



**STANDARD TENDER DOCUMENTS
FOR
THE PROCUREMENT OF WORKS
(MAJOR CONTRACTS)**

METHOD OF TENDER: ICT

Tender Reference:

Issue Date: Day/Month/Year

Name of Entity

December, 2019

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December, 2019 Revision

This revision dated December, 2019 incorporates a number of changes reflecting the experience of procuring entities in using the previous version of this document (last updated version was dated). This revision is to enhance the previous version incorporating Act 663 as Amended and make it consistent with international best practices by addressing issues of sustainability (economic, social and environmental, health and safety).

..... **Revision**

INTRODUCTION

This Standard Tender Document for Procurement of Major Works is intended to be used where the proposed works are of a complex nature, large value (i.e. over GHS 15,000,000.00)¹ that may be contracted under International Competitive Procedures and where the magnitude of the potential risks involved is high for both the Employer and the Contractor.

The General Conditions of Contract contained herein are based on the 2010 Multilateral Development Bank Harmonized Edition of the International Federation of Consulting Engineers' (FIDIC) "Conditions of Contract".

Details to be entered by the Employer prior to the release of the Tender Documents for a particular project are limited to the Tender Data Sheet (TDS), the proposed Agreement, and the Particular Conditions. Details not entered by the Employer are the responsibility of the Tenderer. In addition, the Employer provides the Specification, Drawings, and Unpriced Bill of Quantities or Schedule of Activities (when necessary).

Whoever prepares the Tender documents should be thoroughly familiar with the Instructions to Tenderers and Conditions of Contract included in the Standard Tender Documents for Major Works, STD-MW, as well as with the law applicable to the contract and any specific requirements of the specific contract. Where the user has little experience in writing Tender Documents or where complicated circumstances apply, expert advice should be sought.

The use of Tender and Performance Securities should be part of the overall approach to risk management and should take into account available measures to reduce the risk of contractor's default.

¹ or the equivalent threshold level as revised by the Public Procurement Authority.

INVITATION FOR TENDERS

Invitation for Tenders

Contract Title:

IFT REF:

1. The Government of the Republic of Ghana, acting through the *[insert name of procuring entity]* (the “Employer”), intends to apply a portion of the *[insert source of funds]* Funding to eligible payments under a contract for which this Invitation for Tenders (“IFT”) is issued. Any payments made under the proposed contract will be subject, in all respects, to the terms and conditions of the funding and conditions to the disbursement of funding. No party other than the Government and the Employer shall derive any rights from the funding or have any claim to the proceeds of the funding.
2. The Works and the Contract expected to be awarded under this IFT is: *[insert name of project]* and to be completed in *[insert duration]* **calendar months**.
3. This IFT follows Notices/Bulletins for this project that appeared in local newspapers and Public Procurement Authority (PPA) website www.ppaghana.org, all dated *[insert dates]*.

The *[insert name of procuring entity]* now invites sealed Tenders (“Tenders”) from eligible and qualified entities or persons (“Tenderers”) to provide the works referenced above.

4. More details on the requirements are provided in the Bills of Quantities, Specifications, Performance Requirements and Drawings included in the Tender Documents accompanying this IFT.
5. This IFT is open to all eligible and qualified Tenderers who wish to respond to the relevant “Tender Documents”. Qualification requirements are as described in **Section III. Evaluation and Qualification Criteria**.
6. A contractor will be selected under a competitive Tendering method through the evaluation procedure which is described in the Tender Documents, in accordance with the Public Procurement Act, 2003 (Act 663) as Amended which are provided on the PPA website at www.ppa.gov.gh.
7. For Ghanaian Tenderers, it is mandatory that Tenderers include in their tender the underlisted statutory requirements.
 - Valid GRA Tax Clearance Certificate.
 - Valid SSNIT Clearance Certificate.
 - Valid VAT Registration Certificate (if applicable).
 - Valid Business Registration Certificate
 - Valid Certificate of Incorporation
 - Valid Certificate of Commencement.
 - Valid Works and Housing Certificate
 - Valid Labour Certificate
 - Valid Registration Certificate from PPA

8. Eligible Tenderers interested in obtaining the Tender Documents may obtain further information and inspect the Tender Documents at the following address [*insert address*], from [*insert time*] local time.
9. A complete set of Tender Documents in English may be purchased from [*insert address*], from [*insert time*], (*insert location*) by interested Tenderers on the submission of a written application to the address below and upon payment of a non-refundable fee of [*insert amount*] for each set of Tender Documents. The method of payment will be **by Banker's Draft or cash payable to [*insert name of procuring entity*] in [*insert city/town*]**.
10. A Pre-Tender meeting shall take place on [*insert date*] at [*insert time*] **local time** at the [*insert address*]
11. The deadline for submission of Tenders is [*insert date*] at [*insert time*] *local time*. Tenders must be delivered to the address below on or before the time specified above.

Location

Street No.

Floor number, Room number

Tel:

Fax:

E-mail:

12. All Tenders must be accompanied by a Tender Security in the form and amount specified in the Tender Documents.
13. Tenders will be opened immediately after the deadline for submission in the presence of Tenderers' representatives who choose to attend at the *venue and location* indicated below:

location

Street No.

Floor number, Room number

PART – I
TENDER PROCEDURES

Contents

Part I: Tender Procedures

INTRODUCTION	iv
A. General.....	3
Definitions	3
1. Scope of Tender.....	4
2. Source of Funds.....	4
3. Fraud and Corruption.....	4
4. Eligible Tenderer, Materials, Equipment, and Services	5
5. Qualifications of the Tenderer	7
6. One Tender per Tenderer	9
7. Cost of Tender	9
8. Pre-Tender Meeting and Site Visit.....	9
B. Tender Documents	10
9. Contents of Tender Documents	10
10. Clarification of Tender Documents.....	11
11. Amendment of Tender Documents.....	11
C. Preparation of Tenders.....	11
12. Language of Tender	11
13. Documents Comprising the Tender	12
14. Letter of Tender and Schedules.....	12
15. Tender Prices and Discounts.....	12
16. Currencies of Tender and Payment	12
17. Documents Comprising the Technical Offer.....	13
18. Documents Establishing the Qualifications of the Tenderer	13
19. Tender Validity	13
20. Tender Security and Tender Securing Declaration.....	13
21. Alternative Proposals by Tenderer	14
22. Format and Signing of Tender.....	15
D. Submission and Opening of Tenders	15
23. Submission, Sealing, and Marking of Tenders.....	15
24. Deadline for Submission of Tenders	16
25. Late Tenders.....	16
26. Withdrawal, Substitution, and Modification of Tenders	16
E. Tender Opening and Evaluation	16
27. Tender Opening	16
28. Confidentiality; Undue Influence	17
29. Clarification of Tenders	17
30. Deviations, Reservations, and Omissions.....	18
31. Examination of Tenders and Determination of Responsiveness	18
32. Nonmaterial Nonconformities.....	19
33. Correction of Arithmetical Errors	19
34. Conversion to Single Currency	19
35. Margin of Preference	19
36. Evaluation and Comparison of Tenders	19
37. Qualification of the Tenderer	21
38. Employer’s Right to Accept Any Tender, and to Reject Any or All Tenders.....	21

F.	Award of Contract.....	21
39.	Award Criteria	21
40.	Notification of Award	21
41.	Signing of Contract	22
42.	Performance Security	22
43.	Advance Payment and Security	22
44.	Adjudicator	23
45.	Tender Challenge System	23

Section I. Instructions to Tenderers

A. General

0. Definitions

- (a) “Associate” means any entity or person with whom the Tenderer associates in order to provide any part of the Works.
- (b) “TDS” means the Tender Data Sheet in Section II of these Tender Documents used to reflect specific requirements and/or conditions.
- (c) “Tender” means a Tender for the provision of the Works submitted by a Tenderer in response to these Tender Documents.
- (d) “Tender Security” means the security a Tenderer may be required to furnish as part of its Tender in accordance with ITT Clause 20.
- (e) “Tenderer” means any eligible entity or person, including any associate of such eligible entity or person that submits a Tender.
- (f) “Tender Documents” means Sections I-X of these documents, including any amendments that may be made, prepared by the Employer for the selection of the Contractor.
- (g) “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Tender.
- (h) “Confirmation” means confirmation in writing.
- (i) “Contract” means the contract entered into between the Employer and the Contractor, including all the documents specified in GCC Sub-Clause 1.5 and any attachments, appendices and all documents incorporated by reference therein.
- (j) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- (k) “Contractor” means the entity or person, including any Associate that provides the Works to the Employer under the Contract.
- (l) “Day” means a calendar day.
- (m) “Employer” means the entity **identified in the TDS**, the party with which the Contractor signs the Contract for the provision of the Works.
- (n) “Fraud and Corruption” means any of those actions defined in the GCC (including the phrases “coercive practice,” “collusive practice,” “corrupt practice,” “fraudulent practice,” “obstructive practice,” and “prohibited practice” as defined in GCC Sub-Clause 1.1), according to which action may be taken against the Tenderer, the Contractor, the Employer or any of their respective personnel.
- (o) “GCC” means the General Conditions of Contract.
- (p) “Government” means the government **identified in the TDS**.
- (q) “Instructions to Tenderers” or “ITT” means this Section I of these Tender Documents, including any amendments, which provides Tenderers with information needed to prepare their Tenders.
- (r) “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works as **specified in TDS**.
- (s) “in writing” means communicated in written form (e.g., by mail, e-mail or facsimile) delivered with proof of receipt.
- (t) “Letter of Acceptance” has the meaning given the term in ITT Sub-

Clause 41.2.

