date: February 12, 2015  
Hearing Time: 10 am

17 COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their  
18 attorneys of record, the law firm of PINTAR ALBISTON LLP and files the attached invoices from  
19 Proimtu MMI LLC to support its Petition to Expunge.  
20

21  
22 DATED: February 12, 2015

PINTAR ALBISTON LLP

23  
24 By: Becky A. Pinter

25 Becky A. Pinter, Esq., NSB # 7867  
26 Bryan L. Albiston, Esq., NSB # 12679  
27 6053 S. Fort Apache Rd. #120  
28 Las Vegas, Nevada 89148  
Attorney for Petitioner TRP INTERNATIONAL, INC.

050109/13



EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**

Name: PROIMTU MMI LLC  
4600 E. WASHINGTON STREET,  
SUITE 300 City, State Zip: PHOENIX, AZ, 85034  
Tfno: +34 902 215935 Fax: +34 902 215936  
info@grupomara.com  
www.grupomara.com

Invoice

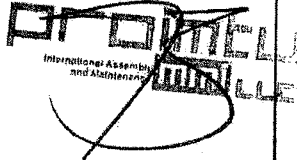
13F00013

**INVOICE****Cliente**

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 13-may-13  
Order \_\_\_\_\_  
Code 6113  
N/Reference \_\_\_\_\_

| Quantity | Description   |      | Amount   |
|----------|---|------|----------|
| 500      | Suministro de un depósito de 500 galones de Gasoil.<br>Galones Diesel                 | 4,18 | 2.087,50 |
|          | Según certificación anexa.<br><br>Proyecto: 9013-Crescent Dunes Solar Energy Project. |      |          |



|   |            |
|---|------------|
| Contract Billing Subtotal                         | \$2.087,50 |
| Sales Tax   |            |
| Before PPB Subtotal                               | \$2.087,50 |
| Estimated Interest Rate of Bank Discount (PPB) 0% |            |
| Final Total                                       | \$2.087,50 |

BANK TRANSFER. 90 D.F.F. NEVADA BANK: 122400779 048 2015443 0151



070176-13



EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**  
Name: PROIMTU MMI LLC  
4600 E. WASHINGTON STREET,  
SUITE 300 City, State Zip: PHOENIX, AZ, 85034  
Tfno: +34 902 215935 Fax: +34 902 215936  
info@grupomara.com  
www.grupomara.com

Invoice 13F00022

**INVOICE****Cliente**

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 28-jun-13  
Order  
Code 6113  
N/Reference

| Quantity  | Description   | Amount                      |
|---|---|-----------------------------|
| 2   | CERTIFICATION<br>Certificated Period: 01/05/13 a 31/05/13                                     | \$908.797,09                |
|   | Discount Avance Production start<br>( \$400.000) to discount per unit of heliostat<br>mounted | -\$40.443,37                |
|   | Discount for broken facets<br>Compensation for new contract extension                         | -\$4.500,00<br>-\$19.190,00 |
|   | Crescent Dune Solar<br>Tonopah Solar  |                             |
|   | Project: 9013-Crescent Dunes Solar<br>Energy Proje.   |                             |
| Contract Billing Subtotal                         |   | \$844.663,72                |
| Retention 5%                                      |   | \$42.233,19                 |
| Before PPB Subtotal                               |   | \$802.430,53                |
| Estimated Interest Rate of Bank Discount (PPB) 0% |   |                             |
| Final Total                                       |   | \$802.430,53                |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



**FORM OF CONDITIONAL LIENWAIVER**

**CONDITIONAL WAIVER AND RELEASE  
UPON PAYMENT**

Property Name: Tonopah Solar Project Engineering, Procurement and Construction Agreement

Property Location: near Tonopah, Nevada

Undersigned's Customer: Tonopah Solar Energy, LLC

Invoice/Payment Application Number: [13F00021 13F00022]

Payment Amount: \$[805 460.53]

Payment Period: [ ] to [ ]

Upon receipt by the undersigned of a check (or other deposit of funds into an account designated by the undersigned) in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release, and the undersigned shall be deemed to waive, any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only up to and including the Payment Amount or such lesser portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. Before any recipient of this document relies on it, he should verify payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of this waiver and release.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Crescent Dunes Solar Energy Project

IN WITNESS WHEREOF, the undersigned has duly caused these presents to be signed and attested by its duly authorized representative on the 25 day of June, 2013, in [CITY, STATE].

[COMPANY NAME]

Signed: [Signature]

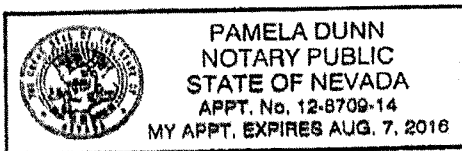
Typed Name: GABRIEL GONZALEZ GARCIA

Title: Chief Executive Manager

**ACKNOWLEDGMENT**

THE STATE OF Nevada §  
COUNTY OF Nye §

This instrument was acknowledged before me on this the 25 day of June, 2013 by Gabriel Gonzalez, Chief Executive Manager of [Contractor], a Promite MME LLC [corporation].



[Signature]  
Notary Public in and for the State of Nevada

Pamela Dunn  
Printed Name of Notary Public

My Commission Expires: Aug 7th 2013

090142-13



EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**  
Name: PROIMTU MMI LLC  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City, State Zip: HENDERSON, NV, 89052  
Tfno: +34 902 215935 Fax: +34 902 215936  
info@grupomara.com  
www.grupomara.com

Invoice 13F00029

**INVOICE****Cliente**

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 28-ago-13  
Order  
Code 6113  
N/Reference

| Quantity | Description   | Amount                      |
|----------|---|-----------------------------|
|          | 4 CERTIFICATION<br>Certificated Period: 07/01/2013 to 08/22/2013                              | \$853.413,45                |
|          | Discount Avance Production start<br>( \$400.000) to discount per unit of heliostat<br>mounted | -\$30.850,80                |
|          | Discount Broken facets<br>Start avance production   | -\$4.522,68<br>-\$63.948,92 |
|          | Proyect: 9013-Crescent Dunes Solar<br>Energy Projeet.   |                             |
|          | Crescent Dune Solar<br>Tonopah Solar  |                             |
|          | <br>EIN: 99-0375700   |                             |

|   |              |
|---|--------------|
| Contract Billing Subtotal                         | \$754.291,25 |
| Retention 5%                                      | \$37.714,56  |
| Before PPB Subtotal                               | \$716.576,69 |
| Estimated Interest Rate of Bank Discount (PPB) 0% |              |
| Final Total                                       | \$716.576,69 |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



CERTIFICACION

Certificación: 4  
 Periodo certifica: 01/07/2013 22/08/2013  
 Cod. de obra: 0113  
 PROYECTO: CRESCIENT DUNES SOLAR - TONOPAH SOLAR

PROIMTU MM LLC  
 2365 W HORIZON RIDGE PARKWAY #200  
 HENDERSON, NV 89052

TRP INTERNATIONAL INC  
 1127 S. Main Street  
 Tonopah 89419 NV, Inland States

| Código         | Ud | Descripción                              | Presup.   | Pres. origen | Pres. período | Pres. origen    | Pres. Anterior  | Pres. período |
|----------------|----|--|-----------|--------------|---------------|-----------------|-----------------|---------------|
| C.01           | Ud | Montaje de Paredes de 15% O Principal    | 126.45 \$ | 1.390        | 725           | 175.765.50 \$   | 84.086.25 \$    | 91.676.25 \$  |
| C.02           | Ud | Montaje de helioestatos                  | 843.00 \$ | 2.212        | 796           | 1.864.710.00 \$ | 1.194.531.00 \$ | 670.185.00 \$ |
| C.03           | Ud | Ampliación de Control principal          | 115.16 \$ | 2.212        | 796           | 254.733.92 \$   | 163.161.72 \$   | 91.562.20 \$  |
| C.04           | Ud | Adelanto inicio producción ( 400.000 \$) | -34.85 \$ | 2.212        | 796           | -85.281.03 \$   | -54.631.33 \$   | -30.650.00 \$ |
| C.05           | Ud | Adelanto inicio producción *             | -88.06 \$ | 340          | 51            | -30.694.60 \$   | -21.971.92 \$   | -4.922.68 \$  |
| C.06           | Ud | Adelanto inicio producción ( 300.000 \$) | -28.91 \$ | 2.212        | 2.212         | -63.048.92 \$   | 0.00 \$         | -63.048.92 \$ |
| SUMA           |    |  |           |              |               | 2.116.389.97 \$ | 1.305.596.72 \$ | 754.281.25 \$ |
| RETENCIONES 2% |    |  |           |              |               |                 |                 | 37.714.56 \$  |
| RESTA          |    |  |           |              |               |                 |                 | 716.576.69 \$ |

\* Pagar de facturas pendiente de confirmación

Tonopah a 05 de Septiembre de 2013

Conforme:  
 Antonio Pérez Barrena  
 Jefe de Obra Proimtu MM

Conforme:  
 Jaime Fernández Menéndez  
 Jefe de Obra de TRP INTERNATIONAL INC

**FORM OF CONDITIONAL LIEN WAIVER**

**CONDITIONAL WAIVER AND RELEASE  
UPON PAYMENT**

Property Name: Tonopah Solar Project Engineering, Procurement and Construction Agreement

Property Location: near Tonopah, Nevada

Undersigned's Customer: Tonopah Solar Energy, LLC

Invoice/Payment Application Number: [ 13F00029 ]

Payment Amount: \$[ 716,576.69 ]

Payment Period: [ 08/28/2013 ] to [ ]

Upon receipt by the undersigned of a check (or other deposit of funds into an account designated by the undersigned) in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release, and the undersigned shall be deemed to waive, any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only up to and including the Payment Amount or such lesser portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. Before any recipient of this document relies on it, he should verify payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, material men and suppliers for all work, materials or equipment that are the subject of this waiver and release.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Crescent Dunes Solar Energy Project

IN WITNESS WHEREOF, the undersigned has duly caused these presents to be signed and attested by its duly authorized representative on the 12 day of SEPTEMBER, 2013, in [CITY, STATE].

[COMPANY NAME]

Signed: [Signature]  
Typed Name: GABRIEL GONZALEZ GARCIA  
Title: CHIEF EXECUTIVE MANAGER

**ACKNOWLEDGMENT**

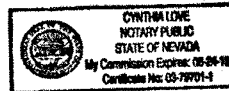
THE STATE OF Nevada §  
COUNTY OF Clark §

This instrument was acknowledged before me on this the 12 day of September 2013, by Gabriel Gonzalez Garcia of [Contractor], a Proprietorship [corporation].

[Signature]  
Notary Public in and for the State of Nevada

Cynthia Love  
Printed Name of Notary Public

My Commission Expires: 06/24/2015





EIN: 99-0375700

Registration number: C20121012-0954

**PROIMTU MMI LLC**

Name: PROIMTU MMI LLC

4600 E. WASHINGTON STREET.

SUITE 300 City, State Zip: PHOENIX, AZ, 85034

Tfno: +34 902 215935 Fax: +34 902 215936

info@grupomara.com

www.grupomara.com

Invoice

13F00036

**INVOICE**

**Cliente**

|         |                       |         |        |
|---------|-----------------------|---------|--------|
| Name    | TRP Internacional INC |         |        |
| Address | 1137 s, Main Street   |         |        |
| Town    | Tonopah               | State   | Nevada |
| EIN     | 45-5312356            | Cp..... | 89049  |

|             |           |
|-------------|-----------|
| Date        | 30-sep-13 |
| Order       |           |
| Code        | 6113      |
| N/Reference |           |

| Quantity                         | Description  | Amount                |
|----------------------------------|--|-----------------------|
|                                  | 5 CERTIFICACION<br>Certificated Period: 07/01/2013 to 08/22/2013                             | \$1.039.491,40        |
|                                  | Discount Avance production start<br>(\$400,000) to discount per unit of heliostat<br>mounted | -\$35.161,45          |
|                                  | Discount Broken facets   | -\$3.990,60           |
|                                  | Start avance production (\$300.000)  | -\$26.365,92          |
|                                  | Installation wiring extension feet   | \$34.944,00           |
|                                  | Proyect: 9013-Crescent dunes solar<br>Energy Project.  |                       |
|                                  | Crescent Dune Solar<br>Tonopah Solar   |                       |
| <b>Contract Billing Subtotal</b> |  | <b>\$1.008.917,43</b> |
| <b>Retention 5%</b>              |  | <b>-\$50.445,87</b>   |
| <b>Subtotal</b>                  |  | <b>\$958.471,56</b>   |
| <b>Final Total</b>               |  | <b>\$958.471,56</b>   |

BANK TRANSFER 90 D.F.F. NEVADA: 122400779 048 2015443



100079/13



EIN: 99-0375700

Registration number: C20121012-0954

**PROIMTU MMI LLC**

Name: PROIMTU MMI LLC

2850 W HORIZON RIDGE PARKWAY

SUITE 200 City, State Zip: HENDERSON, NV, 89052

Tfno: +34 902 215935 Fax: +34 902 215936

info@grupomara.com

www.grupomara.com

Invoice

13F00040

**INVOICE**

**Cliente**

|         |                       |         |        |
|---------|-----------------------|---------|--------|
| Name    | TRP Internacional INC |         |        |
| Address | 1137 s, Main Street   |         |        |
| Town    | Tonopah               | State   | Nevada |
| EIN     | 45-5312356            | Cp..... | 89049  |

|             |           |
|-------------|-----------|
| Date        | 15-oct-13 |
| Order       |           |
| Code        | 6113      |
| N/Reference |           |

| Quantity  | Description  | Amount       |
|---|--|--------------|
|   | 6 CERTIFICATION<br>Certificated Period: 09/21/2013 to 10/06/2013                               | \$719.940,19 |
|   | Discount Avance Production start<br>( \$400.000 ) to discount per unit of heliostat<br>mounted | -\$27.142,17 |
|   | Discount Broken facets<br>Start avance production ( \$300.000 )                                | -\$1.330,20  |
|   | extending pedestals wiring installation  | -\$20.352,64 |
|   | Project: 9013-Crescent Dunes Solar<br>Energy Projet.   | \$6.378,00   |
|   | Crescent Dune Solar<br>Tonopah Solar   |              |
| Contract Billing Subtotal                         |  | \$677.493,18 |
| Retention 5%                                      |  | \$33.874,66  |
| Before PPB Subtotal                               |  | \$643.618,52 |
| Estimated Interest Rate of Bank Discount (PPB) 0% |  |              |
| Final Total                                       |  | \$643.618,52 |

**PROIMTU**  
International Assembly and Construction  
**DPTO. DE PRODUCCIÓN**

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



10/15/13

REVISOR DE APROBACION DE  
CANTIDADES DE ADELANTO  
A REVISAR POR PARTE DE JIM

2309013 06/04/2013  
 Cod de taxa 6113  
 PREVICITO TERRENO EM RUA SOLAR - TORREMOIN SOLAR

TRP INTERNATIONAL INC  
1137 E. Main Street  
Troy, Michigan 48060-1500

[illegible]

1102 200 00000000 000 00 00000000

சென்னை நகராட்சி கமிட்டி உறுப்பினர்  
கமிட்டி உறுப்பினர்  
கமிட்டி உறுப்பினர்

CONFIDENTIAL  
JAMES EARL RAY  
JAMES EARL RAY INTERNATIONAL INC

10/15/13

15-01-76 10:00 AM

(M7040E) DE ROELH270

4 NEW YORK FOR 00075 Jm.



EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**  
Name: PROIMTU MMI LLC  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City, State Zip: HENDERSON, NV, 89052  
Tfno: +34 902 215935 Fax: +34 902 215936  
info@grupomara.com  
www.grupomara.com

Invoice 13F00041

## INVOICE

### Cliente

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 31-oct-13  
Order \_\_\_\_\_  
Code 6113  
N/Reference \_\_\_\_\_

| Quantity  | Description   | Amount       |
|---|---|--------------|
|   | 7 CERTIFICATION   | \$840.617,16 |
|   | Certificated Period: 10/07/2013 to 10/25/2013   |              |
|   | Mounting Pedestals (15% principal contract)   | \$87.503,40  |
|   | Mounting Heliostats   | \$662.598,00 |
|   | Extending principal contract  | \$90.515,76  |
|   | Discount Avance Production start<br>( \$400.000) to discount per unit of heliostat<br>mounted | -\$30.300,30 |
|   | Discount Broken facets FLATZBETZ  | -\$2.128,32  |
|   | Discount Broken facets RIOGLÁS  | -\$2.661,96  |
|   | Start avance production ( \$300.000 )   | -\$22.723,26 |
|   | extending pedestals wiring instalation  | \$11.628,00  |
|   | Discount other works in the instalations of trp   | -\$9.849,16  |
|   | Tools 1   | -\$62.599,53 |
|   | Proyect: 9013-Crescent Dunes Solar<br>Energy Project.   |              |
|   | Crescent Dune Solar<br>Tonopah Solar  |              |
| Contract Billing Subtotal                         |   | \$721.982,63 |
| Retention 5%                                      |   | \$36.099,13  |
| Before PPB Subtotal                               |   | \$685.883,50 |
| Estimated Interest Rate of Bank Discount (PPB) 0% |   |              |
| Final Total                                       |   | \$685.883,50 |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443

**MARA**



EIN: 99-0375700  
Registration number: C20121012-0954

12 00144-13

**PROIMTU MMI LLC**  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City. HENDERSON, NV, 89052  
info@grupomara.com  
www.grupomara.com

Invoice 13F00046

**INVOICE**

**Cliente**

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 30-nov-13  
Order \_\_\_\_\_  
Code 6113  
N/Reference \_\_\_\_\_

| Quantity   | Description                                    | Amount              |
|--|--|---------------------|
|  | 8 CERTIFICATION                                | \$1.062.599,44      |
|  | Certificated Period: 10/26/2013 to 11/24/2013  |                     |
|  | Mounting Pedestals (15% principal contract)    |                     |
|  | Mounting Heliostats                            | \$934.887,00        |
|  | Extending principal contract                   | \$127.712,44        |
|  | Discount Avance Production start               |                     |
|  | ( \$400.000) to discount per unit of heliostat |                     |
|  | mounted  | -\$42.751,95        |
|  | Discount Broken facets FLATZBETZ               |                     |
|  | Discount Broken facets RIOGLÁS                 | -\$3.612,66         |
|  | Start avance production ( \$300.000 )          | -\$32.061,19        |
|  | extending pedestals wiring instalation         | \$7.986,00          |
|  | foundation repair                              | -\$3.450,00         |
|  | servocilindros repair                          | -\$28.750,00        |
|  | Osha penalty                                   | \$9.660,00          |
|  | Delta Material                                 | -\$51.859,25        |
|  | Proyect: 9013-Crescent Dunes Solar             |                     |
|  | Energy Proje.                                  |                     |
|  | Crescent Dune Solar                            |                     |
|  | Tonopah Solar                                  |                     |
| <b>Contract Billing Subtotal</b>                         |  | <b>\$917.760,39</b> |
| <b>Retention 5%</b>                                      |  | <b>\$45.888,02</b>  |
| <b>Before PPB Subtotal</b>                               |  | <b>\$871.872,37</b> |
| <b>Estimated Interest Rate of Bank Discount (PPB) 0%</b> |  |                     |
| <b>Final Total</b>                                       |  | <b>\$871.872,37</b> |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443





## CERTIFICACION

Certificación: 8  
Periodo certificado: 28/10/2013 a 24/11/2013  
Cód. de obra: 6113  
PROYECTO: CRESCEND DUNES SOLAR - TONOPAH SOLAR

PROIMTU MMI LLC  
2650 W HORIZON RIDGE PARWAY #200  
HENDERSON, NV 89052

TRP INTERNATIONAL INC  
1137 s, Main Street  
Tonopah, 89049 NV, United States

| Código         | Ud | Resumen   | Precio        | Med. origen | Med. periodo | Imp. origen     | Imp. Anterior   | Imp. periodo  |
|----------------|----|---|---------------|-------------|--------------|-----------------|-----------------|---------------|
| C.01           | Ud | Montaje de Pedestales 15% C. Principal            | 126.45 \$     | 3.751       | 0            | 474.313,95 \$   | 474.313,95 \$   | 0,00 \$       |
| C.02           | Ud | Montaje de Helicostatos                           | 843,00 \$     | 5.723       | 1.109        | 4.824.489,00 \$ | 3.829.802,00 \$ | 934.887,00 \$ |
| C.03           | Ud | Ampliación de Contrato principal                  | 115,16 \$     | 5.723       | 1.109        | 659.060,68 \$   | 531.348,24 \$   | 127.712,44 \$ |
| C.04           | Ud | Adelanto inicio producción (400.000 \$)           | -38,55 \$     | 5.723       | 1.109        | -220.621,65 \$  | -177.869,70 \$  | -42.751,95 \$ |
| C.05           | Ud | Facetas rotas * FLATZBETZ                         | -88,68 \$     | 429         | 0            | -38.043,72 \$   | -38.043,72 \$   | 0,00 \$       |
|                |    | Facetas rotas * RIOGLAS                           | -95,07 \$     | 66          | 38           | -6.274,62 \$    | -2.861,96 \$    | -3.512,66 \$  |
| C.06           | Ud | Adelanto inicio producción (300.000 \$)           | -28,91 \$     | 5.723       | 1.109        | -165.451,93 \$  | -133.390,74 \$  | -32.061,19 \$ |
| C.07           | Ud | Ampliación instalación del cableado de pedestales | 6,00 \$       | 10.156      | 1.331        | 60.936,00 \$    | 52.950,00 \$    | 7.986,00 \$   |
| C.08           | Pa | Repasos Nave perfiles **                          | -62.599,53 \$ | 1           | 0            | -62.599,53 \$   | -62.599,53 \$   | 0,00 \$       |
| C.09           | Pa | Herramientas **                                   | -9.849,16 \$  | 1           | 0            | -9.849,16 \$    | -9.849,16 \$    | 0,00 \$       |
| C.10           | Pa | Reparación de cimentaciones***                    | -3.450,00 \$  | 1           | 1            | -3.450,00 \$    | 0,00 \$         | -3.450,00 \$  |
| C.11           | Pa | Reparación de servocilindros***                   | -28.750,00 \$ | 1           | 1            | -28.750,00 \$   | 0,00 \$         | -28.750,00 \$ |
| C.12           | Pa | Sanción OSHA                                      | 9.660,00 \$   | 1           | 1            | 9.660,00 \$     | 0,00 \$         | 9.660,00 \$   |
| C.13           | Pa | Materia DELTA                                     | -51.859,25 \$ | 1           | 1            | -51.859,25 \$   | 0,00 \$         | -51.859,25 \$ |
| SUMA           |    |   |               |             |              | 5.441.559,77 \$ | 4.523.799,38 \$ | 917.760,39 \$ |
| RETENCIONES 5% |    |   |               |             |              |                 |                 | 45.888,02 \$  |
| RESTA          |    |   |               |             |              |                 |                 | 871.872,37 \$ |

\*Precio de facetas pendiente de confirmación

\*\*Pendiente de revisión por PROIMTU MMI.

\*\*\*Precio pendiente de confirmación

Tonopah a 24 de Noviembre de 2013

Conforme  
Antonio Pérez Borrero  
Jefe de Obra Proimtu MMI

Conforme  
Jaime Fernández Hernández  
Jefe de Obra de TRP INTERNATIONAL INC

*m/m/13*

**PROIMTU**  
DPTO. DE PRODUCCIÓN



EIN: 99-0375700

Registration number: C20121012-0954

**PROIMTU MMI LLC**  
 2850 W HORIZON RIDGE PARKWAY  
 SUITE 200 City. HENDERSON, NV, 89052  
 info@grupomara.com  
 www.grupomara.com

Invoice

13F00048

**INVOICE**

**Cliente**

Name TRP Internacional INC  
 Address 1137 s, Main Street  
 Town Tonopah State Nevada  
 EIN 45-5312356 Cp..... 89049

Date 31-dic-13  
 Order  
 Code 6113  
 N/Reference

| Quantity   | Description  | Amount              |
|--|--|---------------------|
|  | 10 CERTIFICATION                                       | \$850.181,47        |
|  | Certificated Period: 11/25/2013 to 12/20/2013          |                     |
|  | Mounting Pedestals (15% principal contract)            | -\$28.451,25        |
|  | Mounting Heliostats                                    | \$773.031,00        |
|  | Extending principal contract                           | \$105.601,72        |
|  | Discount Avance Production start                       |                     |
|  | ( \$400.000) to discount per unit of heliostat mounted | -\$35.350,35        |
|  | Discount Broken facets FLATZBETZ                       |                     |
|  | Discount Broken facets RIOGLÁS                         | -\$4.563,36         |
|  | Start avance production ( \$300.000 )                  | -\$26.510,47        |
|  | extending pedestals wiring instalation                 | \$324,00            |
|  | foundation repair                                      |                     |
|  | servocilindros repair                                  |                     |
|  | Osha penalty   |                     |
|  | Delta Material   |                     |
|  | Proyect: 9013-Crescent Dunes Solar                     | -\$51.859,25        |
|  | Energy Projeet.  |                     |
|  | Crescent Dune Solar                                    |                     |
|  | Tonopah Solar  |                     |
| <b>Contract Billing Subtotal</b>                         |  | \$732.222,04        |
| <b>Retention 5%</b>                                      |  | \$36.611,10         |
| <b>Before PPB Subtotal</b>                               |  | \$695.610,94        |
| <b>Estimated Interest Rate of Bank Discount (PPB) 0%</b> |  |                     |
| <b>Final Total</b>                                       |  | <b>\$695.610,94</b> |

**BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443**







EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City. HENDERSON, NV, 89052  
*info@grupomara.com*  
*www.grupomara.com*

Invoice 14F00001

## INVOICE

### Cliente

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 27-ene-14  
Order  
Code 6113  
N/Reference

| Quantity  | Description   | Amount         |
|---|---|----------------|
|   | 11 CERTIFICATION  | \$1.357.712,72 |
|   | Certificated Period: 11/25/2013 to 12/20/2013           |                |
|   | Mounting Pedestals (15% principal contract)             | -\$179.179,65  |
|   | Mounting Heliostats                                     | \$1.194.531,00 |
|   | Extending principal contract                            | \$163.181,72   |
|   | Discount Avance Production start                        |                |
|   | ( \$400.000 ) to discount per unit of heliostat mounted | -\$54.625,35   |
|   | Discount Broken facets FLATZBETZ                        | -\$22.728,42   |
|   | Discount Broken facets RIOGLÁS                          | -\$14.235,84   |
|   | Start avance production ( \$300.000 )                   | -\$40.965,47   |
|   | extending pedestals wiring instalation                  |                |
|   | foundation repair                                       |                |
|   | Tools   |                |
|   | Cimentation repair                                      |                |
|   | servocilindros repair                                   |                |
|   | Osha Penalty  |                |
|   | Material Delta  | -\$51.859,25   |
|   | Parrillas refused                                       | \$1.200,00     |
|   | Proyect: 9013-Crescent Dunes Solar. Energy Projet       |                |
|   | Crescent Dune Solar                                     |                |
|   | Tonopah Solar   |                |
| Contract Billing Subtotal                         |   | \$995.318,74   |
| Retention 5%                                      |   | \$49.765,94    |
| Before PPB Subtotal                               |   | \$945.552,80   |
| Estimated Interest Rate of Bank Discount (PPB) 0% |   |                |
| Final Total                                       |   | \$945.552,80   |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



EIN: 99-0375700  
Registration number: C20121012-0954

**PROIMTU MMI LLC**  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City. HENDERSON, NV, 89052  
info@grupomara.com  
www.grupomara.com

Invoice 14F00006

## INVOICE

### Cliente

Name TRP Internacional INC  
Address 1137 s, Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 02/22/2014  
Order  
Code 6113  
N/Reference

| Quantity   | Description                                       | Amount              |
|--|---|---------------------|
|  | 12 CERTIFICATION                                  | \$381.347,68        |
|  | Certificated Period: 01/28/2014 to 02/22/2014     |                     |
|  | Mounting Pedestals (15% principal contract)       | -\$29.968,65        |
|  | Mounting Heliostats                               | \$335.514,00        |
|  | Extending principal contract                      | \$45.833,68         |
|  | Discount Avance Production start                  |                     |
|  | ( \$400.000) to discount per unit of heliostat    |                     |
|  | mounted   | -\$15.342,90        |
|  | Discount Broken facets FLATZBETZ                  |                     |
|  | Discount Broken facets RIOGLÁS                    |                     |
|  | Start avance production ( \$300.000 )             | -\$3.399,84         |
|  | Extending pedestals wiring instalation            | -\$11.506,18        |
|  | Foundation repair                                 | \$702,00            |
|  | Tools   | \$44.167,79         |
|  | Cimentation repair                                |                     |
|  | servocilindros repair                             |                     |
|  | Osha Penalty                                      |                     |
|  | Material Delta                                    |                     |
|  | Parrillas refused                                 | -\$24.802,25        |
|  | Proyect: 9013-Crescent Dunes Solar. Energy Projet |                     |
|  | Crescent Dune Solar                               |                     |
|  | Tonopah Solar                                     |                     |
| <b>Contract Billing Subtotal</b>                         |   | <b>\$341.197,65</b> |
| <b>Retention 5%</b>                                      |   | <b>\$17.059,88</b>  |
| <b>Before PPB Subtotal</b>                               |   | <b>\$324.137,77</b> |
| <b>Estimated Interest Rate of Bank Discount (PPB) 0%</b> |   |                     |
| <b>Final Total</b>                                       |   | <b>\$324.137,77</b> |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



EIN: 99-0375700

Registration number: C20121012-0954

**PROIMTU MMI LLC**  
2850 W HORIZON RIDGE PARKWAY  
SUITE 200 City. HENDERSON, NV, 89052  
info@grupomara.com  
www.grupomara.com

Invoice

14F00009

**INVOICE****Cliente**

Name TRP Internacional INC  
Address 1137 s. Main Street  
Town Tonopah State Nevada  
EIN 45-5312356 Cp..... 89049

Date 09-mar-14  
Order  
Code 6113  
N/Reference

| Quantity  | Description  | Amount       |
|---|--|--------------|
|   | 13 CERTIFICATION                                       | \$572.979,68 |
|   | Certificated Period: 01/28/2014 to 02/22/2014          |              |
|   | Mounting Pedestals (15% principal contract)            | -\$75.617,10 |
|   | Mounting Heliostats                                    |              |
|   | Extending principal contract                           | \$604.114,00 |
|   | Discount Avance Production start                       | \$68.865,68  |
|   | ( \$400.000) to discount per unit of heliostat mounted | -\$23.052,90 |
|   | Discount Broken facets FLATZBETZ                       |              |
|   | Discount Broken facets RIOGLAS                         | -\$5.808,06  |
|   | Start avance production ( \$300.000 )                  | -\$17.288,18 |
|   | Extending pedestals wiring instalation                 | \$126,00     |
|   | Foundation repair                                      |              |
|   | Tools  |              |
|   | Cimentation repair                                     |              |
|   | servocilindros repair                                  |              |
|   | Osha Penalty   |              |
|   | Material Delta   |              |
|   | Parrillas refused                                      |              |
|   | Proyect: 9013-Crescent Dunes Solar. Energy Projeot     |              |
|   | Crescent Dune Solar                                    |              |
|   | Tonopah Solar  |              |
| Contract Billing Subtotal                         |  | \$451.339,44 |
| Retention 5%                                      |  | \$22.566,97  |
| Before PPB Subtotal                               |  | \$428.772,47 |
| Estimated Interest Rate of Bank Discount (PPB) 0% |  |              |
| Final Total                                       |  | \$428.772,47 |

BANK TRANSFER 90 D.F.F. NEVADA BANK: 122400779 048 2015443



FILED

2015 DEC -4 A 11:54

Debra L. Melton

CASE NO. CV-36431

Defendant. )

OF

BEFORE THE HONORABLE KIMBERLY A. WANKER

HELD ON FEBRUARY 12, 2015

PAHRUMP, NEVADA

FOR THE PLAINTIFFS: BECKY PINTAR, ESQ.

ALSO PRESENT:

PETER C. BROWN, ESQ. (LPR)

GLENN MEIER, ESQ. (COBRA, Tonopah Solar  
Energy, LLC)

MARC WRAY, ESQ. (Mt Grant Electric)

ERIC D. ZIMBELMAN, ESQ. (LPR, Can-Am)

REPORTED BY: SARA BERNSTEIN

Veritext Legal Solutions  
877-955-3855

1 PAHRUMP, NEVADA, FEBRUARY 12, 2015

2 11:26 A.M.

3

4 \* \* \* \* \*

5 (Audio begins mid-sentence)

6 THE COURT: -- here a few months ago  
7 and it was the first chance I had to meet  
8 with the paper to discuss our drug court  
9 program. So that's why I'm running a  
10 little bit late this morning.

11 I have been here. I actually left  
12 here at about 5 this morning so -- and  
13 was back by 8 so we have three things on  
14 the calendar but I want to give you an  
15 update, Counsel, as to what's going on.  
16 And I guess we need everybody come up and  
17 tell me who they are today and make their  
18 appearances for the record.

19 MR. MEIER: Glenn Meier on behalf of  
20 the COBRA defendants and TSE.

21 THE COURT: Okay.

22 MR. ZIMBELMAN: Good morning, Your  
23 Honor. Eric Zimbelman on behalf of LPR  
24 and Can-Am.

25 THE COURT: Okay.

Page 2

1 MS. PINTAR: Becky Pintar on behalf  
2 of TRP International.

3 THE COURT: Okay.

4 MR. BROWN: Peter Brown on behalf of  
5 LPR.

6 THE COURT: Okay.

7 MR. MEACHAM: Steven Meacham on  
8 behalf of Helix Electric and Conti  
9 Electric.

10 THE COURT: Okay.

11 MR. LYNN: Good morning, Your Honor.  
12 Thomas Lynn on behalf of Team Industrial  
13 Services.

14 THE COURT: Okay.

15 MR. WIRTHLIN: Good morning.  
16 Brenoch Wirthlin on behalf of Proimtu MMI  
17 LLC.

18 THE COURT: Okay.

19 MR. ALBREGTS: My turn?

20 Good morning, Your Honor. Jeff  
21 Albregts on behalf of Maui One  
22 Excavating.

23 THE COURT: Okay.

24 MR. WRAY: Good morning, Your Honor.  
25 My name is Mark Wray. I represent Mt

1 Grant Electric.

2 THE COURT: Okay. This is what  
3 we're going to do this morning. First  
4 thing I'm going to do is give you an  
5 update. We finally got a call this --  
6 I've been up here since Monday, working  
7 in Northern Nevada. And we have been on  
8 and on and on the senior judge program.  
9 We finally have a senior judge. They  
10 contacted Jerry yesterday afternoon. I  
11 was in Hawthorne yesterday, hearing  
12 cases.

13 So it's my understanding that Washoe  
14 County -- former Washoe County District  
15 Court Judge Steven Elliott has been  
16 assigned as the senior judge in this case  
17 so he will be taking over these case  
18 files. So I want to bring that to  
19 everyone's attention first.

20 Second, what I want to do -- and --  
21 and one of the things in communicating  
22 with the senior judge program is we told  
23 them that -- the dates that we had  
24 previously set. We wanted somebody  
25 available as of February 23rd and I had

Page 4

1 set some dates. So I -- that was the  
2 urgency. I didn't want them to assign it  
3 to a senior judge.

4 Apparently, senior judges have the  
5 life of luxury because three of them are  
6 in Hawaii and one of them was in India  
7 and I guess Mr. Elliott was in India and  
8 he decided if he could survive there, he  
9 could survive in Tonopah. So that's the  
10 good news here.

11 Now with that, there are a couple  
12 things I want to address today.  
13 Obviously, one is case management. The  
14 second thing is I think there's a matter  
15 that I think will be very easy to hear  
16 and we can dispose of probably pretty  
17 quickly. And that's the CV-36431, TRP  
18 International v. -- I'm thinking it's  
19 Priomtu MMI --

20 MS. PINTAR: Pretty close.

21 THE COURT: -- LLC.

22 MS. PINTAR: Yes.

23 THE COURT: And I see that we're set  
24 up. Is that for this case?

25 MALE SPEAKER: It is, Your Honor.



1 MS. PINTAR: It is.

2 MALE SPEAKER: Yes.

3 THE COURT: Okay, why don't we hear  
4 that first? And before, Counsel, you  
5 begin, I have reviewed the pleadings and  
6 I have a question. I have a question for  
7 both of you. And that -- let's see. My  
8 understanding is we've got two Spanish  
9 corporations who are both contractors in  
10 Nevada. And this is a contract between  
11 the two of them.

