**Contract No. …..**

**Between**

**Nuclear Power Production & Development Co. of IRAN (NPPD)**

**And**

**KSB SE & Co. KGaA**

**Delivery of Spare Parts**

**For**

**BUSHEHR NUCLEAR POWER PLANT UNIT-1**

**Of**

**ISLAMIC REPUBLIC of IRAN**

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# Contracting Parties:

This contract is entered into by and between Nuclear Power Production and Development Co. of Iran (NPPD Co.) a corporation duly organized and existing under the laws of Islamic Republic of Iran duly represented by Mr. Mohammad Ahmadian as NPPD Co. Managing Director, Vice-president of AEOI, hereinafter referred to as “the Purchaser”, on the one hand, and KSB SE &Co. KGaA represented by Mr. Holger Windolf as Senior Manager acting on the basis of Power of Attorney dated 03 May, 2018, hereinafter referred to as the Supplier, on the other hand, and hereinafter collectively referred to as “the Parties”, have agreed to sign the present Contract, hereinafter referred to as “ the Contract”.

# Article 1 – Subject of the Contract

* 1. Subject of this Contract is the supply of the Spare Parts by the Supplier to the Purchaser as set out in **Annex 1** hereto taking into account the Technical Specification as agreed in **Annex 2** hereto.

The type and scope of the technical documentation included in the scope of supply are set out in **Annex 3** hereto.

* 1. Any additional services, especially the supervision of installation at the BNPP-1 site as well as the commissioning and/or test runs of Spare Parts are not included in this Contract and is subjected to signing a separate mutual agreement.

# Article 2 – Terms and Conditions of Supply and Delivery Schedule

* 1. The Spare Parts shall be delivered on the basis of CIF Bushehr port (INCOTERMS2010). In case unavailability of the sea transportation to Bushehr port, the Supplier shall deliver the Spare Parts to Bandar Abbas port by written approval of the Purchaser. The Purchaser shall get transportation insurance at its own cost and provide the copy of it to the Supplier for information and stipulation of the insurance policy number on shipping documents.

2.2 The delivery periods and/or delivery dates of the Spare Parts is stated in Annex 4 hereto.

However, the delivery time shall start from the date of receipt of advance payment opening of the L/C and obtaining BAFA approval. The Supplier shall provide the time schedule of the Contract after obtaining the BAFA approval to the Purchaser for consideration and approval.

2.3 The Purchaser shall review and submit to the Supplier its comments on all documentation provided by the Supplier within 15 working days from date of receipt otherwise send its approval.

Should the Purchaser fail to provide its comment(s) or approval to the Supplier during the above specified deadline, the Supplier has the right to postpone the delivery date respectively. *.*

* 1. Partial delivery(ies) and delivery(ies) prior to the agreed delivery date set forth in the Contract is subject to written notice by Purchaser and mutual agreement between the Parties . If partial deliveries are agreed and agreed payments for previous deliveries are not made in due time, the Supplier shall not be committed to continue making deliveries at the agreed delivery dates.
	2. The Purchaser shall open the packages by presence of the representative of the Supplier at the BNPP-1 Site within one month from the date the Spare Parts have been arrived. The Parties shall visually inspect the Spare Parts in conformity with technical specification stipulated in the Annex 2 to the Contract and the results shall be signed by the Parties in the form of report or minutes of meeting.

# Article 3 – Packaging, Product Marking and Shipping Instructions

* 1. The Spare Parts shall be adequately packed and protected for shipment by truck/ship . The Supplier shall deliver the Spare Parts according to Purchaser’s instructions in such a packaging to provide protection for a maximum of 6 months on site when stored in a fully enclosed and dry area.
	2. The Purchaser shall provide the Supplier with exact marking details for shipment and precise shipping instructions no later than 2 months prior to the shipment. If the Supplier has not received any notification to this effect 2 months prior to the shipment, marking and shipping particulars shall be based on the Supplier’s procedures. .

# Article 4 – Price of the Contract

* 1. The total price for the Spare Parts inclusive the technical documentation shall be

EUR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter referred to as “Contract Price“).

 The Price of this Contract is fixed and not subject to any escalation.

# Article 5- Payments

5.1 Payments for the delivered Spare Parts shall be effected through the Letter of Credit, which will be opened by the Purchaser after receiving BAFA approval in favor of the Supplier in the Central Bank of Iran (hereafter – the “Issuing Bank”) in accordance with the terms and under conditions of the present Contract and on the basis of the latest revision of the Uniform Customs and practice for Documentary Credits (UCP) of the International Chamber of Commerce, ICC publication No.600 (hereinafter – the “L/C”).