- (u) “Project Manager/Engineer” means the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor, to act as the Project Manager/Engineer under the terms of the Contract) who is responsible for supervising the execution of the Works and administering the Contract.
- (v) “SCC” means the Special Conditions of Contract.
- (w) “Subcontractor” means any person or entity to whom a Tenderer intends to sub-contract any part of the Works.
- (x) “Taxes” has the meaning given the term in the Contract.
- (y) “Technical Offer” has the meaning given the term in ITT Sub-Clause 5.1.
- (z) “Works” means what the Contract requires the Contractor to construct, install and turn over to the Employer.

- 1. Scope of Tender**
 - 1.1 The Employer invites Tenders for the provision of the Works, as **described in the TDS** and the **SCC**. The name and identification number of the Contract are **provided in the TDS** and the **SCC**.
 - 1.2 The successful Tenderer shall be expected to complete the Works by the Intended Completion Date **specified in the TDS** and **SCC 1.1.3.3**.
 - 1.3 Throughout these Tender Documents, except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and the feminine means the masculine and vice versa.
- 2. Source of Funds**
 - 2.1 The Employer intends to apply a portion of the proceeds of its budgetary allocation from a source as provided in the TDS to eligible payments under the Contract. Payments under the Contract will be subject, in all respects, to the terms and conditions of the allocation and related documents and conditions to disbursements. No party other than the Employer shall derive any rights from this funding or have any claim to any of the proceeds.
- 3. Fraud and Corruption**
 - 3.1 The Government of Ghana requires that all beneficiaries of Public Funds, including the Employer and any tenderers, suppliers, contractors, subcontractors and consultants observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, the Employer:
 - (a) will reject a Tender if it determines that the Tenderer recommended to be selected as the Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for the Contract;
 - (b) has the right to sanction a Tenderer or Contractor, including declaring the Tenderer or Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Government of Ghana-funded contract if at any time it determines that the Tenderer or Contractor has, directly or through an agent, engaged in Fraud and Corruption in competing for or in executing, such a contract; and

- (c) has the right to require that a provision be included in the Contract requiring the Contractor to permit the Employer to inspect its accounts, records and other documents relating to the submission of a Tender or performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer with the approval of the Government of Ghana.

The Government of Ghana may also invoke, on its own behalf, any of the rights identified for the Employer in this ITT Sub-Clause 3.1 above.

4. Eligible Tenderer, Materials, Equipment, and Services

- 4.1 A Tenderer may be a natural person, private entity, government-owned entity (subject to **ITT Sub-Clause 4.4**) or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement of association in the form of a joint venture or a consortium.
- 4.2 A Tenderer, and all parties constituting the Tenderer, may have the nationality of any country, subject to the restrictions specified in the paragraphs below.
- 4.3 Tenderers and Contractors shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Contractor found to have a conflict of interest may have its contract terminated. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tender process, if:
 - (a) they have at least one controlling partner in common; or
 - (b) they have the same legal representative for purposes of this Tender; or
 - (c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Employer regarding this Tender process; or
 - (d) they participate in more than one Tender in this Tender process; participation by a Tenderer in more than one Tender will result in the disqualification of all Tenders in which the party is involved; however, this provision does not limit the inclusion of the same subcontractor in more than one Tender; or
 - (e) they are, or have been associated in the past, with any person or entity which has been engaged to provide consulting services for the preparation of the design, specifications or other documents to be used for the procurement and provision of the Works expected to be contracted for under these Tender Documents; or
 - (f) they or any of their affiliates have been hired (or is proposed to be hired) by the Employer as Project Manager/Engineer for the Contract; or
 - (g) they are themselves, or have a business or family relationship with, a member of the Employer's board of directors or staff or with any Agent hired by the Employer who is directly or indirectly involved in any part of (i) the preparation of these

Tender Documents, (ii) the Tender selection process, or (iii) supervision of the Contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable throughout the process of preparing the Tender Documents and awarding and executing the Contract.

Tenderers and the Contractor have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of the Employer or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Tenderer or Contractor or the termination of the Contract.

Eligibility of Government – owned Entities

- 4.4 Government-owned entities in the Employer’s country shall be eligible only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not a dependent agency of the Employer.

Continued Eligibility

- 4.5 Tenderers shall provide such evidence of their continued eligibility, in a manner satisfactory to the Employer, as the Employer may reasonably request.

Ineligibility and Debarment

- 4.6 Tenderers and the Contractor (including their Associates, if any, Subcontractors and any of their respective personnel and affiliates) shall not be any person or entity under a declaration of ineligibility for Fraud and Corruption in accordance with **ITT Sub-Clause 3.1** above or that has been declared ineligible for participation in a procurement in accordance with the procedures set out in the **Public Procurement Act, 2003, Act 663**. This would also remove from eligibility for participation in procurement by any firm that is organized in or has its principal place of business or a significant portion of its operations in any country that is subject to sanction or restriction by law or policy of the United Nations. Those countries that are subject to sanction or restriction by law or policy of the United Nations as of the date of these Tender Documents are **specified in the TDS**. However, the countries subject to these sanctions and restrictions are subject to change from time to time and it is necessary to refer to the websites identified in the guidance paper for the most current listing of sanctioned and restricted countries.
- 4.7 A Tenderer or Contractor (including their Associates, if any, Subcontractors, and any of their respective personnel and affiliates) not otherwise made ineligible for a reason **described in ITT Sub-Clause 4.6** above shall be excluded if:
- (a) as a matter of law or official regulation, the Government prohibits commercial relations with the country of the Tenderer, the Contractor, their associates, Subcontractors or their personnel;
 - (b) by an act of compliance with a decision of the **United Nations Security Council** taken under **Chapter VII** of the **Charter of the United Nations**, the Government prohibits any import of goods from the country of the Tenderer, its associates or their

personnel or any payments to persons or entities in such country;
or

(c) such Tenderer, Contractor, Associates, Subcontractors or personnel are otherwise deemed ineligible by the PPA pursuant to any policy or guidance that may, from time to time, be in effect as posted on the PPA website at www.ppaghana.org.

**Eligible Materials,
Equipment and
Services**

4.8 The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the same restrictions specified for Tenderers and their associates and personnel **set forth in ITT 4.6 and 4.7**. At the Employer's request, Tenderers shall provide evidence of the origin of materials, equipment and services.

4.9 For purposes of **ITT 4.8** above, "origin" means the place where the materials and equipment are mined, grown, cultivated, produced, manufactured or processed and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing or substantial or major assembling of components, a commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components.

4.10 The origin of materials, equipment and services is distinct from the nationality of the Tenderer or Contractor.

4.11 Country of origin for major items of plant, materials, goods and services to be provided under the Contract must be indicated in the **Technical Offer** included in **Section IV, Tender Forms**.

4.12 Tenderers must also satisfy the eligibility criteria contained in the **Public Procurement Act, 2003, Act 663** governing procurements. In the case where a Tenderer intends to join with an associate or subcontract part of the Contract, then such associate or Subcontractor shall also be subject to the eligibility criteria set forth in these Tender Documents and the Act.

**5. Qualifications of
the Tenderer**

5.1 All Tenderers shall submit completed **Tender Forms (Section IV)**, including a technical offer which provides environmental and social plans, health and safety plans, work plan, preliminary description of the proposed work method and schedule, including drawings and charts, as necessary (the "Technical Offer").

5.2 In the event that pre-qualification of potential Tenderers has been undertaken, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided by completing **Section IV, Tender Forms**.

5.3 If the Employer has not undertaken pre-qualification of potential Tenderers, all Tenderers shall include the following information and documents with their Tenders in **Section IV, Tender Forms**, unless

otherwise **stated in the TDS**:

- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business of the Tenderer; written power of attorney of the signatory of the Tender to commit the Tenderer;
- (b) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the past 5 years;
- (c) evidence of adequacy of working capital to perform the Contract (access to line(s) of credit and availability of other financial resources);
- (d) authority to seek references from the Tenderer's bankers;
- (e) information regarding any litigation, current or during the last five years, in which the Tenderer was/is involved, the parties concerned, the disputed amounts, and awards;
- (f) total monetary value of construction works performed for each of the last five years;
- (g) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
- (h) major items of construction equipment proposed to carry out the Contract;
- (i) qualifications and experience of key site management and technical personnel proposed for the Contract;
- (j) proposals for sub-contracting components of the Works amounting to more than 10 percent of the Contract Price. The ceiling for subcontractor participation is **stated in the TDS**.