12 MS. PINTAR: Correct, Your Honor.

13 THE COURT: Okay. I want to ask you  
14 about the provisions of the contract,  
15 specifically paragraph 34. And in  
16 paragraph 34 of that contract, it says,  
17 "Should any issue, dispute, or  
18 disagreement arise, at any time between  
19 the contractor and the subcontractors" --  
20 so, between TRP International and  
21 Proimtu -- "with regard to the contract,  
22 its application, or interpretation, the  
23 party holding itself to have been  
24 affected shall immediately serve written  
25 notice on the other of the existence of

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1 that issue, dispute, or disagreement,  
2 expressing its argumentation and  
3 including the documentation which the  
4 party considers enough to support its  
5 arguments. Should the issue not be  
6 resolved by the parties within a thirty-  
7 day period, they agree to submit the  
8 matter before arbitration in law, waiving  
9 any other legal forum to which they might  
10 have been entitled and undertaking to  
11 fulfill the arbitration award as issued.  
12 Submission of the dispute between the  
13 parties for arbitration shall not entitle  
14 either of them to suspend performance of  
15 their obligation under the terms of the  
16 contract."

17 The next -- oh -- and it goes on on  
18 the next page. "Arbitration in law shall  
19 be performed in Madrid, in the Spanish  
20 language, and under Spanish law, and  
21 according the rules of the Civil and  
22 Mercantile Court of Arbitration, to whom  
23 is entrusted the administration of the  
24 arbitration and the appointment of the  
25 sole arbiter. Likewise, the parties

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1 expressly agree that the arbitral  
2 decision will be compulsory for the  
3 parties. It goes on to say, in Section  
4 35, the contract, throughout its scope of  
5 application, shall be governed by Spanish  
6 law and be interpreted in accordance  
7 therewith."

8 And it goes on to say, "on a  
9 subsidiary basis to the arbitration  
10 agreements established, the contractor  
11 and the subcontractor expressly agree to  
12 be bound by the jurisdiction of the  
13 courts of Madrid, expressly waiving any  
14 other legal forum or domicile to which  
15 they may have been entitled."

16 So my question is why are we here?

17 MS. PINTAR: Well, if I may, Your  
18 Honor --

19 THE COURT: Yes.

20 MS. PINTAR: Once they recorded the  
21 lien, I think that we had to argue it  
22 under Nevada law. Now, the lien  
23 obviously attaches to the property and  
24 now the owner is involved.

25 So we felt it was important -- and

1 we absolutely agree with this and TRP  
2 International absolutely submits to the  
3 courts of Spain as the correct  
4 jurisdictional issue. But once we had  
5 the lien, now we have the owner involved,  
6 we have the general contractor involved  
7 and so we believed that we had to bring  
8 this action to get rid of the lien so now  
9 we can invoke this provision if --  
10 because right now, there's not a  
11 dispute -- well, there's a dispute, but  
12 there's not a legal case between Proimtu  
13 and TRP International in the courts thus  
14 far.

15 THE COURT: Well, let me bring that  
16 up. There is an action because I've had  
17 a lien filed and the question I have for  
18 Proimtu is what makes you think that you  
19 could file that lien based upon that  
20 said, this is a dispute over the  
21 contract -- of this contract. And it  
22 looks very clear to me that if it's a  
23 dispute, that it's handled in Spain,  
24 under Spain's law.

25 And my question is why then, based

1 upon the language I just read, would you  
2 think that you would be entitled to go  
3 and file a lien -- which is based upon  
4 this contract -- here in the Nevada  
5 courts?

6 MS. PINTAR: And I'll, of course,  
7 defer to --

8 THE COURT: Yes.

9 MS. PINTAR: -- their counsel.

10 THE COURT: That's the sixty-four  
11 dollar question for me.

12 MR. WIRTHLIN: Certainly, Your  
13 Honor. If I could address that --

14 THE COURT: Please.

15 MR. WIRTHLIN: -- very briefly. I  
16 don't believe -- and I don't believe it's  
17 been argued that this arbitration  
18 provision in any way limits the  
19 applicability of Nevada law. It -- in  
20 terms of performance under the contract,  
21 TRP's requirement to pay Proimtu and  
22 Proimtu's right to protect itself under  
23 payment -- for that payment.

24 Yes, this provision does state if  
25 there's a dispute about the contract, we

1 can go and we can go to Spain and we can  
2 resolve it there. But it doesn't in any  
3 way prohibit Proimtu from saying, hey,  
4 TRP was supposed to pay us; we did the  
5 work. There's no dispute about that.  
6 We're entitled to avail ourselves of  
7 Nevada law, where the project is, where  
8 the contract was performed, and where we  
9 did the work.

10 So I would submit -- I mean,  
11 certainly, we're willing to submit  
12 briefing if the Court would prefer that  
13 because I don't believe that issue has  
14 been raised. But I don't know that  
15 there's any provision in this contract  
16 that in any way prohibits Proimtu from  
17 availing itself of Nevada law.

18 THE COURT: Oh, I disagree and I'm  
19 going to read you the specific section --

20 MR. WIRTHLIN: Okay, okay.

21 THE COURT: -- where it comes in.

22 It says, "waiving any other legal  
23 forum to which they might have been  
24 entitled". So, I think that you're  
25 absolutely right that had that provision

1 not been in there, you might have been  
2 able to avail yourself under Nevada law  
3 but I think the contract is very clear.

4 And I want to know why you're here  
5 and I'm surprised that that wasn't  
6 addressed but I do read the documents.  
7 That's one of the reasons why I needed to  
8 bring a senior judge in because I  
9 simply -- this is a fascinating case to  
10 me and I wish I could read and be  
11 prepared with every single document but  
12 the reality is we have such a heavy  
13 docket here. And in addition, I run the  
14 Pahrump Drug Court and the Tonopah Drug  
15 Court and I'm -- Monday, I'm spending  
16 preparing -- I have a six-day criminal  
17 jury trial that's starting. So I just  
18 simply don't have the time but that's why  
19 I wanted to have the opportunity to read  
20 these documents. But I'm not sure that I  
21 agree with your interpretation.

22 MR. WIRTHLIN: Certainly.

23 Your Honor, it's been brought to my  
24 attention -- and you're right it wasn't  
25 brought out in the briefing at all. We

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1 didn't address it. We'd be happy to do  
2 that.

3 THE COURT: But you attached it as  
4 an exhibit --

5 MR. WIRTHLIN: The contract --

6 THE COURT: -- the parties  
7 (indiscernible) me to read.

8 MR. WIRTHLIN: The contract was,  
9 that's correct.

10 But, Your Honor, as 108.2457 -- I'm  
11 just reading Paragraph 1 here. "Any term  
12 of a contract that attempts to waive or  
13 impair the lien rights of a contractor,  
14 subcontractor, or supplier is void."

15 MS. PINTAR: Well --

16 THE COURT: And --

17 MR. WIRTHLIN: And I don't think the  
18 forum -- you know, in other words, if  
19 we're discussing the forum, where we're  
20 going to resolve the issue, frankly, I  
21 think that's TRP's issue. They brought  
22 this action here so if anyone's in  
23 violation of that provision, it's them.

24 THE COURT: Well, they brought it  
25 because you filed the lien.



1 MR. WIRTHLIN: Right.

2 MS. PINTAR: And --

3 MR. WIRTHLIN: But that provision  
4 does not prevent us from filing that  
5 lien. And Nevada law says any  
6 provision -- even if it were to be  
7 interpreted that way, which it does not  
8 specifically say we waive any lien  
9 rights. It simply says as far as a forum  
10 selection for the arbitration that is  
11 discussed in that provision -- but  
12 anything that impairs our lien rights is  
13 void under Nevada law, Your Honor.

14 THE COURT: Well --

15 MS. PINTAR: And let me just point  
16 out though, if it's not a valid lien,  
17 then it can't invoke the lien law so then  
18 we're back to square one. And I know  
19 that provision that you can't waive any  
20 lien rights. And that's why I brought  
21 the petition to expunge the lien because  
22 now we're applying Nevada law and we're  
23 asking this Court to find it was not a  
24 valid lien.

25 So now, they can't -- now, this

1 provision comes back into play and they  
2 can't invoke 108. -- what was it -- 2457  
3 that says you can't waive jurisdiction of  
4 Nevada --

5 MR. WIRTHLIN: Your Honor, I  
6 think --

7 MS. PINTAR: -- if this Court finds  
8 it's not a valid lien.

9 MR. WIRTHLIN: I think that's a  
10 circular argument. I think if that were  
11 the case, they have waived any right to  
12 claim that this forum is not proper by  
13 bringing this action here. Nevada law  
14 says -- even if this contract does say  
15 that we cannot invoke our lien rights,  
16 which it doesn't. It says "forum  
17 selection".

18 But even if it said that -- I  
19 understand your position. Even if it said  
20 that, they have waived that by bringing  
21 this action and as counsel said, if it's  
22 not a valid lien, well, that presupposes  
23 a determination that it's not a valid  
24 lien. We have that valid -- we have the  
25 right to lien the property and we did

1     that.   We would submit that it is a valid  
2     lien.

3           THE COURT:   Well let me ask you  
4     this.   If the contract says you're saying  
5     that you can't waive any of these lien  
6     law --

7           MS. PINTAR:   Um-hum.

8           THE COURT:   And I'm not familiar  
9     with the statute; I will go look at it.  
10    But what I'm saying is do you even get  
11    there?

12          MS. PINTAR:   That's -- exactly.

13          THE COURT:   Because you've got a  
14    contract between two -- you've got an  
15    agreement and the agreement just doesn't  
16    say the forum.   It says how you're going  
17    to handle disputes.   It says that it -- I  
18    read this provision to mean any issue.  
19    It says, "should any issue, dispute, or  
20    disagreement arise at any time between  
21    the contractor and the subcontractor with  
22    regard to the contract" and that's what  
23    you've got.

24          MS. PINTAR:   And --

25          THE COURT:   You've got -- you've had

1 this dispute and as a result of this  
2 disputer, you went and filed a lien. And  
3 now we've got TRP trying to expunge the  
4 lien.

5 MS. PINTAR: Well -- and, Your  
6 Honor, to complicate -- and the reason we  
7 had to do this is the lien has now been  
8 bonded around so there's a bond out  
9 there. The lien's been bonded around.

10 However, COBRA, which is the general  
11 contractor, has withheld payment from TRP  
12 because of this lien. So we had no  
13 choice -- and we didn't waive anything.  
14 We did not waive because by our argument,  
15 a petition is a very limited action.  
16 It's to get rid of an invalid lien that  
17 we had no choice but to invoke Nevada law  
18 on the preliminary notice to try to get  
19 rid of this lien so that we can go back  
20 to the contract and there's a dispute  
21 between these parties.

22 Proimtu is the one that brought the  
23 owner into this, recorded the lien, and  
24 then we were compelled -- and especially,  
25 we have a bond now there and we're

1 withholding three-and-a-half million  
2 dollars that TRP can't even pay to  
3 Proimtu because it's being withheld from  
4 COBRA, the general contractor.

5 So we didn't waive anything. This  
6 was a very limited action. All it is, is  
7 to get rid of the lien that we consider  
8 an invalid lien to begin with. We  
9 couldn't, obviously, litigate that in  
10 Spain and we couldn't litigate something  
11 when there's a bond posted here in Nevada  
12 for this project.

13 MR. WIRTHLIN: Your --

14 THE COURT: Okay.

15 MR. WIRTHLIN: Your Honor, I would  
16 submit that TRP can't have it both ways.  
17 Either this provision limits them to  
18 Spanish law in a Spanish forum, in which  
19 case they waive their right to claim that  
20 Nevada law doesn't apply by bringing this  
21 action or it doesn't. And if it doesn't,  
22 then we're here before the Court on their  
23 motion to expunge the lien and to address  
24 the merits.

25 Now, one thing I would say is this

1 issue was not raised in the briefing. I  
2 would've --

3 THE COURT: It wasn't. I raised it  
4 from reading the --

5 MR. WIRTHLIN: I understand, Your  
6 Honor.

7 THE COURT: -- document.

8 MR. WIRTHLIN: I would request that  
9 Proimtu -- if the Court wants to decide  
10 on that issue, I would request that  
11 Proimtu be given a chance to brief that  
12 issue because it was not raised by TRP.

13 Secondly, the last thing I wanted to  
14 point out to the Court is that provision,  
15 as I read it, "should that issue not be  
16 resolved by the parties within thirty  
17 days". In other words, if you have an  
18 issue arise -- thirty days -- you can't  
19 work it out. At that point, then you  
20 submit to Spanish arbitration.

21 But our lien is not affected by  
22 that. Nevada law applies. I would agree  
23 with their interpretation in terms of  
24 bringing it here. I think they probably  
25 did need to do that but again, you can't

1 have it both ways. Either Spanish law  
2 prohibits it, in which case, this action  
3 should have never been brought and it has  
4 to be dismissed or Nevada law does apply,  
5 in which case this issue needs to be  
6 decided on the merits.

7 But again, if the Court would like  
8 briefing on that, I would request that we  
9 be allowed to do that.

10 THE COURT: Well, that issue was one  
11 that caught my attention in reading  
12 through the documents. I'll hear your  
13 other arguments. I'd be happy to hear  
14 your other arguments today but I just  
15 want to bring that to the forefront  
16 because it wasn't addressed by anyone  
17 here and I had some concerns about it.

18 MR. WIRTHLIN: Your Honor, can we  
19 submit a supplemental brief on that?

20 THE COURT: I will -- I want to hear  
21 other arguments and then I probably will  
22 have that briefed.

23 MR. WIRTHLIN: Okay.

24 MS. PINTAR: All right. Thank you,  
25 Your Honor.

1           As the Court is aware, mechanics  
2   lien statute is a product of legislative  
3   intent and it's to protect contractors so  
4   they can get paid on projects, by having  
5   a secured interest in --

6           THE COURT:   Let me stop you a  
7   minute.

8           MS. PINTAR:   Yes.

9           THE COURT:   Counsel --

10          MALE SPEAKER:  I'm sorry, Your  
11   Honor.

12          THE COURT:   -- you're going to find  
13   that I find that really rude because I'm  
14   distracted by it.

15          MALE SPEAKER:  I'm sorry.

16          THE COURT:   Here's the thing.  
17   Counsel at the table, you need to be  
18   prepared when you come to court.

19          MALE SPEAKER:  Certainly.

20          THE COURT:   So if you want to submit  
21   something later, great, but I'm listening  
22   and I'm distracted.  Okay?  Thank you.

23          I'm sorry, Ms. Pintar.

24          MS. PINTAR:   Yeah.  No problem, Your  
25   Honor.  Thank you.

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1           So one of the requirements is the  
2 preliminary notice. So you can expressly  
3 put the owner on notice of who's going to  
4 be out improving their property as well  
5 as the amount of the money that they're  
6 going to be improving the property on.

7           There are some narrow exceptions.  
8 One is if you have a contract directly  
9 with the owner. Obviously, they know  
10 you're out there. The second is if you  
11 supply labor only. That is their first  
12 argument; they only supplied labor.  
13 Everything, starting with the contract,  
14 simply belies that point.

15           This was not labor only; this was  
16 Proimtu and I brought -- just yesterday,  
17 I printed out -- they are a company that  
18 does -- they come in and they do large  
19 projects. And I don't know if the Court  
20 would like to look at their website just  
21 to get --

22           THE COURT: Let me ask you  
23 something.

24           MS. PINTAR: Uh-huh?

25           THE COURT: The argument is -- on

1 the one side, is they do supplied labor.

2 MS. PINTAR: Um-hum.

3 THE COURT: That was it. But in  
4 reading the contract, I'd like to know --  
5 obviously, there were invoices -- there  
6 were payments that went back and forth.  
7 What did the invoices say? What were the  
8 invoices for?

9 MS. PINTAR: Your Honor, and I just  
10 got those yesterday and I do have the  
11 supplemental disclosure if the Court  
12 would like to look at those. I do have  
13 those right here.

14 THE COURT: What did they pay for --

15 MS. PINTAR: Yes.

16 THE COURT: -- in other words?

17 MS. PINTAR: May I approach?

18 THE COURT: Yes, please. Thank you.

19 I guess it helps you can speak  
20 Spanish or read Spanish?

21 MS. PINTAR: Yes. Well, most of  
22 it's in English but you can see as we go  
23 through these invoices, they had -- they  
24 brought -- Proimtu had to rent cranes.  
25 Basically what they did, Your Honor --

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1 and I -- and as you look through the  
2 invoices, this will support what work  
3 they did. TRP International manufactures  
4 the bases that these big mirrors go on  
5 and they were going to assemble and  
6 install them themselves. And Proimtu  
7 approached them and says, this is what we  
8 do; we install large components. These  
9 are large components. And Proimtu came  
10 in. They are a Spanish company. They  
11 also work in South Africa. And they came  
12 in with their own team, their own  
13 supervisors --

14 MALE SPEAKER: Cranes.

15 MS. PINTAR: -- and worked with TRP  
16 to assemble these stands. And they had  
17 to get equipment, including cranes. They  
18 had to get trucks because these  
19 components had to be trucked. They had,  
20 like, an assembly line. They had to be  
21 trucked from the assembly line over to  
22 the pads where they installed them. And  
23 this is all the work that Proimtu did.

24 So they had equipment out there.  
25 They had skilled laborers. In fact, if

1 you look at the last -- Exhibit 5, which  
2 is part of their argument that the owner  
3 knew they were out there. If you look at  
4 Exhibit 5 on ours, it says after the  
5 Department of Labor came in, they were  
6 originally paid general labor or rates to  
7 Proimtu. And this specifically about  
8 Proimtu. It was in the paper down in Las  
9 Vegas on November 23rd, 2014. But they  
10 routinely performed duties in skilled  
11 trades, such as ironworking, electrical  
12 work, painting or bridge crane operation.

13 THE COURT: Okay. Let me stop and  
14 ask you about that because I looked at  
15 that.

16 MS. PINTAR: Uh-huh?

17 THE COURT: So are you saying that  
18 unless it was general labor, it couldn't  
19 be labor?

20 MS. PINTAR: Well, labor is not  
21 defined. So if you simply say --  
22 probably, labor was about sixty percent  
23 of what they did. But labor is not  
24 defined in the statute.

25 So now you have to look at what is a

1 reasonable interpretation of labor on a  
2 construction site. Any contractor  
3 performs labor -- any contractor, unless  
4 they're just a material supplier, which  
5 is not a contractor. But a plumber  
6 provides labor; they also provide  
7 materials; they also provide equipment.  
8 If you look at the conditional releases  
9 that under Nevada law, it says you're  
10 releasing for work, materials, and  
11 equipment. They supplied all of that.

12 A laborer, to me, is someone -- and  
13 the Court of course, can have their own  
14 interpretation -- where bodies go out and  
15 someone like TRP says, go dig a ditch  
16 over there or go, you know, do this. But  
17 when you're getting into ironworking,  
18 crane operation, that's not just labor.

19 And they're under their supervision  
20 of -- they're not under the supervision  
21 of TRP, except through the contract.  
22 They have their own supervisors out  
23 there. They have their own management  
24 team out there, who are directing these  
25 workers. And to me, labor means that

1 another entity like TRP is directing.  
2 So, you have men; they're supplying  
3 labor. They don't get paid. They have  
4 lien rights without notifying the owner  
5 that they were out there. That's -- we  
6 don't have any other interpretation.

7 They quote the dictionary, well,  
8 what's labor. Labor is part of every  
9 construction contract, no doubt about it.  
10 But they supplied cranes -- and you can  
11 look at the invoices. They supplied  
12 cranes; they supplied trucks; they  
13 supplied equipment. So they're not just  
14 labor. Otherwise, that would eviscerate  
15 the preliminary notice requirement  
16 because any contractor could claim that;  
17 oh, it was just labor. Mostly, a general  
18 contractor really just supplies labor.  
19 They don't supply much equipment or  
20 anything; it's the subcontractors. But  
21 that's not the way the statute was  
22 written and that's not as valid  
23 interpretation of it and I think counsel  
24 knows that. This is not just labor.

25 THE COURT: Did you look at the

1 legislative history? Usually, the  
2 legislative history can --

3 MS. PINTAR: There is nothing.

4 THE COURT: -- often provide a clue  
5 as to what the legislature was  
6 thinking --

7 MS. PINTAR: Well -- and I think  
8 we --

9 THE COURT: -- where it came from --  
10 Nevada rarely comes up with something  
11 original. It usually comes from  
12 someplace else.

13 MS. PINTAR: And I think even more  
14 compelling is the Nevada State  
15 Contractors Board investigated Proimtu  
16 for doing construction without license so  
17 clearly, they recognize them as a  
18 contractor. And what --

19 THE COURT: Wait a minute. Wait a  
20 minute. I'm not sure I follow that.  
21 You're saying Nevada State Contractors  
22 Board investigates all kinds of --  
23 whether -- I mean, they look at it but  
24 you're saying because they investigated  
25 them, they assumed they were a

1 contractor?

2 MS. PINTAR: Well, labor -- if  
3 you're just supplying labor, my  
4 interpretation of the statute is you don't  
5 need a contractor's license just to  
6 supply labor. If you're just going out  
7 there and directing, you almost become  
8 like a worker.

9 So, if they're a contractor -- and  
10 everywhere in the contract, they're  
11 referred to as the subcontractor,  
12 everywhere. And I know the Court has  
13 read the contract. If you look at the  
14 types of things they were doing in the  
15 contract, clearly, this goes beyond a  
16 reasonable interpretation of labor. They  
17 had to do schedules. They had to do  
18 analysis. They supplied equipment.

19 And I'm looking on page -- you know,  
20 again, referred to as a subcontractor.  
21 Nowhere does it say they're only doing  
22 labor. They're going out -- they're  
23 using -- and if you look at their  
24 website, that's what they do. They lift  
25 heavy components for assembly in



1 different industrial-type -- like a solar  
2 plant -- construction projects.

3 So if you look at -- they had  
4 scheduling, they had organization. Labor  
5 should be very limited and this Court  
6 should interpret labor to be very limited  
7 because it is an exception to NRS Chapter  
8 108, just labor. And it even says on  
9 page 15 of 44, there's a clear price  
10 breakdown between materials and services.  
11 So they're supplying materials. They're  
12 supplying services. They're supplying  
13 skilled workers, not just laborers that  
14 are at the direction of someone else.  
15 Now, they could have had laborers as part  
16 of their group, but certainly, this is a  
17 subcontract that goes way beyond simply  
18 labor. And it -- we know they're the  
19 ones that rented cranes. There were big  
20 cranes out there.

21 Right there, that takes them out of  
22 just labor. They were supplying  
23 equipment, they were supplying skilled  
24 workers to assemble these large stands  
25 that the mirrors go on. They had to meet

1 OSHA standards, they had to have  
2 different types of insurance. All of  
3 these confirm that they were a contractor  
4 and not just a supplier of labor. And I  
5 think if the Court interpreted it to just  
6 be labor, then any contractor could fit  
7 under that exception. But it was much  
8 more than labor that they supplied, even  
9 by their own contract with TRP.

10 So I think the first argument fails.  
11 They didn't just supply labor. They  
12 don't -- shouldn't go under that small  
13 exception.

14 The next exception they have is if  
15 there was actual knowledge of the owner.  
16 And that is another narrow exception that  
17 has substantial compliance. Here, we  
18 have no compliance with the statute. We  
19 have a -- it was a large contract. You  
20 know, it's millions of dollars of a  
21 contract. The owner should know that  
22 they were out there expressly by a  
23 preliminary notice. Now their argument  
24 on actual notice is kind of convoluted  
25 and I think that's what the presentation

1 might be about. That so-and-so knew  
2 about it who was part of this, who was  
3 part of that.

4 And I've got an article that says,  
5 well, Proimtu -- they knew they were out  
6 there because of the Department of Labor  
7 investigation. Well, the Department of  
8 Labor investigation was way into the  
9 project. So when did the owner -- what  
10 actual knowledge did the owner have,  
11 that's not just imputed, and when did  
12 that knowledge arise?

13 Again, that's a very narrow  
14 exception. They quote the case; it's the  
15 Fondren. Everyone in construction knows  
16 the Fondren case, that it's substantial  
17 compliance, but there were a lot of  
18 companies out there and I don't think  
19 they get there by their second argument  
20 that they had actual notice -- that the  
21 owner had actual notice. They have  
22 nothing from the owner saying that they  
23 knew everyone was out there. Their  
24 argument is very convoluted and again,  
25 it's a weak argument. They have no

1 compliance with the preliminary notice.  
2 That's undisputed. A preliminary notice  
3 can be done at any time and it goes back  
4 thirty-one days. They didn't even do  
5 that. They waited until there was a  
6 dispute with TRP and we also attached a  
7 liquidation agreement. There was a  
8 dispute about that where TRP and Proimtu  
9 had come to an agreement about how much  
10 more they should be paid.

11 Now, counsel's argument is it  
12 doesn't meet the requirements of NRS 108.  
13 But again, if we don't have a valid lien,  
14 they didn't have to meet the requirements  
15 of NRS 108 for a release. If we don't  
16 have a valid lien, it all boils down to  
17 can they lien the property? There's a  
18 bond now but regardless, we still have  
19 the lien -- without any preliminary  
20 notice? Do they meet the labor  
21 requirement? I think the Court has to  
22 come to the conclusion they did not.  
23 This is way beyond labor. Did they meet  
24 the requirement of actual notice by the  
25 owner?

1           And the case goes on to say, not  
2   just actual knowledge but no prejudice to  
3   the owner. Well, of course there's  
4   prejudice. Now we have a 1.8 million  
5   dollar lien recorded against the  
6   property, even if the owner knew somehow  
7   Proimtu was out there. We don't know  
8   when they knew they were out there.  
9   Then, we have a lien now of 1.8 million  
10   that the owner didn't even know how much  
11   or what Proimtu was doing on this  
12   construction site. So I don't think --  
13   even if they get to actual notice, they  
14   don't get to -- there was no prejudice to  
15   the owner. Clearly, there's prejudice.  
16   The bond has now been -- or the lien has  
17   now been bonded around. That's at a  
18   substantial cost by the general  
19   contractor but again, the money is being  
20   withheld from TRP. So it is prejudice.  
21   I don't think you get to they had actual  
22   notice and all of their arguments are  
23   just weak and they don't get to the end  
24   line that they have a valid lien on this  
25   property.

1 Any questions, Your Honor?

2 THE COURT: No.

3 MS. PINTAR: Thank you.

4 THE COURT: Thank you.

5 MR. WIRTHLIN: Thank you, Your  
6 Honor.

7 Just a few quick points.

8 Preliminarily, I'd like to point out that  
9 the assertion that strict compliance with  
10 Nevada's mechanics lien statutes is  
11 required is actually inaccurate. That's  
12 a citation to a 1976 Nevada Supreme  
13 Court.

14 In fact, in 2010 in Hardy Company --  
15 which we cited -- the Nevada Supreme  
16 Court said liberal interpretation and  
17 substantial compliance with lien statutes  
18 is what's required. And the Court, in  
19 that case and also in re: Fontainebleau,  
20 discussed -- which we have set forth if  
21 the Court would like that -- discussed  
22 the remedial nature of the mechanics lien  
23 statutes.

24 I mean, the point is to protect  
25 entities such as Proimtu who come in, do

1 some work, and don't get paid. There's  
2 no dispute that the work was done. We  
3 are just not getting paid; TRP doesn't  
4 want to pay us. We understand that but  
5 that's the purpose of the mechanics lien  
6 statute and I think it's important to  
7 keep that in mind.

8 Secondly, regarding the -- I would  
9 also just like to note, preliminarily,  
10 the issue with respect to that provision  
11 that Your Honor raised in the contract,  
12 we did not get a chance to brief that.  
13 TRP raised that and we would request  
14 that -- submit that due process would  
15 require that we be given a chance to  
16 brief that, to respond to that.

17 With respect to the labor issue,  
18 Your Honor, I understand -- and I respect  
19 counsel's interpretation of that term.  
20 But I respectfully disagree and here's  
21 why. That term is not divided in the  
22 statute. Your Honor's correct; Nevada  
23 rarely does things on its own. We take  
24 things from other states that have  
25 worked. I did look at the legislative

1 history. I didn't see anything. I mean,  
2 it's -- you know, it's hard to kind of  
3 hard to sift through that and read every  
4 word, but to the extent that I was able  
5 to -- because I had the same thought that  
6 Your Honor did. There's got to be --  
7 what does labor mean in this context?  
8 But I didn't see anything that was in  
9 there.

10 And the Nevada Supreme Court in --  
11 let me get the (indiscernible) for the  
12 Court. It's Torres v. Goodyear, 317 P.3d  
13 828. The Court says, when interpreting a  
14 statute, we get words that are plain-  
15 meaning, unless attributing that meaning,  
16 would, you know, somehow obviate, you  
17 know -- unless the statute's really  
18 defines that term.

19 Now, Chapter 108 does define several  
20 terms but labor's not one of them. And  
21 actually, the Court addressed this  
22 specific issue that Your Honor raised  
23 that was argued by TRP. If it's "skilled  
24 labor", is that labor? And the Court, in  
25 Moore-Mansfield v. Indianapolis -- this



1 is the Indiana Supreme Court 101 N.E.  
2 296 -- the Court says the following, "It  
3 is not any less labor within the general  
4 meaning of the word its similar issue  
5 that it is done by a person who is fitted  
6 by special training and skill for its  
7 performance. The language quoted makes  
8 no distinction skilled and unskilled  
9 labor."

10 That's exactly the situation we have  
11 here. So what is labor? Well, labor is  
12 different than manufacturing. Labor is  
13 different than designing. The clear  
14 evidence in this case -- and I would  
15 submit the undisputed evidence makes very  
16 clear that TRP was only providing labor.  
17 We didn't design the heliostats. We  
18 didn't manufacture them. We went out  
19 there and put them up. And yes, we had  
20 to some carry some tools. We had to get  
21 some things with us but if counsel's  
22 interpretation that simply showing up and  
23 only doing labor with no tools is the  
24 only way that it can constitute labor or  
25 once someone grabs a wrench, suddenly

1     it's not labor anymore. We simply went  
2     out there. We constructed the heliostats  
3     and that's all we did. And I think --  
4     and I wasn't aware of this but I think  
5     it's important to note that originally,  
6     TRP said well, we'll put them together.  
7     And, you know, we'll manufacture them or  
8     whatever they did and we'll put them  
9     together. And they said, well, actually,  
10    that's kind of a specialized issue; let's  
11    get somebody to come in and do the labor  
12    of putting these together.

13           You see that, Your Honor, in our e-  
14    mail that we attached as Exhibit C to our  
15    motion. And that -- we had a certified  
16    translation of that e-mail. And I think  
17    that e-mail's critical in this case on  
18    the issue of labor, partly -- in large  
19    part because it's an opposing party  
20    admission. And you see back in 2012, TRP  
21    sends an e-mail -- I'll give the Court a  
22    chance to get there.

23           THE COURT: Okay. I looked at it.  
24    I just --

25           MR. WIRTHLIN: Sure.

1 THE COURT: Okay, I'm there.

2 MR. WIRTHLIN: Sure.

3 "Dear sirs" -- it's down there at  
4 the bottom.

5 THE COURT: Yup.

6 MR. WIRTHLIN: "Dear sirs" -- this  
7 is from TRP to COBRA, the general.

8 "Pursuant to that which has been  
9 established in the contract between TRP  
10 and CPI, we are requesting your  
11 authorization for contracting the company  
12 Proimtu to provide assembly-related labor  
13 services." That's what we were there  
14 for. Hey, we need somebody to go and,  
15 you know, screw together the panels and  
16 set them up on the property and Proimtu  
17 does this. We'd like to have them do  
18 that, assembly-related labor services.  
19 That's what we did.

20 I don't think it can be disputed at  
21 this point and I understand counsel's  
22 point. It's certainly inconvenient and  
23 it's a little bit of a mushy issue but  
24 when you've got TRP itself saying hey, we  
25 need somebody to perform labor; we want

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1 Proimtu to do that. It's hard for them  
2 to come back now and say, well, actually,  
3 that's not labor. We called it labor;  
4 that's what the contract says. They're  
5 just putting things together. They're  
6 not manufacturing; they're not designing.  
7 We would submit that on that issue alone,  
8 Proimtu's lien should be -- should not be  
9 expunged because, again, that's the  
10 purpose of the statute, to protect the  
11 right of those who go out and do work and  
12 are not protected.

13 Secondly, Your Honor, with respect  
14 to the issue on notice -- so in other  
15 words, if the Court were to determine,  
16 well, I don't think that's labor -- and I  
17 would submit too, at best -- from TRP's  
18 position -- there's a factual dispute.  
19 And we believe that we should -- the  
20 Court would benefit from and that we are  
21 entitled to an evidentiary hearing on  
22 what exactly took place. I did receive  
23 these documents today. I have not seen  
24 them -- this disclosure. They're in  
25 Spanish. I speak some Spanish but when

1 it comes to contracts and contractors,  
2 that's a specialized area. So we haven't  
3 even had a chance to review those.

4 With respect to the notice issue,  
5 even if the Court said, I don't think  
6 that's labor. You know, did the owner  
7 have notice? That's where, I think, we  
8 also get to the point of TRP -- excuse  
9 me, the Proimtu showing notice -- that  
10 the owner had notice several different  
11 ways.

12 First of all, back to that e-mail.  
13 I think it's critical. I know we're  
14 rehashing it but if you look back at that  
15 e-mail, again, the date -- if you go up  
16 to the top part of the e-mail, which is  
17 the response, December 3rd, 2012. COBRA  
18 responds to TRP'S e-mail about Proimtu  
19 performing assembly-related labor.

20 "Hello Ignacio, please have Proimtu  
21 complete our approval documentation."  
22 Sure, have Proimtu go out there and  
23 perform assembly-related labor on the  
24 heliostats, November 2012.

25 Now, one thing that was brought out

1 in the pleadings -- I'm sorry, in the  
2 motion practice that I do want to correct  
3 is the idea -- the assertion that the  
4 general contractor is not the agent of  
5 the owner. For purposes of Chapter 108,  
6 the general contractor is the agent of  
7 the owner. It's actually -- I've got the  
8 statute here if the Court would like to  
9 review that. And I apologize for -- NRS  
10 108.2214. I've got a -- 22104, excuse  
11 me. I have a copy of that if the Court  
12 would like to review that.

13 THE COURT: Sure, Thank you.

14 Thank you.

15 MR. WIRTHLIN: So that says agent of  
16 the owner means every architect, builder,  
17 contractor, engineer, geologist, land  
18 surveyor, lessee, miner, subcontractor,  
19 or other person having charge or control  
20 of the property, improvement, or work of  
21 improvement of the owner, or any part  
22 thereof. I think it would be very  
23 difficult to argue the general contractor  
24 did not have control of at least part of  
25 the project in this case.

1           Here, we have an e-mail. Back in  
2           2012, COBRA receives notice from TRP.  
3           Proimtu will be doing assembly-related  
4           labor, approves it, says here you go.  
5           Now, I do have a laptop set up, Your  
6           Honor, just with a --

7           THE COURT: Okay, sure.

8           MR. WIRTHLIN: -- very brief chart  
9           because to be honest with you, I was  
10          going through the interrelations of the  
11          companies and it's extremely confusing.

12          THE CLERK: Do you want it to be  
13          (indiscernible)?

14          THE COURT: Yes.

15          MR. WIRTHLIN: Okay. If we look at  
16          that chart then -- I'm sorry, I have a  
17          paper for opposing counsel. But if you  
18          look at that chart there, Your Honor,  
19          there are several ways that we get to  
20          SolarReserve -- who is the owner -- and  
21          Tonopah Solar, having notice of this  
22          project.

23          Not only does TRP specifically  
24          contact the general, COBRA Thermosolar,  
25          and say, hey, by the way, we're going to

1 have Proimtu come out and assemble these  
2 heliostats. Not only that, but COBRA  
3 ACS, who is further up the chain -- the  
4 parent company -- is a board member. We  
5 submitted that in our opposition. If you  
6 go on the other side, you've got Kevin  
7 Smith who is the CEO of SolarReserve and  
8 also a manager of Tonopah Solar; Steven  
9 Mullinnex, senior vice-president of  
10 SolarReserve, manager Tonopah Solar.