5.2 The Supplier is obliged to provide the Purchaser with 10% of the price of the Contract as good performance guaranty in the form of the Corporate Guaranty together with necessary proforma Invoice for L/C opening. The said guaranty shall be valid up to the expiration of the warranty period of the Contract.

5.3 The Purchaser shall open L/C within 2 (two) months after receiving the Supplier notification on BAFA approval to allow the Supplier to receive the advance payment amounting to 50% of the price of the Contract against timely submission of acceptable Corporate-Guarantee by the Supplier which shall be deducted proportionally from each invoice of the Supplier.

5.4. 50% of the price of this Contract will be paid to the Supplier against submission of the following necessary shipping documents to the Nominated bank of the L/C and based on the Annexes No.1&2 to the present Contract:

* Signed commercial invoices amounting to 100% (one hundred percent) of the Spare Parts value confirming that the Spare Parts shipped are in strict conformity with Annexes No.1&2 to the present Contract (four originals, one of which is certified by local Chamber of Commerce).
* Full set clean on board ocean bill of lading marked freight prepaid AND/OR roads waybill of the international carriage of the Spare Parts by road CMR AND/OR negotiable FIATA Multimodal Transport Bill of lading marked freight prepaid evidencing Spare Parts en route AND/OR clean airway bill marked freight prepaid bearing the flight stamp. All shipping documents should be issued for the name of the issuing bank of the L/C as the consignee.
* Certificate of origin issued and certified by local Chamber of Commerce (one original and 3 copies).
* Detailed packing list of Spare Parts (four originals).
* Insurance Policy issued by one of the Iranian Insurance Company covering value of the Spare Parts plus 10% (ten percent) - (Insurance shall be provided by the Purchaser).
* Freight invoice in two originals one of which is certified by local Chamber of Commerce (not required for Air transportation).
	1. However, if the duration of the Contract is extended due to circumstances for which the Supplier is not responsible for, the Supplier shall be entitled to compensation for the costs incurred as a consequence thereof subject to the Purchaser’s approval.

# Article 6 – Transfer of title and risk

"6.1 The title of the Spare parts shall pass to the Purchaser from the date of issuing of the bill of lading (B/L) or other acceptable shipment document, marked the Issuing bank as consignee and the Purchaser as the applicant confirming actual shipment of the Spare Parts to the address of the Purchaser."

6.2 Risk of accidental damage or accidental loss of the Spare Parts shall pass to Purchaser upon delivery in accordance with terms and conditions of the present Contract.

# Article 7 – Warranty

* 1. Purchaser shall inspect all Spare parts received hereunder for damage, defect or shortage within 30 days of receipt at destination (BNPP-1 site). All claims for obvious defects, shortage or non-delivery must be made in writing by the Purchaser within the aforementioned period of time and the Supplier shall not be liable for any such claims not made within such time period.
	2. The Supplier warrants that the Spare Parts conform to the agreed Technical Specification (**Annex 2**).. The Supplier further warrants that the Spare Parts are free from defects in materials or workmanship. No warranty shall apply for defects for which the Supplier is not responsible, such as normal wear & tear, or the operating and maintenance faults.
	3. Warranty shall be for a period of 18 months from the date of commissioning, but no more than 24 months after notice of readiness for dispatch whichever period expires first.
	4. Should within the waranty period of the Spare parts, any defects and deficiencies be observed while utilizing the Spare parts, , the Supplier shall within reasonable time initiate all necessary measures to replace or repair, and improve such deficiencies at his own cost and own option. The new waranty period for faulty Spare parts or deficiencies will start after the date of replaceing and/or repairing the faulty Spare parts.

Disassembly or reassembly costs associated with the Supplier's warranty obligation shall be excluded by the warranty claim.

* 1. If the Supplier is responsible for a delay in correcting a defect pursuant to Article 7.4 hereof, Purchaser shall – after prior written notification – be entitled to correct such defect itself or have it corrected by a third party. In addition, Purchaser shall be entitled to repair or replace any defective component in the place ofthe Supplier in urgent cases when operating reliability is at risk or in order to prevent disproportionate damage, in which case the Supplier shall – to the extent possible and/or appropriate – promptly be informed. the Supplier shall reimburse Purchaser for the reasonable costs incurred for such repair or replacement.
	2. All rights provided to Purchaser under Article 7.4 and Article 7.5. hereof with respect to defects shall be considered final and conclusive. All other rights with respect to defective deliveries shall be excluded.