5.4 Tenders submitted by a joint venture of two or more entities shall comply with the following requirements, unless otherwise **stated in the TDS**:

- (a) the Tender shall include all the information listed in **ITT Sub-Clause 5.3** above for each joint venture member;
- (b) the Tender shall be signed so as to be legally binding on all members;
- (c) all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the members shall be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all members of the joint venture;
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the member in charge; and
- (f) a copy of the joint venture or similar agreement entered into by the members shall be submitted with the Tender; or a letter of intent to execute a joint venture or similar agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed agreement.

5.5 To qualify for award of the Contract, Tenderers shall meet the

following minimum qualifying criteria:

- (a) an average annual financial amount of construction work as stipulated in **sub-factor 3.2 of Section III, Evaluation and Qualification Criteria**;
- (b) experience as prime contractor in the construction of at least the number of works of a nature and complexity equivalent to the Works over the period stipulated in **sub-factor 4.2 of Section III, Evaluation and Qualification Criteria** (to comply with this requirement, works cited should be at least 70 percent complete);
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment **listed in the TDS**;
- (d) key personnel having the requisite skills and years of experience stipulated in **sub-factor 6 of Section III, Evaluation and Qualification Criteria**;
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount stipulated in **sub-factor 3.3 of Section III, Evaluation and Qualification Criteria**; and
- (f) the other minimum qualifying criteria set forth in **Section III, Evaluation and Qualification Criteria**.

A consistent history of litigation or arbitration awards against the Tenderer or any member of a joint venture may result in disqualification.

- 5.6 The figures for each of the members of a joint venture shall be added together to determine the Tender's compliance with the minimum qualifying criteria; however, for a joint venture to qualify, its members must meet the minimum qualifying criteria set forth in **Section III, Evaluation and Qualification Criteria**. Failure to comply with this requirement shall result in rejection of the joint venture's Tender. Subcontractors' experiences and resources shall not be taken into account in determining the Tender's compliance with the qualifying criteria, unless otherwise **stated in the TDS**.
- 6. **One Tender per Tenderer**
 - 6.1 Each Tenderer shall submit only one Tender, either individually or as a member of a joint venture. A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Tenderer's participation to be disqualified.
- 7. **Cost of Tender**
 - 7.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender and the Employer shall, in no case, be responsible or liable for those costs, regardless of the conduct or outcome of the Tender process.
- 8. **Pre-Tender Meeting and Site Visit**
 - 8.1 The Tenderer's designated representative is invited to attend a Pre-Tender meeting, if **provided for in the TDS**. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. Non-attendance at the Pre-Tender meeting will not be a cause for disqualification of a Tenderer.

- 8.2 Minutes of the Pre-Tender meeting, including the text of the questions raised, without identifying the source and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who acquired the Tender Documents in accordance with **ITT 9.3**. Any modification to the Tender Documents that may become necessary as a result of the Pre-Tender meeting shall be made by the Employer exclusively through the issuance of an addendum pursuant to **ITT 11** and not through the minutes of the Pre-Tender meeting.
- 8.3 A site visit will be organized by the Employer if so **specified in the TDS**. The cost of participating in the Pre-Tender meeting and the site visit shall be at the Tenderer's own expense.
- 8.4 If no site visit is organized, the Tenderer is advised to visit and examine the site of the Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The cost of visiting the site shall be at the Tenderer's own expense. If permission is required to gain access to the site, the Tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon the premises and lands for the purpose of such visit, but only upon the express condition that the Tenderer, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, cost, and expenses incurred as a result of the inspection.

B. Tender Documents

9. Contents of Tender Documents

- 9.1 The set of Tender Documents comprises the documents listed below and addenda issued in accordance with **ITT Clause 11**:

Part I —Tender Procedures

Section I. Instructions to Tender (ITT)

Section II. Tender Data Sheet (TDS)

Section III. Evaluation and Qualification Criteria

Section IV. Tender Forms

Part II – Forms of Contract and Securities

Section V. Form of Agreement and General Conditions of Contract (GCC)

Section VI. Form of Special Conditions of Contract (SCC) and Additional Provisions Annex to the Contract

Section VII. Securities Forms

Part III -- Works Requirements

Section VIII. Bill of Quantities (Volume II)

Section IX. Specifications and Performance Requirements (Volume III)

Section X. Drawings (Volume IV)

- 9.2 The Invitation for Tenders issued by the Employer is not part of the Tender Documents.
- 9.3 The Employer is not responsible for the completeness of the Tender Documents and their addenda, if they were not obtained directly from the Employer.
- 9.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications, inclusive of environmental, social, health and safety requirements, in the Tender Documents. Failure to furnish all information or documentation required by the Tender Documents may result in the rejection of the Tender.

10. Clarification of Tender Documents

- 10.1 A prospective Tenderer requiring any clarification of the Tender Documents may notify the Employer in writing at the Employer's address **indicated in the TDS**. The Employer will respond to any request for clarification received earlier than the number of days **indicated in the TDS** prior to the deadline for submission of Tenders. Copies of the Employer's response will be forwarded to all prospective Tenderers who have acquired the Tender Documents directly from it. Alternatively, and if so **indicated in the TDS**, the response may be posted at the Employer's website, including a description of the inquiry, but without identifying its source. Prospective Tenderers are responsible for visiting this website and obtaining clarifications in relation to the Tender Documents.

11. Amendment of Tender Documents

- 11.1 Before the deadline for submission of Tenders, the Employer may modify the Tender Documents by issuing addenda.
- 11.2 Any addendum thus issued shall become part of the Tender Documents and shall be forwarded by the Employer to all prospective Tenderers who have acquired the Tender Documents directly from it. Alternatively, and if so **indicated in the TDS**, the addendum may be posted at the Employer's website. Prospective Tenderers are responsible for visiting this website and obtaining addenda in relation to the Tender Documents and shall acknowledge receipt of each addendum in writing to the Employer.
- 11.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Employer may, at its discretion, extend the deadline for submission of Tenders, in accordance with **ITT Sub-Clause 24.2** below.

C. Preparation of Tenders

12. Language of Tender

- 12.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Employer, shall be written in English and, at the discretion of the Employer, in another language if so **specified in the TDS**. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of

the relevant passages in English, in which case, for purposes of interpretation of the Tender, such translation shall govern. Tenderers should understand that, for all documents provided, the English version prevails.

**13. Documents
Comprising
the Tender**

- 13.1 The Tender submitted by the Tenderer shall comprise the following:
- (a) The Tender (in the format indicated in Section IV);
 - (b) Tender Security, in accordance with **ITT Clause 20**, if required;
 - (c) Priced Bill of Quantities;
 - (d) Qualification Information Form and Documents;
 - (e) Technical Offer;
 - (f) Alternative offers, where invited;
 - (g) Written confirmation authorizing the signatory of the Tenderer to commit the Tenderer, in accordance with **ITT Sub-Clause 22.2**; and
 - (h) any other materials required to be completed and submitted by the Tenderer, as **specified in the TDS**.
- 13.2 In addition to the requirements under **ITT Sub-Clause 13.1**, Tenders submitted by a joint venture shall include those documents specified in, and otherwise comply with the requirements of, **ITT Sub-Clause 5.4**.

**14. Letter of
Tender and
Schedules**

- 14.1 The Letter of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in **Section IV, Tendering Forms and Section X, Bill of Quantities**. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

**15. Tender Prices
and Discounts**

- 15.1 The Contract shall be for the Works, as described in **ITT Sub-Clause 1.1**, based on the priced Bill of Quantities submitted by the Tenderer.
- 15.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the Tenderer shall not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.
- 15.3 The rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if **provided for in the TDS and SCC** and the provisions of **Sub-Clause 13.8** of the **GCC**. The Tenderer shall submit with the Tender all the information required under the **SCC and GCC Sub-Clause 13.8**.
- 15.4 If so **indicated in the TDS**, Tenders may be invited for individual lots or for any combination of lots (packages). Tenderers wishing to offer any price reduction for the award of more than one lot shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual lots within the package. Price reductions or discounts shall be submitted in accordance with **ITT Sub-Clause 26.5**, provided the Tenders for all lots are submitted and opened at the same time.