11 That leads in to the next portion of  
12 what I was going to talk about, that  
13 VEGASINC article. In that article, which  
14 counsel's correct, we did cite that. In  
15 that article, Mr. Kevin Smith said he  
16 agreed -- if you look at the last column  
17 there, of Exhibit 5, Smith said he agreed  
18 with the original job classification.  
19 Agreed with the original job  
20 classification, which was laborers and  
21 it's unfair to imply that Proimtu broke  
22 any labor laws. Difficult to see how he  
23 could have agreed with it if he wasn't  
24 aware of it. And if he was aware of the  
25 job classification, he was clearly aware



1     they were out there.

2             Now I would say that, you know, at a  
3     minimum, I think, we should be able to  
4     depose Mr. Smith. We were -- literally,  
5     we could not comply with the statutes to  
6     subpoena Mr. Smith, find out when he knew  
7     what he knew. I think the evidence is  
8     clear. And again, we've got imputed  
9     notice from the owner -- I'm sorry, from  
10    the general contractor. But I think this  
11    is key as well. Here, you have the owner  
12    CEO saying, oh, sure, I agreed with the  
13    original job classification, not after  
14    the fact, as counsel suggests. It's  
15    actually agreed with the original job  
16    classification as laborers.

17            Finally, Your Honor, to show actual  
18    notice as well, I do have a brief video  
19    and I apologize for inundating the Court  
20    with videos but hopefully, if it works  
21    right, it will only be about a minute.  
22    And a couple of things -- I'm sorry.

23            Before I approach, a couple of  
24    things I wanted to point out with respect  
25    to the video. The first is you'll see a

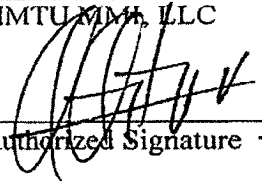
9. Terms of payment of the lien claimant's contract: In accordance with Nevada law but no later than 90 days after receipt of the invoice and the approved application.

10. That the claimant herein is entitled to a reasonable attorney's fee, collections costs, bank fees, statutory interest on the amount of this lien claim, and costs incurred in perfecting this lien claim.

11. A description of the Improvement and Land to be charged: See Exhibit "A".

In Witness Whereof, I/We have hereunto set my hand/our hands this 11<sup>th</sup> day of NOVEMBER, 2014.

666  
\_\_\_\_\_  
PROIMTUMM, LLC

By:   
\_\_\_\_\_  
Authorized Signature - Gabriel Gonzalez

STATE OF NEVADA)  
COUNTY OF CLARK)

PROINTU MMI LLC, being first duly sworn on oath according to law, deposes  
and says:

I have read the foregoing Notice of Lien claim, know the contents thereof and state the same is  
true of my own personal knowledge, except those matters stated upon information and belief,  
and, as to those matters, I believe them to be true.

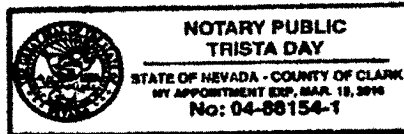
[Signature]  
Authorized Signature of Claimant - Gabriel Gonzalez

Subscribed and sworn to before me this 11<sup>th</sup> day of NOVEMBER, 2014.

[Signature]  
NOTARY PUBLIC

My Commission expires: 3-15-16

Notice of Lien  
Initials bbb



## EXHIBIT A

### (Legal Description of the Property)

Nye County Assessor Parcels: APN 012-141-01, APN 012-151-01, APN 612-141-01, APN 012-031-04, APN 012-131-03, and APN 012-131-04

AND MORE PARTICULARLY DESCRIBED BY DOCUMENTS PREPARED BY OR FOR TONOPAH SOLAR ENERGY, LLC AS FOLLOWS:

All that land situated in the County of Nye, State of Nevada, more particularly described as follows:

#### PARCEL 1:

GEN-TIE LINE (NVN-087933)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the official Plat thereof, described as follows:

Section 2: The SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the W  $\frac{1}{2}$  SE  $\frac{1}{4}$ ;

Section 11: The W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ ;

Section 14: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;

Section 15: The E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 22: The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 27: The NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$ ;

Section 28: The SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ ;

Section 33: The NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;

#### PARCEL 2:

SOLAR ENERGY PROJECT (NVN-086292)

All that property lying within Township 5 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

- Section 33: The SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the S  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;
- Section 34: The W  $\frac{1}{2}$ , the SE  $\frac{1}{4}$ , the W  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ;
- Section 35: The SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ .

All that property lying within Township 4 North, Range 41 East, M.D.B. & M., in the County of Nye, State of Nevada, according to the Official Plat thereof, described as follows:

- Section 2: Lot 4 and the W  $\frac{1}{2}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$
- Section 3: The N  $\frac{1}{2}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{2}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SW  $\frac{1}{4}$ , the N  $\frac{1}{2}$  S  $\frac{1}{2}$  SW  $\frac{1}{4}$  and the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ;
- Section 4: The NE  $\frac{1}{4}$ , the N  $\frac{1}{2}$  SE  $\frac{1}{4}$ , the E  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  SE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  SW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  NW  $\frac{1}{4}$ , the E  $\frac{1}{2}$  of Lot 4 and the NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  NW  $\frac{1}{4}$

PARCEL 4-1:

The North one Half (N  $\frac{1}{2}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) and the Southeast Quarter (SE  $\frac{1}{4}$ ) of the Southeast Quarter (SE  $\frac{1}{4}$ ) of Section 12 in Township 6 North, Range 40 East, M.D.B. & M., according to the Official Plat of said Land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel 4 of Parcel Map recorded July 25, 1980, as File No. 26731, Nye County, Nevada Records.

PARCEL 4-2:

Lots One (1) and Two (2) in the Northwest Quarter (NW  $\frac{1}{4}$ ) of Section 18, Township 6 North, Range 41 East, M.D.B. & M., according to the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel Two (2) of Parcel Map recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

Together with an easement for the purpose of installing and maintaining an irrigation well, more particularly described as follows:

Commencing at the Northeast corner of Section 13, Township 6 North, Range 40 East, M.D.B. & M.,;

Thence South 200 feet at the Trust Point of Beginning;

Continuing South for 50 feet;

Thence Westerly for 20 feet;

Thence Northerly for 50 feet;

Thence Easterly for 20 feet, at the true point of beginning.

PARCEL 4-3:

East Half (E ½) of the Northwest Quarter (NW ¼) of Section 18, Township 6 North Range 41 East, M.D.B. & M., according of the Official Plat of said land on file in the Office of the Bureau of Land Management.

Said land is also known as Parcel One (1) of Parcel Maps, recorded July 25, 1980 as File No. 26731, Nye County, Nevada Records.

PARCEL 5:

All land defined as "Servient Property," described and depicted in that certain document entitled "Grant of Generation Tie Easement" recorded September 14, 2011 as Document No. 772385, Official Records, Nye County, Nevada, being a portion of the Southeast Quarter (SE 1/3), of the Northeast Quarter (NE ¼) of Section 2, Township 5 North, Range 41 East, M.D.B. & M., according to the Official Plat thereof, EXCEPTING THEREFROM any portion conveyed to Sierra Pacific Power Company by a Deed recorded January 1, 1981 in Book 295, Page 553 as File No. 36411 of Official Records, Nye County, Nevada.

# EXHIBIT 4

# EXHIBIT 4

San José de la Rinconada (Sevilla), 15th of January 2014.

Of the one part, **D. JUAN ANTONIO MARTÍNEZ CANO**, of legal age, with Spanish nationality and with notification domicile in Johann Gutenberg 10, San José de la Rinconada (Sevilla), Identity Number 28484958-X. He intervenes in this act representing the companies **PROIMTU MMI, S.L.** with tax number B91970046 and domicile in Johann Gutenberg 10, San José de la Rinconada (Sevilla) and **PROIMTU MMI, LLC** with tax number EIN 99-0375700 and domicile in 4600 E Washington Street suite 300 Phoenix, Arizona.

Of the other part, **D. JOSÉ MANUEL RODRÍGUEZ DE LA RUZ**, of legal age, with Spanish nationality, with notification domicile in P. Ind. Ciudad del Transporte calle Doblón 5, 11591, Jerez de la Frontera- Guadalcaín, (Cadiz) and Identity Number 31335687-G. He intervenes in this act representing the companies **TECNOLOGÍA Y ROBÓTICA DE PROCESOS, S.L.** with tax number B11870706 and with notification domicile in P. Ind. Ciudad del Transporte calle Doblón 5, 11591, Jerez de la Frontera- Guadalcaín, (Cadiz) and **TRP INTERNATIONAL, INC** with tax number EIN 45-5312356 and domiciled in 1137 S. Main Street, Unit E-3, Tonopah, Nevada.

#### **BOTH PARTIES MANIFEST AND DECLARE**

I.- That **PROIMTU MMI, LLC** (hereinafter the supplier) as a consequence of the commercial relations with **TRP INTERNATIONAL, INC** (hereinafter the client) has borne a series of deviations produced regarding the main contract subscribed by both parties.

II.- That the works affected by the deviations have been done in accordance to the general agreements established in the assembly contract and they are subject to the same guaranty clauses.

III.- That taking into account that the contract is almost fulfilled (70% executed), the client and the supplier have analyzed the possible deviations to be produced until the end of the contract.

IV.- That **TECNOLOGÍA Y ROBÓTICA DE PROCESOS, S.L.**, mother company, and owner of the 100% of the shares of **TRP INTERNATIONAL, INC** and **PROIMTU MMI, S.L.**, mother company, and owner of the 95% of the shares of **PROIMTU MMI, LLC**, together with their respective affiliates, signed a transfer of credit agreement the 20<sup>th</sup> of July 2013 which allows that this payment of the liquidation of the services provided can be paid directly by **TECNOLOGÍA Y ROBÓTICA DE PROCESOS, S.L.** to **PROIMTU MMI, S.L.**



## BOTH PARTIES AGREE

That after the several claims made by the supplier, and after studying all of them, the parties had reached the agreement to fixed a global amount by which any amount that the supplier may have claimed until this date is liquidated.

Both parties, after having fulfilled more than the 70% of the project, and taking in to account the experience achieved by both parties, have been able to agree on an amount to reimburse the supplier for the deviations that may occurred in the execution of the main contract until the execution of all the works.

That both parties agree on an fixed and definitive amount of 600.000 USD that will be paid by the client to the supplier. This amount can not be increased under any circumstance, being the services provided fully paid and they will not be subject to any amount claimed by the supplier.

This amount has been given to the supplier the 12<sup>th</sup> and the 18<sup>th</sup> of December 2013, attaching to this contract a copy of the receipt.

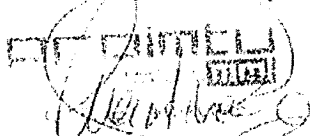
In witness whereof the parties have executed this agreement in quadruplicate at the place and on the date first above mentioned.


The supplier

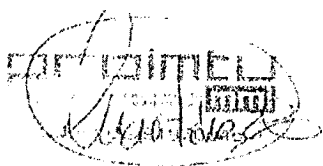
The client


PROIMTU MMI, LLC

TRP INTERNATIONAL, Inc.

  
PROIMTU MMI, S.L.

  
TECNOLOGÍA Y ROBÓTICA DE PROCESOS, SL





# EXHIBIT 5

# EXHIBIT 5

# Solar plant workers get nearly \$2 million in back pay

BY ELI SEGALL  
STAFF WRITER

Federal labor officials landed almost \$2 million in unpaid compensation for workers at a solar-panel plant near Tonopah, though a project executive says nothing underhanded occurred.

The U.S. Department of Labor said it recovered about \$1.91 million in back wages and fringe benefits for 147 workers of subcontractor Proimtu Mmi-NV LLC, which the agency said was based in Henderson and provided construction services at the Crescent Dunes Solar Energy Plant.

The 1,600-acre solar project, roughly 220 miles northwest of Las Vegas in Nye County on land leased from the U.S. Bureau of Land Management, received a \$737 million loan guarantee from the U.S. Department of Energy in fall 2011.

"The money we've recovered for these workers is not a windfall — it is their hard-earned pay that their

employer was legally obligated to pay them but did not," David Weil, administrator of the department's Wage and Hour Division, said in a news release. "Companies that benefit from federal funding must see to it that the money is used properly and that their workers are compensated according to the law."

Investigators found that from June 2013 to April 2014, Proimtu failed to pay workers the correct wages and fringe benefits for their job duties, the Labor Department said.

The company allegedly paid general laborers rates' to workers who "routinely performed duties in skilled trades such as ironworking, electrical work, painting or bridge crane operation," the department said. The workers should have been paid up to twice what they received, according to the department.

Proimtu now properly classifies its workers and pays them correctly, the agency said. The company also agreed to "raise awareness" about

wage requirements with other employers at Crescent Dunes.

Kevin Smith, CEO of project developer SolarReserve, said that as part of the federal loan guarantee, workers' pay rates had to conform with U.S. labor law and that federal officials got to approve the job classifications.

Proimtu's workers assembled heliostats, or billboard-sized computer-controlled mirrors. That job classification didn't exist, Smith said, so the subcontractor picked another one in "good faith." The workers were paid around \$30 per hour, Smith said.

According to Smith, Energy Department officials were fine with the classification, but the Labor Department, which has the final say, was not. That department said the workers should have been listed as steelworkers, and as a result, should have been paid around \$60 per hour, Smith said.

The contractors finished their

work at Crescent Dunes roughly six months ago. Smith said he agreed with the original job classification and that it's unfair to imply that Proimtu broke any labor laws.

"You're talking about a new job classification that didn't exist anywhere," he said of heliostat work.

SolarReserve, based in Santa Monica, Calif., is the majority owner of Crescent Dunes. It also has investments from two Spanish companies — construction-services firm ACS Group and banking powerhouse Banco Santander.

Construction is finished, and electricity generation is expected by the end of the year, SolarReserve spokeswoman Mary Grikas said.

The plant, with more than 10,000 heliostats, will be able to power up to 75,000 homes during peak electricity periods, according to SolarReserve.

Under a 25-year deal, the company plans to sell all electricity generated at the plant to Las Vegas-based NV Energy, Nevada's main electric utility.

**ORDR**

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Attorneys for Plaintiff  
 TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT****NYE COUNTY, NEVADA****FILED**

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 NYE COUNTY CLERK  
 BY DEPUTY

TRP INTERNATIONAL, INC., a foreign  
 corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited liability  
 company,

Respondent.

Case No.: *CV36431*  
 Dept.: *1*

**ORDER FOR HEARING ON PETITION  
TO EXPUNGE LIEN**

**PURSUANT TO NRS 108.2275, IF THE LIEN CLAIMANT FAILS TO APPEAR AT THE  
 TIME AND PLACE NOTED, THE NOTICE OF LIEN WILL BE RELEASED WITH  
 PREJUDICE AND THE LIEN CLAIMANT WILL BE ORDERED TO PAY THE  
 REASONABLE COSTS THE APPLICANT INCURS IN BRINGING THE PETITION,  
 INCLUDING REASONABLE ATTORNEY'S FEES.**

**ORDER FOR HEARING ON PETITION TO EXPUNGE LIEN**

TRP INTERNATIONAL, INC, pursuant to NRS 108.2275(3) hereby requests an order to  
 hear the Petition to Expunge Lien,

Pursuant to NRS 108.2275(3), the Court shall conduct the hearing within not less than 15  
 days or more than 30 days after the court issues the order for a hearing.

1 IT IS HEREBY ORDERED that the PETITION TO EXPUNGE LIEN will be heard on the  
2 12 day of FEBRUARY, 2015, at the hour of 10:00 A.m.

3  
4 Dated: ~~December~~ <sup>January</sup> 8, 2015.

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7 DISTRICT COURT JUDGE  
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PINTAR ALBISTON LLP

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7 Attorneys for Plaintiff  
 TRP INTERNATIONAL, INC.

8 **FIFTH DISTRICT COURT**  
 9 **NYE COUNTY, NEVADA**

11 TRP INTERNATIONAL, INC., a foreign  
 12 corporation,

Case No.: CV36431  
 Dept.: 1

13 Petitioner,

**CERTIFICATE OF SERVICE**

14 v.

14 PROIMTU MMI LLC, a Nevada limited liability  
 15 company,  
 16 Respondent.

17 The undersigned hereby certifies that on January 15, 2015, she served a copy of the  
 18 foregoing **Petition to Expunge Lien and Order for Hearing** by placing said copy in an envelope,  
 19 postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

20 Christopher H. Byrd, Esq.  
 21 FENNEMORE CRAIG JONES VARGAS  
 300 S. Fourth St., Suite 1400  
 22 Bank of America Plaza  
 Las Vegas, NV 89101  
 23 cbyrd@fclaw.com

24 DATED: January 15, 2014.

PINTAR ALBISTON LLP

26 By: 

27 Becky A. Pintar, Esq., NSB # 7867  
 28 Attorney for Petitioner TRP INTERNATIONAL, INC.

1 Christopher H. Byrd, Esq. (No. 1633)  
2 Bradley J. Richardson, Esq. (No. 1159)  
3 Brenoch R. Wirthlin, Esq. (No. 10282)  
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5 300 S. Fourth Street, Suite 1400  
6 Las Vegas, Nevada 89101  
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9 e-mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
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11 Attorneys for Respondent  
12 Proimtu MMI LLC

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**FIFTH DISTRICT COURT**  
**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited liability  
company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

**RESPONDENT PROIMTU MMI**  
**LLC'S OPPOSITION TO PETITION**  
**TO EXPUNGE LIEN**

Hearing Date: February 12, 2015

Hearing Time: 10:00 a.m.

Respondent Proimtu MMI LLC ("Proimtu"), by and through counsel, Fennemore Craig, P.C., hereby submits its opposition to Petitioner TRP International, Inc.'s ("Petitioner") Petition to Expunge Lien ("Petition"). As set forth herein, Proimtu was hired to perform labor only on the project at issue and therefore the notice requirement of NRS 108.245 does not apply. Alternatively, Proimtu substantially complied with the notice requirement of NRS 108.245 because the owner of the project had actual knowledge of Proimtu's work and involvement. Finally, the purported settlement agreement attached by Petitioner to the Petition was not signed by an authorized representative of Proimtu and fails to satisfy the requirements of NRS 108.2457(1)(a) for a valid lien release.

This Opposition is brought pursuant to NRS 108.245, 108.2275, and is based on the following Memorandum of Points and Authorities, the exhibits attached hereto including the Affidavit of Gabriel Gonzalez attached hereto as **Exhibit A** ("Gonzalez Affidavit"), any oral

FILED

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Sarah Westfall

NYE COUNTY CLERK  
BY DEPUTY

1 argument the Court chooses to entertain at a hearing on this matter, and all papers and pleadings  
2 on file herein.

3 DATED this 30<sup>th</sup> day of January, 2015.

4 FENNEMORE CRAIG, P.C.

6  
7 By: 

Christopher H. Byrd, Esq. (No. 1633)  
Bradley J. Richardson, Esq. (No. 1159)  
Brenoch Wirthlin (No. 10282)  
300 S. Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
Attorneys for Respondent  
Proimtu MMI LLC

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION AND STATEMENT OF FACTS**

14 Proimtu is a Nevada limited liability company based in Spain. *See* Gonzalez Affidavit at  
15 ¶ 3. In or around October 16, 2012, Proimtu entered into that certain contract (“Contract”) with  
16 Petitioner for the erection of heliostats for the Crescent Dunes Thermosolar Power Plant  
17 (“Project”). *See id.* at ¶ 4. A copy of the Contract is attached hereto as **Exhibit B**. *Id.* Pursuant  
18 to the Contract, Proimtu agreed to perform “[h]eliostat assembly and field erection of heliostats.”  
19 *See* Exhibit B at p. 2.<sup>1</sup> As set forth in the Contract, the owner (“Owner”) of the Project is  
20 “Tonopah Solar Energy and its different (sic) authorized agents.” *Id.* at 3. Further, Petitioner  
21 was the contractor on the Project, and the principal contract was that certain contract signed  
22 between the Owner and an entity known as “Cobra Thermosolar.” *Id.*

23 Under the terms of the Contract, Proimtu was retained to perform only labor on the  
24 Project. *See* Gonzalez Affidavit at ¶ 5. As set forth in the Contract, the responsibilities of  
25 Proimtu are the following:  
26

27  
28 <sup>1</sup> A heliostat an instrument consisting of a mirror moved by clockwork, for reflecting the sun's  
rays in a fixed direction.



- Close monitoring of the procedure to assemble heliostats, according to the requirements issued by the client.. (sic)
- Monitoring of all documentary and procedural requirements required by the customer
- Care, maintenance and use of the tools provided to do the job .. (sic)
- Strictly following the procedures defined for the tasks, included as ANNEX by TRP for each point on the assembly line and the implementation of appropriate controls to ensure the proper execution of the work.
- Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet customer requirements.
- Comply with the quality requirements imposed by the client in the assembly of heliostats.
- Establish and incorporate shifts working staff needed to produce 400 heliostats a week, having also the possibility of increasing its resources to a production of 500 heliostats a week without any additional cost to TRP.
- Meet calibrations according to the specifications of the quality plan approved by the client. Using stations verification and calibration equipment needed for 100% of the heliostats within tolerances.
- Use of the means provided by the Contractor for quality control and traceability of heliostats mounted.
- Transport from the assembly line to the final erection on site. Includes all equipment and lifts, vehicles and manpower needed to carry out the implementation on the foundation of the pedestals or heliostats corresponding (sic)
- Preparation and submission for approval of procedures by TRP pedestal and heliostat erection on field.
- Providing tools, hand tools, jigs and other equipment of any kind to be established in the lifting procedure once approved by TRP to perform transport and lifting the heliostats on the site. This equipment must be in good condition for the implementation of the scope defined in this contract.
- Maintenance of all equipment according to the instructions of TRP
- Strict monitoring of lifting procedures, and generating reports end monitoring quality control to ensure the smooth implementation of the lifting.

- Final and perfect leveling and alignment of heliostat according to the specifications of COBRA.
- Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional cost to TRP.
- Previous verification of screws already in the solar field to confirm you have the correct position and verticality and that are on the side of tolerance
- Reporting quality control and production control applications to ensure the smooth implementation of the lifting.
- Final leveling and fit and alignment pedestals and heliostats according to specifications.
- Final reports Quality Control
- Re-Galvanization of damaged items during the course of the work if necessary.
- Preparation of Risk Assessment for the work required and must be approved by the contractor before the work begins.
- Preparation of Environmental Management Reports and waste required by the Customer. Strict monitoring of environmental management Standards required by the client.
- Certificates of materials used if it is the case.
- Issuance of Certificates of Inspection of equipment that require own.
- Generation and contribution in a timely manner of the documentation required by the American authorities and the client on the recruits.
- Completion of Documents and Project Quality required.
- Implementation of temporary facilities as OSHA requirements and health and safety by the subcontractor.
- Lights when necessary work areas, exterior or interior and means to do so if outdoors. Excluding general vials, responsibility. (sic)
- All activities necessary to conduct the proper execution of the work according to the conditions, which are considered by the subcontractor are included.
- Contribution in case of personnel certificates in compliance with the operational requirements of the site, including:

- Wage Requirements as Davis Davis (sic) Bacon requirements as indicated in Annex 4.
- Delivery of the required data from DBA & STA indicated In Annex 4 regularly.

See Exhibit B at pp. 5-7.

Further evidencing the fact that Proimtu was retained solely to perform labor services on the Project is an email sent by Petitioner to Cobra Thermosolar dated November 30, 2012 (“November 2012 Email”), in which Petitioner introduced Proimtu as a subcontractor for the Project. In that email, attached hereto as **Exhibit C** along with a certified translation, Petitioner expressly states that it is asking for “authorization for contracting the company Proimtu to provide **assembly-related labor services** at the Tonopah plant.” See Exhibit C hereto. (Emphasis added). Thus, Petitioner itself defined and qualified the services to be provided by Proimtu as labor only.

Due to Petitioner’s failure to pay Proimtu as required under the Contract, Proimtu recorded the mechanic’s lien attached hereto as **Exhibit D**. Petitioner asserts incorrectly that the payment dispute was resolved through a liquidation agreement to settle all outstanding claims by Proimtu, which purported agreement it attaches as Exhibit 4 to its Petition. See Petition at 3. This is incorrect. In fact, the purported “agreement” attached as Exhibit 4 to the Petition was not signed by an authorized representative of Proimtu. See Gonzalez Affidavit at ¶ 6. Attached as **Exhibit E** hereto is a letter from Javier Dominguez, Spanish counsel for Proimtu, to Petitioner dated November 27, 2014, along with a certified translation, in which Mr. Dominguez affirms the purported agreement was not signed by an authorized representative of Proimtu. *Id.*

## II. LAW AND ARGUMENT

### A. Because Proimtu was hired only to perform labor on the Project, the notice requirements of NRS 108.245 are inapplicable to Proimtu and the Petition must be denied.

Subsection one of NRS 108.245 makes clear that the notice provisions of that statute do

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///

1 **not apply to entities performing labor only:**

2 1. Except as otherwise provided in subsection 5, every lien claimant, **other than**  
3 **one who performs only labor**, who claims the benefit of NRS 108.221 to  
4 108.246, inclusive, shall, at any time after the first delivery of material or  
5 performance of work or services under a contract, deliver in person or by certified  
6 mail to the owner of the property a notice of right to lien in substantially the  
7 following form...

8 Nev. Rev. Stat. Ann. § 108.245 (West) (Emphasis added). The term “labor” is not defined in  
9 Chapter 108. Black’s defines “labor” as “[w]ork of any type, including mental exertion.” *Black’s*  
10 *Law Dictionary*, 9<sup>th</sup> Ed. at 952 (2009). Thus, labor includes only work as opposed to the sale of  
11 goods. In this case, as set forth above, it is undisputed that Proimtu was hired for the Project to  
12 perform labor only, *i.e.*, the assembly and installation of the heliostats. *See* the Contract, Exhibit  
13 B at pp. 5-7; *see also* Gonzalez Declaration, Exhibit A hereto, at ¶ 5. Proimtu did not  
14 manufacture the parts for the heliostats, but only installed them as required under the contract. *Id.*  
15 Further, as noted above, in the November 2012 Email Petitioner itself states that Proimtu will  
16 only be performing “assembly-related labor services” for the project. *See* Exhibit C. Thus, by  
17 Petitioner’s own admission the notice requirements of NRS 108.245 do not apply to Proimtu.

18 Further, the business article from “VegasInc.” attached as Exhibit 5 to the Petition makes  
19 clear that Kevin Smith, CEO of SolarReserve – who is an owner of the Project – was aware of  
20 and agreed with the original job classification of Proimtu’s workers as laborers, and therefore  
21 necessarily aware of Proimtu’s involvement in the Project. *See* Exhibit 5 to the Petition. Thus,  
22 because it is undisputed that Proimtu provided only labor for the Project, the notice provisions of  
23 NRS 108.245 do not apply and Petitioner’s Petition must be denied.

24 **B. Alternatively, the Owner had actual notice of Proimtu’s work and therefore**  
25 **Proimtu was not required to serve notice of its right to lien. The Petition**  
26 **must therefore be denied.**

27 NRS 108.245(5) provides in relevant part:

28 5. A prime contractor or other person who contracts directly with an owner or sells  
materials directly to an owner is not required to give notice pursuant to this  
section.

1 Nev. Rev. Stat. Ann. § 108.245 (West). Preliminarily, it should be noted that Petitioner  
2 incorrectly asserts that strict compliance with Chapter 108 is required for a valid lien. This  
3 assertion is directly contradicted by the Nevada Supreme Court's holding in *Hardy Companies,*  
4 *Inc. v. SNMARK, LLC*, 126 Nev. Adv. Op. 49, 245 P.3d 1149, 1152 (2010). In *Hardy*  
5 *Companies*, the Court held that that "substantial compliance with the pre-lien notice requirement  
6 is sufficient to perfect the lien if the property owner is not prejudiced" and that Nevada's "long-  
7 standing Nevada caselaw supporting a liberal interpretation of mechanic's lien statutes that allow  
8 substantial performance of statutory requirements to perfect a lien" is still the law in Nevada. *Id.*  
9 at 1156. Nevada's substantial performance doctrine remains in force and any contrary suggestion  
10 by Petitioner is misleading.

11 Further, the *Hardy* Court held that actual notice by the owner of the potential lien claim  
12 obviates the need for compliance with NRS 108.245's pre-lien notice requirement:

13  
14 As this court explained in *Durable Developers*, a lien claimant substantially  
15 complies with NRS 108.245's pre-lien requirement when the property owner has  
16 **actual knowledge of the potential lien claim and is not prejudiced.** ... In  
17 *Fondren*, this court reaffirmed the principle that was set forth in *Durable*  
18 *Developers*, concluding that actual knowledge of the potential lien claim was  
19 sufficient to perfect a lien. ... In *Fondren*, we concluded that the lessor of a  
20 commercial property who failed to file a notice of nonresponsibility had  
21 knowledge that the lessee had contracted to have remodeling work done. ... The  
22 mechanic's lien on the property could be enforced against the lessor even though  
23 the contractors who sought to enforce the liens failed to deliver a pre-lien notice to  
24 the lessor. *Id.* **Because the lessor had actual knowledge of the work, the**  
25 **purpose behind the pre-lien notice had been satisfied.** *Id.* ... "Delivery of any  
26 pre-lien notice would have accomplished little or nothing and, therefore, was not  
27 required." *Id.*

28 *Id.*, 245 P.3d at 1155; see also *Fondren v. K/L Complex Ltd.*, 106 Nev. 705, 707, 800 P.2d 719,  
720 (1990) (failure to serve pre-lien notice does not invalidate a mechanics' or materialmen's lien  
where the owner received actual notice); *Bd. of Trustees of Vacation Trust Carpenters Local No.*  
*1780 v. Durable Developers, Inc.*, 102 Nev. 401, 403, 724 P.2d 736, 738 (1986) (substantial  
compliance with the technical requirements of lien statutes is sufficient to create a lien on  
property where the owner of the property receives actual notice of the potential lien claim and is  
not prejudiced).

Moreover, the *Hardy* Court explained that Nevada's substantial compliance doctrine allows for imputation of notice from the owner's agent to the owner where the agent witnesses or inspects the property being improved by the lien claimant:

In addition, a property owner has actual<sup>2</sup> knowledge of potential lien claims if the property owner or the property owner's agent regularly inspects the remodeling project. *Id.* Actual knowledge by the property owner's agent is imputed to the property owner. *Id.* (citing *Gould v. Wise*, 18 Nev. 253, 259, 3 P. 30, 31 (1884)). **An owner who witnesses the construction, either firsthand or through an agent, cannot later claim a lack of knowledge regarding future lien claims.**

*Id.* at 1157.

In this case, as noted above, the Owner of the Project is defined as "TonopahSolar Energy and its different (sic) authorized agents." See Exhibit B hereto. As set forth above, the VegasInc. article attached as Exhibit 5 to the Petition clarifies that SolarReserve is also an owner, and the majority owner, of the project. See Exhibit 5 to the Petition. SolarReserve's website also includes various pictures and videos of the progress on the Project, clearly demonstrating not only SolarReserve's ownership of the Project and Tonopah Solar, LLC ("Tonopah Solar") but also the fact that Proimtu was performing labor services on the Project site.<sup>2</sup> In the video entitled "Crescent Dunes Construction Update – April, 2013"<sup>3</sup> SolarReserve CEO Kevin Smith – who is also a manager of Tonopah Solar – states that the Crescent Dunes Project is SolarReserve's "flagship project." Moreover, in the video on SolarReserve's website entitled "Crescent Dunes Tower Construction"<sup>4</sup> an individual identified as "Brian Painter," wearing a SolarReserve hardhat, is listed as the "Site Manager" for the Project.

Further, as noted above, the VegasInc. article attached by Petitioner makes clear that Kevin Smith, SolarReserve's CEO, "agreed with the original job classification" of Proimtu's

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<sup>2</sup><http://www.solarreserve.com/newsroom/photo-video-library/>

<sup>3</sup><http://www.solarreserve.com/wp-content/themes/default/videos/CrescentDunesUpdate0413.mov>  
A copy of the video is contained in the disc attached hereto as **Exhibit F**.

<sup>4</sup>[http://www.solarreserve.com/wp-content/themes/default/videos/SolarReserve\\_Crescent\\_Dunes\\_Tower\\_Construction.mov](http://www.solarreserve.com/wp-content/themes/default/videos/SolarReserve_Crescent_Dunes_Tower_Construction.mov). A copy of the video is contained in the disc attached hereto as Exhibit F.

1 workers as laborers. *Id.* In order to agree with the classification, Mr. Smith – the owner’s CEO –  
2 would, of course, had to have been aware of the involvement and work of Proimtu on the Project.  
3 Thus, it cannot be disputed that the owner of the Project had actual knowledge of Proimtu’s work  
4 on the Project.

5 Further, the relationship between SolarReserve and Tonopah Solar imputed knowledge of  
6 Proimtu’s involvement to Tonopah Solar. The inter-related nature of SolarReserve and Tonopah  
7 Solar is evidenced by the fact that Kevin Smith, the CEO of SolarReserve, and Stephen Mullenix,  
8 the Senior Vice President of Operations for SolarReserve (*see* Exhibit 6), are also managers of  
9 Tonopah Solar. *See Exhibit G* hereto, Secretary of State website printout for Tonopah Solar and  
10 website printout from SolarReserve showing management team.

11 Finally, notice can be imputed from Cobra – who as noted above was informed of  
12 Proimtu’s involvement by Petitioner through the November 2012 Email – to SolarReserve. Oscar  
13 Yunta of Cobra Concesiones – the Asset Management division of Cobra Group – is a member of  
14 the board of SolarReserve. *See Exhibit H.* Further, SolarReserve and the Cobra Group – parent  
15 company of the contractor on the Project, Cobra Thermosolar – are business partners on the  
16 Project. In a press release dated December 1, 2014 and obtained from SolarReserve’s website,<sup>5</sup>  
17 SolarReserve admits that it is the owner of the Project and ACS Cobra is an investor on the  
18 Project. *See Exhibit I* hereto. In the press release, SolarReserve also admits that “**ACS Cobra’s**  
19 **Nevada-based affiliate, Cobra Thermosolar Plants Inc., is constructing the facility** as the  
20 general contractor while utilizing Nevada and regional subcontractors to perform the work.” *Id.*  
21 (Emphasis added). As the U.S. Supreme Court recognized in *Meehan v. Valentine*, 145 U.S. 611,  
22 620, 12 S. Ct. 972, 973, 36 L. Ed. 835 (1892), “[e]very partner is an agent of the partnership.”  
23 Thus, the owner of the Project had actual notice of Proimtu’s involvement from multiple sources  
24 and cannot now claim otherwise.

25 Because Proimtu provided only labor for the Project, it was not required to comply with  
26 NRS 108.245’s pre-lien notice requirement. Alternatively, it cannot be disputed that the owners

27 <sup>5</sup> [http://www.solarreserve.com/wp-content/uploads/2014/12/SolarReserve-Awarded-Best-SW-](http://www.solarreserve.com/wp-content/uploads/2014/12/SolarReserve-Awarded-Best-SW-Project-by-ENR-Press-Release-01Dec2014.pdf)  
28 [Project-by-ENR-Press-Release-01Dec2014.pdf](http://www.solarreserve.com/wp-content/uploads/2014/12/SolarReserve-Awarded-Best-SW-Project-by-ENR-Press-Release-01Dec2014.pdf)

1 of the Project, SolarReserve and Tonopah Solar, had actual notice of Proimtu's work on the  
2 Project and therefore its potential lien claim. Accordingly, pursuant to binding Nevada precedent,  
3 Petitioner's Petition must be denied.

4 C. The purported settlement agreement attached to the Petition contains the  
5 forged signature of an individual unknown to Proimtu and is therefore  
6 invalid.

7 Petitioner alleges that Proimtu and Petitioner "entered into a liquidation agreement to  
8 settle all outstanding claims by Proimtu." See Petition at 3. This is incorrect. The purported  
9 settlement agreement attached to the Petition was not signed by an authorized representative of  
10 Proimtu and therefore is invalid. See Gonzalez Affidavit at ¶ 6. In fact, Spanish counsel for  
11 Proimtu sent a letter to Petitioner informing Petitioner that the signature on the purported  
12 agreement was not signed by an authorized representative of Proimtu. See *id*; see also Exhibit 5.

13 Further, it bears noting that the in order to be an effective release of Proimtu's lien rights  
14 the purported agreement would need to be in the form specified by NRS 108.2457(1)(a). Because  
15 the purported agreement indisputably does not comply with this statutory requirement, it is  
16 unenforceable.

17 D. Proimtu is entitled to its costs and fees.

18 NRS 108.2275(6) provides in relevant part:

19 6. If, after a hearing on the matter, the court determines that:

20 ...  
21 (c) The notice of lien is not frivolous and was made with reasonable cause or that  
22 the amount of the notice of lien is not excessive, the court shall make an order  
23 awarding costs and reasonable attorney's fees to the lien claimant for defending the  
24 motion.