# Article 8 – Testing / Inspections at the Supplier’s Workshops and/or Workshops of Subsuppliers

All agreed tests/inspections shall be carried out on the Spare Parts.

The tests and inspections of the Spare Parts shall be based on the “Standard Quality Control Plan” (SQCP) of the Purchaser or the specific “Manufacturing Sequence Plans (MSP) – prepared by the Supplier-” which have to be approved by the Purchaser . The SQCP or MSP for the Spare Parts shall be based on the original manufactured pumps.

# Article 9 – Delay

* 1. In the event of delay in delivery date of the Spare Part for which the Purchaser is not responsible, the Supplier shall pay liquidated damages for delay after expiry of a approved grace period granted by Purchaser to the Supplier to cure the unmet delivery schedule; such liquidated damages shall be limited to 0.5 % of the value of the supplies delivered late for each full week after expiry of the grace period.
	2. The total amount of penalty on delays shall not exceed a sum of 10 % of the Contract Price. Any and all further penalty for calculation of delay shall be disregarded.
	3. In the event of a delay in delivery caused by the Supplier, the Purchaser shall be entitled to terminate the Contract only after having exhausted the maximum amount of liquidated damages pursuant to Article 9.2 hereof.

# Article 10 – Intellectual Property

* 1. The Supplier shall indemnify and hold the Purchaser harmless from all charges, expenses including legal fees, losses or damages which may arise in connection with any claim, action or charge based on the grounds that the Purchaser or the supplier or their agents have in any way violated or infringed any patents or other intellectual property rights of the third parties."
	2. If any use of the Spare Parts infringes upon the industrial property rights or copyright of a third party, the Supplier shall, at its own expense and discretion, as a rule either obtain the right to continue use of the Spare Parts by Purchaser or modify the Spare Parts in a manner acceptable to The Supplier so as to avoid the infringement of third-party rights. Should the Supplier not be able to undertake one of the aforementioned options under economically reasonable conditions or within a reasonable period of time, Purchaser shall be entitled to withdraw from the Contract. Under the aforementioned circumstances, the Supplier shall likewise be entitled to withdraw from the Contract.

The Supplier shall also indemnify and hold the Purchaser harmless from and against any and all undisputed or legally enforceable claims of the owners of the property rights.

* 1. The provisions under Article 10.1and 10.2 hereof shall be final and conclusive as regards Purchaser’s rights in the event of an infringement of industrial property rights or copyright of a third party. Any and all further claims by Purchaser shall be excluded.

In addition, the Supplier’s obligations under Article 10.1and 10.2 hereof shall only apply provided that Purchaser immediately notifies the Supplier of an asserted claim of infringement of industrial property rights or copyright, does not recognize such asserted claim brought by a third party without prior consent from the Supplier, assists the Supplier to a reasonable extent in defending against such asserted claims and, the Supplier is, in addition, reserved the right to all defensive measures including out-of-court settlements. Furthermore, the Supplier’s obligations under Article 10 hereof shall only apply provided that the defect of title is not based on an instruction by Purchaser and the infringement of the right(s) was not caused by Purchaser having made unauthorized changes to the Spare Parts or having used the Spare Parts in a manner not compliant with this Contract.

# Article 11 – Liability / Nuclear Liability

11.1 Notwithstanding anything contained in this Contract to the contrary, the liability of the Supplier hereunder, irrespective of the legal grounds (e.g. delay, warranty, and tort) and including its agents, servants, subcontractors and suppliers, shall be limited as follows:

* the Supplier shall only be liable for damage to property and personal injury caused by negligent performance of the contractual obligations. Such liability shall not exceed the sum of EUR 2.5 million for each damage event, and the total amount - regardless of the number damage events – shall be limited to EUR 5 million.
* Any further liability shall be excluded. In particular, the Supplier shall not be liable - whether by way of indemnity or as a result of breach of contract or otherwise - for any loss of revenue or profits, loss of use, costs of capital or costs incurred for any business interruption, nor for any other indirect or consequential damage.
	1. Notwithstanding any other provision of this Contract or under applicable laws the Supplier and its sub-suppliers shall under no circumstance and at no time be liable for any damage, loss or claim based on damage to property of Purchaser, including but not limited to damage to the Nuclear Power Plant itself and any property on or of the site where the Nuclear Power Plant is situated resulting directly or indirectly from a nuclear incident in the Nuclear Power Plant including any incidental or consequential damages, losses, costs or expenses unless intentionally or grossly negligent caused by the Supplier or its sub-suppliers.