16. Currencies of

- 16.1 The currency(ies), or combinations thereof, of the Tender and

- Tender and Payment**
- payments shall be as **specified in the TDS**.
- 17. Documents Comprising the Technical Offer**
- 17.1 The Tenderer shall furnish a Technical Offer which shall include all forms in **Section IV. 3 – Technical Offer Forms**, in sufficient detail to demonstrate the adequacy of the Tenderer’s Tender to meet the Works Requirements and the Time for Completion.
- 18. Documents Establishing the Qualifications of the Tenderer**
- 18.1 In accordance with **Section III, Evaluation and Qualification Criteria**, to establish that the Tenderer continues to meet the criteria used at the time of pre-qualification, the Tenderer shall provide in the corresponding information sheets included in **Section IV, Tender Forms**, updated information on any assessed aspect that changed from that time.
- 19. Tender Validity**
- 19.1 Tenders shall remain valid for the period **specified in the TDS** after the Tender submission deadline date prescribed by the Employer in accordance with **ITT Sub-Clause 24.1**. A Tender valid for a shorter period shall be rejected by the Employer as non-responsive.
- 19.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Employer may request Tenderers to extend the period of validity of their Tenders for a specified additional period. The request and the Tenderers’ responses shall be made in writing. If a Tender Security is requested in accordance with **ITT Clause 20**, it shall also be extended up to 28 days after the deadline of the extended Tender validity period. A Tenderer may refuse the request without forfeiting the Tender Security except as provided in **ITT Sub-Clause 19.3**. A Tenderer agreeing to the request shall not be required or permitted to modify its Tender, except at the discretion of the Employer.
- 19.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial tender validity, the Contract price shall be determined as follows:
- (a) In the case of fixed price contracts, the Contract price shall be the tender price adjusted by the factor **specified in the TDS**.
 - (b) In the case of adjustable price contracts, no adjustment shall be made.
- In any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.
- 20. Tender Security and Tender Securing Declaration**
- 20.1 If required in the TDS, the Tenderer shall furnish, as part of its Tender, a Tender Security or Tender Securing Declaration in original form as **specified in the TDS**. If a Tenderer is tendering on multiple lots or is submitting alternative Tenders, only one Tender Security is required for all lots and for both base and alternative Tenders.
- 20.2 The Tender Security (if required) shall be in the amount and currency **specified in the TDS**, and shall:
- (1) at the Purchaser’s option, be in the form of either an irrevocable

letter of credit or an unconditional bank guarantee from a banking institution;

- (2) be issued by a reputable institution selected by the Tenderer and located in any eligible country (as determined in accordance with **ITT Clause 4**); if the institution issuing the bank guarantee is located outside the Employer's country, it shall have a correspondent financial institution located in the Employer's country, acceptable to the Employer, to make it enforceable;
- (3) be substantially in accordance with one of the forms of Tender Security included in **Section VII, Security Forms**, or other form approved by the Employer prior to Tender submission; in either case, the form must include the complete name of the Tenderer;
- (4) be payable promptly upon written demand by the Employer in case the conditions listed in **ITT Sub-Clause 20.5** are invoked;
- (5) be submitted in its original form; copies shall not be accepted;
- (6) remain valid for a period of 28 days beyond the validity period of the Tenders, as extended, if applicable, in accordance with **ITT Sub-Clause 19.2**.

20.3 Any Tender not accompanied by a substantially responsive Tender Security (if required) in accordance with **ITT Sub-Clause 20.1** shall be rejected by the Employer as non-responsive.

20.4 The Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's furnishing of the performance security in accordance with **GCC Sub-Clause 4.2** as described in **ITT Clause 42**.

20.5 The Tender Security may be forfeited:

- (a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tender on the Tender Submission Sheet, except as provided in **ITT Sub-Clause 19.2**; or
- (b) if the Tenderer does not accept the correction of its Tender Price pursuant to **ITT Sub-Clause 33**;
- (c) if the successful Tenderer fails within the specified time to:
 - (i) sign the Contract; or
 - (ii) furnish the required performance security.

20.6 The Tender Security of a joint venture must be in the name of the joint venture that submits the Tender. If the joint venture has not been legally constituted at the time of Tender, the Tender Security shall be in the names of all future members as named in the letter of intent or similar agreement in connection with the formation of the joint venture.

21. Alternative Proposals by Tenderer

21.1 Alternative Tenders shall not be considered, unless specifically **allowed in the TDS**. If so allowed, **ITT Sub-Clauses 21.1** and **21.2** shall govern, and the **TDS shall specify** which of the following options shall be allowed:

- (a) Option One: A Tenderer may submit alternative Tenders with the base Tender and the Employer shall only consider the alternative Tenders offered by the Tenderer whose Tender for the base case was determined to be the Lowest-Evaluated Tender, or

(b) Option Two: A Tenderer may submit an alternative Tender with or without a Tender for the base case. All Tenders received, for the base case, as well as alternative Tenders meeting the specifications and performance requirements pursuant to **Section IX, Specifications and Performance Requirements**, shall be evaluated on their own merits.

21.2 Alternative Tenders shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.

22. Format and Signing of Tender

22.1 The Tenderer shall prepare one original set of the documents comprising the Tender as described in **ITT Clause 13** and clearly mark it **ORIGINAL**. Alternative Tenders, if permitted in accordance with **ITT Clause 21**, shall be clearly marked **ALTERNATIVE**. In addition, the Tenderer shall submit copies of the Tender, in the language(s) and number **specified in the TDS** and clearly mark each one **COPY**. In the event of any discrepancy between the original and the copies, the Original shall prevail.

22.2 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as **specified in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person(s) signing the Tender.

22.3 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person(s) signing the Tender.

22.4 The Tenderer shall furnish information as described in the **Form of Tender** in **Section IV on Commissions or Gratuities**, if any, paid or to be paid to agents relating to this Tender, or to Contract execution if the Tenderer is awarded the Contract.

D. Submission and Opening of Tenders

23. Submission, Sealing, and Marking of Tenders

23.1 Tenderers may always submit their Tenders by mail or by hand. When so **specified in the TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the procedures **specified in the TDS**. For Tenders submitted in hard copy, the Tenderers shall seal the original and all copies of the Tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as **“ORIGINAL”**, **“ALTERNATIVE”** and **“COPIES.”**

23.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Tenderer;
- (b) be addressed to the Employer at the address **provided in the TDS**;
- (c) bear the name and identification number of the Contract as

defined in the TDS Section 1.1 and SCC; and

(d) provide a warning not to open before the specified time and date for Tender opening as **defined in the TDS.**

23.3 If the envelopes are not sealed and marked as above, the Employer shall assume no responsibility for the misplacement or premature opening of the Tender.

24. Deadline for Submission of Tenders

24.1 Tenders shall be delivered to the Employer at the address **specified in the TDS** no later than the date and time **specified in the TDS.**

24.2 The Employer may, at its discretion, extend the deadline for submission of Tenders by issuing an addendum in accordance with **ITT Clause 11**, in which case all rights and obligations of the Employer and the Tenderer previously subject to the original deadline shall then be subject to the new deadline.

25. Late Tenders

25.1 Any Tender received by the Employer after the deadline prescribed in **ITT Clause 24** shall be declared late, rejected and returned unopened to the Tenderer.

26. Withdrawal, Substitution, and Modification of Tenders

26.1 A Tenderer may withdraw, substitute or modify its Tender after it has been submitted by giving notice in writing before the deadline for Tender submission prescribed in **ITT Clause 24**, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with **ITT Sub-Clause 22.2.**

26.2 Each Tenderer's withdrawal, substitution or modification notice shall be prepared, sealed, marked, and delivered in accordance with **ITT Clauses 23** (except that withdrawal notices do not require copies), with the outer and inner envelopes additionally marked "**WITHDRAWAL,**" **SUBSTITUTION,**" or "**MODIFICATION**", as appropriate.

26.3 Tenders requested to be withdrawn in accordance with **ITT Sub-Clause 26.2** shall be returned unopened to the Tenderer.

26.4 No Tender may be withdrawn, substituted or modified after the deadline for submission of Tenders.

26.5 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders, by submitting Tender modifications in accordance with this clause or included in the initial Tender.

E. Tender Opening and Evaluation

27. Tender Opening

27.1 The Employer shall open the Tenders, including modifications made pursuant to **ITT Clause 26**, in the presence of the Tenderers' representatives who choose to attend at the time and in the place **specified in the TDS.** Any specific opening procedures required, if electronic Tender is permitted in accordance with **ITT Sub-Clause 23.1**, shall be as **specified in the TDS.**

27.2 First, e-mail files and envelopes marked **WITHDRAWAL** shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening. Next, e-mail files and envelopes marked **SUBSTITUTION** shall be opened and read out and exchanged with the

corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening. E-mail files and envelopes marked **MODIFICATION** shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening. Only Tenders that are opened and read out at Tender opening shall be considered further.