25 Nev. Rev. Stat. Ann. § 108.2275 (West). If the Court denies the Petition, Proimtu respectfully  
26 requests that this Court award it its fees and costs in defending against the Petition.

27 IV. CONCLUSION

28 For all these reasons, Petitioners respectfully request that this Court deny TRP's Petition  
to Expunge Lien in its entirety, award Proimtu its fees and costs, and grant such other and further

///



1 relief as the Court deems appropriate.

2 DATED this 30th day of January, 2015.

3  
4 **FENNEMORE CRAIG, P.C.**

5  
6  
7 By: 

8 Christopher H. Byrd, Esq. (No. 1633)  
9 Bradley J. Richardson, Esq. (No. 1159)  
10 Brenoch Wirthlin (No. 10282)  
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12 Las Vegas, Nevada 89101  
13 *Attorneys for Respondent*  
14 *Proimtu MMI LLC*  
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# EXHIBIT A

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*Attorneys for Respondent*  
*Proimtu MMI LLC*

**FIFTH DISTRICT COURT**  
**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

vs.

PROIMTU MMI LLC, a Nevada limited liability  
company,

Respondent.

CASE NO.: CV-36431

DEPT. NO.: I

**AFFIDAVIT OF GABRIEL**  
**GONZALEZ IN SUPPORT OF**  
**RESPONDENT PROIMTU MMI**  
**LLC'S OPPOSITION TO PETITION**  
**TO EXPUNGE LIEN**

Hearing Date: February 12, 2015

Hearing Time: 10:00 a.m.

STATE OF NEVADA            )  
  ) ss:  
COUNTY OF CLARK        )

Gabriel Gonzalez, being first duly sworn upon his oath, deposes and says that he has  
personal knowledge and is competent to testify to the following:

1. I am Chief Operating Officer of Proimtu MMI, LLC ("Proimtu"), respondent herein.

2. I make this affidavit in support of Proimtu's Opposition ("Opposition") to Petitioner  
TRP International, Inc.'s ("Petitioner") Petition to Expunge Lien ("Petition"). All facts stated  
herein are based upon my personal knowledge, except for those matters stated on information and  
belief and as to those matters, I believe them to be true.

3. Proimtu is a Nevada limited liability company based in Spain.

4. In or around October 16, 2012, Proimtu entered into that certain contract

1 ("Contract") with Petitioner for the erection of heliostats for the Crescent Dunes Thermosolar Power  
2 Plant ("Project"). A copy of the Contract is attached hereto as Exhibit B to the Opposition.

3 5. Under the terms of the Contract, Proimtu was retained to perform only labor on the  
4 Project.

5 6. The purported "agreement" attached as Exhibit 4 to the Petition was not signed by an  
6 authorized representative of Proimtu. Attached as Exhibit E to the Opposition is a letter from Javier  
7 Dominguez, Spanish counsel for Proimtu, to Petitioner dated November 27, 2014 in which Mr.  
8 Dominguez affirms the purported agreement was not signed by an authorized representative of  
9 Proimtu.

10 7. I have reviewed the contents of this Affidavit and affirm that, to the best of my  
11 knowledge, its contents are true and accurate.

12 FURTHER YOUR AFFIANT SAYETH NOT.

13 DATED this 30<sup>th</sup> day of January, 2015.

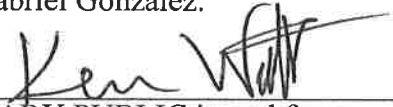
14  
15  
16 

Gabriel Gonzalez

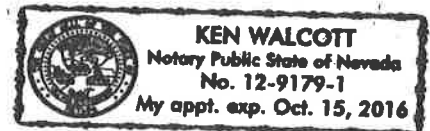
17 Signed and sworn to (or affirmed) before

18 me on the 31 day of January, 2015

19 by Gabriel Gonzalez.

20  
21   
22 NOTARY PUBLIC in and for  
the State of Nevada

23 My appointment expires Oct 15, 2016



# EXHIBIT B

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HELIOSTAT ASSEMBLY AND FIELD ERECTION

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| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                       |

TRP INTERNATIONAL has been awarded with the turn key contract for Assembly Line and Helioestat Erection for Crescent Dunes Thermosola Plant, a Thermosolar Power Plant of 125 MW, Solar Power Plant in Nevada, United States.

TRP INTERNATIONAL is contracting "Helioestat assembly and field erection of heliostats" to PROIMTU MMI LLC.

TRP INTERNATIONAL (the CONTRACTOR) is ordering the present Contract to execute and complete the Works to PROIMTU MMI LLC. (the SUBCONTRACTOR), as part of the above Project and as hereafter detailed.

The parties conclude with this Contract on October 16 2012 (Awarding Date), by which the CONTRACTOR and the SUBCONTRACTOR agreed on the Execution of the Work "Helioestat Assembly and field erection" as it was stipulated in the documentation from the Request for Proposal and all the exchange information and meetings until the Awarding Date.


The SUBCONTRACTOR shall execute and complete such Works upon the terms and conditions hereafter:

## 1 DEFINITIONS

- The definitions used in this CONTRACT shall have the following meaning, meanwhile the wording in which they are used do not show specifically something different:

|                      |  |
|----------------------|--|
| - OWNER:             | - Means the company TonopahSolar Energy and its differentes authorized agents  |
| - PRINCIPAL CONTRACT | - Contract signed between the owner and Cobra Thermosolar  |
| - CONTRACTOR         | - TRP International who award the present contract.  |
| - SUBCONTRACTOR      | - PROIMTU MMI LLC independent company whom TRP INTERNATIONAL has awarded the contract.   |
| - CONTRACT:          | - Means the present Supply Contract and the corresponding ANNEXES.   |
| - PROJECT:           | - Means the Electrical generation Plant Crecent Dunes Solar  |
| - SITE:              | - Means in general terms the boundaries of the thermosolar power plant installations. It is located in 10,7 gabbs pole line Tonopah,   |
| - OFFER:             | - Means the document prepared by the SUBCONTRACTOR and incorporated to this contract as ANNEX, which defines the technical description, characteristics and scope of works included in the SUPPLY. |

## 2 SCOPE OF THE CONTRACT

|   |  |                                       |
|---|--|---------------------------------------|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 5 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                       |

The scope of work entails the execution of the **Erection of heliostat on site** in accordance with the terms of the present Contract and all of the documents and annexes contained therein, including the design, installation and permits of an assembly line on site, perform the assembly line to produce 80 heliostat per day until complete the whole Solar Field of 10.375 Heliostat, and Erect them on site.


The scope described above covers the following works:

#### **HELIOSTAT ASSEMBLY LINE**

- Close monitoring of the procedure to assemble heliostats, according to the requirements issued by the client ..
- Monitoring of all documentary and procedural requirements required by the customer
- Care, maintenance and use of the tools provided to do the job ..
- Strictly following the procedures defined for the tasks, included as ANNEX by TRP for each point on the assembly line and the implementation of appropriate controls to ensure the proper execution of the work.
- Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet customer requirements.
- Comply with the quality requirements imposed by the client in the assembly of heliostats.
- Establish and incorporate shifts working staff needed to produce 400 heliostats a week, having also the possibility of increasing its resources to a production of 500 heliostats a week without any additional cost to TRP.
- Meet calibrations according to the specifications of the quality plan approved by the client. Using stations verification and calibration equipment needed for 100% of the heliostats within tolerances.
- Use of the means provided by the Contractor for quality control and traceability of heliostats mounted.

#### **Heliostat and pedestals erection**

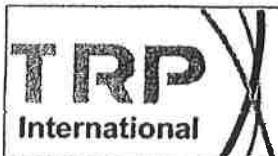
- Transport from the assembly line to the final erection on site. Includes all equipment and lifts, vehicles and manpower needed to carry out the implementation on the foundation of the pedestals or heliostats corresponding
- Preparation and submission for approval of procedures by TRP pedestal and heliostat erection on field.

|   |  |                                  |
|---|--|----------------------------------|
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| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                  |

- Providing tools, hand tools, jigs and other equipment of any kind to be established in the lifting procedure once approved by TRP to perform transport and lifting the heliostats on the site. This equipment must be in good condition for the implementation of the scope defined in this contract.
- Maintenance of all equipment according to the instructions of TRP
- Strict monitoring of lifting procedures, and generating reports and monitoring quality control to ensure the smooth implementation of the lifting.
- Final and perfect leveling and alignment of heliostat according to the specifications of COBRA.
- Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional cost to TRP.
- Previous verification of screws already in the solar field to confirm you have the correct position and verticality and that are on the side of tolerance
- Reporting quality control and production control applications to ensure the smooth implementation of the lifting.
- Final leveling and fit and alignment pedestals and heliostats according to specifications.
- Final reports Quality Control

As general issues the SUBCONTRACTOR has to take into account and is included in the scope:

- Re-Galvanization of damaged items during the course of the work if necessary.
- Preparation of Risk Assessment for the work required and must be approved by the contractor before the work begins.
- Preparation of Environmental Management Reports and waste required by the Customer. Strict monitoring of environmental management standards required by the client.
- Certificates of materials used if it is the case.
- Issuance of Certificates of Inspection of equipment that require own.
- Generation and contribution in a timely manner of the documentation required by the American authorities and the client on the recruits.
- Completion of Documents and Project Quality required.
- Implementation of temporary facilities as OSHA requirements and health and safety by the subcontractor.

|   |  |                                       |
|---|--|---------------------------------------|
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| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |                                       |

- Lights when necessary, work areas, exterior or interior and means to do so if outdoors. Excluding general vials, responsibility.
- All activities necessary to conduct the proper execution of the work according to the conditions, which are considered by the subcontractor are included.
- Contribution in case of personnel certificates in compliance with the operational requirements of the site, including:
- Wage Requirements as Davis Davis Bacon requirements as indicated in Annex 4.
- Delivery of the required data from DBA & STA indicated in Annex 4 regularly.

It is included in Annex I, a chart with technical clarifications included in the scope of the contract.

### 3 MODIFICATION OR EXTENSION OF THE SCOPE

Any modification or extension of the scope of the PROJECT requested by the CONTRACTOR shall be submitted to the SUBCONTRACTOR in writing and signed by the CONTRACTOR. The SUBCONTRACTOR shall submit to the CONTRACTOR a detailed offer with price and conditions of payment for this modification or extension and the consequences of the requested modification in relation with its schedule of works, date of delivery, terms of guarantee and technical specifications.

In case of acceptance, CONTRACTOR shall communicate in writing its decision to the SUBCONTRACTOR duly signed by CONTRACTOR. (In form of Change order, extension of the original contract or a new contract)

The price and the conditions of payment of this extensions or modifications shall be totally independent from those agreed in this CONTRACT. The effective date of these extensions or modifications of the CONTRAT shall be established in the offer submitted by the SUBCONTRACTOR.


All the direct expenses strictly caused by these modifications or extensions shall be paid by the CONTRACTOR.

The total number of helistats assembled and erectes shll be changed in the client requests wo without any chage in the unit price.

### 4 CONTRACTUAL DOCUMENTS

Only the Contract Documents defined and listed and the attached Annexes List shall together constitute the Contractual Documentation between the CONTRACTOR and the SUBCONTRACTOR.

Contract Documents are bound together with this Contract and have been signed by the CONTRACTOR and the SUBCONTRACTOR:

|   |  |                                       |
|---|--|---------------------------------------|
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| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |                                       |

1.- The present document.

2.- annex I Technical Clarifications-Minutes of meeting March 30th 2012

3.- Annex II Technical Documents

- Assembly in Plant (CDS-10-UWA-OIP-TMP-001\_Rev. E)
- Solar Field Assembly (CDS-10-UWA-OIP-TMP-002\_Rev. D)

4.-Annex III Commercial Documents

- General Purchasing Conditions CDS-COM-GPC-CPI-0001 General Purchasing Conditions USA Cobra Thermosolar Plants
- Terms and conditions on site CDS-COM-GPC-CPI-0002 Terms and Condition on site works

5.-Annex IV Administration documents:


- Davis Bacon Act Requirements
- Sales Tax Abatement Requirements
- Documents SUBCONTRACTOR has to present with each invoice
- Documents SUBCONTRACTOR has to present with the sign of the present document.
- Documents to present with the provisional turnover.

6.-Annex V Plan of Development

- Wind Data

7.-Annex VI Permits & Plans:

- Construction Stormwater
- Groundwater Discharge
- Working Waterways
- Air Quality Class II
- Surface Area Disturbance
- Encroachment Permit

|   |  |   |
|---|--|---|
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|   | <b>HELIOSTAT ASSEMBLY AND FIELD ERECTRION</b>  |   |

- Flood Damage Prevention Permit
- SWPP Plan
- SPCC Plan
- H&S Plan
- Lighting Plan
- Traffic Management Plan
- Waste Management Plan
- Hazardous Materials Program
- Facility Emergency Action Plan

8.-Annex VIII WEAP

9.-annex IX Subcontract Offer


In case of conflict between Contract Documents, the order of precedence shall be:

- First: This Contract
- Second: Its Annexes, prevailing Annex 1 over Annex 2, Annex 2 over Annex 3

## 5 SCHEDULE

The Work has to be done in order to fulfil the following contractual dates:

| Contract Dates |   |                     |
|----------------|---|---------------------|
| 1              | Pedestal production start                     | 5/11/2012           |
| 2              | Samples validation on heliostat assembly line | 09/11/2012          |
| 3              | Heliostat production start                    | 12/11 2012          |
| 4              | Ramp up perio                                 | 3 de Diciembre 2012 |
| 5              | End of heliostat assembly and field erection  | 30 de mayo 2013     |
| Contract Dates |   |                     |

|   |  |  |
|---|--|--|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 10 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |  |

## 6 GUARANTEE VALUES

Warranties and requirements will be met for each heliostat assembled and therefore no mean values o complete lots will be accepted. The failure to comply with any technical requirement defined in the Technical specifications mentioned in the previous section, involves rejection of units and forces the Subcontractor to replace these units by new ones under contractual schedule at his own expenses.

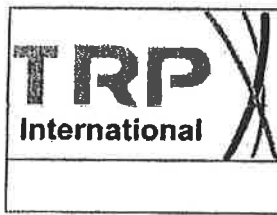
The Subcontractor will guarantee the following requirements in each step of the assembly line and solar field erection in case of the pedestal:

| Description                         | Operation          | Type  | Value                     | Measurement point  | Measurement system                        |
|-------------------------------------|--------------------|---|---------------------------|--|---|
| Assembly reference surface          | OP-E200 to OP-E800 | Leveling  | 0.2 mrad                  | Interface with positioning tooling                                 | Inclinometer                              |
| Torque tube functional verification | OP-E600            | Torque between 0 <sup>º</sup> and 100 <sup>º</sup> and maximum clearance unalignmen t | Lower than defined values | Torque tube  | Torque meter and linear probe             |
| Assembly of trusses                 | OP-E800            | Leveling  | 0.2 mrad                  | Trusses points   | Inclinometer/Laser Tracker/ or equivalent |
| Canting                             | OP-E1100           | Length/Distance   | +/-0.02 inch              | On the glazing of the facet at mooring points (4 points per facet) | Laser Radar/ Gantry Probes/ or equivalent |
| Pedestal levelling                  | OP-OC400           | Leveling  | +/-0.3 mrad (*)           | Upper flange   | Inclinometer / or equivalent              |

(\*) Conditioned to adapt foundation bolts to fine coarse.

## 7 REQUESTED DOCUMENTATION TO SUBCONTRACTOR

Functional verification torque tube values (torque and clearance unalignment in excel format).

|   |  |                                    |
|---|--|------------------------------------|
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| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                    |

Leveling values for each pedestal (In excel format), according to the final leveling procedure issued by the Contractor.

Traceability documentation per each heliostat.

## 8 UNIT PRICES AND QUANTITIES

The prices indicated shall be fixed and subject to no revision whatsoever for any reason within the period of execution of the Works covered by this Contract

| Scope   | Quantity | Unit Price   | Total         |
|---|----------|--------------|---------------|
| Price by Heliostat assembled and erected on site. | 10.375   | 843,00 \$/ud | 8.746.125 USD |

Eight million seven hundred and forty six thousand one hundred and twenty five US Dollars

The previous price includes all the concepts, and taxes required by local regulations for the execution of the works according to the scope of the contract. Since it is a service it is not subject to Sales Tax in Nevada

The previous price includes up to a 5% of additional work that might have to be executed as consequence of rejections or reworks that be necessary during the execution of the activities assembly and erection activities.


In case of fulfillment of the stated work calendar and execution of works at full satisfaction of the Contractor, the previous amount will be increased in a value of 253.875 dollars.

The price includes the expenses of Sales and USE TAX in the conditions reflected in the agreement reached by the final client with Nevada State.

The final client (Cobra) will assume this cost only if COBRA Thermosolar Plant receives invoices clearly detailing and materials that the Supplier has obtained reduction SALES TAX, and provided the documentation required by the Department of energy to obtain and comply with the requirements. Otherwise the payment of these taxes will be the sole responsibility of the subcontractor. If COBRA or TRP incur any tax liability for reasons attributable to the subcontractor, the subcontractor TRP immediately reimburse the total cost thereof, including attorneys' fees, interest and penalties.

The prices indicated shall be fixed and subject to no revision whatsoever for any reason within the period of execution of the Works covered by this Contract, provided there are no modifications to the bases for the design, except for those permitted modifications indicated in the aforementioned Annex, not even as a result of official variations in the prices of materials or collective or specific labour agreements established subsequently by professional organisations or official bodies at the local, district or national level. The prices include, among other aspects, all direct and indirect costs, industrial profits, execution of all services lying



|   |  |  |
|---|--|--|
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within the Scope, supplies of materials, transportation as far as the point of delivery indicated in the Contract, preparation for transportation, any required staff deployment, use of manufacturing equipment as required, all insurance policies, withholding taxes, rights and expenses required, along with all levies, taxes, tariffs, charges and fees of any kind for the proper and satisfactory execution of the Scope by the SUBCONTRACTOR.

The SUBCONTRACTOR consequently assumes the entire economic risk based on any modification to the cost of the services and materials, assets and equipment involved in manufacture, transportation, levies, taxes, charges, social insurance payments, salary reviews or any others which may affect the Scope and which may arise for any reason, except where expressly provided otherwise in the Contract.

As long as there are no delays attributable to the subcontractor, the work will take place during the work schedule it has set. In case of delays attributable to the subcontractor, the Contractor may require Subcontractor development work for 24 hours 7 days a week, with no increase whatsoever in this case for weekend or night work.

## 9 OPTIONS

Additional Price per heliostat is stated in Clause 8.

## 10 PROJECT SCHEDULING AND ORGANIZATION


### Scheduling

The SUBCONTRACTOR should divide the Contract's scope of work in work packages defined by equipment, systems, including parts and subsystems if these are considered critical, of important execution or highly difficult. There will be detailed planning for each work package which will serve as the base for defining and emitting the Program for Points of Inspection. The SUBCONTRACTOR should include the procedures presentation that supports the Project, detailed engineering, supply of material, manufacture and workshop testing, erection, inspections and tests.

The SUBCONTRACTOR will be responsible for preparation, follow-up and updated of the Project Schedule, using bar graphs, in which the different activities are represented. The SUBCONTRACTOR should present the work load that supports the proposed scheduling.

The following schedules must be presented in native format (Primavera Project Planner or Microsoft Project):

1. Summary Schedule, with bar graphs, which reflect the general scheduling of the significant activities that make up the Contract's scope of work, those conditions in the beginning as well as at the end by third parties and those Works that involve opening a new task, included in the CONTRACTOR's milestones schedule.
2. A general Schedule of priorities; development of the first which contains at least the activities described by the SUBCONTRACTOR and the milestones set by the CONTRACTOR.
3. This schedule will gather all of the necessary connections between activities whether for the physical configuration or because the same means are necessary for execution.

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4. Labor hours curves chart, classified as direct and indirect labour hours in the most significant specialties.
5. Monthly and accumulated production curves chart from the determining entries for the general advancement of the project.

Based on the contractual schedule, the SUBCONTRACTOR should present the CONTRACTOR:


- Detailed schedule, coordinated with the project's general schedule, in no more than 10 days from award in editable format.
- Also, throughout the works, the SUBCONTRACTOR must carry out :
  - o detailed schedules for specific tasks,
  - o an analysis of the schedules in light of work follow-up, etc., in coordination with the CONTRACTOR, keeping in mind the presence of other SUBCONTRACTORS on site,
  - o Detailed schedule with a bar graph within the first three days of each month
  - o Weekly schedule at the beginning of each week, including the activities scheduled and carried out the previous week and those scheduled for the current week as well as for the following week.

The CONTRACTOR's Construction Manager will establish the priorities in interphases with other SUBCONTRACTORS. The SUBCONTRACTOR will take the pertinent steps so that the work is carried out in accordance with the established schedule. If impact on the daily production of this decision is higher than the 10% the SUBCONTRACTOR will have the right to recover this extra-cost.

#### Organization of means

The SUBCONTRACTOR must present:

- Daily report including: List of equipments and tools that will be on job site for the Works of the bidding, indication technical characteristics and origin.
- Detailed description of the erection process, with proof, whenever necessary, of the special works.

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- Study of achievement levels, production and analysis of the repetitive work time, detailing the human and material means and foreseen workday.
- Technical and analytical studies of the subjects that the SUBCONTRACTOR considers timely including, when necessary, the origin of the material.

The SUBCONTRACTOR will coordinate and expedite all its SUBCONTRACTORS' work, resolving all possible problems that may come up among them. The SUBCONTRACTOR guarantees that all activities carried out are in accordance to the requirements fixed in the present specification.

The SUBCONTRACTOR must present within fifteen days, any subcontracte company operating within the scope of the present contact.

## 11 DOCUMENTATION REQUIRED FROM THE SUBCONTRACTOR

The SUBCONTRACTOR must comply with all manner of documentary requirements set out in the CONTRACT and all Annexes thereto.

The documentation required of the SUBCONTRACTOR in the CONTRACT is subject to approval by the CONTRACTOR, the SUBCONTRACTOR being required to meet the demands of said party under the terms of the CONTRACT

## 12 INVOICING AND FORM OF PAYMENT

Invoicing shall be performed as follows:

95% by monothly certifications closed on the 15<sup>th</sup> of each months accounting for the heliostats erectedf on the field.


5% upon final approval by the client of final quality documentation

Wworks will vbe certified by heliostat assembled on field.

These sums to be invoiced shall at all times correspond to works actually executed and approved by the CONTRACTOR. To approve the works, SUBCONTRACTOR has to issue an application using a COBRA THERMOSOLAR PLANT template before than 20<sup>th</sup> of each calendar month. The application shall be done accumulated to origin of works and closed on the 15<sup>th</sup> of each month.

Five days after presenting the application, CONTRACTOR will approve or reject it. SUBCONTRACTOR will be allowed to invoice as soon as application has been approved.

Payments will be done meanwhile bank wire transfer, 90 days after the reception of the correspondent invoice by CONTRACTOR together with the approved application. Payments will be done the 25<sup>th</sup> of each month.

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By mutual agreement, may use billing and payment options that allow the discount of bills by the subcontractor.

Should any of invoices be incorrect or the documents attach to the invoice are incomplete and need to be returned to the SUBCONTRACTOR for modification, being the SUBCONTRACTOR's fault, the date of the new invoice will be that of the new issue.

Invoices shall be issued and mailed in original + three (3) copies, in accordance with following indications:


|  |   |
|--|---|
| <b>Dirección de Factura</b><br><br>TRP INTERNATIONAL INCP.O. BOX 1528<br><br>1137 S. Main St<br><br>TONOPAH, NV 89049<br><br>EIN: 45-5312653 | <b>Enviar a:</b><br><br>ALEJANDRO FERNANDEZ CUADRA<br><br>TRP INTERNATIONAL INCP.O. BOX 1528<br><br>1137 S. Main St<br><br>TONOPAH, NV 89049<br><br>EIN: 45-5312653 |
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All invoices must clearly be stated, otherwise it shall be returned:

- SUBCONTRACTOR's Reg. Number.
- Clear price break down between materials and services.
- Complete SUBCONTRACTOR.'s Bank Account data and terms of payment.
- Project: 9013 - Crescent Dunes Solar Energy Project
- PURCHASE ORDER No.

Each progress invoice shall be accompanied by(Annex 4):

- An approved certification that the portion of the work for which Subcontractor has requested payment has been satisfactorily completed in accordance with this agreement.
- Documentation to obey David Bacon Law
- Documentation to obey SALES TAXES Law
- A conditional waiver and release upon progress payment

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- An unconditional waiver and release upon progress payment .Documentation that all taxes and insurances are current and paid through the application date.
- All other documentation SUBCONTRACTOR is required to submit pursuant to this Agreement in ANNEX 5 or any other documentation COBRA THERMOSOLAR PLANT administration department must require by law.

The final invoice shall be accompanied by (Annex 4):

- An approved certification that the portion of the work for which Subcontractor has requested payment has been satisfactorily completed in accordance with this agreement.
- An unconditional waiver and release upon final .Documentation that all taxes and insurances are current and paid through the application date. .
- Certification of final completion.
- State unemployment certificate.
- All other documentation CONTRACTOR is required to submit pursuant to this Agreement.

It is agreed that no payment hereunder shall be made, except at CONTRACTOR'S option, until and unless such documentation have been furnished.

In any case the subcontractor assume the responsibility of the best practices about SALES TAXES following the current law.

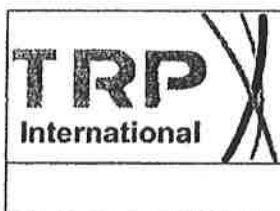
### 13 WITHHOLDINGS AND BANK GUARANTEES.

Performance Bond (letter of credit or bank guarantee) covering 5% of the contract price valid from the actual date of completion of work until a year later.

The sum of each bank guarantee, withholding and other deposits not only ensures the proper execution of the work, but also the obligations of the scope of this contract

The Letter of Credit shall be Issued by a top international bank operating in Spain, Spanish language, governed by Spanish law. Any change or modification of the above conditions must be explicitly approved by the contractor.

The supplier is responsible to require repayment of the credit cards once they have met the contractual requirements.

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#### 14 DELAY LIQUIDATED DAMAGES

##### 1. Delay during learning curve.

A failure by the subcontractor in the Work Programme set out in clause 5 of this contract shall entitle the contractor to claim the first interim payment of liquidated damages, compensation equivalent to 2% (two percent) per week of delay applied to the total contract price. The cumulative delay damages for such damage may not exceed 10% (ten percent) of the total sum of the contract and any extensions.

##### 2.-Delay during production phase.

The subcontractor must recover under his cost the delay on production using a third shift or working on weekend.

It is NOT acceptable delays on production week by week; It means that the subcontractor has to recover every week the corresponding pending production.

Deviation in the finalization of the production (May 15<sup>th</sup> 2013) will have two weeks grace period. After this grace period the deviation will be penalized with:

0,5 % per week for the first two weeks.

1% per week from the third week.


The cumulative sum of such delay liquidated damages may not exceed 10% (ten percent) of the overall sum of the Contract and any extensions thereto

Liquid damages do not apply if it does not affect to the production process and it means that the SUBCONTRACTOR would recover and readjust the contracted production.

The sum of any delay liquidated damages shall be deducted from invoices pending payment at the time of application thereof, and/or the Bank Guaranties provided by the SUBCONTRACTOR. In case of this percentage is exceeded by the SUBCONTRACTOR, the CONTRACTOR shall be entitled to terminate the Contract and, in such case, shall be entitled to withhold the sums invoiced and pending payment, along with the Bank Guarantees provided by the SUBCONTRACTOR, pending due settlement of the tasks performed, following deduction of the charges applicable on the basis of the damages occasioned to the CONTRACTOR.

This shall not constitute a waiver of any rights of the CONTRACTOR to damages or other remedies of CONTRACTOR under this Agreement; provided, that the remedies set forth in this clause are CONTRACTOR's sole and exclusive remedies for SUBCONTRACTOR's failure to achieve the deadlines stated in the Working Programme set out in Clause 5 of this Contract.

#### 15 CONDITIONS FOR EXECUTION OF THE TASKS

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The SUBCONTRACTOR declares that it has received enough documentation and information required in order properly to execute the complete scope of the Contract in accordance with the order of precedence set out in Clause 2 of this Contract. Should the SUBCONTRACTOR failed to serve notice of any error which it may have uncovered in accordance with the diligence incumbent upon it under the terms of this Contract, the SUBCONTRACTOR shall be liable for any surplus costs directly derived from such errors.

The SUBCONTRACTOR is responsible of supervising all the heliostat's supplies received, if there are missing or damage units the SUBCONTRACTOR must communicate it by written to the CONTRACTOR before the following 48 hours from the reception of the supplies. If the CONTRACTOR is not informed during this period, the SUBCONTRACTOR will be responsible of all the possible replacement expensive.


The SUBCONTRACTOR may make no modifications, corrections, permissions, additions or variations to the details of the Plans Approved by the CONTRACTOR's Engineering Department, which shall be presented by the latter party sufficiently in advance, nor may it change any brands or technical specifications with regard to the materials, equipment or machines to be employed in the Works, without the prior authorisation in writing of the CONTRACTOR. It would otherwise incur grave grounds for rescission of the Contract, if deemed appropriate.

The SUBCONTRACTOR must at all times provide all technical information regarding execution of the Works which the CONTRACTOR may deem it necessary to know, such as Working Programmes, personnel workloads or lists of machinery characteristics. In particular, sufficiently in advance and in all cases prior to commencement of its tasks, the SUBCONTRACTOR shall, if so required, present on Site a sample of the various materials and equipment to be supplied for acceptance by the CONTRACTOR and, where applicable, the Technical Management Team. Any damage caused to the Site as a result in a delay in the presentation of samples shall be attributable to the SUBCONTRACTOR.

Any changes which may be made to the original Project as a result of orders issued by the CONTRACTOR's Works Management Team shall be accepted by the SUBCONTRACTOR, without the right to revise any of the terms of this Contract, except on the basis of the evaluation of the new units to be executed or in justified schedule changes, which must be approved by the CONTRACTOR by means of the corresponding Annex.

The SUBCONTRACTOR shall at its own expense have in place all temporary installations and constructions required, such as offices, washrooms, changing rooms, warehouses, etc in order to perform its tasks. The CONTRACTOR shall bear no responsibility of any kind regarding the offloading, verification, safekeeping or storage of the SUBCONTRACTOR's materials or machinery. The CONTRACTOR shall make available to the SUBCONTRACTOR, at no expense to it, the space available for these installations.

If by express agreement the CONTRACTOR should supply materials or components for the tasks to be performed by the SUBCONTRACTOR, this shall be performed by means of DELIVERY NOTES stating the price of the materials supplied, with the corresponding RECEIPT. Signature thereof by the authorised staff of the SUBCONTRACTOR shall be sufficient for it to take responsibility for the safekeeping and preservation of such materials or equipment, which shall be deducted from the invoices submitted by the SUBCONTRACTOR, in the event they are included within the contractual scope.

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The SUBCONTRACTOR shall clean and remove at its own expense all waste or surplus materials resulting from its work, leaving the site suitable for the entry of any subsequent operatives or installations required.

The SUBCONTRACTOR shall provide the personnel, means of production and materials required and adequate for execution of the tasks under the conditions set out in this CONTRACT, in accordance with the Employment Legislation in force, and may not remove any of these without the prior authorisation in writing of the CONTRACTOR.

Prior to commencement of the services, the SUBCONTRACTOR shall confirm its organisational structure for execution of the tasks covered by the Contract, including at least the names and CVs of the managers who will in fact be responsible for execution of the service. This organisational structure must be agreed to by the CONTRACTOR, the constituent personnel being dedicated 100% to the works throughout the period of execution of the tasks.

The SUBCONTRACTOR must appoint a supervisor or a representative as the channel for the relationship between the CONTRACTOR and the SUBCONTRACTOR's staff. The CONTRACTOR reserves the right to object to this Interlocutor if, as a result of objective considerations, although in its sole judgement, it should deem so necessary. In this case the SUBCONTRACTOR shall be obliged to replace its representative on an urgent basis by means of another individual of the same technical category, without this giving rise to any justification for any delay in compliance with its Schedule. The CONTRACTOR may request a valid and independent Interlocutor with regard to the functions of Quality Assurance, Health and Safety and Environmental Management. The SUBCONTRACTOR shall be responsible for ensuring that its supervisor is familiar with, complies with and ensures compliance with the obligations derived from the Contract.

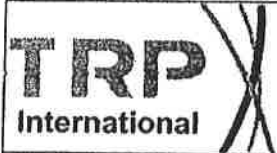
Per Clients request, the Contractor must change erection areas within prior notice of 12 hours.

All notices must be served by the Parties within a maximum period of five days from occurrence of the event, unless any other deadline is given in the specific clauses of the Contractual Documentation. Replies must be given within a period of five days. The maximum deadlines set out above shall be 15 days in the case of notices or responses from the CONTRACTOR involving the OWNER.

All works extension of the scope of the present contract has to be signed by COBRA in a change order document before its execution. Every change order that should be received with more than one month after the execution of the works it won't be had into account

The SUBCONTRACTOR may not, without the prior authorisation in writing of the CONTRACTOR, reproduce, copy, employ or reveal in whole or in part the information provided by the CONTRACTOR nor the information or documentation generated by it in performance of the Contract, unless in order to meet the needs of strict compliance therewith. These demands shall apply to any possible subcontractors of the SUBCONTRACTOR itself



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Should the SUBCONTRACTOR refuse or be unable on its own account to perform the tasks required in order to complete the works under the contract conditions, the CONTRACTOR may execute these directly using its own resources or commission them from a third party, charging the sums involved either to any sums which may at that time be owed to the SUBCONTRACTOR on the basis of invoices and certificates pending payment, or settling them against the bank guaranties received, should these exist, or any bonds or sums withheld which it may hold, notwithstanding the right to bring any legal action which it may deem relevant should these sums prove insufficient in order to cover the cost of the works and its claim for compensation for the damages suffered.

The SUBCONTRACTOR hereby declares it is familiar with the site area, along with any difficulties which may exist regarding the tasks, in addition to the weather conditions, terrain, etc. of the site, and has included in its prices any possible incidents which may be caused thereby. The SUBCONTRACTOR in particular acknowledges and agrees that its work shall in part be performed at the same time as that of other Subcontractors or Suppliers in the same location, thereby requiring proper coordination by the CONTRACTOR.

All cleaning of facilities and areas under the operational responsibility of the subcontractor and will be the subcontractors responsibility.

All material damaged by the subcontractor during operations, it will be recovered and if so, paid his reinstatement.

The subcontractor agrees to use the means and resources assigned by the CONTRACTOR in a diligent manner. Damage or failure caused by personnel of the subcontractor, are your sole responsibility, and the consequences that may arise thereof. (Stops, delays, repairs, replacements ...)

The offer includes the costs necessary for temporary premises needed by subcontractor's employees.

Any damage caused to third parties by the subcontractor, shall be borne entirely by it.

Subcontractor shall monitor and maintain the material collected


The subcontractor must maintain equipment property of the CONTRACTOR and return to normal conditions.

The subcontractor may not subcontract a significant portion of this Agreement to other companies without consent of the CONTRACTOR

The subcontractor shall assume full compliance with all procedures and technical instructions provided by CONTRACTOR.

The subcontractor must meet all OSHA requirements, both those related to plant operation and field. Any environmental impact incurred by its operators, shall be assumed by it.

Subcontractor shall also provide the means required by OSHA extinction

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At the end of the work, the subcontractor must perform a final cleaning and ship campaign and remove debris field generated by its activity. If there is any damage caused to the ship or its facilities, must be repaired. All mechanical and human resources must be approved by TRP

The Contractor may require changing any operator or technician employed by the subcontractor WORK

The subcontractor shall provide means mechanical work with at least two weeks before the beginning of the learning curve,

The staff of the work must also incorporated two weeks before the start of assembly

## 16 OFFICIAL AUTHORISATIONS

All the equipments and materials including in the SUPPLY shall be duly authorised or homologated by the SUBCONTRACTOR in the country of origin.

The subcontractor must have the necessary licenses to perform the work under this contract, including the contractor's license to operate in the state of Nevada.

The Contractor may use the coverage of such license to third parties relating to the Scope of Work.