Purchaser undertakes to indemnify the Supplier and its sub-suppliers against any claims by third parties due to any damage, loss or claim based on personal injury or death of any person, damage to property of any person or entity resulting directly or indirectly from a nuclear incident in the Nuclear Power Plant including any incidental or consequential damages, losses, cost or expenses. Purchaser ensures that insurers of the Nuclear Power Plant shall have no rights of recourse or subrogation against the Supplier and its sub-suppliers for Nuclear Damage.

Purchaser represents to be the sole owner and operator of the Nuclear Power Plant at the time of signing of this Contract without any other party having ownership or equivalent interest therein and shall neither transfer nor assign any rights or interest in Spare Parts furnished or serviced by the Supplier, nor locate such Spare Parts for use in any nuclear application other than in the Nuclear Power Plant unless protection for the Supplier and its sub-suppliers against liability for Nuclear Damage will be as per this Article.

Purchaser guarantees that above provision is in conformity with the applicable laws in the country the Nuclear Power Plant is located, and that no mandatory provision of this law is overriding any provision of this clause. In case of changes to the respective laws regarding Nuclear Damage, Purchaser shall promptly inform the Supplier thereof.

The provisions of this Article shall apply as long as the Nuclear Power Plant is in operation and thereafter until all radioactive material has been removed from the site, regardless of the Supplier’s breach of Contract and any termination or cancellation of this Contract.

# Article 12 – Force Majeure

* 1. Force Majeure means any circumstances beyond the reasonable control of either of the Parties hereto, including, but not limited to, earthquakes, storms, fires, floods, epidemics, war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, embargo, rebellion, revolution, insurrection, military or usurped power, civil war, riot, commotion or disorder, labour disputes and acts of terrorism, any impediments arising out of national and international foreign trade and customs requirements or any future embargos or other sanctions preventing the fulfilment of the contract or acts of government and/or non-issuance of licenses.
	2. Neither Party hereto shall be considered to be in default or in breach of its obligations under this Contract to the extent that performance of such obligations is prevented or delayed by any circumstances of Force Majeure and the time for delivery/completion shall be adequately extended.
	3. If, in consequence of Force Majeure, the Contractual Products/work-in-progress suffer loss or damage, the Supplier shall be entitled to payment for such Contractual Products/work-in-progress without regard to the loss or damage that has occurred.
	4. If circumstances of Force Majeure continue for a period of more than 6 months, either Party shall be entitled to terminate this Contract with 30 days notice. In the event of such termination, the Supplier shall be paid the value of all Spare Parts supplied or of any work-in-process, of all material ordered and all evidentory expenses incurred in expectation of completing the Spare Parts, as well as the costs of demobilization.
	5. " In case of force-majeure, each party shall bear its own costs excluding Paragraph12.4 independently of the territory of the origin of force-majeure circumstances."

# Article 13 –Termination

The Purchaser shall at any time during the period of the Contract has the right to terminate the Contract by giving written notice thereof to the Supplier 1 (one) months prior to the termination date. Should the Purchaser use its right for termination of the Contract for which the Supplier is responsible as results of the following cases:

 (i) Supplier bankruptcy or insolvent or subjected to winding-up or liquidation; or,

(ii) Supplier is in default of its obligations under this Contract, and continues to be in default for more than (90) days after the Purchaser has submitted written notice of the default to Supplier, or

(iii) Supplier fails to deliver the 150 calendar days more than deadlines specified in time schedule of the Contract.

 then the Supplier shall reimburse the Purchaser all documented costs incurred by the Purchaser due to such a termination with the amount limited 5% of the price of the Contract and the Purchaser shall claim against the Supplier’s penalties as per Article No. 9 of the Contract and the Purchaser has the right to deduct the amount of the penalties from any due payments of the Supplier.

# Article 14 – Suspension

14.1 During the Contract period, the Purchaser shall have the right to suspend the subject of the Contract thereof by giving to the Supplier a written notice thereof 15 days prior to the effective date of the suspension. The Supplier undertakes to eliminate the reasons for suspension at its expenses without any extra costs to the Purchaser, if the reason thereof is due to the Supplier‘s responsibilities.

14.2 If the above suspension is caused by the reason for which the Purchaser is responsible, then the Purchaser shall reimburse to the Supplier the related direct expenses actually incurred by the Supplier directly as the result of the mentioned suspension subject to submission of evidentiary documents.

# Article 15 – Applicable Law and Arbitration

15.1 This Contract is construed under, governed by and shall be subject to the material Laws of Austria under exclusion of the United Nations Convention on Contracts for the International Sale of Spare Parts of April 11, 1980 (CISG).