27.3 All other e-mail files and envelopes shall then be opened one at a time, and the official shall read aloud: the name of the Tenderer and whether there is a modification; the Tender price(s), including any discounts and alternative offers; the presence of a Tender Security, if required; and any other details as the Employer may consider appropriate. Only discounts and alternative offers read out at Tender opening shall be considered for evaluation. No Tender shall be rejected at Tender opening except for late Tenders, in accordance with **ITT Sub-Clause 25.1**. Substitution Tenders and modifications submitted pursuant to **ITT Clause 26** that are not opened and read out at Tender opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and substituted Tenders shall be returned un-opened to the respective Tenderers.

27.4 The Employer shall prepare minutes of the Tender opening, including the information disclosed, to those present, in accordance with **ITT Sub-Clause 27.2**.

28.1 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendations for the award of a Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until publication of the award to the successful Tenderer has been announced pursuant to **ITT Sub-Clause 40.4**. The undue use by any Tenderer of confidential information related to the process may result in the rejection of its Tender and may subject the Tenderer to the provisions of the Government's and the Employer's anti-fraud and corruption policies.

28.2 Any effort by a Tenderer to influence the Employer's processing of Tenders or award decisions may result in the rejection of its Tender. Notwithstanding the above, from the time of Tender opening to the time of Contract award, if any Tenderer wishes to contact the Employer on any matter related to the Tender process, it should do so in writing.

**28. Confidentiality;
Undue Influence**

**29. Clarification of
Tenders**

29.1 To assist in the examination, evaluation, and comparison of Tenders, the Employer may, at its discretion, ask any Tenderer for clarification of the Tenderer's Tender. The request for clarification and the response shall be in writing, but no change in the price or substance of the Tender shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders in accordance with **ITT Clause 33**.

- 30. Deviations, Reservations, and Omissions** 0 During the evaluation of Tenders, the following definitions apply:
- (a) “*deviation*” is a departure from the requirements specified in the Tender Documents;
 - (b) “*reservation*” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender Documents; and
 - (c) “*omission*” is the failure to submit part or all of the information or documentation required in the Tender Documents.
- 31. Examination of Tenders and Determination of Responsiveness** 31.1 Prior to the detailed evaluation of Tenders, the Employer shall determine whether each Tender (a) meets the eligibility criteria defined in **ITT Clause 4**; (b) has been properly signed; (c) is accompanied by the Tender Security, if required; and (d) is substantially responsive to the requirements of the Tender Documents.
- 31.2 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tender Documents, without material deviation or reservation. A material deviation or reservation is one which:
- a. affects in any substantial way the Scope, Quality, or Performance of the Contract; the following shall constitute such material deviations
 - i. failure to sign the Tender Form/ Priced Bill of Quantities or Schedule of Activities by authorised person or persons.
 - ii. inability to meet the critical delivery schedule or work schedule clearly specified in the tender document, where such schedule is a critical condition with which tenderer must comply;
 - iii. subcontracting in a substantially different amount or manner than that permitted;
 - iv. failure to submit the required Manufacturer Authorization (if applicable) for equipment not manufactured by the Tenderer/Agent.
 - b. which limits in any substantial way, inconsistent with the Tender documents, the Employer’s rights or the Tenderer’s obligations under the Contract; material deviations include the following:
 - i. failure to submit documents establishing the Tenderer’s eligibility to Tender.
 - ii. failure to submit its qualifications to perform the contract if its Tender is accepted.
 - iii. failure to submit a tender security as specified in the tender document.

- iv. failure to satisfy the tender validity period
- v. failure to comply with minimum experience criteria as specified in the tender document;
- vi. conditional tenders such as conditions in a tender which limit the tenderer's responsibility to accept an award;
For example
 - inability to accept the price adjustment formulae of the tendering documents;
 - stipulating price adjustment when fixed price tenders were invited;

(c) whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

- | | |
|--|---|
| 31.3 | If a Tender is not substantially responsive, it shall be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation. |
| 32. Nonmaterial Nonconformities | 32.1 Provided that a Tender is substantially responsive, the Employer may waive any nonconformities in the Tender that do not constitute a material deviation, reservation or omission. |
| 33. Correction of Arithmetical Errors | 33.1 Provided that the Tender is substantially responsive, the Employer shall correct arithmetical errors on the following basis: <ul style="list-style-type: none"> (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. 33.2 If the Tenderer that submitted the Lowest Evaluated Tender does not accept the correction of errors, its Tender shall be rejected and the Tender Security may be forfeited in accordance with ITT Sub-Clause 20.5(b) . |
| 34. Conversion to Single Currency | 34.1 For evaluation and comparison purposes, the currency(ies) of the Tenderers shall be converted into a single currency as specified in the TDS . |
| 35. Margin of Preference | 35.1 A margin of preference for domestic Tenderers shall be as specified in the TDS . |
| 36. Evaluation and | 36.1 The Employer shall evaluate and compare only the Tenders determined |

Comparison of Tenders

- to be substantially responsive in accordance with **ITT Clause 31**.
- 36.2 In evaluating the Tenders, the Employer shall determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:
- (a) making any correction for errors pursuant to **ITT Clause 33**;
 - (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including day work, where priced competitively;
 - (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with **ITT Clause 21**;
 - (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with **ITT Sub-Clause 26.5**; and
 - (e) using the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.
- 36.3 The Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially responsive Tender is qualified to perform the Contract satisfactorily. The determination shall be based upon an examination of the documentary evidence of a Tender's qualifications submitted by a Tenderer and the qualification criteria indicated in **Section III, Evaluation and Qualification Criteria**.
- 36.4 The Employer reserves the right to accept or reject any variation, deviation, or unsolicited alternative offer. Variations, deviations, and unsolicited alternative offers and other factors which are in excess of the requirements of the Tender Documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in Tender evaluation.
- 36.5 The estimated effect of any price adjustment conditions under **GCC Sub-Clause 13.8**, during the period of implementation of the Contract, shall not be taken into account in Tender evaluation.
- 36.6 In the case of several lots, pursuant to **ITT Sub-Clause 15.5**, the Employer shall determine the application of discounts so as to minimize the combined cost of all the lots.
- 36.7 If the Tender, which results in the lowest evaluated Tender price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Tenderer to produce detailed price analyses for any or all items of the Bill of Quantities to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Tenderer to a level sufficient to protect the Employer against financial loss in the event of default of the successful Tenderer under the Contract.
- 36.8 At any time during the evaluation process, the Employer reserves the right to conduct a verification of market-reasonableness of the prices offered, and a negative determination (either unreasonably high or

unreasonably low) could be a reason for rejection of the Tender at the discretion of the Employer. The Tenderer shall not be permitted to revise its Tender after this determination.

- 36.9 The Tenderer's past performance on contracts will be considered as a criterion in the Employer's evaluation of the Tender and the Employer reserves the right to carry out verification procedures including physical assessment and confirmation of Tenderer's submissions.
- 37. Qualification of the Tenderer**
- 37.1 The Employer shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated and substantially and technically responsive Tender continues to meet the qualifying criteria specified in **Section III, Evaluation and Qualification Criteria**.
- 37.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to **ITT Sub-Clause 18.1**.
- 37.3 The Employer reserves the right to inspect equipment proposed by Tenderers to ascertain their availability or otherwise.
- 37.4 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Employer shall proceed to the next lowest evaluated Tender to make a similar determination that the Tenderer is qualified to perform satisfactorily.
- 38. Employer's Right to Accept Any Tender, and to Reject Any or All Tenders**
- 38.1 Notwithstanding **ITT Clause 37**, the Employer reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract award, without thereby incurring any liability to Tenderers or any obligation to inform the affected Tenderer(s) of the grounds for the Employer's action. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

- 39. Award Criteria**
- 39.1 Subject to **ITT Clause 38** and prior to the expiration of the period of Tender validity, the Employer will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender Documents and who has offered the lowest evaluated Tender price, provided that such Tenderer has been determined to be (a) eligible in accordance with the provisions of **ITT Clause 4**, (b) qualified in accordance with the provisions of **ITT Clause 5** and (c) otherwise determined qualified to perform the Contract.
- 40. Notification of Award**
- 40.1 The Tenderer whose Tender has been accepted shall be notified of the award by the Employer in writing prior to the expiration of the Tender validity period using a **Letter of Acceptance** in the form set out in **Section IV** of these Tender Documents (the "Letter of Acceptance").
- 40.2 The Letter of Acceptance shall constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with **ITT Clause 42** and signing the Contract in accordance with **ITT Clause 41**.
- 40.3 The Contract will constitute all agreements between the Employer and

the successful Tenderer as described in **GCC Sub-Clause 1.5**.

40.4 The Employer will publish the results identifying the Tenderer and lot numbers and the following information: (i) name of each Tenderer who submitted a Tender; (ii) Tender prices as read out at Tender opening; (iii) name and evaluated prices of each Tenderer that was evaluated; (iv) names of Tenderers whose Tenders were rejected and the reasons for their rejection; and (v) name of the winning Tenderer, and the price it offered, as well as the duration and summary scope of the Contract awarded.