## 17 COMPLETION OF TASKS, PROVISIONAL HANDOVER AND FINAL SETTLEMENT OF WORKS


Provisional Handover or Acceptance of the Works by the CONTRACTOR shall occur when:

In addition to satisfactory conclusion of all tasks covered by this CONTRACT, the SUBCONTRACTOR has presented the CONTRACTOR with all contractual documentation as required in accordance with the terms of this CONTRACT, and this has been reviewed and approved by the CONTRACTOR.

Provisional Handover shall take place by means of signature by both Parties of the Provisional Handover Document, including among other documents the Release and Waiver Certificate, included as Annex 3 to the General Purchasing and Conditions.

The SUBCONTRACTOR shall sign the Provisional Handover document for the tasks covered by this Contract, the corresponding FINAL SETTLEMENT RECEIPT, placing on record the sums withheld, and provide proof that it has no outstanding payments regarding charges for

- (i) Materials providing CONTRACTOR the final Lien waivers of its subcontractors and any other documentation that the CONTRACTOR considers necessary,
- (ii) Labour providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law,
- (iii) Insurance providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law and

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- (iv) Health Security System -If applicable- providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law, nor any employment claims regarding the personnel employed on the CONTRACTOR's Works.

Settlement of the works shall not be performed without prior presentation by the SUBCONTRACTOR, at its expense, of all Certificates, Slips, Permits, Plans, Approvals and any other documentation required in accordance with the legislation in force with regard to the Works performed, or the equipment and materials employed in execution thereof by the SUBCONTRACTOR, and likewise without the CONTRACTOR having deemed that all documentation required under the Contract is complete and acceptable.

The SUBCONTRACTOR shall clear the works site, remove all installations, Machinery, tools and materials and collect all waste, rubble or dirt which may have been generated by its work, handing over the site clean and in perfect conditions for use. Any expense incurred by the CONTRACTOR in ensuring compliance with these requirements shall be deducted from the settlement to be paid to the CONTRACTOR.

#### 18 WARRANTY

The Warranty Period is twelve months for payment of the practiced retentions and twenty four (24) months to respond of quality and good execution of works, accounted for at the moment of provisional acceptance of the plant by the owner, once the works stated in this document be finished and the related documentations be delivered and approved the contractor.


All Bank Guaranties, sums withheld and bonds which may exist shall serve to guarantee not only proper execution of the contract works, but also compliance with all obligations incumbent upon the SUBCONTRACTOR under the terms of this Contract. They may likewise not be released in the event that the CONTRACTOR or the SUBCONTRACTOR should be involved in any official or court proceedings involving cases derived from actions or omissions of the SUBCONTRACTOR itself or of its staff, until such time as a final judgement has been issued releasing the CONTRACTOR from any liability which may have been claimed against it.

The CONTRACTOR may automatically deduct any charges levied against the SUBCONTRACTOR on these Works as a result of delay liquidated damages, subsidies, compensation, etc., against the Bank Guaranties, invoices or withheld sums pending payment, under this or any other Contract performed by the same SUBCONTRACTOR.

#### 19 TAXATION AND EMPLOYMENT OBLIGATIONS OF THE SUBCONTRACTOR

SUBCONTRACTOR shall comply with and enforce applicable law relating to employment and occupational health and safety. In addition, SUBCONTRACTOR shall timely comply with its obligations related to Taxes under applicable law.

SUBCONTRACTOR shall comply, and cause its Subcontractors to comply, with all Davis-Bacon and SALES TAX Act Requirements during and in connection with the Works. The SUBCONTRACTOR shall be responsible for the possible penalties or damages as a result of a failure to comply with Davis-Bacon Law and SALES TAX requirements for itself and any SUBCONTRACTORS it may have subcontracted and recognize be informed

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and have the knowledge to use the right work classification and the right wage determination rates in appliance in the project, being responsible about its correct use:

- Annex 5.16.C - DavisBacon-NV16 Mod12 (8-26-11)
- Annex 5.16.D - DavisBacon-NV32 Mod8 (8-26-11)
- Annex 5.16.B - DavisBacon-NV76 Mod0 (5-20-11)

If required by applicable law, SUBCONTRACTOR shall comply, and cause its Subcontractors to comply, with all EEOC Requirements during and in connection with the Works.

Any time it is required by the CONTRACTOR in the course of the execution of this Contract, SUBCONTRACTOR shall produce to CONTRACTOR on reasonable notice documents that demonstrate SUBCONTRACTOR is in compliance with its obligations set forth in the first paragraph of this Clause.

SUBCONTRACTOR shall enforce strict discipline and good order among SUBCONTRACTOR's employees and its subcontractors' and supplier' employees. SUBCONTRACOR shall at all times take all commercially reasonable precautions to prevent any unlawful or disorderly conduct by or among its employees and the employees of its subcontractors and suppliers and for the preservation of the peace and the protection of persons and property at, or in the neighborhood of, the Site.


SUBCONTRACTOR will indemnify and hold harmless the CONTRACTOR from any claim that it may suffer resulting from accidents and injuries to employees and workers on the Site, except to the extent that such claim resulted from the gross negligence or willful misconduct of the CONTRACTOR, its subcontractors.

Upon commencement of the Works the SUBCONTRACTOR shall appoint one person as valid interlocutor with the CONTRACTOR, being given full responsibility regarding matters of a technical and Workplace Risk Prevention nature applicable to it, along with compliance with any instructions passed on to it in this regard by the CONTRACTOR. Ignorance on the part of the former of the Standards and Instructions issued by the CONTRACTOR shall not release the SUBCONTRACTOR from its obligation to comply therewith.

The SUBCONTRACTOR may not assign or subcontract the works or any part thereof to third parties without the written permission of the CONTRACTOR, although such permission may not be deemed to constitute any contractual relationship between the CONTRACTOR and any approved SUBCONTRACTORS.

Should such permission exist, the SUBCONTRACTOR shall be obliged to compile and present to the CONTRACTOR all employment or taxation documentation from its subcontractors, suppliers and/or third parties or companies in the same manner as its own documentation. The SUBCONTRACTOR shall be jointly and severally liable for any damages and claims which may be brought by authorities with regard to its subcontractors and suppliers from third parties on its initiative.

The CONTRACTOR is expressly entitled to withhold pending payments at any point of the Works in order to make payment of salaries which have accrued and not been received by the workers employed on the Site by the SUBCONTRACTOR.

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The SUBCONTRACTOR is responsible for strict and timely compliance on the part of its staff with all orders and instructions given it by the authorised staff of the CONTRACTOR regarding working hours, working standards and internal discipline as established on the Site.

The CONTRACTOR and its representative likewise reserve the right to challenge any of the SUBCONTRACTOR's staff, of any category, who as a result of their ineptitude, negligence, indiscipline or lack of performance could jeopardise safety, the pace of the works or the relationship with the OWNER or the Technical Management Team.

No staff of the SUBCONTRACTOR involved in any form of labour dispute during execution of the contracted Works or Service may remain on the Site for as long as this situation should remain in place. The SUBCONTRACTOR shall nonetheless remain subject to the same obligations, commitments and responsibilities entered into with regard to the contracted Works or Service.

All transportation costs, both initial installation and daily travel to the site, shall be borne by the SUBCONTRACTOR. The time employed by staff performing Induction and Risk Prevention and Environmental training shall be paid for by the SUBCONTRACTOR.


The SUBCONTRACTOR must request authorisation in order to employ the Image or name of the CONTRACTOR in any advertising medium referring to the tasks performed by it. Should this authorisation be granted, the SUBCONTRACTOR must at all times refer to the CONTRACTOR as the lead contractor for the works and employ the logos and formats provided to it by the CONTRACTOR.

The SUBCONTRACTOR undertakes not to employ in its service any staff of the CONTRACTOR, of the OWNER or of other subcontractors working on the Site, except with the prior written authorisation of the CONTRACTOR in each case.

SUBCONTRACTOR is an independent contractor and shall, at his sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work, obtain all necessary permits and licenses therefore; pay all manufacturers taxes, sales taxes, use taxes, processing taxes and all Federal, state and local taxes, Insurance and contribution for Health System and Unemployment which are measured by wages, salaries, or other remuneration's paid to or to be paid to SUBCONTRACTOR'S employees, whether levied under existing or subsequently enacted laws, rules or regulations. SUBCONTRACTOR, upon request, shall furnish evidence satisfactory to CONTRACTOR that any or all of the foregoing obligations have been fulfilled. SUBCONTRACTOR shall impose these obligations on all his subcontractors and shall ensure that no subcontractors or Governmental Authority shall have any claim against CONTRACTOR for reimbursement of taxes. SUBCONTRACTOR shall hold harmless the CONTRACTOR for any claim from his subcontractors or Governmental Authority arisen against the CONTRACTOR and shall be responsible for the associated costs (including reasonably lawyer expenses) related to such claim.

## 20 QUALITY CONDITIONS APPLICABLE TO THE WORK.

The SUBCONTRACTOR must have in place a Quality system acceptable to the CONTRACTOR and guaranteeing on its behalf and that of any of its subcontractors compliance with the requirements set out in the Contract.

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To this end, prior to commencement of the tasks it shall present a Quality Assurance Plan complying with the Construction Quality Plan demands.

This Quality Assurance Plan shall describe the manner in which the commissioned tasks are executed, in order to guarantee compliance with the demands (contractual requirements, applicable regulations, applicable legislation). This document shall place on record all particulars deemed necessary by the CONTRACTOR.

Subcontractor will provide those aspects of the Quality Plan pertaining directly the scope of its services.


Below are listed, by way of indication, the various aspects which the aforementioned Plan may include, but not be confined to:

- Organization of tasks.
- Planning of activities.
- Inspections and testing. Scope thereof.
- Inspection points program
- Documentation control.
- Control of materials involved in the tasks.
- Control tasks to be performed.
- Control of the measuring equipment to be employed.
- Handling of anomalies and/or deviations.
- List of procedures (general procedures of the quality system, specific procedures for execution of the tasks, etc.).
- List of formats to be employed.
- List of regulations applicable to the tasks commissioned (standards, legislation, etc.).

Upon conclusion of the tasks, the Final Quality Dossier shall be presented, comprising all documentation required in order to confirm the quality of the tasks performed. This dossier shall be handed to the CONTRACTOR within a maximum of 15 days of conclusion of the tasks.

Below are listed, by way of indication, the various Documents which the aforementioned Dossier may include, but not be confined to:

- Procedures employed.
- Inspection points program.
- Testing reports.
- Certificates for the materials employed.
- Certificates for the inspection equipment. Calibration certificates.
- Staff certificates (where applicable).
- Dispatch authorizations (where applicable).
- Any modifications sheets which may have arisen during the execution process (where applicable).
- AS-BUILT plans, as applicable

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All tasks performed by the SUBCONTRACTOR must comply with the Sets of Technical Conditions and Technological or Mandatory Standards established by any Official Body or COBRA Standard Procedures, with competency regarding the tasks covered by the Contract, even if not expressly referred to in the Contract, and must employ machinery which has been certified as compliant by Official Bodies or Approved Private Organizations, in accordance also with any other requirement set out in the Annexes, along with an undertaking to present the CONTRACTOR with documents demonstrating compliance with the above circumstances, prior to incorporation on site.

Any deviation from any technical requirement established in the Contract shall lead to a non-conformity report being issued, with any applicable corrective measures being proposed in accordance, to be approved by the CONTRACTOR, the costs thereof being borne by the SUBCONTRACTOR. This requirement shall likewise apply to deviations regarding plans or documents generated by the SUBCONTRACTOR following review and approval by the CONTRACTOR.

The SUBCONTRACTOR hereby declares it has the knowledge required for execution of the tasks, such as: location of the Works and the Site, Report, Plans, Measurements, technical specifications and, in general, all relevant documentation, and deems this sufficient in order properly to perform the aforementioned tasks for the prices agreed. It likewise declares that it is fully familiar with all natural elements (topography, geology, hydrology, etc.) which could influence execution of the tasks.

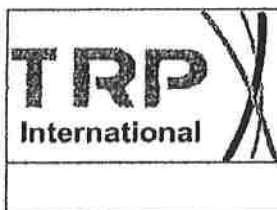
The SUBCONTRACTOR shall provide staff perfectly suited to properly executing the tasks, and must take the utmost care in the selection of its staff. The SUBCONTRACTOR must be qualified to provide its staff with technical support on Site at all times, and to include within its team more highly qualified technical staff where required.

The staff performing the work must be technically qualified for this purpose. The CONTRACTOR reserves the right to object to any qualified staff who, on an objective basis, do not comply with the minimum requirements. The CONTRACTOR may give any qualified operative a qualifications skills test for which the SUBCONTRACTOR indicates that individual is suited.

The quality of the tasks is dependent on approval by the CONTRACTOR and at all times, in the final instance, acceptance by the OWNER.

Any alteration to the contracted tasks must be authorized by the CONTRACTOR's Management Team, whose instructions must be fulfilled by the SUBCONTRACTOR on a mandatory basis.

The SUBCONTRACTOR must at all times provide full technical information regarding execution

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of the Contract which the CONTRACTOR may deem it necessary to know.

The SUBCONTRACTOR undertakes to perform at its own expense all controls, tests and analyses specified in the Specific Contractual Conditions, along with any others required under the Contract, the SUBCONTRACTOR bearing all costs involved in the return of materials which do not pass the tests, along with the demolition and reconstruction of any units executed with such materials, and any other parts of the works which may have been damaged. The CONTRACTOR reserves the right during execution of the tasks to perform any tests and inspections it may deem relevant.

The cost of compliance with all quality requirements shall be borne by the SUBCONTRACTOR, on the clear basis that all scaffolding, auxiliary staff and x-rays, non-destructive testing as required for this purpose shall likewise be the responsibility of the SUBCONTRACTOR, and thus paid for by it, and must be prepared and arranged in accordance with the guidelines and schedule of which the CONTRACTOR will serve timely notice.

THE CONTRACTOR reserves the right during execution of the tasks to perform, at its own expense, any tests or inspections it may deem relevant, aside from any which the SUBCONTRACTOR may have contracted.


The SUBCONTRACTOR expressly authorizes the CONTRACTOR, whenever the latter should deem appropriate, to visit its workshops, factories, laboratories or offices where all or any of the tasks commissioned under this Contract are being performed, in order to monitor and supervise the tasks in question.

The CONTRACTOR shall be under no obligation to pay any invoice to the SUBCONTRACTOR for units which are rejected by the OWNER as a result of inadequate quality of the materials used within the scope of work of the SUBCONTRACTOR or poor execution of the tasks performed by the SUBCONTRACTOR.

The SUBCONTRACTOR undertakes to correct at its own expense, during the execution and warranty period, any tasks performed without approval by the CONTRACTOR, or which in the judgment of the OWNER are unacceptable on the basis of poor execution or a lack of quality in the materials provided by the SUBCONTRACTOR, including demolition and reinforcement and the renewed execution of the units in question. If these tasks are performed by the CONTRACTOR or by third parties acting on its instructions, the costs derived there from shall be deducted from the SUBCONTRACTOR's invoices or the Guaranties.

The tasks are performed at the risk and venture of the SUBCONTRACTOR up until conclusion of the Warranty Period.



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The SUBCONTRACTOR shall on its own account perform the final on site testing of all technical installations executed by it.

The SUBCONTRACTOR shall be liable for any damages caused to the CONTRACTOR or to third parties as a result of poor execution of the works, or through the inappropriate quality or usage of materials or equipment, or through breaches of any instructions received. If such claims are brought via or by the CONTRACTOR, they may be settled against payments pending or sums withheld, following confirmed evidence in support of the claim brought.

## 21 HEALTH AND SAFETY CONTROL REQUIREMENTS

The CONTRACTOR will comply with the S&S control requirements required by the OWNER from the CONTRACTOR in the Principal Contract, as well as those established by the present Contract.

Before beginning the work, the SUBCONTRACTOR will present and Health and Safety Report which complies with the CONTRACTOR's Health and Safety Plan requirements during construction, which must be approved by the CONTRACTOR.

The SUBCONTRACTOR declares knowledge and the necessary resources for the Safe execution of the work in this CONTRACT.

The cost of compliance with the S&S requirements described in this section will be set aside by the SUBCONTRACTOR.


## 22 ENVIRONMENTAL REQUIREMENTS AND WASTE MATERIAL MANAGEMENT

CONTRACTOR will comply with the environmental requirements and those for waste material management required by The OWNER from the CONTRACTOR in the Principal Contract that are the same annexed in this contract, as well as those requirements established in the present contract. The SUBCONTRACTOR will present an Environmental and Waste Management Report which complies with the requirements of:

- Final Environmental Impact Study
- Permits & Plans
- WEAP

As well as the legislation in this regard which is applicable during construction, which must be approved by the CONTRACTOR.

SUBCONTRACTOR declares having knowledge of environmental and waste material management to execute the work object of this Contract.

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The SUBCONTRACTOR assumes the cost of compliance with the environmental and waste material management requirements.

## 23 LIABILITY

The SUBCONTRACTOR shall be solely responsible to the CONTRACTOR for the performance of its obligations under this Contract, whether performed by the SUBCONTRACTOR or any of its Subcontractors or suppliers.

The Parties shall not be liable for loss of profit, loss of production, and/or for standstill and for any consequential damages, or for any special indirect, punitive, exemplary, incidental, economic or consequential costs, loss or indirect damages of any description under or in connection with this Contract, whether by reason of breach of contract or statutory duty, negligence or other tort and/or indemnity.

Unless as a result of intentional actions or gross negligent action or omission attributable to a party, such party's liability shall be limited to the contract value and the additional works value (including change orders) under this Contract.

To the extent of SUBCONTRACTOR's sole negligence, the SUBCONTRACTOR shall indemnify and hold harmless the CONTRACTOR and the OWNER from any action or reclamation (from any third party including but not limited to the SUBCONTRACTOR's Subcontractor or suppliers and anyone directly or indirectly employed by the SUBCONTRACTOR or its subcontractors or suppliers) in relation (direct or indirect) with the Contract.

The amount of any of the bank guarantees shall not be considered as a limitation of the liabilities of the SUBCONTRACTOR.

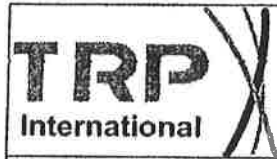
## 24 INSURANCE

### Commercial General Liability

Commercial General Liability Insurance (including follow form umbrella liability insurance if necessary) on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the Insurance Services Office Commercial General Liability Policy, CG 001. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, contractual liability or construction defects. In addition to procuring and maintaining this insurance during the duration of the contract, SUBCONTRACTOR agrees to continue to procure and maintain products and completed operations liability insurance coverage for a minimum of 3 years after the date the contract is completed or terminated

The subcontractor shall submit, prior to commencement of work, the Certificate of RC Policy that covers specifically the work done at the site.

In addition to contracting and retaining this insurance for the duration of the contract, the supplier agrees to maintain liability insurance coverage for a minimum of three years after the date of completion or

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termination of the contract, this coverage may be using a generic policy company does not require it to be specific to the project after it.

The SUBCONTRACTOR is liable for all direct damages of any kind arising from any act or mission by him or his Sub-contracting parties (or their staffs). In that case the SUBCONTRACTOR will indemnify CONTRACTOR for the pecuniary consequences.

The policy shall have a minimum limit of Indemnity of USD 3.000.000 per occurrence and 5.000.000 per aggregated occurrences.

The same requirements will be made to SUBCONTRACTORS' Subcontractors regarding the scope of work of these parties.

#### Pollution Liability Insurance

Required if SUBCONTRACTOR's scope of services includes remediation, treatment, storage or disposal of waste or hazardous materials on or about the project site, as determined by General CONTRACTOR. Such coverage shall include defense costs applicable to claims for bodily injury, property damage or clean up costs. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which Subcontractor performs services on behalf of General CONTRACTOR.

#### Professional Liability

Required if SUBCONTRACTOR's scope of services include architectural, engineering, professional consulting or construction management as determined by General CONTRACTOR.


Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which SUBCONTRACTOR performs professional services for General SUBCONTRACTOR, and for an additional period after termination of this agreement or the last date such services are performed, whichever comes later. If SUBCONTRACTOR's scope of work includes environmental engineering or consulting, coverage cannot exclude environmental professional services.

#### Cargo Insurance

If the SUBCONTRACTOR is responsible for transport, it will contract at its own expense, or have its transport SUBCONTRACTOR take out, an "all risks" transport insurance policy covering 110% of the value of the equipment from Ex-Works to the contractual delivery site.

#### Other Policies

It is SUBCONTRACTOR's responsibility to contract all insurance policies for:

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- Illness and work accident insurance for all workers assigned to the Project in accordance to all legal requirements
- Statutory Workers' Compensation and Employer's Liability insurance (including follow form umbrella liability insurance if necessary) as is required by any state or federal statute or law, or as may be available on a voluntary basis.
- Automobile Liability insurance (including follow form umbrella liability insurance if necessary) covering liability arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of the SUBCONTRACTOR. The coverage shall be at least as broad as the current edition of the Insurance Services Office Business Automobile Policy, CA 0001 ©. If SUBCONTRACTOR's scope of services includes the transportation of hazardous materials to or from the project site, as determined by General SUBCONTRACTOR, SUBCONTRACTOR shall be required to include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS-90 and CA 9948, or their equivalents.
- Equipment, materials and construction machinery (including transportation to site insurance)
- Any other insurance policy related (or not) to the present Contract that could be required by law during the life of the Contract.

If the SUBCONTRACTOR is involved in an accident, loss or damage, CONTRACTOR has the right to retain all payments due to the SUBCONTRACTOR for as long as it has not submitted all the documents required by the insurers and has not taken the reasonable steps required for the settlement of this accident, loss or damage.

SUBCONTRACTOR shall assume any amount not insured or not covered under the policies whether due to exclusion, excess or any other matter.

#### Common provisions

Before the start of the works, the SUBCONTRACTOR shall submit to CONTRACTOR the insurance certificates covering itself and its Subcontracting parties for all the risks mentioned above.

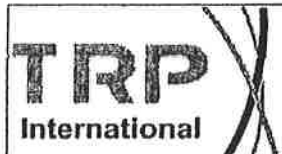
SUBCONTRACTORS insurance policies are primary to any other insurance that CONTRACTOR or the Customer may have

A copy of the renewed policies must be provided to CONTRACTOR before their expiration date.

Should SUBCONTRACTOR not provide Insurance contract or its renewal, CONTRACTOR may contract and maintain any Insurance, and CONTRACTOR will make the necessary payments for it. These payments will be deducted by CONTRACTOR from the Contract Price.

All the Insurance policies should be contracted with well-known and solvent companies, Insurance companies that provide insurance policies should have a Best's Rating of A-, VII or better, and must include:

- CONTRACTOR and Customer as additional insured Party

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- Provision that each Insurance company is required to inform CONTRACTOR of any changes, cancellations or no payment of the policies.
- SUBCONTRACTOR's Insurance company must expressly renounce to subrogate in those rights.
- SUBCONTRACTOR will obtain from his Insurance companies as well as the Insurance companies of his Subcontractors a clause of waiver against CONTRACTOR, or the Customer of any claims related to damages or accidents on SUBCONTRACTOR's properties or properties used by him or his Subcontractors

Required Insurance policies will be written in English and subject to USA Tribunal; Insurance Companies must be operative and established in USA and must be acceptable to both parties. Also, insurance companies should be re-insured by well-known Reinsurance companies and acceptable to both parties.

CONTRACTOR reserves the right to suspend payments to the SUBCONTRACTOR until these certificates are submitted, if these are not presented on time or do not fulfill the contractual obligations.

In case of accident, loss, damage, or claim from a third party; the SUBCONTRACTOR must immediately inform CONTRACTOR by written whatever the nature and the importance of the event. In case of omission, the SUBCONTRACTOR will take all consequences upon itself.

SUBCONTRACTOR will inform CONTRACTOR of any incident which could cause an accident and may need CONTRACTOR's approval to carry out any claims against Insurance Companies.

The amounts received from insurance policies should go towards replacements and repairs of the damages.


This does not affect SUBCONTRACTOR legal obligations.

It is agreed and understood that established excess clause included in the insurance policies mentioned in this Article will be assumed by the SUBCONTRACTOR.

The SUBCONTRACTOR will assume all payments that CONTRACTOR will not be able to recover from the project Insurances within the established policy limits as a result of:

- Transmission of wrong information that may be reasonably required by the Insurance Company, and that SUBCONTRACTOR may refuse to supply, or Deliberate concealment, or bad faith information
- Non compliance of any declaration, condition, or guarantee required by the Insurance Company, and that is attributable to the SUBCONTRACTOR or any of the SUBCONTRACTOR's Subcontractors.

The insurance policies contracted by virtue of the agreements in the present Clause does not limit the obligations and responsibilities to the SUBCONTRACTOR, having to be responsible for any losses or responsibilities attributed in excess or defect at the requested limits and guarantees.

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## 25 OBLIGATIONS OF THE SUBCONTRACTOR REGARDING WORKPLACE RISK PREVENTION

The SUBCONTRACTOR is obliged to comply with all legal requirements regarding Workplace Risk Prevention and workmen's compensation insurance, being responsible for the implementation of such provisions, along with any consequences derived from a breach thereof, applicable likewise to any operations subcontracted from it and any which it may in turn subcontract from third parties.

The SUBCONTRACTOR's workers must comply with Workplace Risk Prevention and Company Medical Attention Standards.

The SUBCONTRACTOR shall specifically be liable for any violations committed by its staff or its subcontractor's staff of the Workplace Risk Prevention Regulation in force, and shall adopt all measures required, in addition to mandatory provisions, in order to guarantee the utmost safety of its operatives and other staff.

The CONTRACTOR shall accept no claims from the SUBCONTRACTOR on the basis of lost time, as a result of interruptions to work, through a breach by it of Workplace Risk Prevention and Company Medical Attention Standards.

If it is required by law, the SUBCONTRACTOR, at its own expense, shall be obliged to present the CONTRACTOR with a medical examination certificate for its employees prior to their commencing their work on site; if such medical examination certificate is not required by law but CONTRACTOR requires it, the SUBCONTRACTOR shall be obliged to present the CONTRACTOR the medical examination certificate, at CONTRACTOR's expense. It shall likewise indicate the treatment procedure for accident victims, indicating the organisation, clinic, physician, etc., to provide care when needed.


The SUBCONTRACTOR must abide by the Health and Safety Plan for the CONTRACTOR. To this end the CONTRACTOR shall provide the SUBCONTRACTOR with the Workplace Risk Prevention Plan, specifying that part which, in accordance with its specialist area, affects it. The SUBCONTRACTOR shall sign confirmation of receipt of the instructions received.

The cost of compliance with all health and safety requirements shall be borne by the SUBCONTRACTOR

Personal Protection Equipment employed by the SUBCONTRACTOR's workers must comply with the legislation in force, the said party being responsible for the proper provision and specific usage thereof for the work to be performed by all its employees.

The SUBCONTRACTOR shall in all cases provide the personal protection clothing it may deem necessary (helmets, overalls, safety boots, etc.) for the SUBCONTRACTOR's staff, the cost of which shall be deducted from the following invoice upon presentation for payment.

The SUBCONTRACTOR shall install any collective protection measures required in order to perform the works commissioned from it and for which it is solely responsible, assuming responsibility for the Installation thereof at the opportune time and maintenance thereof.

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The staff of the SUBCONTRACTOR must comply with the safety and functionality conditions of the portable electrical distribution boards on site in accordance with the CONTRACTOR's regulations.

The SUBCONTRACTOR shall provide sufficient information on all chemical products to be employed at the Plant sufficiently in advance, providing the corresponding technical datasheets.

The SUBCONTRACTOR undertakes proper use and maintenance of health and welfare facilities on site.

If it is required by the CONTRACTOR, the SUBCONTRACTOR shall each month present the CONTRACTOR a safety report in accordance with the Health and Safety Plan for the CONTRACTOR.

Should the CONTRACTOR fail to comply with the regulations in force regarding Health and Safety at Work and the terms of the Workplace Risk Prevention Plan, the CONTRACTOR may suspend the tasks affected by this breach. The costs occasioned by such a suspension shall be borne by the SUBCONTRACTOR.

Any penalties or sanctions which the Competent Employment Authorities may impose on the CONTRACTOR as a result of a breach of Workplace Risk Prevention measures by the staff of the SUBCONTRACTOR shall be passed on to it in the corresponding payments, notwithstanding the terms of the paragraph below.

## 26 HAZAROUS MATERIALS AND ENVIRONMENTAL OBLIGATIONS OF THE SUBCONTRACTOR

The SUBCONTRACTOR shall be responsible, at its sole cost, for the proper handling, collection, removal, transportation and disposal of any SUBCONTRACTOR's hazardous materials and the SUBCONTRACTOR shall be solely responsible for obtaining a disposal site for such hazardous materials. All activities in connection with the foregoing shall be performed in accordance with the requirements of all governmental authorities and Applicable Laws. Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility and liability for any and all hazardous materials shall at all time remain with SUBCONTRACTOR.

SUBCONTRACTOR is entirely responsible for all the preventive and operative environmental requirements derived or as consequence of their activities.

SUBCONTRACTOR shall identify to the CONTRACTOR in writing any proposed disposal SUBCONTRACTOR or transporter of SUBCONTRACTOR's Hazardous Materials and SUBCONTRACTOR's disposal plan not less than fifty (50) days before such proposed disposal or transporter removes SUBCONTRACTOR Hazardous Materials from the Site and shall provide the CONTRACTOR documentation evidencing any disposal following such disposal. SUBCONTRACTOR shall give CONTRACTOR not less than three days' prior written notice of any proposed shipment of SUBCONTRACTOR Hazardous Materials from the Site, and SUBCONTRACTOR shall ensure that CONTRACTOR and/or the Owner has the opportunity to inspect such shipment of SUBCONTRACTOR Hazardous Materials before removal from the Site.

SUBCONTRACTOR shall indemnify, release and save CONTRACTOR harmless from all damages, liability, expenses or penalties paid by CONTRACTOR resulting from SUBCONTRACTOR Hazardous Materials.

The SUBCONTRACTOR must be familiar with and comply with all Environmental Legal Regulations which may affect any of its activities. It shall reduce as far as possible the consumption of water, energy and other raw materials, discharges, noise and gas emissions. It shall identify any materials and products employed by it

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Attorneys for Plaintiff  
TRP INTERNATIONAL, INC.

**FIFTH DISTRICT COURT**  
**NYE COUNTY, NEVADA**

TRP INTERNATIONAL, INC., a foreign  
corporation,

Petitioner,

v.

PROIMTU MMI LLC, a Nevada limited liability  
company,  
Respondent.

Case No.: CV 36431  
Dept.: 1

**PETITION TO EXPUNGE LIEN**

**ARBITRATION EXEMPT: Affects Title to  
Real Property**

COMES NOW, Plaintiff TRP INTERNATIONAL, INC. ("TRP"), by and through their  
attorneys of record, the law firm of PINTAR ALBISTON LLP and brings this Petition to Expunge  
Lien. This Petition is based upon NRS Chapter 108, the attached affidavit, pleadings and papers on  
file herein, and the oral argument of counsel during the hearing on this matter.

**POINTS AND AUTHORITIES**

**I. FACTS**

TRP is a company based in Spain that constructs solar projects. It entered into a contract with  
the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and erect heliostats on a  
solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant (the "Project").  
Inturn, TRP and Respondent PROIMTU MMI LLC ("Proimtu"), both licensed contractors in the



1 state of Nevada, entered into a contract for heliostat assembly and field erection<sup>1</sup> TRP is referred to  
2 as the Contractor and Proimtu is referred to as the Subcontractor, in the Contract, with the scope of  
3 work included the following:

- 4 - Monitoring of the procedure to assemble heliostats;
- 5 - Monitoring of all documentary and procedural requirements of the Owner;
- 6 - Installation of 10,375 heliostats;
- 7 - Establish and incorporate shifts for working staff needed to produce 400 heliostats a  
8 week;
- 9 - Meet calibrations according to specifications;
- 10 - Establish procedures for quality control;
- 11 - Transport heliostats from the assembly line to the erection on site;
- 12 - Prepare procedures for pedestal and heliostat erection;
- 13 - Provide all equipment to perform the work in the scope of the contract;
- 14 - Final leveling and alignment of heliostats;
- 15 - Re-galvanization of damaged items during the scope of the work;
- 16 - Preparation of required Environmental Management Reports;
- 17 - Implementation of temporary facilities for OSHA requirements for health and safety of  
18 the subcontractor;
- 19 - Providing exterior lighting as necessary;
- 20 - Wage requirements in compliance with Davis Bacon Act.

21 The relationship between TRP and Proimtu was unmistakably one of contractor and  
22 subcontractor. Ultimately, a dispute arose between TRP and Proimtu, with Proimtu making demands  
23 for additional payment beyond the contractual amount.<sup>2</sup> TRP refused to pay the additional sums  
24 demanded by Proimtu, although the parties are negotiating in Spain, the home country of both  
25 parties, to resolve this dispute. Due to the dispute for payment, Proimtu subsequently recorded an  
26 mechanics lien (the "Lien") in the amount of \$2,357,977 against the real property more commonly

27 \_\_\_\_\_  
28 <sup>1</sup> See Contract, attached hereto as Exhibit 1.

<sup>2</sup> See Correspondence attached hereto as Exhibit 2.

known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and 012-131-04, in Nye County (the "Real Property").<sup>3</sup> The Lien was recorded on November 12, 2014.

TRP argues that the Lien is invalid and should be expunged as Proimtu has failed to comply with mandatory statutory requirements for a valid lien by failing to serve a notice of right to lien pursuant to NRS 108.245.. The Lien has caused payments owed to TRP to be suspended from the prime contractor, In addition, TRP and Proimtu entered into a liquidation agreement to settle all outstanding claims by Proimtu.<sup>4</sup> Therefore, TRP respectfully requests that the Court set a hearing to hear arguments on expunging the Lien.

## II. LEGAL ARGUMENT

### A. Pursuant to NRS 108.2275, TRP Requests and Order to Set a Hearing to Expunge the Lien

NRS Chapter 108 is the governing authority for the Court to make a determination of the validity of the recorded Lien of Proimtu.

NRS 108.2275 provides the provisions for the release of frivolous or excessive liens:

1. The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of lien is excessive, may apply by Petition to the district court for the county where the property or some part thereof is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted.

2. The Petition must:

(a) Set forth in detail the legal and factual grounds upon which relief is requested; and

(b) Be supported by:

(1) A notarized affidavit signed by the applicant setting forth a concise statement of the facts upon which the Petition is based; and

(2) Documentary evidence in support of the affidavit, if any.

3. If the court issues an order for a hearing, the applicant shall serve notice of the application and order of the court on the lien claimant within 3 days after the court issues the order. The court shall conduct the hearing within not less than 15 days or more than 30 days after the court issues the order for a hearing.

4. The order for a hearing must include a statement that if the lien claimant fails to appear at the time and place noted, the notice of lien will be released with prejudice and the lien claimant will be ordered to pay the reasonable costs the

<sup>3</sup> See Mechanic's Lien attached hereto as Exhibit 3.

<sup>4</sup> See Exhibit 4.

applicant incurs in bringing the Petition, including reasonable attorney's fees.

5. If, at the time the application is filed, an action to foreclose the notice of lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of \$85. If an action has been filed to foreclose the notice of lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the notice of lien.

6. If, after a hearing on the matter, the court determines that:

(a) The notice of lien is frivolous and was made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the Petition.

(b) The amount of the notice of lien is excessive, the court may make an order reducing the notice of lien to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant for bringing the Petition.

(c) The notice of lien is not frivolous and was made with reasonable cause or that the amount of the notice of lien is not excessive, the court shall make an order awarding costs and reasonable attorney's fees to the lien claimant for defending the Petition.

7. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.

8. An appeal may be taken from an order made pursuant to subsection 6. A stay may not be granted if the district court does not release the lien pursuant to subsection 6.

9. If an order releasing or reducing a notice of lien is entered by the court, and the order is not stayed, the applicant may, within 5 days after the order is entered, record a certified copy of the order in the office of the county recorder of the county where the property or some part thereof is located. The recording of a certified copy of the order releasing or reducing a notice of lien is notice to any interested party that the notice of lien has been released or reduced.

Nevada Revised Statutes Chapter 108 provides the mandatory requirements to record a valid mechanic's lien on real property. Proimtu has failed to comply with NRS 108.245 by failing to serve a notice of right to lien. Therefore, pursuant to NRS 108.2275(3), TRP requests that the Court grant an order to set this Petition to Expunge the Lien on for hearing.