* 1. All disputes resulting from, concerning the validity of or arising in connection with the present Contract shall be finally settled, ousting jurisdiction by ordinary courts, by a three-member arbitral tribunal in accordance with the arbitration rules of the International Chamber of Commerce (ICC). Arbitration shall take place in Vienna, Austia. Proceedings shall be held in English.

# Article 16 – Correspondence and Language

16.1 Throughout the term of this Contract, all written notices by either Party to the other shall exclusively be in English.

16.2 All relevant technical documentation, lists, etc. hereunder shall exclusively be delivered in English and German languages.

# Article 17- Address

17.1 Nuclear Power Production and Development Co of IRAN

 No.8, Tandis Str. Africa Ave. Tehran- Iran

Fax: +98-21-22058480

Tel: +98-21-22058894

17.2 KSB SE & KGaA, Johann-Klein Strasse 9, D-67227, Frankenthal, Germany

Tel: +49-6233-860

Fax: +49-6233-86-3401

17.2 in case of any change in the contact information of both parties, the parties shall announce it in written within 15 days before the changes.

# Article 18 – Effectiveness date

18.1 This Contract is valid from the effective Date of the Contract until all the obligations have been fulfilled by the Parties.

18.2 The Contract will be effective after the Purchaser obtains all the required permits for performing the Contract and the Supplier obtains all the required permits particularly BAFA approval for performing the Contract.

This Contract shall be subjected to the reservation that any export authorization required are granted and/or there are no other impedimenta due to export or transfer provisions to be observed by us as exporter/transferor or by one of our suppliers.

Upon conclusion of the Contract, the Supplier shall use its best efforts to seek to obtain the required authorizations. In this case, the Purchaser shall undertake to promptly provide to the Supplier written copies of all documents and information necessary for the granting of the authorizations. If the required authorization are not granted, the Contract shall be deemed not to be have been submitted with regard to the relevant delivery and service obligations and the relevant contract not to have concluded. All rights to claim for damages by the Purchaser in the event of non-fulfilment of the delivery and obligations due to required authorization not being granted, for which the Supplier cannot be held responsible, shall be excluded.

18.4 With due consideration of the above 18.2, the Parties shall officially notify each other that they have received necessary permits for implementation of the Contract.

# Article 19: Quality Assurance

19.1 Quality assurance for the Spare Parts under this Contract is presented in Annex...

19.2 The Supplier is obliged to provide the Purchaser with the Quality Control Plan and Manufacturing Sequence Plans for consideration and approval.

# Article 20: Required Documents

The Supplier shall submit all required documents for the supplied Spare parts to the Purchaser for consideration and approval. These documents are described in the Annex No.3to the Contract.

# Article 21 – Miscellaneous

21.1 Neither Party shall assign, in whole or in part, any rights nor obligations hereunder without the other Party’s prior written consent.

21.2 All modifications and amendments to this Contract, including this clause, must be in writing in order to be effective and must be duly signed by the Parties hereto.

21.3 The following annexes shall form an integral part of this Contract:

21.4 This Contract was prepared and signed on ……2018 in two original copies in English, one for the Supplier and one for the Purchaser.

Annex 3: Scope of Documentation

Annex 4: Time Schedule for Documentation

Annex 5: General Terms and Conditions of Sale

21.5 This Contract was prepared and signed on ……2018 in two original copies in English, one for the Supplier and one for the Purchaser.

*(Place) –Tehran-Iran*

The Purchaser The Supplier

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Annex 3**

Scope of Documentation

The following documents are included in the scope of supply:

- Data sheets of the pump and characteristic curve

- Sectional drawing of the pump and mechanical seal with list of components

- P & I diagram for the scope of supply

- List of valves

- List of measuring points with list of instrumentation

- Foundation plan of the scope of supply with weights, forces and moments

- Functional diagram

- Terminal wiring diagram

- Complete manual consisting of the following chapters:

 Safety regulations

 Transport

 Pump description

 Installation

 Commissioning

 Servicing/maintenance

 Trouble-shooting

 Drawings relevant to the scope of supply

 Quality reports

**Annex 4**

Time Schedule for deliver and Documentation

Time period after signature of Contract *[when including Article 1.2: after receipt by KSB of the technically clarified order] and* receipt of the “export permission” as well as the down payment.

- Pre-Approval Documents (Parts List, Test & Examination Sequence Plan) 8 weeks

 for approval by the Purchaser

 Please be aware that no order for raw material or other parts like o-rings,

 Mechanical shafts seals and so on can be placed before written approval

 of the “Pre-Approval documents” by the Purchaser and/or further

 Authorities to be named by the Purchaser.