40.5 After publication of the award, unsuccessful Tenderers may request in writing to the Employer for a debriefing seeking explanations for the failure of their Tenders. The Employer shall promptly respond in writing to any unsuccessful Tenderer who, after notification of award in accordance with **ITT Clause 40**, requests of the Employer in writing the grounds on which its Tender was not selected.

41. Signing of Contract

41.1 Promptly after notification, and after providing for the time period for receipt of Tender Challenges, the Employer shall send the successful Tenderer the Contract Agreement.

41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Employer.

42. Performance Security

42.1 Subject to **ITT Sub-Clause 36.7**, within twenty-eight (28) days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security in accordance with the terms of **GCC Sub-Clause 4.2**, using for that purpose the form of **Performance Bank Guarantee** included in **Section VII** of these Tender Documents, or another form acceptable to the Employer. A foreign institution providing the Performance Security shall (a) be from an eligible country determined in accordance with **ITT Clause 4**, (b) have a correspondent financial institution located in the Employer's country and (c) be acceptable to the Employer.

42.2 Failure of the successful Tenderer to comply with the requirements of **ITT Sub-Clauses 42.2** and **43.1** shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security. In that event the Employer may award the Contract to the next Lowest Evaluated Tenderer whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

42.3 Upon the successful Tenderer's signing of the Contract and furnishing of the Performance Security pursuant to **GCC Sub-Clause 4.2**, as described in **ITT Sub-Clause 42.1**, the Employer shall promptly notify the name of the winning Tender to each unsuccessful Tenderer and shall discharge the Tender Securities of the unsuccessful Tenderers pursuant to **ITT Sub-Clause 20.4**.

43. Advance Payment and Security

43.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the **GCC Sub-Clause 14.2** and as **stated in the TDS**. The Advance Payment shall be guaranteed by a Security. **Section VII**, "**Security Forms**", provides Advance Payment form for a Bank

Guarantee.

- 44. Adjudicator** 44.1 The Employer proposes the person **named in the TDS** to be appointed as Adjudicator under the Contract, at an hourly fee **specified in the TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority **designated in the TDS** and the **SCC** at the request of either party.
- 45. Tender Challenge System** 45.1 Tenderers may challenge the results of a Tender according to the rules established in the Tender Challenge System developed by the Employer in accordance with the **Public Procurement Act, 2003 (Act 663) as Amended**. The rules and provisions of the Tender Challenge System shall be published by the Employer

SECTION II. TENDER DATA SHEET

Section II. Tender Data Sheet

A. General	
Definitions	<p>“Employer” means:</p> <p>“Government” means the Government of Ghana.</p>
ITT 1.1	<p>The Works for which the Tender Documents have been issued is:</p> <p><i>[insert name of project]</i></p> <p>The number and identification of lot (contract) comprising this IFT is:</p> <p><i>[insert reference number and identification of contract]</i></p>
ITT 1.2	The Intended Completion Date of the Works is: <i>[insert date i.e. (...) calendar months from the date of commencement.]</i>
ITT 2.1	Source of Funding is (Insert the source of funding)
ITT 4.6	As of the date of these Tender Documents, the countries that are subject to sanction or restriction by law or policy of the Republic of Ghana include <i>[insert list of countries]</i> .
ITT 5.3	The information required from Tenderers in ITT Sub-Clause 5.3 is modified as follows: <i>[insert modification(s)]</i>
ITT 5.3(j)	The ceiling for subcontractor participation is: <i>[insert threshold as percentage of total works]</i>
ITT 5.4	The qualification data required from Tenderers in ITT Sub-Clause 5.4 are modified as follows: <i>[insert modification(s)]</i>
ITT 5.4(c)	If the Tenderer is a joint venture or consortium, all members [shall/shall not] be jointly and severally liable for the execution of the Contract in accordance with the Contract terms.
ITT 5.5(c)	The essential equipment to be made available for the Contract by the successful Tenderer shall be: as stipulated in Section III. Evaluation and Qualification Criteria .
ITT 5.6	Subcontractors’ experience and resources shall not be taken into account.
ITT 8.1	A Pre-Tender meeting shall take place on [insert date] at [insert time] local time at [insert address] .
ITT 8.3	A site visit [shall/shall not] be organized.
B. Tender Documents	
ITT 10.1	<p>For purposes of clarification, the Employer’s address is</p> <p>Street Address:</p>

	<p>Building Name:</p> <p>Floor:</p> <p>City/Town:Room number</p> <p>Region:</p> <p>Tel:</p> <p>Fax:</p> <p>E mail</p> <p>The minimum number of days prior to the deadline for submission of Tenders to receive any request for clarification: Days i.e. [insert date].</p> <p>The minimum number of days prior to the deadline for submission of Tenders that the Employer will respond: Days i.e. [insert date].</p> <p>The responses [<i>shall/shall not</i>] be posted on the Employer's website.</p>								
ITT 11.2	Addenda [<i>shall/shall not</i>] be posted on the Employer's website.								
C. Preparation of TENDERS									
ITT 13.1(h)	The Tenderer shall submit with its Tender the following additional documents: (Insert additional documents if required)								
ITT 15.4	The prices quoted by the Tenderer shall be: subject to adjustment after [insert period]								
ITT 15.5	Tenders <i>are</i> being invited for the following lot: <table border="1" style="width: 100%; height: 40px;"> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </table>								
ITT 16.1	The currency (ies) of the Tender shall be as follows: [<i>insert currency(ies)</i>] The currency (ies) of the payment shall be as follows: [<i>insert currency(ies)</i>]								
ITT 19.1	The Tender validity period shall be [<i>insert number of days</i>] days from the deadline for Tender submission.								
ITT 20.1	A Tender Security is required. The form of the Tender Security shall be: 'Unconditional Bank Guarantee' acceptable to the Employer.								
ITT 20.2	The amount and currency of the Tender Security shall be: [<i>insert amount and currency</i>]								
ITT 21.1	Alternative Tenders are not permitted.								

ITT 22.1	In addition to the original of the Tender, the number of required copies is: <i>[insert number]</i>
ITT 22.2	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: Notarized document/Power of Attorney.
D. Submission of TENDERS	
ITT 23.1	Tenderers [do/do not] have the option of submitting their Tenders electronically.
ITT 23.2(b)	<p>For Tender submission purposes only, the submission address is:</p> <p>Attention: xxxxx xxxxxx</p> <p>Street Address: xxxxx</p> <p>Building Name: xxxxx</p> <p>Floor: xxxxxRoom number</p> <p>City/Town: xxxxx</p> <p>Region: xxxxxx</p> <p>Tel: xxxxxxxxxx</p> <p>Fax: xxxxxxxxxx</p> <p>E-mail xxxxxxx</p>
ITT 23.1(d)	<p>The deadline for Tender submission is:</p> <p>Date: xxxx</p> <p>Time: xx am or xx pm. local time</p>
E. Tender Opening and Evaluation	
ITT 24.1 and ITT 27.1	<p>The Tender opening shall take place at:</p> <p>.....</p> <p>Street Address:</p> <p>Building Name:</p> <p>Floor:Room number</p> <p>City/Town:</p> <p>Region:</p> <p>Date:</p> <p>Time: local time</p>

	Procedure for electronic opening: [Applicable/Not Applicable]
ITT 34.1	<p>The currency that shall be used for Tender evaluation and comparison is:</p> <p>The basis for conversion shall be: Selling rate established for similar transactions by the source specified and on the date stipulated.</p> <p>Source for the exchange rate shall be: Bank of Ghana</p> <p>The date for exchange rate shall be: Twenty-Eight (28) days prior to the Deadline of Submission of the Tenders</p>
ITT 35.1	A margin of preference shall/shall not apply
F. Award of Contract	
ITT 43.1	The Advance Payment shall be limited to xx (xx) percent of the Contract Accepted Amount less specified Provisional Sums and Contingencies.
ITT 44.1	<p>The name of the proposed Adjudicator is (inset name.....)</p> <p>The hourly fee is (inset fee.....)</p> <p>The Appointing Authority is: [insert name of Authority]</p>
45	The details of the Tender Challenge System can be found at:

Section III. Evaluation and Qualification Criteria

Section III. Evaluation and Qualification Criteria

This Section contains criteria that the Employer will use to qualify Tenderers. To demonstrate its qualifications, the Tenderer shall provide all the information requested in the forms included in Section IV, Tender Forms.

A. Evaluation

In addition to the criteria listed in **ITT 5, 17 and 18**, the following criteria shall apply:

1. **Adequacy of Technical Offer**, in accordance with **ITT 5.1 and 17.1**, will be evaluated as follows:

Evaluation of the Tenderer's Technical Offer will include an assessment of the Tenderer's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in **Section VIII-Bill of Quantities, Section IX- Specifications & Performance Requirements, and Section X-Drawings**.