**B. Proimtu has Failed to comply with NRS 108.245 and therefore does not have a Valid Lien**

Nevada Revised Statutes Chapter 108 provides the mandatory requirements to record a valid mechanic's lien on real property. Specifically, one of the mandates required to record a valid lien is contained in NRS 108.245 which provides as follows:

1. Except as otherwise provided in subsection 5, **every lien claimant**, other than one who performs only labor, who claims the benefit of NRS 108.221 to

1 108.246, inclusive, **shall**, at any time after the first delivery of material or  
 2 performance of work or services under his contract, **deliver in person or by certified**  
 3 **mail to the owner of the property a notice of right to lien** in substantially the  
 following form:

4 3. **No lien for materials or equipment furnished or for work or services**  
 5 **performed**, except labor, may be perfected or enforced pursuant to NRS 108.221 to  
 108.246, inclusive, **unless the notice has been given.**

6 4. The notice need not be verified, sworn to or acknowledged.

7 5. A prime contractor or other person who contracts directly with an owner or  
 8 sells materials directly to an owner is not required to give notice pursuant to this  
 section.

9 (emphasis added) In addition, NRS 108.2453 provides, in part, that, “[e]xcept as otherwise provided  
 10 in NRS 108.221 to 108.246, inclusive, a person may not waive or modify a right, obligation or  
 11 liability set forth in the provisions of NRS 108.221 to 108.246, inclusive.” Therefore, the mandate  
 12 in NRS 108.245 to provide all owners with notice that their real property rights are subject to a  
 mechanic’s lien cannot be waived by the lien claimant.

13 In this case, Proimtu meets none of the exceptions provided in NRS 108.245 that would  
 14 excuse them from not providing a notice of right to lien. They clearly did not just provide labor. In  
 15 fact, Proimtu was cited by the U.S. Department of Labor failing to pay their workers the appropriate  
 16 wages as required by Federal law. Proimtu was classifying their workforce as laborers, when the  
 17 workers were actually providing duties in skilled trades, such as ironworking, electrical work,  
 18 painting and crane operation.<sup>5</sup> for nor was there a direct contract with the owner, identified as  
 19 Tonopah Solar Energy, LLC for the Project and the Bureau of Land Management for the real  
 20 property. Therefore, the undisputed fact that Proimtu did not provide a notice of right to lien clearly  
 21 and unequivocally invalidates its lien, which make it subject to expungement by this Court.

### 22 C. NRS Chapter 108 Requires Strict Compliance for a Valid Lien

23 “Because Nevada’s mechanic’s lien statutes are a product of legislative fiat, this Court has  
 24 held that strict compliance with those statutes is necessary before a party is entitled to any benefits  
 25 occasioned by their existence.”<sup>6</sup> Commentators on mechanic’s lien law have almost universally  
 26 agreed with this statement of the law. C.J.S. (Mechanics) § 102 (2009). *Id.* While there is some case  
 27

28 <sup>5</sup> See VegasINC article, attached hereto as Exhibit 5.

<sup>6</sup> *Fisher Bros., Inc. v. Harrah Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203, 204 (1976) n6.

1 law to support that substantial compliance may suffice in certain circumstances, the Supreme Court  
 2 of Nevada has stated that, "...we do not think that a notice of lien may be so liberally construed as to  
 3 condone the total elimination of a specific requirement of the statute."<sup>7</sup> "The general rule is that ...  
 4 the failure to give a prelien notice is fatal."<sup>8</sup>

5 NRS Chapter 108 requires lien claimant to "...deliver in person or by certified mail to the  
 6 owner of the property a notice of right to lien."<sup>9</sup> Moreover, it specifically states that "[n]o lien ...  
 7 may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has  
 8 been given."<sup>10</sup> The only exceptions to this notice requirement is when just labor is supplied, or in  
 9 situations where the contractor contracts directly with an owner.<sup>11</sup>

10 In this case, Proimtu has failed to comply entirely with NRS 108.245. It has failed to deliver  
 11 in person or by certified mail to the owner of the property a notice of right to lien. NRS Chapter 108  
 12 specifically state that "[n]o lien ... may be perfected or enforced pursuant to NRS 108.221 to  
 13 108.246, inclusive, unless the notice has been given." <sup>12</sup> Proimtu has satisfied none of the  
 14 exemptions. Therefore, its Lien is invalid and should be expunged.

15 **D. TRP is entitled to all Costs and Fees for bringing the Action to Expunge the**  
 16 **Lien**

17 **NRS 108.2275(6) provides:**

18 If, after a hearing on the matter, the court determines that:

19 (a) The notice of lien is frivolous and was made without reasonable cause,  
 20 the court shall make an order releasing the lien and awarding costs and reasonable  
 attorney's fees to the applicant for bringing the Petition.

21 Therefore, should TRP prevail, then it respectfully request its attorney fees and costs incurred.

22 **III. CONCLUSION**

23 Plaintiff respectfully requests, pursuant to NRS 108.2275, that the mechanic's lien Proimtu  
 24 wrongfully recorded against the Real Property be expunged for the following reasons:

25 \_\_\_\_\_  
 26 <sup>7</sup> *Schofield v. Copeland Lumber Yards*, 101 Nev. 83, 84-85, 692 P.2d 519, 520 (1985)

27 <sup>8</sup> *In re Stanfield*, 6 B.R. 265, 268 (9th Cir. 1980).

<sup>9</sup> NRS 108.245(1)

<sup>10</sup> NRS 108.245(3)

<sup>11</sup> NRS 108.245(6)

<sup>12</sup> NRS 108.245(3)

- 1 1. Promitu contracted with TRP to provide skilled work for heliostat erection on the Cresecent
- 2 Dunes Solar Project.
- 3 2. Proimtu recorded a lien without complying with NRS 108.245 by providing a notice of right
- 4 to lien.
- 5 3. No lien may be perfected or enforced unless the notice has been given.
- 6 4. Plaintiffs also request reasonable attorney fees and costs be awarded, pursuant to NRS
- 7 108.2275(6).
- 8

9 DATED: December 3, 2014.

PINTAR ALBISTON LLP

10  
11 By: \_\_\_\_\_

12 Becky A. Pintar, Esq., NSB # 7867  
13 Bryan L. Albiston, Esq., NSB # 12679  
14 6053 S. Fort Apache Rd. #120  
15 Las Vegas, Nevada 89148  
16 Attorney for Petitioner TRP INTERNATIONAL, INC.  
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28

**AFFIDAVIT OF NEFTALI MUNOZ IN SUPPORT OF**  
**PETITION TO EXPUNGE LIEN**

I, Neftali Munoz, hereby affirm, testify and declare as follows:

1. I am the President of TRP International, Inc. ("TRP") in Nevada.

2. TRP's parent company is based in Spain and constructs solar projects.

3. TRP entered into a contract with the prime contractor, Cobra Thermosolar Plants, Inc. ("Cobra"), to fabricate and erect heliostats on a solar project in Tonopah, Nevada, known as the Crescent Dunes Thermosolar Plant (the "Project").

4. TRP and Defendant PROIMTU MMI LLC ("Proimtu"), both licensed contractors in the state of Nevada, entered into a contract for heliostat assembly and field erection. Attached hereto as Exhibit 1 is a true and correct copy of the Contract.

5. TRP is referred to as the Contractor and Proimtu is referred to as the Subcontractor, in the Contract, with the scope of work included the following:

- Monitoring of the procedure to assemble heliostats;
- Monitoring of all documentary and procedural requirements of the Owner;
- Installation of 10,375 heliostats;
- Establish and incorporate shifts for working staff needed to produce 400 heliostats a week;
- Meet calibrations according to specifications;
- Establish procedures for quality control;
- Transport heliostats from the assembly line to the erection on site;
- Prepare procedures for pedestal and heliostat erection;
- Provide all equipment to perform the work in the scope of the contract;
- Final leveling and alignment of heliostats;
- Re-galvanization of damaged items during the scope of the work;
- Preparation of required Environmental Management Reports;
- Implementation of temporary facilities for OSHA requirements for health and safety of the subcontractor;

- 1 1. Promitu contracted with TRP to provide skilled work for heliostat erection on the Crescent
- 2 Dunes Solar Project.
- 3 2. Proimtu recorded a lien without complying with NRS 108.245 by providing a notice of right
- 4 to lien.
- 5 3. No lien may be perfected or enforced unless the notice has been given.
- 6 4. Plaintiffs also request reasonable attorney fees and costs be awarded, pursuant to NRS
- 7 108.2275(6).
- 8

9 DATED: December 8, 2014.

PINTAR ALBISTON LLP

10  
11 By: Becky A. Pinta

12 Becky A. Pinta, Esq., NSB # 7867

13 Bryan L. Albiston, Esq., NSB # 12679

14 6053 S. Fort Apache Rd. #120

15 Las Vegas, Nevada 89148

16 Attorney for Petitioner TRP INTERNATIONAL, INC.

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- Providing exterior lighting as necessary;
- Wage requirements in compliance with Davis Bacon Act.

6. The work provided by Proimtu included employees providing duties in skilled trades, such as ironworking, electrical work, painting and crane operation.

7. Ultimately, a dispute arose between TRP and Proimtu, with Proimtu making demands for additional payment beyond the contractual amount. Attached hereto as Exhibit 2 is a true and correct copy of the correspondence received from Proimtu related to the demand.

8. TRP refused to pay the additional sums demanded by Proimtu, although the parties are negotiating in Spain, the home country of both parties, to resolve this dispute.

9. Due to the dispute for payment, Proimtu subsequently recorded an mechanics lien (the "Lien") in the amount of \$2,357,977 against the real property more commonly known as APN Nos. 012-141-01, 012-151-01, 612-141-01, 012-031-04, 012-131-03 and 012-131-04, in Nye County (the "Real Property"). The Lien was recorded on November 12, 2014. Attached hereto as Exhibit 3 is a true and correct copy of the Lien.

10. The Lien has caused payments owed to TRP to be suspended from the prime contractor, Cobra.

11. In addition, TRP and Proimtu entered into a liquidation agreement to settle all outstanding claims by Proimtu. Attached hereto as Exhibit 4 is a true and correct copy of the Liquidation Agreement.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

NEFTALI MUNOZ

12/05/14

On December 5, 2014, before me, a notary public in and for Nevada, personally appeared Rebeca Martinez, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to within instrument and acknowledged to me that he executed the same in his capacity and that by giving his/her signature on the instrument the person acted, executed the instrument.

Notary Public Ashwin M. Asher  
My commission expires: 2-04-2015

SEE ATTACHED



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 12.05.14 before me, Ashwin M. Asher, Notary Public

personally appeared

NEFAL MANA HARKERA  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: APR. 14.15

Document Date: 12.05.14 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_


- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

# EXHIBIT 1


# EXHIBIT 1

|   |  |   |
|---|--|---|
|  | <b>1137 S. Main St.</b><br><b>Tonopah, NV 89049</b><br><b>EIN: 45-5312356</b><br><b>TEL.. (775) 482 1919</b> | <b>Page 2 of 44</b><br><br><b>Fecha _16/10/2012</b> |
| <b>HELIOSTAT ASSEMBLY AND FIELD ERECTRION</b>                                     |  |   |

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|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 4 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                       |

TRP INTERNATIONAL has been awarded with the turn key contract for Assembly Line and Heliostat Erection for Crescent Dunes Thermosolar Plant, a Thermosolar Power Plant of 125 MW, Solar Power Plant in Nevada, United States.

TRP INTERNATIONAL is contracting "Heliostat assembly and field erection of heliostats" to PROIMTU MMI LLC.

TRP INTERNATIONAL (the CONTRACTOR) is ordering the present Contract to execute and complete the Works to PROIMTU MMI LLC. (the SUBCONTRACTOR), as part of the above Project and as hereafter detailed.

The parties conclude with this Contract on October 16 2012 (Awarding Date), by which the CONTRACTOR and the SUBCONTRACTOR agreed on the Execution of the Work "Heliostat Assembly and field erection" as it was stipulated in the documentation from the Request for Proposal and all the exchange information and meetings until the Awarding Date.


The SUBCONTRACTOR shall execute and complete such Works upon the terms and conditions hereafter:

## 1 DEFINITIONS

- The definitions used in this CONTRACT shall have the following meaning, meanwhile the wording in which they are used do not show specifically something different:

|                      |  |
|----------------------|--|
| - OWNER:             | - Means the company TonopahSolar Energy and its differentes authorized agents  |
| - PRINCIPAL CONTRACT | - Contract signed between the owner and Cobra Thermosolar  |
| - CONTRACTOR         | - TRP International who award the present contract.  |
| - SUBCONTRACTOR      | - PROIMTU MMI LLC independent company whom TRP INTERNATIONAL has awarded the contract.   |
| - CONTRACT:          | - Means the present Supply Contract and the corresponding ANNEXES.   |
| - PROJECT:           | - Means the Electrical generation Plant Crecent Dunes Solar  |
| - SITE:              | - Means in general terms the boundaries of the thermosolar power plant installations. It is located in 10,7 gabbs pole line Tonopah,   |
| - OFFER:             | - Means the document prepared by the SUBCONTRACTOR and incorporated to this contract as ANNEX, which defines the technical description, characteristics and scope of works included in the SUPPLY. |

## 2 SCOPE OF THE CONTRACT

|   |  |                                       |
|---|--|---------------------------------------|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 5 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTION   |  |                                       |

The scope of work entails the execution of the **Erection of heliostat on site** in accordance with the terms of the present Contract and all of the documents and annexes contained therein, including the design, installation and permits of an assembly line on site, perform the assembly line to produce 80 heliostat per day until complete the whole Solar Field of 10.375 Heliostat, and Erect them on site.

The scope described above covers the following works:

#### **HELIOSTAT ASSEMBLY LINE**

- Close monitoring of the procedure to assemble heliostats, according to the requirements issued by the client ..
- Monitoring of all documentary and procedural requirements required by the customer
- Care, maintenance and use of the tools provided to do the job ..
- Strictly following the procedures defined for the tasks, included as ANNEX by TRP for each point on the assembly line and the implementation of appropriate controls to ensure the proper execution of the work.
- Installation of 10,375 or heliostats heliostats at 80 days after the learning period to meet customer requirements.
- Comply with the quality requirements imposed by the client in the assembly of heliostats.
- Establish and incorporate shifts working staff needed to produce 400 heliostats a week, having also the possibility of increasing its resources to a production of 500 heliostats a week without any additional cost to TRP.
- Meet calibrations according to the specifications of the quality plan approved by the client. Using stations verification and calibration equipment needed for 100% of the heliostats within tolerances.
- Use of the means provided by the Contractor for quality control and traceability of heliostats mounted.

#### **Heliostat and pedestals erection**

- Transport from the assembly line to the final erection on site. Includes all equipment and lifts, vehicles and manpower needed to carry out the implementation on the foundation of the pedestals or heliostats corresponding
- Preparation and submission for approval of procedures by TRP pedestal and heliostat erection on field.

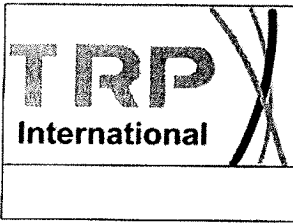
**HELIOSTAT ASSEMBLY AND FIELD ERECTRION**

- Providing tools, hand tools, jigs and other equipment of any kind to be established in the lifting procedure once approved by TRP to perform transport and lifting the heliostats on the site. This equipment must be in good condition for the implementation of the scope defined in this contract.
- Maintenance of all equipment according to the instructions of TRP
- Strict monitoring of lifting procedures, and generating reports and monitoring quality control to ensure the smooth implementation of the lifting.
- Final and perfect leveling and alignment of heliostat according to the specifications of COBRA.
- Adapt the resource needs to reach heliostats and pedestals erection to meet the requirement of 400 heliostats a week, with potential to increase to 500 heliostats a week at no additional cost to TRP.
- Previous verification of screws already in the solar field to confirm you have the correct position and verticality and that are on the side of tolerance
- Reporting quality control and production control applications to ensure the smooth implementation of the lifting.
- Final leveling and fit and alignment pedestals and heliostats according to specifications.
- Final reports Quality Control

As general issues the SUBCONTRACTOR has to take into account and is included in the scope:

- Re-Galvanization of damaged items during the course of the work if necessary.
- Preparation of Risk Assessment for the work required and must be approved by the contractor before the work begins.
- Preparation of Environmental Management Reports and waste required by the Customer. Strict monitoring of environmental management standards required by the client.
- Certificates of materials used if it is the case.
- Issuance of Certificates of Inspection of equipment that require own.
- Generation and contribution in a timely manner of the documentation required by the American authorities and the client on the recruits.
- Completion of Documents and Project Quality required.
- Implementation of temporary facilities as OSHA requirements and health and safety by the subcontractor.



|   |  |                                       |
|---|--|---------------------------------------|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 7 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |                                       |

- Lights when necessary, work areas, exterior or interior and means to do so if outdoors. Excluding general vials, responsibility.
- All activities necessary to conduct the proper execution of the work according to the conditions, which are considered by the subcontractor are included.
- Contribution in case of personnel certificates in compliance with the operational requirements of the site, including:
- Wage Requirements as Davis Davis Bacon requirements as indicated in Annex 4.
- Delivery of the required data from DBA & STA indicated in Annex 4 regularly.

It is included in Annex I, a chart with technical clarifications included in the scope of the contract.

### 3 MODIFICATION OR EXTENSION OF THE SCOPE

Any modification or extension of the scope of the PROJECT requested by the CONTRACTOR shall be submitted to the SUBCONTRACTOR in writing and signed by the CONTRACTOR. The SUBCONTRACTOR shall submit to the CONTRACTOR a detailed offer with price and conditions of payment for this modification or extension and the consequences of the requested modification in relation with its schedule of works, date of delivery, terms of guarantee and technical specifications.

In case of acceptance, CONTRACTOR shall communicate in writing its decision to the SUBCONTRACTOR dully signed by CONTRACTOR. (In form of Change order, extension of the original contract or a new contract)

The price and the conditions of payment of this extensions or modifications shall be totally independent from those agreed in this CONTRACT. The effective date of these extensions or modifications of the CONTRAT shall be established in the offer submitted by the SUBCONTRACTOR.


All the direct expenses strictly caused by these modifications or extensions shall be paid by the CONTRACTOR.

The total number of helistats assembled and erectes shll be changed in the client requests wo without any chage in the unit price.

### 4 CONTRACTUAL DOCUMENTS

Only the Contract Documents defined and listed and the attached Annexes List shall together constitute the Contractual Documentation between the CONTRACTOR and the SUBCONTRACTOR.

Contract Documents are bound together with this Contract and have been signed by the CONTRACTOR and the SUBCONTRACTOR:

|   |  |                                       |
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1.- The present document.

2.- annex iTechnical Clarifications-Minutes of meeting March 30th 2012

3.- Annex ii Technical Documents

- Assembly in Plant (CDS-10-UWA-OIP-TMP-001\_Rev. E)
- Solar Field Assembly (CDS-10-UWA-OIP-TMP-002\_Rev. D)

4.-Annex III Commercial Documents

- General Purchasing Conditions CDS-COM-GPC-CPI-0001 General Purchasing Conditions USA Cobra Thermosolar Plants
- Terms and conditions on site CDS-COM-GPC-CPI-0002 Terms and Condition on site works

5.-Annex IV Administration documents:

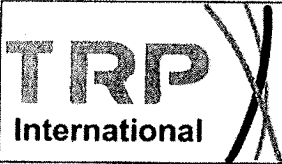
- Davis Bacon Act Requirements
- Sales Tax Abatement Requirements
- Documents SUBCONTRACTOR has to present with each invoice
- Documents SUBCONTRACTOR has to present with the sign of the present document.
- Documents to present with the provisional turnover.

6.-Annex V Plan of Development

- Wind Data

7.-Annex VI Permits & Plans:

- Construction Stormwater
- Groundwater Discharge
- Working Waterways
- Air Quality Class II
- Surface Area Disturbance
- Encroachment Permit

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- Flood Damage Prevention Permit
- SWPP Plan
- SPCC Plan
- H&S Plan
- Lighting Plan
- Traffic Management Plan
- Waste Management Plan
- Hazardous Materials Program
- Facility Emergency Action Plan

8.-Annex VIII WEAP

9.-annex IX Subcontract Offer


In case of conflict between Contract Documents, the order of precedence shall be:

- First: This Contract
- Second: Its Annexes, prevailing Annex 1 over Annex 2, Annex 2 over Annex 3

## 5 SCHEDULE

The Work has to be done in order to fulfil the following contractual dates:

| Contract Dates |   |                     |
|----------------|---|---------------------|
| 1              | Pedestal production start                     | 5/11/2012           |
| 2              | Samples validation on heliostat assembly line | 09/11/2012          |
| 3              | Heliostat production start                    | 12/11 2012          |
| 4              | Ramp up perio                                 | 3 de Diciembre 2012 |
| 5              | End of heliostat assembly and field erection  | 30 de mayo 2013     |
| Contract Dates |   |                     |

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## 6 GUARANTEE VALUES

Warranties and requirements will be met for each heliostat assembled and therefore no mean values or complete lots will be accepted. The failure to comply with any technical requirement defined in the Technical specifications mentioned in the previous section, involves rejection of units and forces the Subcontractor to replace these units by new ones under contractual schedule at his own expenses.


The Subcontractor will guarantee the following requirements in each step of the assembly line and solar field erection in case of the pedestal:

| Description                         | Operation          | Type   | Value                     | Measurement point  | Measurement system                        |
|-------------------------------------|--------------------|--|---------------------------|--|---|
| Assembly reference surface          | OP-E200 to OP-E800 | Leveling   | 0.2 mrad                  | Interface with positioning tooling                                 | Inclinometer                              |
| Torque tube functional verification | OP-E600            | Torque between 0° and 100° and maximum clearance unalignment | Lower than defined values | Torque tube  | Torque meter and linear probe             |
| Assembly of trusses                 | OP-E800            | Leveling   | 0.2 mrad                  | Trusses points   | Inclinometer/Laser Tracker/ or equivalent |
| Canting                             | OP-E1100           | Length/Distance  | +/-0.02 inch              | On the glazing of the facet at mooring points (4 points per facet) | Laser Radar/ Gantry Probes/ or equivalent |
| Pedestal leveling                   | OP-OC400           | Leveling   | +/-0.3 mrad (*)           | Upper flange   | Inclinometer / or equivalent              |

(\*) Conditioned to adapt foundation bolts to fine coarse.

## 7 REQUESTED DOCUMENTATION TO SUBCONTRACTOR

Functional verification torque tube values (torque and clearance unalignment in excel format).

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Leveling values for each pedestal (in excel format), according to the final leveling procedure issued by the Contractor.

Traceability documentation per each heliostat.

## 8 UNIT PRICES AND QUANTITIES

The prices indicated shall be fixed and subject to no revision whatsoever for any reason within the period of execution of the Works covered by this Contract

| Scope   | Quantity | Unit Price   | Total         |
|---|----------|--------------|---------------|
| Price by Heliostat assembled and erected on site. | 10.375   | 843,00 \$/ud | 8.746.125 USD |

Eight million seven hundred and forty six thousand one hundred and twenty five US Dollars

The previous price inclides all the concepts, and taxes requied by local regulations for the execution of the works according to the scope of the contract. Since it is a servece It is not subject to Sales Tax in Nevada


The previous price includes up to a 5% of additional work that might have to be executed as consequence of rejections or reworks that be necessary during the execution of the activitiesassembly and erection activities.

In case of fulfillment of the stated work calendar and execution of works at full satisfaction of the Contractor, the previous amount will be increased jn a value of 253.875 dollars.

The price includes the expenses of Sales and USE TAX in the conditions reflectec in the agreement reached by the final clinet with Nevada State.

The final client (Cobra) will assume this cost only if COBRA Thermosolar Plant receives invoices clearly detailing and materials that the Supplier has obtained reduction SALES TAX, and provided the documentation required by the Department of energy to obtain and comply with the requirements. Otherwise the payment of these taxes will be the sole responsibility of the subcontractor. If COBRA or TRP incur any tax liability for reasons attributable to the subcontractor, the subcontractor TRP immediately reimburse the total cost thereof, including attorneys' fees, interest and penalties.

The prices indicated shall be fixed and subject to no revision whatsoever for any reason within the period of execution of the Works covered by this Contract, provided there are no modifications to the bases for the design, except for those permitted modifications indicated in the aforementioned Annex, not even as a result of official variations in the prices of materials or collective or specific labour agreements established subsequently by professional organisations or official bodies at the local, district or national level. The prices include, among other aspects, all direct and indirect costs, industrial profits, execution of all services lying

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within the Scope, supplies of materials, transportation as far as the point of delivery indicated in the Contract, preparation for transportation, any required staff deployment, use of manufacturing equipment as required, all insurance policies, withholding taxes, rights and expenses required, along with all levies, taxes, tariffs, charges and fees of any kind for the proper and satisfactory execution of the Scope by the SUBCONTRACTOR.

The SUBCONTRACTOR consequently assumes the entire economic risk based on any modification to the cost of the services and materials, assets and equipment involved in manufacture, transportation, levies, taxes, charges, social insurance payments, salary reviews or any others which may affect the Scope and which may arise for any reason, except where expressly provided otherwise in the Contract.

As long as there are no delays attributable to the subcontractor, the work will take place during the work schedule it has set. In case of delays attributable to the subcontractor, the Contractor may require Subcontractor development work for 24 hours 7 days a week, with no increase whatsoever in this case for weekend or night work.

## 9 OPTIONS

Additional Price per heliostat is stated in Clause 8.

## 10 PROJECT SCHEDULING AND ORGANIZATION


### Scheduling

The SUBCONTRACTOR should divide the Contract's scope of work in work packages defined by equipment, systems, including parts and subsystems if these are considered critical, of important execution or highly difficult. There will be detailed planning for each work package which will serve as the base for defining and emitting the Program for Points of Inspection. The SUBCONTRACTOR should include the procedures presentation that supports the Project, detailed engineering, supply of material, manufacture and workshop testing, erection, inspections and tests.

The SUBCONTRACTOR will be responsible for preparation, follow-up and updated of the Project Schedule, using bar graphs, in which the different activities are represented. The SUBCONTRACTOR should present the work load that supports the proposed scheduling.

The following schedules must be presented in native format (Primavera Project Planner or Microsoft Project):

1. Summary Schedule, with bar graphs, which reflect the general scheduling of the significant activities that make up the Contract's scope of work, those conditions in the beginning as well as at the end by third parties and those Works that involve opening a new task, included in the CONTRACTOR's milestones schedule.
2. A general Schedule of priorities; development of the first which contains at least the activities described by the SUBCONTRACTOR and the milestones set by the CONTRACTOR.
3. This schedule will gather all of the necessary connections between activities whether for the physical configuration or because the same means are necessary for execution.

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4. Labor hours curves chart, classified as direct and indirect labour hours in the most significant specialties.
5. Monthly and accumulated production curves chart from the determining entries for the general advancement of the project.

Based on the contractual schedule, the SUBCONTRACTOR should present the CONTRACTOR:


- Detailed schedule, coordinated with the project's general schedule, in no more than 10 days from award in editable format.
- Also, throughout the works, the SUBCONTRACTOR must carry out :
  - o detailed schedules for specific tasks,
  - o an analysis of the schedules in light of work follow-up, etc., in coordination with the CONTRACTOR, keeping in mind the presence of other SUBCONTRACTORS on site,
  - o Detailed schedule with a bar graph within the first three days of each month
  - o Weekly schedule at the beginning of each week, including the activities scheduled and carried out the previous week and those scheduled for the current week as well as for the following week.

The CONTRACTOR's Construction Manager will establish the priorities in interphases with other SUBCONTRACTORS. The SUBCONTRACTOR will take the pertinent steps so that the work is carried out in accordance with the established schedule. If impact on the daily production of this decision is higher than the 10% the SUBCONTRACTOR will have the right to recover this extra-cost.

#### Organization of means

The SUBCONTRACTOR must present:

- Daily report including: List of equipments and tools that will be on job site for the Works of the bidding, indication technical characteristics and origin.
- Detailed description of the erection process, with proof, whenever necessary, of the special works.

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- Study of achievement levels, production and analysis of the repetitive work time, detailing the human and material means and foreseen workday.
- Technical and analytical studies of the subjects that the SUBCONTRACTOR considers timely including, when necessary, the origin of the material.

The SUBCONTRACTOR will coordinate and expedite all its SUBCONTRACTORS' work, resolving all possible problems that may come up among them. The SUBCONTRACTOR guarantees that all activities carried out are in accordance to the requirements fixed in the present specification.

The SUBCONTRACTOR must present within fifteen days, any subcontracte company operating within the scope of the present contact.

## 11 DOCUMENTATION REQUIRED FROM THE SUBCONTRACTOR

The SUBCONTRACTOR must comply with all manner of documentary requirements set out in the CONTRACT and all Annexes thereto.

The documentation required of the SUBCONTRACTOR in the CONTRACT is subject to approval by the CONTRACTOR, the SUBCONTRACTOR being required to meet the demands of said party under the terms of the CONTRACT

## 12 INVOICING AND FORM OF PAYMENT

Invoicing shall be performed as follows:

95% by monothly certifications closed on the 15<sup>th</sup> of each months accounting for the heliostats erectedf on the field.

5% upon final approval by the client of final quality documentation


Wworks will vbe certified by heliostat assembled on field.

These sums to be invoiced shall at all times correspond to works actually executed and approved by the CONTRACTOR. To approve the works, SUBCONTRACTOR has to issue an application using a COBRA THERMOSOLAR PLANT template before than 20<sup>th</sup> of each calendar month. The application shall be done accumulated to origin of works and closed on the 15<sup>th</sup> of each month.

Five days after presenting the application, CONTRACTOR will approve or reject it. SUBCONTRACTOR will be allowed to invoice as soon as application has been approved.

Payments will be done meanwhile bank wire transfer, 90 days after the reception of the correspondent invoice by CONTRACTOR together with the approved application. Payments will be done the 25<sup>th</sup> of each month.



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By mutual agreement, may use billing and payment options that allow the discount of bills by the subcontractor.

Should any of invoices be incorrect or the documents attach to the invoice are incomplete and need to be returned to the SUBCONTRACTOR for modification, being the SUBCONTRACTOR's fault, the date of the new invoice will be that of the new issue.

Invoices shall be issued and mailed in original + three (3) copies, in accordance with following indications:

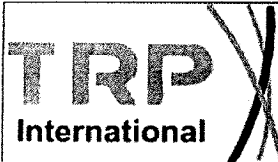
|   |  |
|---|--|
| Dirección de Factura<br><br>TRP INTERNATIONAL INCP.O. BOX 1528<br><br>1137 S. Main St<br><br>TONOPAH, NV 89049<br><br>EIN: 45-5312653 | Enviar a:<br><br>ALEJANDRO FERNANDEZ CUADRA<br><br>TRP INTERNATIONAL INCP.O. BOX 1528<br><br>1137 S. Main St<br><br>TONOPAH, NV 89049<br><br>EIN: 45-5312653 |
|---|--|

All invoices must clearly be stated, otherwise it shall be returned:

- SUBCONTRACTOR's Reg. Number.
- Clear price break down between materials and services.
- Complete SUBCONTRACTOR.'s Bank Account data and terms of payment.
- Project: 9013 - Crescent Dunes Solar Energy Project
- PURCHASE ORDER No.

Each progress invoice shall be accompanied by(Annex 4):

- An approved certification that the portion of the work for which Subcontractor has requested payment has been satisfactorily completed in accordance with this agreement.
- Documentation to obey David Bacon Law
- Documentation to obey SALES TAXES Law
- A conditional waiver and release upon progress payment

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- An unconditional waiver and release upon progress payment .Documentation that all taxes and insurances are current and paid through the application date.
- All other documentation SUBCONTRACTOR is required to submit pursuant to this Agreement in ANNEX 5 or any other documentation COBRA THERMOSOLAR PLANT administration department must require by law.

**The final invoice** shall be accompanied by (Annex 4):

- An approved certification that the portion of the work for which Subcontractor has requested payment has been satisfactorily completed in accordance with this agreement.
- An unconditional waiver and release upon final .Documentation that all taxes and insurances are current and paid through the application date.
- Certification of final completion.
- State unemployment certificate.
- All other documentation CONTRACTOR is required to submit pursuant to this Agreement.

It is agreed that no payment hereunder shall be made, except at CONTRACTOR'S option, until and unless such documentation have been furnished.

In any case the subcontractor assume the responsibility of the best practices about SALES TAXES following the current law.


### **13 WITHHOLDINGS AND BANK GUARANTEES.**

Performance Bond (letter of credit or bank guarantee) covering 5% of the contract price valid from the actual date of completion of work until a year later.

The sum of each bank guarantee, withholding and other deposits not only ensures the proper execution of the work, but also the obligations of the scope of this contract

The Letter of Credit shall be issued by a top international bank operating in Spain, Spanish language, governed by Spanish law. Any change or modification of the above conditions must be explicitly approved by the contractor.

The supplier is responsible to require repayment of the credit cards once they have met the contractual requirements.

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#### 14 DELAY LIQUIDATED DAMAGES

##### 1. Delay during learning curve.

A failure by the subcontractor in the Work Programme set out in clause 5 of this contract shall entitle the contractor to claim the first interim payment of liquidated damages, compensation equivalent to 2% (two percent) per week of delay applied to the total contract price. The cumulative delay damages for such damage may not exceed 10% (ten percent) of the total sum of the contract and any extensions.

##### 2.-Delay during production phase.

The subcontractor must recover under his cost the delay on production using a third shift or working on weekend.

It is NOT acceptable delays on production week by week; it means that the subcontractor has to recover every week the corresponding pending production.

Deviation in the finalization of the production (May 15<sup>th</sup> 2013) will have two weeks grace period. After this grace period the deviation will be penalized with:

0,5 % per week for the first two weeks.

1% per week from the third week.


The cumulative sum of such delay liquidated damages may not exceed 10% (ten percent) of the overall sum of the Contract and any extensions thereto

Liquid damages do not apply if it does not affect to the production process and it means that the SUBCONTRACTOR would recover and readjust the contracted production.

The sum of any delay liquidated damages shall be deducted from invoices pending payment at the time of application thereof, and/or the Bank Guaranties provided by the SUBCONTRACTOR. In case of this percentage is exceeded by the SUBCONTRACTOR, the CONTRACTOR shall be entitled to terminate the Contract and, in such case, shall be entitled to withhold the sums invoiced and pending payment, along with the Bank Guarantees provided by the SUBCONTRACTOR, pending due settlement of the tasks performed, following deduction of the charges applicable on the basis of the damages occasioned to the CONTRACTOR.

This shall not constitute a waiver of any rights of the CONTRACTOR to damages or other remedies of CONTRACTOR under this Agreement; provided, that the remedies set forth in this clause are CONTRACTOR's sole and exclusive remedies for SUBCONTRACTOR's failure to achieve the deadlines stated in the Working Programme set out in Clause 5 of this Contract.

#### 15 CONDITIONS FOR EXECUTION OF THE TASKS

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The SUBCONTRACTOR declares that it has received enough documentation and information required in order properly to execute the complete scope of the Contract in accordance with the order of precedence set out in Clause 2 of this Contract. Should the SUBCONTRACTOR failed to serve notice of any error which it may have uncovered in accordance with the diligence incumbent upon it under the terms of this Contract, the SUBCONTRACTOR shall be liable for any surplus costs directly derived from such errors.

The SUBCONTRACTOR is responsible of supervising all the heliostat's supplies received, if there are missing or damage units the SUBCONTRACTOR must communicate it by written to the CONTRACTOR before the following 48 hours from the reception of the supplies. If the CONTRACTOR is not informed during this period, the SUBCONTRACTOR will be responsible of all the possible replacement expensive.


The SUBCONTRACTOR may make no modifications, corrections, permissions, additions or variations to the details of the Plans Approved by the CONTRACTOR's Engineering Department, which shall be presented by the latter party sufficiently in advance, nor may it change any brands or technical specifications with regard to the materials, equipment or machines to be employed in the Works, without the prior authorisation in writing of the CONTRACTOR. It would otherwise incur grave grounds for rescission of the Contract, if deemed appropriate.

The SUBCONTRACTOR must at all times provide all technical information regarding execution of the Works which the CONTRACTOR may deem it necessary to know, such as Working Programmes, personnel workloads or lists of machinery characteristics. In particular, sufficiently in advance and in all cases prior to commencement of its tasks, the SUBCONTRACTOR shall, if so required, present on Site a sample of the various materials and equipment to be supplied for acceptance by the CONTRACTOR and, where applicable, the Technical Management Team. Any damage caused to the Site as a result in a delay in the presentation of samples shall be attributable to the SUBCONTRACTOR.

Any changes which may be made to the original Project as a result of orders issued by the CONTRACTOR's Works Management Team shall be accepted by the SUBCONTRACTOR, without the right to revise any of the terms of this Contract, except on the basis of the evaluation of the new units to be executed or in justified schedule changes, which must be approved by the CONTRACTOR by means of the corresponding Annex.

The SUBCONTRACTOR shall at its own expense have in place all temporary installations and constructions required, such as offices, washrooms, changing rooms, warehouses, etc in order to perform its tasks. The CONTRACTOR shall bear no responsibility of any kind regarding the offloading, verification, safekeeping or storage of the SUBCONTRACTOR's materials or machinery. The CONTRACTOR shall make available to the SUBCONTRACTOR, at no expense to it, the space available for these installations.

If by express agreement the CONTRACTOR should supply materials or components for the tasks to be performed by the SUBCONTRACTOR, this shall be performed by means of DELIVERY NOTES stating the price of the materials supplied, with the corresponding RECEIPT. Signature thereof by the authorised staff of the SUBCONTRACTOR shall be sufficient for it to take responsibility for the safekeeping and preservation of such materials or equipment, which shall be deducted from the invoices submitted by the SUBCONTRACTOR, in the event they are included within the contractual scope.

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The SUBCONTRACTOR shall clean and remove at its own expense all waste or surplus materials resulting from its work, leaving the site suitable for the entry of any subsequent operatives or installations required.

The SUBCONTRACTOR shall provide the personnel, means of production and materials required and adequate for execution of the tasks under the conditions set out in this CONTRACT, in accordance with the Employment Legislation in force, and may not remove any of these without the prior authorisation in writing of the CONTRACTOR.

Prior to commencement of the services, the SUBCONTRACTOR shall confirm its organisational structure for execution of the tasks covered by the Contract, including at least the names and CVs of the managers who will in fact be responsible for execution of the service. This organisational structure must be agreed to by the CONTRACTOR, the constituent personnel being dedicated 100% to the works throughout the period of execution of the tasks.

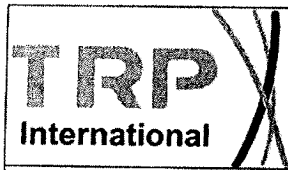
The SUBCONTRACTOR must appoint a supervisor or a representative as the channel for the relationship between the CONTRACTOR and the SUBCONTRACTOR's staff. The CONTRACTOR reserves the right to object to this interlocutor if, as a result of objective considerations, although in its sole judgement, it should deem so necessary. In this case the SUBCONTRACTOR shall be obliged to replace its representative on an urgent basis by means of another individual of the same technical category, without this giving rise to any justification for any delay in compliance with its Schedule. The CONTRACTOR may request a valid and independent interlocutor with regard to the functions of Quality Assurance, Health and Safety and Environmental Management. The SUBCONTRACTOR shall be responsible for ensuring that its supervisor is familiar with, complies with and ensures compliance with the obligations derived from the Contract.

Per Clients request, the Contractor mith change erection areas within prior notice of 12 hours.

All notices must be served by the Parties within a maximum period of five days from occurrence of the event, unless any other deadline is given in the specific clauses of the Contractual Documentation. Replies must be given within a period of five days. The maximum deadlines set out above shall be 15 days in the case of notices or responses from the CONTRACTOR involving the OWNER.

All works extension of the scope of the present contract has to be signed by COBRA in a change order document before its execution. Every change order that should be received with more than one month after the execution of the works it won't be had into account

The SUBCONTRACTOR may not, without the prior authorisation in writing of the CONTRACTOR, reproduce, copy, employ or reveal in whole or in part the information provided by the CONTRACTOR nor the information or documentation generated by it in performance of the Contract, unless in order to meet the needs of strict compliance therewith. These demands shall apply to any possible subcontractors of the SUBCONTRACTOR itself

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Should the SUBCONTRACTOR refuse or be unable on its own account to perform the tasks required in order to complete the works under the contract conditions, the CONTRACTOR may execute these directly using its own resources or commission them from a third party, charging the sums involved either to any sums which may at that time be owed to the SUBCONTRACTOR on the basis of invoices and certificates pending payment, or settling them against the bank guaranties received, should these exist, or any bonds or sums withheld which it may hold, notwithstanding the right to bring any legal action which it may deem relevant should these sums prove insufficient in order to cover the cost of the works and its claim for compensation for the damages suffered.

The SUBCONTRACTOR hereby declares it is familiar with the site area, along with any difficulties which may exist regarding the tasks, in addition to the weather conditions, terrain, etc. of the site, and has included in its prices any possible incidents which may be caused thereby. The SUBCONTRACTOR in particular acknowledges and agrees that its work shall in part be performed at the same time as that of other Subcontractors or Suppliers in the same location, thereby requiring proper coordination by the CONTRACTOR.

All cleaning of facilities and areas under the operational responsibility of the subcontractor and will be the subcontractors responsibility.

All material damaged by the subcontractor during operations, it will be recovered and if so, paid his reinstatement.

The subcontractor agrees to use the means and resources assigned by the CONTRACTOR in a diligent manner. Damage or failure caused by personnel of the subcontractor, are your sole responsibility, and the consequences that may arise thereof. (Stops, delays, repairs, replacements ...)

The offer includes the costs necessary for temporary premises needed by subcontractor's employees.

Any damage caused to third parties by the subcontractor, shall be borne entirely by it.

Subcontractor shall monitor and maintain the material collected

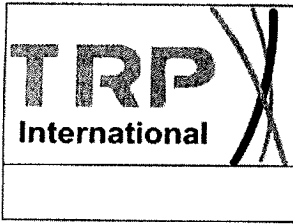
The subcontractor must maintain equipment property of the CONTRACTOR and return to normal conditions.

The subcontractor may not subcontract a significant portion of this Agreement to other companies without consent of the CONTRACTOR

The subcontractor shall assume full compliance with all procedures and technical instructions provided by CONTRACTOR.

The subcontractor must meet all OSHA requirements, both those related to plant operation and field. Any environmental impact incurred by its operators, shall be assumed by it.

Subcontractor shall also provide the means required by OSHA extinction

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At the end of the work, the subcontractor must perform a final cleaning and ship campaign and remove debris field generated by its activity. If there is any damage caused to the ship or its facilities, must be repaired. All mechanical and human resources must be approved by TRP

The Contractor may require changing any operator or technician employed by the subcontractor WORK

The subcontractor shall provide means mechanical work with at least two weeks before the beginning of the learning curve,

The staff of the work must also incorporated two weeks before the start of assembly

## 16 OFFICIAL AUTHORISATIONS

All the equipments and materials including in the SUPPLY shall be duly authorised or homologated by the SUBCONTRACTOR in the country of origin.

The subcontractor must have the necessary licenses to perform the work under this contract, including the contractor's license to operate in the state of Nevada.

The Contractor may use the coverage of such license to third parties relating to the Scope of Work.

## 17 COMPLETION OF TASKS, PROVISIONAL HANDOVER AND FINAL SETTLEMENT OF WORKS

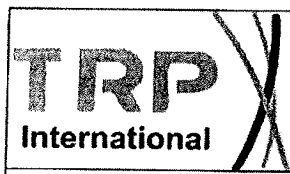
Provisional Handover or Acceptance of the Works by the CONTRACTOR shall occur when:

In addition to satisfactory conclusion of all tasks covered by this CONTRACT, the SUBCONTRACTOR has presented the CONTRACTOR with all contractual documentation as required in accordance with the terms of this CONTRACT, and this has been reviewed and approved by the CONTRACTOR.

Provisional Handover shall take place by means of signature by both Parties of the Provisional Handover Document, including among other documents the Release and Waiver Certificate, included as Annex 3 to the General Purchasing and Conditions.

The SUBCONTRACTOR shall sign the Provisional Handover document for the tasks covered by this Contract, the corresponding FINAL SETTLEMENT RECEIPT, placing on record the sums withheld, and provide proof that it has no outstanding payments regarding charges for

- (i) Materials providing CONTRACTOR the final Lien waivers of its subcontractors and any other documentation that the CONTRACTOR considers necessary,
- (ii) Labour providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law,
- (iii) Insurance providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law and

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- (iv) Health Security System –if applicable- providing the CONTRACTOR any valid documentation and/or declaration according to the applicable law, nor any employment claims regarding the personnel employed on the CONTRACTOR's Works.

Settlement of the works shall not be performed without prior presentation by the SUBCONTRACTOR, at its expense, of all Certificates, Slips, Permits, Plans, Approvals and any other documentation required in accordance with the legislation in force with regard to the Works performed, or the equipment and materials employed in execution thereof by the SUBCONTRACTOR, and likewise without the CONTRACTOR having deemed that all documentation required under the Contract is complete and acceptable.

The SUBCONTRACTOR shall clear the works site, remove all installations, Machinery, tools and materials and collect all waste, rubble or dirt which may have been generated by its work, handing over the site clean and in perfect conditions for use. Any expense incurred by the CONTRACTOR in ensuring compliance with these requirements shall be deducted from the settlement to be paid to the CONTRACTOR.

## 18 WARRANTY

The Warranty Period is twelve months for payment of the practiced retentions and twenty four (24) months to respond of quality and good execution of works, accounted for at the moment of provisional acceptance of the plant by the owner, once the works stated in this document be finished and the related documentations be delivered and approved the ontractor.

All Bank Guaranties, sums withheld and bonds which may exist shall serve to guarantee not only proper execution of the contract works, but also compliance with all obligations incumbent upon the SUBCONTRACTOR under the terms of this Contract. They may likewise not be released in the event that the CONTRACTOR or the SUBCONTRACTOR should be involved in any official or court proceedings involving cases derived from actions or omissions of the SUBCONTRACTOR itself or of its staff, until such time as a final judgement has been issued releasing the CONTRACTOR from any liability which may have been claimed against it.


The CONTRACTOR may automatically deduct any charges levied against the SUBCONTRACTOR on these Works as a result of delay liquidated damages , subsidies, compensation, etc., against the Bank Guaranties, invoices or withheld sums pending payment, under this or any other Contract performed by the same SUBCONTRACTOR.

## 19 TAXATION AND EMPLOYMENT OBLIGATIONS OF THE SUBCONTRACTOR

SUBCONTRACTOR shall comply with and enforce applicable law relating to employment and occupational health and safety. In addition, SUBCONTRACTOR shall timely comply with its obligations related to Taxes under applicable law.

SUBCONTRACTOR shall comply, and cause its Subcontractors to comply, with all Davis-Bacon and SALES TAX Act Requirements during and in connection with the Works. The SUBCONTRACTOR shall be responsible for the possible penalties or damages as a result of a failure to comply with Davis-Bacon Law and SALES TAX requirements for itself and any SUBCONTRACTORS it may have subcontracted and recognize be informed



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and have the knowledge to use the right work classification and the right wage determination rates in appliance in the project, being responsible about its correct use:

- Annex 5.16.C - DavisBacon-NV16 Mod12 (8-26-11)
- Annex 5.16.D - DavisBacon-NV32 Mod8 (8-26-11)
- Annex 5.16.B - DavisBacon-NV76 Mod0 (5-20-11)

If required by applicable law, SUBCONTRACTOR shall comply, and cause its Subcontractors to comply, with all EEOC Requirements during and in connection with the Works.

Any time it is required by the CONTRACTOR in the course of the execution of this Contract, SUBCONTRACTOR shall produce to CONTRACTOR on reasonable notice documents that demonstrate SUBCONTRACTOR is in compliance with its obligations set forth in the first paragraph of this Clause.

SUBCONTRACTOR shall enforce strict discipline and good order among SUBCONTRACTOR's employees and its subcontractors' and supplier' employees. SUBCONTRACTOR shall at all times take all commercially reasonable precautions to prevent any unlawful or disorderly conduct by or among its employees and the employees of its subcontractors and suppliers and for the preservation of the peace and the protection of persons and property at, or in the neighborhood of, the Site.


SUBCONTRACTOR will indemnify and hold harmless the CONTRACTOR from any claim that it may suffer resulting from accidents and injuries to employees and workers on the Site, except to the extent that such claim resulted from the gross negligence or willful misconduct of the CONTRACTOR, its subcontractors.

Upon commencement of the Works the SUBCONTRACTOR shall appoint one person as valid interlocutor with the CONTRACTOR, being given full responsibility regarding matters of a technical and Workplace Risk Prevention nature applicable to it, along with compliance with any instructions passed on to it in this regard by the CONTRACTOR. Ignorance on the part of the former of the Standards and Instructions issued by the CONTRACTOR shall not release the SUBCONTRACTOR from its obligation to comply therewith.

The SUBCONTRACTOR may not assign or subcontract the works or any part thereof to third parties without the written permission of the CONTRACTOR, although such permission may not be deemed to constitute any contractual relationship between the CONTRACTOR and any approved SUBCONTRACTORS.

Should such permission exist, the SUBCONTRACTOR shall be obliged to compile and present to the CONTRACTOR all employment or taxation documentation from its subcontractors, suppliers and/or third parties or companies in the same manner as its own documentation. The SUBCONTRACTOR shall be jointly and severally liable for any damages and claims which may be brought by authorities with regard to its subcontractors and suppliers from third parties on its initiative.

The CONTRACTOR is expressly entitled to withhold pending payments at any point of the Works in order to make payment of salaries which have accrued and not been received by the workers employed on the Site by the SUBCONTRACTOR.

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The SUBCONTRACTOR is responsible for strict and timely compliance on the part of its staff with all orders and instructions given it by the authorised staff of the CONTRACTOR regarding working hours, working standards and internal discipline as established on the Site.

The CONTRACTOR and its representative likewise reserve the right to challenge any of the SUBCONTRACTOR's staff, of any category, who as a result of their ineptitude, negligence, indiscipline or lack of performance could jeopardise safety, the pace of the works or the relationship with the OWNER or the Technical Management Team.

No staff of the SUBCONTRACTOR involved in any form of labour dispute during execution of the contracted Works or Service may remain on the Site for as long as this situation should remain in place. The SUBCONTRACTOR shall nonetheless remain subject to the same obligations, commitments and responsibilities entered into with regard to the contracted Works or Service.

All transportation costs, both initial installation and daily travel to the site, shall be borne by the SUBCONTRACTOR. The time employed by staff performing induction and Risk Prevention and Environmental training shall be paid for by the SUBCONTRACTOR.


The SUBCONTRACTOR must request authorisation in order to employ the image or name of the CONTRACTOR in any advertising medium referring to the tasks performed by it. Should this authorisation be granted, the SUBCONTRACTOR must at all times refer to the CONTRACTOR as the lead contractor for the works and employ the logos and formats provided to it by the CONTRACTOR.

The SUBCONTRACTOR undertakes not to employ in its service any staff of the CONTRACTOR, of the OWNER or of other subcontractors working on the Site, except with the prior written authorisation of the CONTRACTOR in each case.

SUBCONTRACTOR is an independent contractor and shall, at his sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work, obtain all necessary permits and licenses therefore; pay all manufacturers taxes, sales taxes, use taxes, processing taxes and all Federal, state and local taxes, insurance and contribution for Health System and Unemployment which are measured by wages, salaries, or other remuneration's paid to or to be paid to SUBCONTRACTOR'S employees, whether levied under existing or subsequently enacted laws, rules or regulations. SUBCONTRACTOR, upon request, shall furnish evidence satisfactory to CONTRACTOR that any or all of the foregoing obligations have been fulfilled. SUBCONTRACTOR shall impose these obligations on all his subcontractors and shall ensure that no subcontractors or Governmental Authority shall have any claim against CONTRACTOR for reimbursement of taxes. SUBCONTRACTOR shall hold harmless the CONTRACTOR for any claim from his subcontractors or Governmental Authority arisen against the CONTRACTOR and shall be responsible for the associated costs (including reasonably lawyer expenses) related to such claim.

## 20 QUALITY CONDITIONS APPLICABLE TO THE WORK.

The SUBCONTRACTOR must have in place a Quality system acceptable to the CONTRACTOR and guaranteeing on its behalf and that of any of its subcontractors compliance with the requirements set out in the Contract.

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To this end, prior to commencement of the tasks it shall present a Quality Assurance Plan complying with the Construction Quality Plan demands.

This Quality Assurance Plan shall describe the manner in which the commissioned tasks are executed, in order to guarantee compliance with the demands (contractual requirements, applicable regulations, applicable legislation). This document shall place on record all particulars deemed necessary by the CONTRACTOR.

Subcontractor will provide those aspects of the Quality Plan pertaining directly the scope of its services.


Below are listed, by way of indication, the various aspects which the aforementioned Plan may include, but not be confined to:

- Organization of tasks.
- Planning of activities.
- Inspections and testing. Scope thereof.
- Inspection points program
- Documentation control.
- Control of materials involved in the tasks.
- Control tasks to be performed.
- Control of the measuring equipment to be employed.
- Handling of anomalies and/or deviations.
- List of procedures (general procedures of the quality system, specific procedures for execution of the tasks, etc.).
- List of formats to be employed.
- List of regulations applicable to the tasks commissioned (standards, legislation, etc.).

Upon conclusion of the tasks, the Final Quality Dossier shall be presented, comprising all documentation required in order to confirm the quality of the tasks performed. This dossier shall be handed to the CONTRACTOR within a maximum of 15 days of conclusion of the tasks.

Below are listed, by way of indication, the various Documents which the aforementioned Dossier may include, but not be confined to:

- Procedures employed.
- Inspection points program.
- Testing reports.
- Certificates for the materials employed.
- Certificates for the inspection equipment. Calibration certificates.
- Staff certificates (where applicable).
- Dispatch authorizations (where applicable).
- Any modifications sheets which may have arisen during the execution process (where applicable).
- AS-BUILT plans, as applicable

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All tasks performed by the SUBCONTRACTOR must comply with the Sets of Technical Conditions and Technological or Mandatory Standards established by any Official Body or COBRA Standard Procedures, with competency regarding the tasks covered by the Contract, even if not expressly referred to in the Contract, and must employ machinery which has been certified as compliant by Official Bodies or Approved Private Organizations, in accordance also with any other requirement set out in the Annexes, along with an undertaking to present the CONTRACTOR with documents demonstrating compliance with the above circumstances, prior to incorporation on site.

Any deviation from any technical requirement established in the Contract shall lead to a non-conformity report being issued, with any applicable corrective measures being proposed in accordance, to be approved by the CONTRACTOR, the costs thereof being borne by the SUBCONTRACTOR. This requirement shall likewise apply to deviations regarding plans or documents generated by the SUBCONTRACTOR following review and approval by the CONTRACTOR.

The SUBCONTRACTOR hereby declares it has the knowledge required for execution of the tasks, such as: location of the Works and the Site, Report, Plans, Measurements, technical specifications and, in general, all relevant documentation, and deems this sufficient in order properly to perform the aforementioned tasks for the prices agreed. It likewise declares that it is fully familiar with all natural elements (topography, geology, hydrology, etc.) which could influence execution of the tasks.

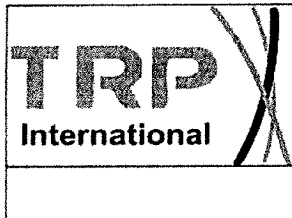
The SUBCONTRACTOR shall provide staff perfectly suited to properly executing the tasks, and must take the utmost care in the selection of its staff. The SUBCONTRACTOR must be qualified to provide its staff with technical support on Site at all times, and to include within its team more highly qualified technical staff where required.

The staff performing the work must be technically qualified for this purpose. The CONTRACTOR reserves the right to object to any qualified staff who, on an objective basis, do not comply with the minimum requirements. The CONTRACTOR may give any qualified operative a qualifications skills test for which the SUBCONTRACTOR indicates that individual is suited.

The quality of the tasks is dependent on approval by the CONTRACTOR and at all times, in the final instance, acceptance by the OWNER.

Any alteration to the contracted tasks must be authorized by the CONTRACTOR's Management Team, whose instructions must be fulfilled by the SUBCONTRACTOR on a mandatory basis.

The SUBCONTRACTOR must at all times provide full technical information regarding execution

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of the Contract which the CONTRACTOR may deem it necessary to know.

The SUBCONTRACTOR undertakes to perform at its own expense all controls, tests and analyses specified in the Specific Contractual Conditions, along with any others required under the Contract, the SUBCONTRACTOR bearing all costs involved in the return of materials which do not pass the tests, along with the demolition and reconstruction of any units executed with such materials, and any other parts of the works which may have been damaged. The CONTRACTOR reserves the right during execution of the tasks to perform any tests and inspections it may deem relevant.

The cost of compliance with all quality requirements shall be borne by the SUBCONTRACTOR, on the clear basis that all scaffolding, auxiliary staff and x-rays, non-destructive testing as required for this purpose shall likewise be the responsibility of the SUBCONTRACTOR, and thus paid for by it, and must be prepared and arranged in accordance with the guidelines and schedule of which the CONTRACTOR will serve timely notice.

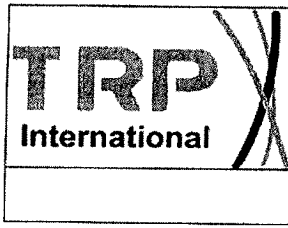
THE CONTRACTOR reserves the right during execution of the tasks to perform, at its own expense, any tests or inspections it may deem relevant, aside from any which the SUBCONTRACTOR may have contracted.

The SUBCONTRACTOR expressly authorizes the CONTRACTOR, whenever the latter should deem appropriate, to visit its workshops, factories, laboratories or offices where all or any of the tasks commissioned under this Contract are being performed, in order to monitor and supervise the tasks in question.

The CONTRACTOR shall be under no obligation to pay any invoice to the SUBCONTRACTOR for units which are rejected by the OWNER as a result of inadequate quality of the materials used within the scope of work of the SUBCONTRACTOR or poor execution of the tasks performed by the SUBCONTRACTOR.

The SUBCONTRACTOR undertakes to correct at its own expense, during the execution and warranty period, any tasks performed without approval by the CONTRACTOR, or which in the judgment of the OWNER are unacceptable on the basis of poor execution or a lack of quality in the materials provided by the SUBCONTRACTOR, including demolition and reinforcement and the renewed execution of the units in question. If these tasks are performed by the CONTRACTOR or by third parties acting on its instructions, the costs derived there from shall be deducted from the SUBCONTRACTOR's invoices or the Guaranties.

The tasks are performed at the risk and venture of the SUBCONTRACTOR up until conclusion of the Warranty Period.

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The SUBCONTRACTOR shall on its own account perform the final on site testing of all technical installations executed by it.

The SUBCONTRACTOR shall be liable for any damages caused to the CONTRACTOR or to third parties as a result of poor execution of the works, or through the inappropriate quality or usage of materials or equipment, or through breaches of any instructions received. If such claims are brought via or by the CONTRACTOR, they may be settled against payments pending or sums withheld, following confirmed evidence in support of the claim brought.

## 21 HEALTH AND SAFETY CONTROL REQUIREMENTS

The CONTRACTOR will comply with the S&S control requirements required by the OWNER from the CONTRACTOR in the Principal Contract, as well as those established by the present Contract.

Before beginning the work, the SUBCONTRACTOR will present and Health and Safety Report which complies with the CONTRACTOR's Health and Safety Plan requirements during construction, which must be approved by the CONTRACTOR.

The SUBCONTRACTOR declares knowledge and the necessary resources for the Safe execution of the work in this CONTRACT.

The cost of compliance with the S&S requirements described in this section will be set aside by the SUBCONTRACTOR.


## 22 ENVIRONMENTAL REQUIREMENTS AND WASTE MATERIAL MANAGEMENT

CONTRACTOR will comply with the environmental requirements and those for waste material management required by The OWNER from the CONTRACTOR in the Principal Contract that are the same annexed in this contract, as well as those requirements established in the present contract. The SUBCONTRACTOR will present an Environmental and Waste Management Report which complies with the requirements of:

- Final Environmental Impact Study
- Permits & Plans
- WEAP

As well as the legislation in this regard which is applicable during construction, which must be approved by the CONTRACTOR.

SUBCONTRACTOR declares having knowledge of environmental and waste material management to execute the work object of this Contract.

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The SUBCONTRACTOR assumes the cost of compliance with the environmental and waste material management requirements.

## 23 LIABILITY

The SUBCONTRACTOR shall be solely responsible to the CONTRACTOR for the performance of its obligations under this Contract, whether performed by the SUBCONTRACTOR or any of its Subcontractors or suppliers.

The Parties shall not be liable for loss of profit, loss of production, and/or for standstill and for any consequential damages, or for any special indirect, punitive, exemplary, incidental, economic or consequential costs, loss or indirect damages of any description under or in connection with this Contract, whether by reason of breach of contract or statutory duty, negligence or other tort and/or indemnity.

Unless as a result of intentional actions or gross negligent action or omission attributable to a party, such party's liability shall be limited to the contract value and the additional works value (including change orders) under this Contract.

To the extent of SUBCONTRACTOR's sole negligence, the SUBCONTRACTOR shall indemnify and hold harmless the CONTRACTOR and the OWNER from any action or reclamation (from any third party including but not limited to the SUBCONTRACTOR's Subcontractor or suppliers and anyone directly or indirectly employed by the SUBCONTRACTOR or its subcontractors or suppliers) in relation (direct or indirect) with the Contract.

The amount of any of the bank guarantees shall not be considered as a limitation of the liabilities of the SUBCONTRACTOR.


## 24 INSURANCE

### Commercial General Liability

Commercial General Liability insurance (including follow form umbrella liability insurance if necessary) on an occurrence coverage form, with coverage at least as broad as that provided under the current edition of the Insurance Services Office Commercial General Liability Policy, CG 001. Other than standard exclusions applicable to pollution, asbestos, mold, employment practices, ERISA and professional liability, there shall be no limitations or exclusions beyond those contained in the standard policy forms which apply to property damage, products and completed operations, contractual liability or construction defects. In addition to procuring and maintaining this insurance during the duration of the contract, SUBCONTRACTOR agrees to continue to procure and maintain products and completed operations liability insurance coverage for a minimum of 3 years after the date the contract is completed or terminated

The subcontractor shall submit, prior to commencement of work, the Certificate of RC Policy that covers specifically the work done at the site.

In addition to contracting and retaining this insurance for the duration of the contract, the supplier agrees to maintain liability insurance coverage for a minimum of three years after the date of completion or

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termination of the contract, this coverage may be using a generic policy company does not require it to be specific to the project after it.

The SUBCONTRACTOR is liable for all direct damages of any kind arising from any act or mission by him or his Sub-contracting parties (or their staffs). In that case the SUBCONTRACTOR will indemnify CONTRACTOR for the pecuniary consequences.

The policy shall have a minimum limit of indemnity of USD 3.000.000 per occurrence and 5.000.000 per aggregated occurrences.

The same requirements will be made to SUBCONTRACTORS' Subcontractors regarding the scope of work of these parties.

#### **Pollution Liability Insurance**

Required if SUBCONTRACTOR's scope of services includes remediation, treatment, storage or disposal of waste or hazardous materials on or about the project site, as determined by General CONTRACTOR. Such coverage shall include defense costs applicable to claims for bodily injury, property damage or clean up costs. Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which Subcontractor performs services on behalf of General CONTRACTOR.

#### **Professional Liability**

Required if SUBCONTRACTOR's scope of services include architectural, engineering, professional consulting or construction management as determined by General CONTRACTOR.

Claims-made coverage is permitted, provided the policy retroactive date is continuously maintained prior to the commencement date of this agreement, and coverage is continuously maintained during all periods in which SUBCONTRACTOR performs professional services for General SUBCONTRACTOR, and for an additional period after termination of this agreement or the last date such services are performed, whichever comes later. If SUBCONTRACTOR's scope of work includes environmental engineering or consulting, coverage cannot exclude environmental professional services.

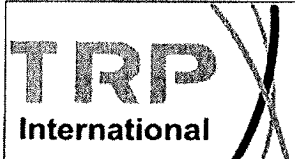
#### **Cargo Insurance**

If the SUBCONTRACTOR is responsible for transport, it will contract at its own expense, or have its transport SUBCONTRACTOR take out, an "all risks" transport insurance policy covering 110% of the value of the equipment from Ex-Works to the contractual delivery site.

#### **Other Policies**

It is SUBCONTRACTOR's responsibility to contract all insurance policies for:



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- Illness and work accident insurance for all workers assigned to the Project in accordance to all legal requirements
- · Statutory Workers' Compensation and Employer's Liability insurance (including follow form umbrella liability insurance if necessary) as is required by any state or federal statute or law, or as may be available on a voluntary basis.
- · Automobile Liability insurance (including follow form umbrella liability insurance if necessary) covering liability arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of the SUBCONTRACTOR. The coverage shall be at least as broad as the current edition of the Insurance Services Office Business Automobile Policy, CA 0001 ©. If SUBCONTRACTOR's scope of services includes the transportation of hazardous materials to or from the project site, as determined by General SUBCONTRACTOR, SUBCONTRACTOR shall be required to include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS-90 and CA 9948, or their equivalents.
- · Equipment, materials and construction machinery (including transportation to site insurance)
- · Any other insurance policy related (or not) to the present Contract that could be required by law during the life of the Contract.

If the SUBCONTRACTOR is involved in an accident, loss or damage, CONTRACTOR has the right to retain all payments due to the SUBCONTRACTOR for as long as it has not submitted all the documents required by the insurers and has not taken the reasonable steps required for the settlement of this accident, loss or damage.

SUBCONTRACTOR shall assume any amount not insured or not covered under the policies whether due to exclusion, excess or any other matter.

#### **Common provisions**

Before the start of the works, the SUBCONTRACTOR shall submit to CONTRACTOR the insurance certificates covering itself and its Subcontracting parties for all the risks mentioned above.


SUBCONTRACTORS insurance policies are primary to any other insurance that CONTRACTOR or the Customer may have

A copy of the renewed policies must be provided to CONTRACTOR before their expiration date.

Should SUBCONTRACTOR not provide insurance contract or its renewal, CONTRACTOR may contract and maintain any insurance, and CONTRACTOR will make the necessary payments for it. These payments will be deducted by CONTRACTOR from the Contract Price.

All the insurance policies should be contracted with well-known and solvent companies, Insurance companies that provide insurance policies should have a Best's Rating of A-, VII or better, and must include:

- CONTRACTOR and Customer as additional insured Party

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- Provision that each insurance company is required to inform CONTRACTOR of any changes, cancellations or no payment of the policies
- SUBCONTRACTOR's Insurance company must expressly renounce to subrogate in those rights.
- SUBCONTRACTOR will obtain from his insurance companies as well as the insurance companies of his Subcontractors a clause of waiver against CONTRACTOR, or the Customer of any claims related to damages or accidents on SUBCONTRACTOR's properties or properties used by him or his Subcontractors

Required insurance policies will be written in English and subject to USA Tribunal; Insurance Companies must be operative and established in USA and must be acceptable to both parties. Also, insurance companies should be re-insured by well-known Reinsurance companies and acceptable to both parties.

CONTRACTOR reserves the right to suspend payments to the SUBCONTRACTOR until these certificates are submitted, if these are not presented on time or do not fulfill the contractual obligations.

In case of accident, loss, damage, or claim from a third part; the SUBCONTRACTOR must immediately inform CONTRACTOR by written whatever the nature and the importance of the event. In case of omission, the SUBCONTRACTOR will take all consequences upon itself.

SUBCONTRACTOR will inform CONTRACTOR of any incident which could cause an accident and may need CONTRACTOR's approval to carry out any claims against Insurance Companies.

The amounts received from insurance policies should go towards replacements and repairs of the damages.

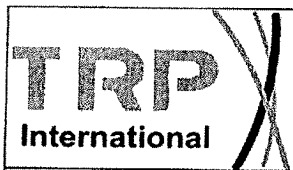
This does not affect SUBCONTRACTOR legal obligations.

It is agreed and understood that established excess clause included in the insurance policies mentioned in this Article will be assumed by the SUBCONTRACTOR.

The SUBCONTRACTOR will assume all payments that CONTRACTOR will not be able to recover from the project insurances within the established policy limits as a result of:

- Transmission of wrong information that may be reasonably required by the Insurance Company, and that SUBCONTRACTOR may refuse to supply, or Deliberate concealment, or bad faith information
- Non compliance of any declaration, condition, or guarantee required by the Insurance Company, and that is attributable to the SUBCONTRACTOR or any of the SUBCONTRACTOR's Subcontractors.

The insurance policies contracted by virtue of the agreements in the present Clause does not limit the obligations and responsibilities to the SUBCONTRACTOR, having to be responsible for any losses or responsibilities attributed in excess or defect at the requested limits and guarantees.

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## 25 OBLIGATIONS OF THE SUBCONTRACTOR REGARDING WORKPLACE RISK PREVENTION

The SUBCONTRACTOR is obliged to comply with all legal requirements regarding Workplace Risk Prevention and workmen's compensation insurance, being responsible for the implementation of such provisions, along with any consequences derived from a breach thereof, applicable likewise to any operations subcontracted from it and any which it may in turn subcontract from third parties.

The SUBCONTRACTOR's workers must comply with Workplace Risk Prevention and Company Medical Attention Standards.

The SUBCONTRACTOR shall specifically be liable for any violations committed by its staff or its subcontractor's staff of the Workplace Risk Prevention Regulation in force, and shall adopt all measures required, in addition to mandatory provisions, in order to guarantee the utmost safety of its operatives and other staff.

The CONTRACTOR shall accept no claims from the SUBCONTRACTOR on the basis of lost time, as a result of interruptions to work, through a breach by it of Workplace Risk Prevention and Company Medical Attention Standards.

If it is required by law, the SUBCONTRACTOR, at its own expense, shall be obliged to present the CONTRACTOR with a medical examination certificate for its employees prior to their commencing their work on site; if such medical examination certificate is not required by law but CONTRACTOR requires it, the SUBCONTRACTOR shall be obliged to present the CONTRACTOR the medical examination certificate, at CONTRACTOR's expense. It shall likewise indicate the treatment procedure for accident victims, indicating the organisation, clinic, physician, etc., to provide care when needed.

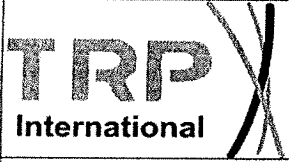
The SUBCONTRACTOR must abide by the Health and Safety Plan for the CONTRACTOR. To this end the CONTRACTOR shall provide the SUBCONTRACTOR with the Workplace Risk Prevention Plan, specifying that part which, in accordance with its specialist area, affects it. The SUBCONTRACTOR shall sign confirmation of receipt of the instructions received.

The cost of compliance with all health and safety requirements shall be borne by the SUBCONTRACTOR

Personal Protection Equipment employed by the SUBCONTRACTOR's workers must comply with the legislation in force, the said party being responsible for the proper provision and specific usage thereof for the work to be performed by all its employees.

The SUBCONTRACTOR shall in all cases provide the personal protection clothing it may deem necessary (helmets, overalls, safety boots, etc.) for the SUBCONTRACTOR's staff, the cost of which shall be deducted from the following invoice upon presentation for payment.

The SUBCONTRACTOR shall install any collective protection measures required in order to perform the works commissioned from it and for which it is solely responsible, assuming responsibility for the installation thereof at the opportune time and maintenance thereof.

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The staff of the SUBCONTRACTOR must comply with the safety and functionality conditions of the portable electrical distribution boards on site in accordance with the CONTRACTOR's regulations.

The SUBCONTRACTOR shall provide sufficient information on all chemical products to be employed at the Plant sufficiently in advance, providing the corresponding technical datasheets.

The SUBCONTRACTOR undertakes proper use and maintenance of health and welfare facilities on site.

If it is required by the CONTRACTOR, the SUBCONTRACTOR shall each month present the CONTRACTOR a safety report in accordance with the Health and Safety Plan for the CONTRACTOR.

Should the CONTRACTOR fail to comply with the regulations in force regarding Health and Safety at Work and the terms of the Workplace Risk Prevention Plan, the CONTRACTOR may suspend the tasks affected by this breach. The costs occasioned by such a suspension shall be borne by the SUBCONTRACTOR.

Any penalties or sanctions which the Competent Employment Authorities may impose on the CONTRACTOR as a result of a breach of Workplace Risk Prevention measures by the staff of the SUBCONTRACTOR shall be passed on to it in the corresponding payments, notwithstanding the terms of the paragraph below.