2. **Adequacy of Environmental, Social, Health and Safety Plans**, in accordance with **ITT Sub-Clause 5.1 and 17.1**, will be evaluated as follows:

Evaluation of the Tenderer's **Environmental, Social, Health and Safety Plans** will include an assessment of the Tenderer's experience, awareness, and systems, and demonstration that it possesses a high level of **Environmental and Social ("E&S")** management expertise to successfully manage the E&S risks associated with the implementation of the proposed Works in accordance with Employer Environmental Guidelines and the requirements of Ghana's environmental legislation.

3. **Alternative Proposals**: if permitted under **ITT Sub-Clause 21.1**, will be evaluated as follows: **Applicable/Not Applicable**.
4. **Multiple Lots, Discounts**: Works are grouped in a single contract hence consideration for Multiple Lots is not applicable. Pursuant to **Sub-Clause 36 of the Instructions to Tenderers**, the Employer will evaluate and compare Tenders on the basis of single contract by taking into account discounts offered by Tender, if permitted under **ITT Sub-Clause 26.5 and 36.2(d)**.

B. Qualification

Sub-Factor	1. Eligibility Criteria				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
1.1 Nationality	Nationality in accordance with ITT 4.2.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
1.2 Conflict of Interest	No conflicts of interests as described in ITT 4.3.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
1.3 Ineligibility	Not having been deemed ineligible based on any of the criteria set forth in ITT 4.	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
1.4 Government Owned Entity	Compliance with conditions of ITT 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	N / A

Sub-Factor	2. Historical Contract Non-Performance				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
2.1 History of Non-Performing Contracts	Non-performance of a contract did not occur within last 5 years prior to the deadline for Tender submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract, and where all appeal instances available to the Tender have been exhausted.	Must meet requirement by itself or as member to past or existing joint venture	N / A	Must meet requirement by itself or as member to past or existing joint venture	N / A
2.2 Failure to Sign a Contract	Failure to sign a contract after submitting a Tender security has not occurred in the past 5 years. Any deviation should be explained in the Contract Non-Performance form.	Must meet requirement or have an explanation for any deviation typically minor in nature that meets the satisfaction of the evaluation panel.	Must meet requirement or have an explanation for any deviation typically minor in nature that meets the satisfaction of the evaluation panel.	Must meet requirement or have an explanation for any deviation typically minor in nature that meets the satisfaction of the evaluation panel.	N / A

Sub-Factor	2. Historical Contract Non-Performance				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
	All members combined		Each member	At least one member	
2.3 Pending Litigation	All pending litigation shall in total not represent more than 10% of the Tender's net worth and shall be treated as resolved against the Tender.	Must meet requirement by itself or as member to past or existing joint venture	N / A	Must meet requirement by itself or as member to past or existing joint venture	N / A

	3. Financial Situation				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
	All members combined		Each member	At least one member	
3.1 Historical Financial Performance	Submission of audited financial statements, including balance sheets, cash flow statements, or income statements or, if not required by the laws of the Applicant's country, other financial statements acceptable to the Employer, for the last five years to demonstrate the current soundness of the Tender's Financial position and its prospective long term profitability. (i) Average coefficient of Current ratio (Current Assets /Current Liabilities): ≥ 1.2 (ii) Average coefficient of Debt Ratio (Total Debt/Total Assets) ≤ 0.75	Must meet requirement	N / A	Must meet requirement	N / A

	3. Financial Situation				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
3.2 Average Annual Construction Turnover	Minimum average annual construction turnover for each year as set forth below, calculated as total certified payments received for contracts in progress or completed, within last 5 years. (i) For Award of this <u>Contract</u> GHS xxxx million or equivalent.	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40% of the requirement
3.3 Financial Resources	Tenderer must demonstrate access to, or availability of, Financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the following cash-flow requirement: (i) For Award of this <u>Contract</u> GHS million or equivalent. (ii) the overall cash flow requirements for this contract and its current commitments.	Must meet requirement	Must meet requirement	Must meet 25% of the requirement	Must meet 40% of the requirement

Sub-Factor	4. EXPERIENCE				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
4.1 General Construction Experience	Experience in XX related construction contracts in the role of contractor, subcontractor, or management contractor for each of the last five years prior to the Application submission deadline and with activity in at least nine months in each year.	Must meet requirement	N/A	Must meet requirement	N/A
4.2 Similar Construction Experience	Participation as contractor, management contractor or subcontractor, in at least three contracts of similar nature within the last five years, each with a value of at least: GHSxxxx million or equivalent; that has been completed and that are similar to the proposed works.	Must meet requirement	Must meet requirement	N/A	Must meet requirement
4.3 Specific Construction Experience in Key Activities	For the above or other contracts executed during the last five years, minimum construction experience in following key activities: A) <u>Monthly Rate of Production:</u> 1) 2) 3) 4) 5) 6)	Must meet requirement	Must meet requirements	N / A	Must meet the following requirements (can be specialist subcontractor): 55% of the requirements.

5. Equipment

The Tenderer must demonstrate that it will have access to the key Contractor’s equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required for contract
1		
2		
3		
.		
.		
.		

The Tenderer shall provide further details of proposed items of equipment using the relevant Form in Section IV.

6. Key Personnel

The Tenderer must demonstrate that it will have the personnel for the key positions that meet the following requirements:

No.	Position	Years of Experience (general)	Years of experience in proposed position	Key Personnel Requirement
1				
2				
3				
.				
.				
.				

The Tenderer shall provide details of the proposed personnel, their biographical data describing their qualifications and experience records in the relevant Forms included in Section IV, Tender Forms.

Section IV. Tender Forms

1. Contractor’s Tender

[The Tenderer shall fill in and submit this Tender form with the Tender. If the Tenderer objects to the Adjudicator proposed by the Employer in the Tender Documents, it should so state in its Tender, and present an alternative candidate, together with the candidate’s daily fees and biographical data, in accordance with ITT Clause 37.]

[date]

Identification No: **[insert identification number]**

Title of Contract:

To:,
,
,
,

Having examined the Tender Documents, including addenda **[insert list]**, we offer to execute the **[name and identification number of Contract]** in accordance with the form of Contract accompanying this Tender for the Contract Price of **[insert amount in numbers]**, **[insert amount in words]** **[insert name of currency]**. The total amount of all Taxes and Duties, not included within the above Tender Price, has been assessed to be the sum of *[insert amount in figures and words]* as per the attached Schedule of Tender’s Local Tax and Duty Assessment.

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one [insert foreign currency] equals <i>[insert local]</i>	Inputs for which [foreign currency] is required
(a)			
(b)			

Our Tender shall be valid for the period of time in accordance with **ITT Sub-Clause 19.1**, from the date fixed for Tender submission deadline in accordance with **ITT Sub-Clause 23.1**, and it shall remain binding upon us and may be accepted at any time before the expiration of that period. We hereby confirm that this Tender complies with the Tender Security as required by the Tender Documents and specified in the **TDS**.

If our Tender is accepted, we commit to obtain a Performance Security in accordance with **GCC Clause 56** and as described in **ITT Clause 43** for the due performance of the Contract.

We accept the appointment of **[insert name proposed in Tender Data Sheet]** as the Adjudicator.

[or]

We do not accept the appointment of **[insert name proposed in Tender Data Sheet]** as the Adjudicator, and propose instead that **[insert name]** be appointed as Adjudicator, whose daily fees and biographical data are attached.

We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with **ITT Clause 4**.

We have no conflict of interest in accordance with **ITT Sub-Clause 4.3**.

Our firm, its affiliates or subsidiaries - including any subcontractors or suppliers for any part of the Contract has not been declared ineligible by the Government of Ghana, or under the Employer's country laws or official regulations or as otherwise provided in **ITT Clause 4**.

We are aware of, and will comply with, the rules on prohibited activities, restricted parties and eligibility requirements of prohibited source provisions in accordance with applicable Ghanaian laws, regulations and policy and other requirements as summarized in Annex A to the form of Contract (Additional Provisions) shown in Section VI of the Tender Documents.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Tender and to Contract execution if we are awarded the Contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

We understand and agree that this Tender and your written acceptance of it shall constitute a binding Contract between us until a formal Agreement is executed. We understand that you are not bound to accept the lowest or any Tender you receive.

Authorized Signature:
Name and Title of Signatory:
Name of Tender:
Address:

Schedule of Tenderer’s Tax and Duty Assessment

In order to facilitate the designation of this project as a ‘Tax and Duty Free’ contract, the Employer requires that Tenderers provide a genuine estimate of the ‘Taxes and Duties’ which would be payable were this project not exempt. Tenderers are accordingly required to make this assessment on the tables provided below, which form part of the Letter of Tender.