## 26 HAZAROUS MATERIALS AND ENVIRONMENTAL OBLIGATIONS OF THE SUBCONTRACTOR

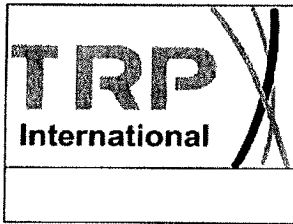
The SUBCONTRACTOR shall be responsible, at its sole cost, for the proper handling, collection, removal, transportation and disposal of any SUBCONTRACTOR's hazardous materials and the SUBCONTRACTOR shall be solely responsible for obtaining a disposal site for such hazardous materials. All activities in connection with the foregoing shall be performed in accordance with the requirements of all governmental authorities and Applicable Laws. Anything herein to the contrary notwithstanding, title to, ownership of, and legal responsibility and liability for any and all hazardous materials shall at all time remain with SUBCONTRACTOR.

SUBCONTRACTOR is entirely responsible for all the preventive and operative environmental requirements derived or as consequence of their activities.

SUBCONTRACTOR shall identify to the CONTRACTOR in writing any proposed disposal SUBCONTRACTOR or transporter of SUBCONTRACTOR's Hazardous Materials and SUBCONTRACTOR's disposal plan not less than fifty (50) days before such proposed disposal or transporter removes SUBCONTRACTOR Hazardous Materials from the Site and shall provide the CONTRACTOR documentation evidencing any disposal following such disposal. SUBCONTRACTOR shall give CONTRACTOR not less than three days' prior written notice of any proposed shipment of SUBCONTRACTOR Hazardous Materials from the Site, and SUBCONTRACTOR shall ensure that CONTRACTOR and/or the Owner has the opportunity to inspect such shipment of SUBCONTRACTOR Hazardous Materials before removal from the Site.

SUBCONTRACTOR shall indemnify, release and save CONTRACTOR harmless from all damages, liability, expenses or penalties paid by CONTRACTOR resulting from SUBCONTRACTOR Hazardous Materials.

The SUBCONTRACTOR must be familiar with and comply with all Environmental Legal Regulations which may affect any of its activities. It shall reduce as far as possible the consumption of water, energy and other raw materials, discharges, noise and gas emissions. It shall identify any materials and products employed by it

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which have an environmental impact, and include environmental matters in the training given to its staff: Solid Urban Waste, Solid Inert Waste, Hazardous Waste.

The SUBCONTRACTOR must comply with the:

- Final Environmental Impact Study presenting a monthly monitoring report for that Plan
- Permits & Plans
- Weap

The SUBCONTRACTOR is obliged to comply with all provisions and demands regarding environmental matters, being responsible for the implementation thereof and any consequences derived from a breach thereof affecting both its activities and those of the CONTRACTOR or other Subcontractors which may arise. All Managers, Supervisors, Foremen, Team Leaders, etc., must accept responsibility for ensuring that the staff working under them comply with environmental standards. This compliance shall not lead to any extra cost for the CONTRACTOR.

The CONTRACTOR shall accept no claim from the SUBCONTRACTOR on the basis of lost time, as a result of interruptions to work, through a breach by it of Environmental Legislation or the regulations set out in the Site Environmental Plan.

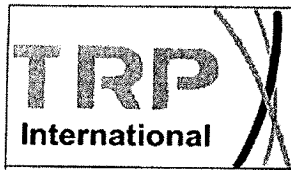
The SUBCONTRACTOR undertakes to remove from the site all industrial waste and packaging generated by its activities and to process these in accordance with Environmental Legislation.

Any penalties or sanctions which the Competent Environmental Authorities may impose on the CONTRACTOR as a result of a breach of Environmental Protection measures by the staff of the SUBCONTRACTOR shall be passed on to it in the corresponding payments.

## 27 LIENS

The SUBCONTRACTOR shall keep the Works free from all liens, charges, claims and judgments, security interests and encumbrances (hereinafter referred to as "Liens") arising out of the performance of the Works under this Contract and shall indemnify, defend and hold harmless the CONTRACTOR from any such Liens on the Works arising out of the performance of the Work under this Agreement.

If the CONTRACTOR seeks indemnification by the SUBCONTRACTOR for any Lien, the CONTRACTOR shall give the SUBCONTRACTOR prompt notice of any Lien of which it has knowledge and cooperate in the defense of the Lien at SUBCONTRACTOR's expense; provided that SUBCONTRACTOR shall promptly confirm in writing its obligation to indemnify the CONTRACTOR with respect to all costs and expenses with respect to the Lien. The SUBCONTRACTOR shall take prompt steps to discharge or bond over any Lien filed against the Works by any of its subcontractor and suppliers based on a claim for payment in connection with the Works. If SUBCONTRACTOR fails to discharge promptly any Lien, CONTRACTOR shall have the right, upon notifying SUBCONTRACTOR in writing, to take any reasonable action to satisfy, defend, settle or otherwise remove the Lien at SUBCONTRACTOR's expense, including reasonable attorneys' fees, costs and expenses.

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CONTRACTOR shall have the right to deduct and offset, or otherwise recover, any expenses so incurred from any payment due, or which may become due, to SUBCONTRACTOR under this Contract.

If it is required by the CONTRACTOR, the SUBCONTRACTOR shall each month present the CONTRACTOR a report in whose content declares that the Works are free for any Liens.

## 28 CONTRACT TRANSFER


None of the Parties may transfer rights and / or obligations assumed by virtue of this Contract without previous written authorization from the other Party.

In accordance with the previous paragraph, the SUBCONTRACTOR authorizes the CONTRACTOR expressly so that the CONTRACTOR may transfer the CONTRACT freely to any of the entities that form part of the CONTRACTOR's Group or any other entity, with or without its own legal frame, in which the CONTRACTOR or any other entity or companies within the CONTRACTOR's Group may be a member.

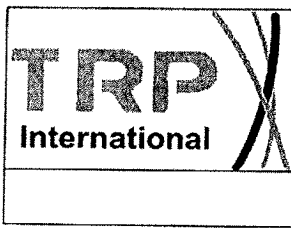
## 29 TERMINATION OF THE CONTRACT

a) In addition to the terms established in the General Purchasing Conditions, CONTRACTOR may terminate this Contract in the event of any of the following:

- 1) If SUBCONTRACTOR fails to comply with or perform any obligation under this Contract and/or breaches in whole or in part of all or any of the clauses set out herein, the CONTRACTOR may terminate the Contract if the SUBCONTRACTOR fails to remedy the breach of the Contract within 30 days from the prior notice of such breach from CONTRACTOR; or
- 2) if any representation or warranty made by SUBCONTRACTOR in this Contract shall prove to have been false, or
- 3) If the SUBCONTRACTOR shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Applicable Law now or hereafter in effect, or (ii) seek the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (iii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (iv) make a general assignment for the benefit of creditors, or (v) admit in writing it is, or be, generally unable to pay its debts as they become due, or (vi) take any corporate action to authorize any of the foregoing; or
- 4) If an involuntary case or other proceeding shall be commenced against the SUBCONTRACTOR seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; or
- 5) If SUBCONTRACTOR shall be terminated, dissolved or liquidated, or any proceeding shall be commenced by any person seeking such termination, dissolution or liquidation; or

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- 6) If SUBCONTRACTOR fails to comply with its obligations to obtain or maintain the insurance required by this Contract; or
  - 7) If SUBCONTRACTOR has discontinued or abandoned the Works for a period exceeding fifteen (15) days.
  - 8) If SUBCONTRACTOR suspends performance of the work for more than ten Business Days and such suspension is not on account of a Force Majeure event; or
  - 9) A lack of technical or professional capacity on the part of the SUBCONTRACTOR observed during execution of the contracted tasks; or
  - 10) If the subcontractor does not present the required State of Nevada Contractors License
  - 11) The CONTRACTOR, given its responsibility before the OWNER, expressly reserves the right to terminate this Contract at any time if in its judgement or that of the OWNER implementation or execution of the Works, installations or materials being executed or installed by the SUBCONTRACTOR do not comply with the agreed pace, the SUBCONTRACTOR in such cases being entitled to no form of compensation for damages on the basis of any works which it as a result does not execute, or for any other reason; or
  - 12) In the event of termination of the Main Contract between the OWNER and the CONTRACTOR.
- b) The SUBCONTRACTOR may terminate this Contract for any of the following reasons:
- 1) If CONTRACTOR fails to comply with or perform any obligation under this Contract and/or breaches in whole or in part of all or any of the clauses set out herein, the SUBCONTRACTOR may terminate the Contract if the CONTRACTOR fails to remedy the breach of the Contract within 30 days from the prior written notice of such breach from SUBCONTRACTOR; or
  - 2) If any representation or warranty made by the CONTRACTOR in this Contract shall prove to have been false or misleading.
  - 3) If the CONTRACTOR shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar Applicable Law now or hereafter in effect, or (ii) seek the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (iii) consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or (iv) make a general assignment for the benefit of creditors, or (v) admit in writing it is, or be, generally unable to pay its debts as they become due, or (vi) take any corporate action to authorize any of the foregoing; or
  - 4) If an involuntary case or other proceeding shall be commenced against the CONTRACTOR seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property; or

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5) If CONTRACTOR shall be terminated, dissolved or liquidated, or any proceeding shall be commenced by any person seeking such termination, dissolution or liquidation; or

c) Either Party may terminate this Contract where the Works has been suspended for more than three hundred sixty five consecutive days for reasons of Force Majeure.

d) Mutual agreement by the Parties, with the effects herein established. In this case the SUBCONTRACTOR shall be entitled to claim the CONTRACTOR the incurred demobilization costs provided such incurred demobilization costs have been duly justified to the CONTRACTOR.

e) In the event of termination of this Contract by the CONTRACTOR, the SUBCONTRACTOR shall be liable for the damages incurred because of the occurrence of the event leading to the termination, including all reasonable costs and expenses incurred in connection with the completion of the Works, any liquidated damages that have been incurred prior to such termination and any proceeding to enforce CONTRACTOR's rights. To this end, CONTRACTOR may proceed with the execution of the bank guarantees, where appropriate, and/or the deduction of any pending amount to be paid by CONTRACTOR in order to recover damages caused by SUBCONTRACTOR.

The SUBCONTRACTOR expressly recognizes the CONTRACTOR's right regarding the applicability of termination as set out above.

f) In the event of termination of the Main Contract between the OWNER and the CONTRACTOR, the SUBCONTRACTOR shall be entitled only to receive payment for the works actually executed and recognised and paid for by the OWNER to the CONTRACTOR, being entitled to no other form of compensation or claim.

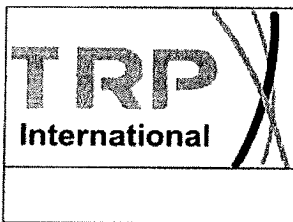
### 30 FORCE MAJEURE

Neither Party shall be liable for any breach of its obligations under this Contract where such breach is caused by Force Majeure event.

For purposes hereof, "Force Majeure" means any event, condition or circumstance which occurs subsequent to the works scope of this contract and before the termination or expiration of this Contract that causes a demonstrable, material and adverse delay or disruption on the performance of any obligation imposed by this Contract, but only if and to the extent:

- such event is not within the reasonable control, directly or indirectly, of the affected Party;
- the affected Party has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on its ability to perform its obligations under this Contract and which by the exercise of due diligence the affected Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome; and
- such event is not the direct or indirect result of the negligence or the fault or the failure of, or caused by, the affected Party;



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including, to the extent meeting the requirements set forth above, acts of God, acts of any Governmental Authority (for this purpose governmental Authority means any Federal, state, regional, municipal, local or other governmental, regulatory or administrative agency, commission, department, board or other government subdivision, court, tribunal, arbitral body or any other government or quasi government authority, fire, flooding, earthquake including unseasonable extreme weather conditions, explosion, riot or civil insurrection, acts of terrorism, landslide, hurricane, tornado, any industry or trade-wide or union-wide national strike and action or inaction of a third party (other than SUBCONTRACTOR's suppliers and/or subcontractors) that prevents or hinders the timely completion of each Party's obligations under this Contract.

Notwithstanding the foregoing, Force Majeure shall not include


- (i) shortages, cost increases, delays, breakage, improper handling, failures or unavailability of equipment or materials, except to the extent directly resulting from any cause described in the previous two paragraphs
- (ii) shortages, unavailability or cost increases of labor or manpower,
- (iii) financial problems of the Party (including its subcontractors) claiming the Force Majeure or acts, events or conditions to the extent arising therefrom,
- (iv) strikes, labor disputes, boycotts or lockouts directed against SUBCONTRACTOR or any of its suppliers and/or subcontractors on Site or otherwise, except as part of a national or regional strike, or
- (v) unfavorable weather, except as described in the previous paragraph.

The Party affected by Force Majeure event shall notify the other Party in writing within three (3) Business Days after the Party affected by Force Majeure event became aware or reasonably should have been aware of the occurrence of such Force Majeure. Such notice must contain:

- a description of such Force Majeure event and the potential impact it may have on the Work including the partial or total suspension of the Works;
- the estimated duration of such Force Majeure event; and
- the affected Party's intended response to protect the Works from such Force Majeure event.

The Party notified of such Force Majeure event shall, within seven (7) days after receiving such notice, provide any comments it deems appropriate in respect of such Force Majeure event to the affected Party. During the duration of any Force Majeure, SUBCONTRACTOR and CONTRACTOR shall meet weekly to discuss the status of such Force Majeure and, in mutual agreement with the CONTRACTOR, SUBCONTRACTOR shall take the measures necessary to protect the Works, and allow, where appropriate, its partial operation.

### 31 NON-WAIVERABILITY AND AMENDMENTS

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The fact that either of the Parties should fail to demand compliance with any of the clauses of this Contract or any of the rights connected therewith may not be interpreted as a waiver of that condition or right, nor shall it affect the validity of the Contract as a whole.

Should any of the Clauses of the Contract or enforceability thereof on any person or circumstances be declared invalid: this invalidity shall not affect the other Clauses which may be fulfilled without the invalidated terms.

The spirit of the Contract shall be analysed and the Parties shall proceed by mutual consent to amend the same, for the purpose of its execution as faithfully in accordance with the intention of the Invalidated application or Clause as possible.


### 32 INTELLECTUAL PROPERTY

SUBCONTRACOR warrants that no infringement of any intellectual property right of any kind will result from the performance of the Works. SUBCONTRACTOR shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems incorporated into or used in the development of the Works. In performing the Works, SUBCONTRACTOR shall not use or incorporate any materials, methods, processes or systems that involve any confidential information, intellectual property or other proprietary rights that SUBCONTRACTOR does not have the right to use in connection with the performance of the Works or that may reasonably be expected to result in a loss by the CONTRACTOR or SUBCONTRATOR arising out of claims of infringement, misappropriation or other violation of any domestic or foreign rights in Patents, Copyrights, Software, Know-How, confidential information or other proprietary rights, or applications for any such rights. SUBCONTRACTOR shall pay all royalties, license and other fees payable under or in respect of, and shall defend, indemnify and hold harmless the CONTRACTOR from and against any loss arising out of, resulting from, or reasonably incurred in contesting, any claim (a) for unauthorized disclosure by the SUBCONTRACTOR or any of its subcontractors and suppliers or use of any Know-How, (b) for any other intellectual property infringement or other violation (including Patent, Copyright, Trademark infringement or other violation) arising from the SUBCONTRACTOR's performance, or that of its subcontractors, under this Contract.

### 33 ADVERTISING AND CONFIDENTIALITY

a) ADVERTISING: The SUBCONTRACTOR may not make reference, describe or employ as an illustration for advertising purposes any of the materials, equipment or constructions covered by the CONTRACT, nor the installations of the OWNER, without the prior authorisation in writing of the CONTRACTOR.

b) CONFIDENTIALITY: Any information relating to the Crescent Dunes Thermosolar Power Plant or the performance of the Works, verbal or written, or which has been provided by a Party or by a third party on behalf of a Party, is confidential and the exclusive property of the Party that disclosed or delivered it to the other Party. For the avoidance of doubt, nothing in this Clause shall prevent the communication or use of any information that is owned by a Party by such Party as it deems appropriate or desirable and any photographs or video recordings of the Works, Land or Crescent Dunes Thermosolar Power Plant by the SUBCONTRACTOR shall be considered exclusive property of Contractor under this Clause. Therefore, each

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Party agrees that such information, including any such photographs or video recordings of the Work, Land or Power Plant, may not be disclosed to third parties or used for purposes other than those under this Contract except as otherwise provided in this Clause. Nothing in this Clause shall prevent the communication of information contained in this Contract as may be requested or required by any governmental authority or required by applicable law, or to any employee, subcontractor or consultant of either party in order to fulfill its obligations under this Contract; provided that (a) prior to disclosing such information as required by a governmental authority or applicable law, such Party shall use reasonable efforts to provide prompt notice thereof to the other Party and (b) such employee, Subcontractor or consultant of either Party is subject to a confidentiality agreement containing a prohibition on disclosure substantially similar to and in furtherance of the provisions of this Clause.

The provisions related to Confidentiality shall remain in force (i) for all information that has been made available to a Party, directly or indirectly, that relates to intellectual property, for a period of ten years from the end of the warranty period and (ii) for all other information, five years from the date of the Final Acceptance hereunder. The provisions of Section 38.1 shall not apply to information that:

at the time of its disclosure to a Party or any time thereafter was available to the public (unless such availability was the result of unauthorized disclosure);


at the time of its disclosure to a Party was known by such Party or was acquired by such Party independently without violating its obligations under this Contract;

Except as may be required by applicable law or by a governmental authority, any press release, notice or communication of any kind relating to the transactions contemplated by this Contract shall require the prior approval of the other Party. Any press release, notice or communication of any kind relating to the transactions contemplated by this Contract that is required by a governmental authority or applicable law shall include only information that is required to be disclosed by such governmental authority or applicable law.

Following termination or expiration of this Contract, upon the request of the disclosing party, the receiving party shall return or destroy all documents and other embodiments in any form then in the possession of the receiving party that contain confidential information of the disclosing party.

### 34 INTERPRETATION AND ARBITRATION

Should any issue, dispute or disagreement arise at any time between the CONTRACTOR and the SUBCONTRACTOR with regard to the CONTRACT, its application or interpretation, the Party holding itself to have been affected shall immediately serve written notice on the other of the existence of that issue, dispute or disagreement, expressing its argumentation and including the documentation which the Party considers enough to support its arguments. Should the issue not be resolved by the Parties within a thirty (30) days period, they agree to submit the matter before -arbitration in law, waving any other legal forum to which they might have been entitled, and undertaking to fulfil the arbitration award as issued. Submission of disputes between the Parties for arbitration shall not entitle either of them to suspend performance of their obligations under the terms of the CONTRACT.

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Arbitration in law shall be performed in Madrid in the Spanish language and under Spanish law and according the rules of the Civil and Mercantile Court of Arbitration (CIIMA), to whom is entrusted the administration of the arbitration and the appointment of the sole arbitrator.

Likewise, the Parties expressly agree that the arbitral decision will be compulsory for the Parties.

### **35 LEGISLATION AND COURTS**

The CONTRACT throughout its scope of application shall be governed by Spanish law and be interpreted in accordance therewith.

On a subsidiary basis to the arbitration arrangements established, the CONTRACTOR and the SUBCONTRACTOR expressly agree to be bound by the jurisdiction of the Courts of Madrid, expressly waiving any other legal forum or domicile to which they might have been entitled.

### **36 TAXES**

All Taxes, Levies or Duties, except VAT, which may apply to this Contract or execution of the works to which it refers, and all expenses derived from any possible registration of this Contract in a public deed, shall be borne by the SUBCONTRACTOR, except for the Works Licence and, excluding sales taxes on permanent material.

### **37 OBSERVANCE OF THE LAW.**

The SUBCONTRACTOR should have knowledge of and obey the law, ordinances and other legal dispositions that may affect the development of its activity and in all phases of same (Including Design and Construction).

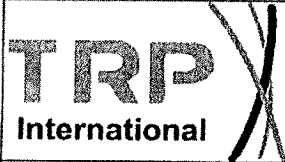
The CONTRACTOR is exempt from any responsibility that may arise from SUBCONTRACTOR's non-compliance of the law, ordinances or legal dispositions that affect the development of work of the same.

### **38 INVALID PROVISIONS**

In the event that any section, clause or provision of this Contract or any part thereof becomes or shall be declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract shall continue in full force and effect without said provisions, provided that no such severability shall be effective if it materially changes the benefits or obligations of either Party hereunder


### **39 LIST OF ANNEXES**

The following Annexes shall together constitute the Contract between the CONTRACTOR and the SUBCONTRACTOR.

|   |  |  |
|---|--|--|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 43 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |  |

Signing this contract means the acceptance by the SUBCONTRACTOR of each document referred to in the following annexes.

- The present document.
- Annex I Technical Clarifications-Minutes of meeting March 30th 2012
- Annex II Technical Documents
  - o Assembly in Plant (CDS-10-UWA-OIP-TMP-001\_Rev. E)
  - o Solar Field Assembly (CDS-10-UWA-OIP-TMP-002\_Rev. D)
- Annex III Commercial Documents
  - o General Purchasing Conditions CDS-COM-GPC-CPI-0001 General Purchasing Conditions USA Cobra Thermosolar Plants
  - o Terms and conditions on site CDS-COM-GPC-CPI-0002 Terms and Condition on site works
- Annex VI Administration documents:
  - o Davis Bacon Act Requirements
  - o Sales Tax Abatement Requirements
  - o Documents SUBCONTRACTOR has to present with each invoice
  - o Documents SUBCONTRACTOR has to present with the sign of the present document.
  - o Documents to present with the provisional turnover.
- Annex V Plan of Development
  - o Final Environmental Impact Study
  - o Geotech & Geological study
  - o Form of Monthly Progress Report
- Annex VI Permits & Plans:
  - o Construction Stormwater
  - o Groundwater Discharge

|   |  |  |
|---|--|--|
|  | 1137 S. Main St.<br>Tonopah, NV 89049<br>EIN: 45-5312356<br>TEL.. (775) 482 1919 | Page 44 of 44<br><br>Fecha _16/10/2012 |
| HELIOSTAT ASSEMBLY AND FIELD ERECTRION  |  |  |

- Working Waterways
- Air Quality Class II
- Surface Area Disturbance
- Encroachment Permit
- Flood Damage Prevention Permit
- SWPP Plan
- SPCC Plan
- H&S Plan
- Lighting Plan
- Traffic Management Plan
- Waste Management Plan
- Hazardous Materials Program
- Facility Emergency Action Plan
- Annex VII Quality Documentation.
  - CDS-COM-PRO-CPI-007-REV2 Vendor Quality Procedure
- Annex VIII WEAP
- Annex IX SUBCONTRACTORS QUOTE

In case of conflict between Contract Documents, the order of precedence shall be:

First: This Contract

Second: Its Annexes, prevailing Annex 1 over Annex 2, Annex 2 over Annex 3

# EXHIBIT 2

# EXHIBIT 2



PROIMTU MMI LLC  
2850 W HORIZON RIDGE PARKWAY #200  
HENDERSON, NV, 89052

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LIQUIDATION INDEX FOR DAMAGES PRODUCED DURING THE CONTRACT 9013-Crescent Dunes Solar Energy Project

|   | IMPORTE        |
|---|----------------|
| 1.- INDIRECT COST PRODUCED BY THE STOPPED TIME FOR THE TOTAL LINE'S BREAKING DOWN | \$106.970,55   |
| 2.- REDUCTION OF SHIFTS FROM 3 TO 1   | \$129.661,28   |
| 3.- REDUCTION OF SHIFTS FROM 3 TO 2   | \$97.245,96    |
| 4.- TOTAL STOPPED TIME FOR FACETS BOLTS RESOLUTION                                | \$243.114,89   |
| 5.- DIFFERENCE IN PRODUCTION AGREED IN CONTRACT                                   | \$1.771.637,84 |
| 6.- T&M AGREED IN THE CONTRACT AND SIGNED BY TRP REPRESENTATIVE PERSONNEL         | \$56.527,34    |
| 7.- BACK CHARGES NON AGREED IN THE CONTRACT ( FACETS )                            | \$30.153,93    |
| 8.- DISCOUNT FOR OTHER LIQUIDATION PAID   | -\$600.000,00  |
| IMPORTE TOTAL DE RECLAMACIÓN  | \$1.835.311,79 |



CONDITIONAL WAIVER AND RELEASE  
UPON FINAL PAYMENT

Property Name: Crescent Dunes Solar Project  
Property Location: Gabbs Pole Line Rd., Tonopah, NV 89049  
Undersigned's Customer: TRP International INC  
Invoice/Payment Application Number: 14F00032  
Payment Amount: \$1,835,311.79  
Payment Period: 25/may/2014  
Amount of Disputed Claims: \$1,835,311.79

Upon receipt by the undersigned of a check in the above-referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above-described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of this document relies on it, the recipient should verify evidence of payment to the undersigned. The undersigned warrants that he or she either has already paid or will use the money received from the final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated: 25/may/2014

PROMPTU MMI LLC

By: Gabriel González García


Its: CEO

10/6/2014

State of Nevada  
County of Clark

This instrument was acknowledged  
before me on ~~25~~ June 10, 2014 ~~xx~~  
by ~~xx~~ Gabriel Gonzalez Garcia



  
Notarial Signature  
Shelley L Estela

6/10/14



EIN: 99-0375700

**PROIMTU MMI LLC**  
2850 W Horizon Ridge Parkway #200  
Henderson, NV 89052  
[www.grupomara.com](http://www.grupomara.com)

June 10, 2014

TRP International, Inc.  
EIN: 45-5312356  
P.O. Box 1528  
Tonopah, Nevada, 89049

RE: 9013-Crescent Dunes Solar Energy Project

To Whom It May Concern:

We are formally writing to you in order to inform, that as per our contract with TRP International, Inc.; Proimtu MMI LLC has completed all its scope of work at the Crescent Dunes Solar Project on April 4, 2014, related to the contract number 9013- Crescent Dunes Solar Energy Project.

Also communicate to Trp International, Inc that in accordance to the contract signed between Trp International Inc and Proimtu MMI LLC:

"Provisional Handover or Acceptance of the Works by the CONTRACTOR shall occur when:  
In addition to satisfactory conclusion of all tasks covered by this CONTRACT, the SUBCONTRACTOR  
has presented the CONTRACTOR with all contractual documentation as required in accordance with  
the terms of this CONTRACT, and this has been reviewed and approved by the CONTRACTOR.  
Provisional Handover shall take place by means of signature by both Parties of the Provisional  
Handover Document, including among other documents the Release and Waiver Certificate, included as  
Annex 3 to the General Purchasing and Conditions."

Proimtu MMI LLC has previously provided all the documentation relative to this contract required and there is still a negation, from Trp International Inc's side, to proceed with the Provisional Handover or Acceptance of the Works.



FIN: 99-0375700

**PROIMTU MMI LLC**  
2850 W Horizon Ridge Parkway #200  
Henderson, NV 89052  
[www.grupomara.com](http://www.grupomara.com)

Also inform that TRP International Inc still has not fulfilled totally with its payment obligations to Proimtu MMI LLC, still has not attended the right, of its subcontractor Proimtu MMI LLC, of claim for the increase of the total contract amount of payment due to TRP International Inc incidents occurred during the execution of the mentioned project, incidents that have increased:

- 1.- The contract period time for the execution been claimed the daily production Proimtu MMI LLC had the equipment and human resources for.
- 2.- Contract costs. Increase in the contract cost for the technical personnel for the execution of the project due to different stopped time produced by the production line.
- 3.- The T&M agreed to be paid in the contract after been approved by TRP International Inc personnel.
- 4.- Back charges from TRP International Inc to Proimtu MMI LLC not agreed at any times under the threat of not been paid at all.

Please find attached as part of this acknowledgement the invoice # **14F00032** owned by TRP International Inc to Proimtu MMI LLC for the total amount of **1.835.311,79\$** ( *one million eight hundred thirty five thousand, three hundred and eleven dollars with seventy nine cents* ) and the conditional lien waiver for this invoice. Also, please find attached all the documents that justify it.

I hope a prompt response

Yours Sincerely

  
Gabriel González García  
CEO  
Proimtu MMI LLC



# EXHIBIT 3

# EXHIBIT 3

**DOC # 823637**

Official Records Nye County Nevada  
Deborah Beatty - Recorder  
11/12/2014 12:16:06 PM  
Requested By: FENNEMORE  
Recorded By: tc RPTT:\$0  
Recording Fee: \$20.00  
Non Conformity Fee: \$0.00  
Page 1 of 7



APN 012-031-04, 012-131-03,

APN 012-131-04, 1

APN , 012-141-01,

APN , 012-151-01, and 612-141-01

Recording Requested By:

Name Fennemore Craig Jones Vargas

Address 300 South Fourth St. 14th Floor

City / State / Zip Las Vegas, NV 89101

Notice of Lien

(Print Name Of Document On The Line Above)

☐

I the undersigned hereby affirm that this document submitted for recording contains personal information (social security number, driver's license number or identification card number) of a person as required by specific law, public program or grant that requires the inclusion of the personal information. The Nevada Revised Statute (NRS), public program or grant referenced is:

(Insert The NRS, public program or grant referenced on the line above.)

Signature

Name Typed or Printed

This page is added to provide additional information required by NRS 111.312 Sections 1-2.  
This cover page must be typed or printed. Additional recording fee applies.

APN: # 012-141-01, 012-151-01  
612-141-01, 012-031-04  
012-131-03, 012-131-04

Recording requested by and mail documents to:

Proimtu MMI LLC  
c/o Christopher H. Byrd, Esq.  
Fennemore Craig Jones Vargas  
300 South Fourth St. 14<sup>th</sup> Floor  
Las Vegas, NV 89101

---

NOTICE OF LIEN  
(Mechanic Lien)

Notice is Hereby Given:

1. That PROIMTU MMI, LLC, hereinafter known as "Claimant," hereby claims a lien pursuant to the provisions of N.R.S. 108.221 to 108.246 inclusive, on the property located in Nevada described in Exhibit "A" (the "Land") and upon any improvements constructed on the Land, including but not limited to the improvements identified as the assembly line and heliostats (the "Improvement") for the Crescent Dunes Solar Project.
2. The amount of the original contract is: \$8,746,125.
3. The total amount of all charges and additions, if any, is \$3,792,104
4. The total amount of payments received to date is \$10,180,252
5. The total amount of the lien, after deducting all credits and offsets is \$2,357,977
6. The name of the owner of the Improvement is: Tonopah Solar Energy, LLC, including its subsidiaries and all other related or associated entities (the "Owner"). Upon information and belief the Owner's principal address is believed to be 2425 Olympic Boulevard, Suite 500 East, Santa Monica, California, 90404. The interest of the Owner in the Improvement is as a lessee of a leasehold estate.
7. The name of the owner of the Land is: Bureau of Land Management ( "BLM"). Upon information and belief the BLM's principal address is 1340 Financial Blvd., Reno, Nevada, 89502.
8. The name of the person whom the lien claimant was employed or to whom the lien claimant furnished work, material, or equipment is TRP International, Inc. ("TRP"). Upon information and belief TRP's principal address is 9550 S. Eastern Ave, Suite 253, Las Vegas, Nevada, 89123.

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 PROIMTU MMI LLC, a Nevada limited  
liability company,

3                                   Appellant,

4                   vs.

5 TRP INTERNATIONAL, INC., a  
foreign corporation,

6                                   Respondent.

7 PROIMTU MMI LLC, a Nevada limited  
liability company,

8                                   Appellant,

9                   vs.

10 TRP INTERNATIONAL, INC., a  
foreign corporation,

11                                   Respondent.

Case No. 68942

District Court Case No. CV-36431

Electronically Filed  
May 18 2016 09:24 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Case No. 69336

District Court Case No. CV-36431

12  
13                   **JOINT APPENDIX TO OPENING BRIEF**  
14                                   **IN CASE NO. 69336**

15                                   **FENNEMORE CRAIG, P.C.**

Christopher H. Byrd, Esq. (No. 1633)

Brenoch R. Wirthlin, Esq. (No. 10282)

300 S. Fourth Street Suite 1400

Las Vegas, NV 89101

Telephone:       (702) 692-8000

Facsimile: (702) 692-8099

E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)

[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)

19                   *Attorneys for Defendant and Appellant*  
20                                   *Proimtu MMI, LLC*

1 **JOINT APPENDIX TO OPENING BRIEF**

2

|    | <b>DOCUMENTS</b>                                       | <b>BATES<br/>STAMP NO.</b> | <b>VOL.</b> |
|----|--|----------------------------|-------------|
| 3  | 1. Certificate of Service for Motion for Attorney Fees | 0402-0403                  | 2           |
| 4  | dated August 27, 2015.                                 |                            |             |
| 5  | 2. Certificate of Service of Petition to Expunge Lien  | 0076                       | 1           |
| 6  | and Order for Hearing dated January 15, 2014(sic)      |                            |             |
| 7  | 3. Disclosure of Supplemental Documents to Support     | 0186-0204                  | 1           |
| 8  | the Petition to Expunge dated February 12, 2015        |                            |             |
| 9  | 4. Findings of Fact, Conclusions of Law and Order on   | 0409-0415                  | 2           |
| 10 | Petition to Expunge Lien dated September 9, 2015       |                            |             |
| 11 | 5. Motion for Attorney Fees dated July 2, 2015         | 0378-0384                  | 2           |
| 12 | 6. Notice of Appeal dated December 10, 2015            | 0432-0446                  | 2           |
| 13 | 7. Notice of Appeal dated October 5, 2015              | 0417-0418                  | 2           |
| 14 | 8. Notice of Entry of Findings of Fact, Conclusions of | 0416-0424                  | 2           |
| 15 | Law and Order on Petition to Expunge Lien dated        |                            |             |
| 16 | October 5, 2015  |                            |             |
| 17 | 9. Notice of Entry of Order Granting Motion for        | 0429-0431                  | 2           |
| 18 | Attorney Fees dated November 12, 2015                  |                            |             |
| 19 |  |                            |             |
| 20 |  |                            |             |



|    |     |  |           |   |
|----|-----|--|-----------|---|
| 1  | 10. | Objection to Untimely Disclosure of Supplemental   | 0293-0295 | 2 |
| 2  |     | Documents to Support the Petition to Expunge       |           |   |
| 3  |     | dated February 25, 2015 (PART 2 of 2)              |           |   |
| 4  | 11. | Opposition to Petition to Expunge Lien dated       | 0077-0179 | 1 |
| 5  |     | February 2, 2015                                   |           |   |
| 6  | 12. | Opposition to Petitioner's Motion for Attorney's   | 0385-0391 | 2 |
| 7  |     | Fees dated July 17, 2015                           |           |   |
| 8  | 13. | Order (transferring matter to Judge Elliott) dated | 0296-0297 | 2 |
| 9  |     | March 3, 2015                                      |           |   |
| 10 | 14. | Order for Hearing on Petition to Expunge Lien      | 0074-0075 | 1 |
| 11 |     | dated January 8, 2015                              |           |   |
| 12 | 15. | Order Granting Motion for Attorney Fees dated      | 0427-0428 | 2 |
| 13 |     | November 12, 2015                                  |           |   |
| 14 | 16. | Order of Recusal and Request for Senior Judge      | 0400-0401 | 2 |
| 15 |     | dated August 24, 2015                              |           |   |
| 16 | 17. | Petition to Expunge Lien dated December 12, 2014   | 0001-0073 | 1 |
| 17 | 18. | Reply to Opposition to Motion for Attorney Fees    | 0392-0399 | 2 |
| 18 |     | dated July 23, 2015                                |           |   |
| 19 |     |  |           |   |
| 20 |     |  |           |   |

|    |     |  |           |   |
|----|-----|--|-----------|---|
| 1  | 19. | Reply to Opposition to Petition to Expunge Lien    | 0180-0185 | 1 |
| 2  |     | dated February 3, 2015                             |           |   |
| 3  | 20. | Reporter's Transcript of Proceedings before the    | 0205-0250 | 1 |
| 4  |     | Honorable Kimberly A. Wanker held on February      |           |   |
| 5  |     | 12, 2015 (PART 1 of 2)                             |           |   |
| 6  | 21. | Reporter's Transcript of Proceedings before the    | 0251-0292 | 2 |
| 7  |     | Honorable Kimberly A. Wanker held on February      |           |   |
| 8  |     | 12, 2015 (PART 2 of 2)                             |           |   |
| 9  | 22. | Reporter's Transcript of Proceedings before the    | 0301-0377 | 2 |
| 10 |     | Honorable Steven Elliott held on June 18, 2015     |           |   |
| 11 | 23. | Request for Ruling on Petition to Expunge Lien, or | 0298-0300 | 2 |
| 12 |     | in the Alternative, to Place on Calendar dated     |           |   |
| 13 |     | March 27, 2105                                     |           |   |
| 14 | 24. | Supplement to Motion for Attorney Fees dated       | 0404-0408 | 2 |
| 15 |     | September 9, 2015                                  |           |   |