Table A. CIF, Import Duties and VAT/NHIL

Item	Description	Unit	Quantity	Value CIF (Value unit) - A	Import Duty Rate – x%	Total Import Duty (B=x% of A)	Sum of CIF & Import Duty (A+B)	VAT/NHIL Rate – k%	VAT/NHIL – k% of (A+B)
1	Construction Equipment List all equipment that will be imported into Ghana for the works								
2	Vehicles List all vehicles that will be imported into Ghana for the works								
3	Office Equipment List all office equipment that will be imported into Ghana for the works								
4	Construction Materials								

Section IV. Tender Forms

	<ul style="list-style-type: none">- Cement- Reinforcement- Bitumen- Lubricant- Explosive- Other Materials to be imported (list)								
--	--	--	--	--	--	--	--	--	--

Table B. Withholding Tax

Item	Description	Rate	Applicable Value	Total Tax Due
1	Foreign Component			
2	Local Component			

Table D. Summary

TOTAL AMOUNT OF ALL TAXES CARRIED TO LETTER OF TENDER:

Import Duties _____
VAT and NHIL _____
Withholding Tax _____
Total _____

2. Tender Qualification Information Forms

[The Tenderer shall provide the information requested in the Tender Qualification Information Forms included hereafter in accordance with **Section III (Evaluation and Qualification Criteria)** to establish Tenderer's qualifications to perform the contract. Attach additional pages as necessary.]

**Form – 1.1
Tender Information Sheet**

Each Tenderer must fill in this form.

Tenderer’s legal name	
In case of JV, legal name of each partner	
Tenderer’s country of constitution	
Tenderer’s year of constitution	
Tenderer’s legal address in country of constitution	
Tenderer’s authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITT Sub-Clause 4.1 and 4.2. <input type="checkbox"/> 2. Authorization to represent the firm or JV named above, in accordance with ITT Sub-Clause 22.2. <input type="checkbox"/> 3. In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT Sub-Clause 4.1. <input type="checkbox"/> 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITT Sub-Clause 4.4. 	

Employer reserves the right to check references including any work on Donor-funded contracts and as per any Past Performance Database.

The Contractor’s future performance under any contract resulting from these Tender Documents will be subject to Reporting and Considering Past Performance.

**Form - 1.2
JV Information Sheet**

Each member of a JV or an association must fill in this form.

JV / Specialist Subcontractor Information	
Tenderer's legal name	
JV Partner's or Subcontractor's legal name	
JV Partner's or Subcontractor's country of constitution	
JV Partner's or Subcontractor's year of constitution	
JV Partner's or Subcontractor's legal address in country of constitution	
JV Partner's or Subcontractor's authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITT Sub-Clause 4.1 and 4.2. <input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITT Sub-Clause 22.2. <input type="checkbox"/> 3. In the case of a government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITT Sub-Clause 4.4. 	

Employer reserves the right to check references including any work on Donor-funded contracts and as per any Past Performance Database.

The Contractor's future performance under any contract resulting from these Tender Documents will be subject to Reporting and Considering Past Performance.

Form – 1.3
Subcontractor Information Sheet

Each Tenderer must complete this form for each specialized Subcontractor mentioned in its subcontracting plan.

Sub-contractor's legal name	
Subcontractor's country of constitution	
Subcontractor's year of constitution	
Subcontractor's legal address in country of constitution	
Subcontractor's authorized representative (name, address, telephone numbers, fax numbers, e-mail address)	
<p>Attached are copies of the following original documents.</p> <ul style="list-style-type: none"> <input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITT Sub-Clause 4.2. <input type="checkbox"/> 2. Authorization to represent the entity named above. <input type="checkbox"/> 3. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITT 4.4. 	

Form – 2

Historical Contract Non-Performance

Tenderer’s Legal Name: _____ Date: _____
 JV/Consortium Member’s Legal Name: _____ Tender No: _____
 Page _____ of _____ pages

Non-Performing Contracts			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2 of B. Qualification of Section III. Evaluation and Qualification Criteria.			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Contract non-performance during the stipulated period, in accordance with Sub-Factor 2 of B. Qualification of Section III. Evaluation and Qualification Criteria.			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, GHS equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
Failure to sign a Contract in accordance with Sub-Factor 2 of B. Qualification of Section III. Evaluation and Qualification Criteria. <p style="text-align: center;"><i>[Explain deviation(s), if any]</i></p>			
Pending Litigation			
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> No pending litigation in accordance with Sub-Factor 2 of B. Qualification of Section III. Evaluation and Qualification Criteria.			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2 of B. Qualification of Section III. Evaluation and Qualification Criteria , as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, GHS equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

**Form – 3.1
Financial Situation**

Each Tenderer or member of a JV must fill in this form.

Financial Data for Previous 5 Years [GHS Equivalent]				
Year 1:	Year 2:	Year 3:	Year 4:	Year 5:

Information from Balance Sheet

Total Assets					
Total Liabilities					
Net Worth					
Current Assets					
Current Liabilities					

Information from Income Statement

Total Revenues					
Profits Before Taxes					
Profits After Taxes					

- Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last 5 years, as indicated above, complying with the following conditions.
- All such documents reflect the financial situation of the Tender or partner to a JV, and not sister or parent companies.
 - Historic financial statements must be audited by a certified accountant.
 - Historic financial statements must be complete, including all notes to the financial statements.
 - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Form – 3.2
Average Annual Construction Turnover

Each Tenderer or member of a JV must fill in this form.

Annual Turnover Data for the Last 5 Years (Construction only)			
Year	Amount Currency	Exchange Rate	GHS Equivalent
Average Annual Construction Turnover			

The information supplied should be the Annual Construction Turnover of the Tenderer or each member of a JV in terms of the amounts billed to clients for each year for work in progress or completed, converted to GHS at the rate of exchange at the end of the period reported.

Form - 3.3
Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in **Sub-factor 3.3 of B. Qualification of Section III. Evaluation and Qualification Criteria.**

Source of financing	Amount (GHS equivalent)
1.	
2.	
3.	
4.	

Form – 3.4

Current Contract Commitments/Works in Progress

Tenderers and each member of a JV/Consortium should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate is yet to be issued.

Name of contract	Employer, contact address/tel/fax	Value of outstanding work (current GHS equivalent)	Estimated completion date	Average monthly invoicing over last six months (GHS/month)
1.				
2.				
3.				
4.				
5.				
etc.				

**Form – 4.1
General Construction Experience**

[The following table shall be filled in for the Applicant and for each partner of a Joint Venture / Consortium.]

Applicant's/Joint Venture/Consortium Partner's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

Applicant JV/Consortium Party Legal Name: *[insert full name]*

Page *[insert page number]* of *[insert total number]* pages

[Identify contracts that demonstrate continuous construction work over the past five years pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 4.1. List contracts chronologically, according to their commencement (starting) dates.]

Starting Month / Year	Ending Month / Year	Contract Identification	Role of Applicant
<i>[indicate month/ year]</i>	<i>[indicate month/ year]</i>	Contract name: <i>[insert full name]</i> Brief Description of the Works performed by the Applicant: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in GHS equivalent]</i> Name of institution: <i>[indicate full name]</i> Address: <i>[indicate street/number/town or city/country]</i> Contact person: <i>[insert tel. & e-mail]</i> ¹	<i>[insert "Contractor" or "Subcontractor" or "Contract Manager"]</i>
		Contract name: <i>[insert full name]</i> Brief Description of the Works performed by the Applicant: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in GHS equivalent]</i> Name of institution: <i>[indicate full name]</i> Address: <i>[indicate street/number/town or city/country]</i> Contact person: <i>[insert tel. & e-mail]</i>	<i>[insert "Contractor" or "Subcontractor" or "Contract Manager"]</i>

¹ Employer reserves the right to check references and contact this person or any other person for reference check. It is in the best interest of the Applicant to seek that the contact person provided in this form responds within a maximum of 7 days when contacted by Employer. A non- response from the reference could be treated as a poor reference.

Form – 4.2
Similar Construction Experience

[The following table shall be filled in for contracts performed by the Applicant, each partner of a Joint Venture/Consortium, and specialist sub-contractors. A copy of the certificate of substantial completion should be attached for each contract in order for such contract to be considered.]

Applicant's/Joint Venture/Consortium Partner's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

JV/Consortium Party Name: *[insert full name]*

Page *[insert page number]* of *[insert total number]* pages

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information		
Contract Identification	<i>[insert contract name and number, if applicable]</i>		
Award date	<i>[insert day, month, year,]</i>		
Start date	<i>[insert day, month, year,]</i>		
Completion date	<i>[insert day, month, year,]</i>		
Role in Contract <i>[check the appropriate box]</i>	Contractor <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount	GHS <i>[insert total contract amount in GHS]</i>		
If partner in a JV/Consortium, or subcontractor, specify participation in total contract amount	<i>[insert percentage amount]</i>	a	<i>[insert total contract amount in GHS equivalent]</i>
Employer's Name ² :	<i>[insert full name]</i>		

² **Employer** reserves the right to contact this person or any other person for reference check. It is in the best interest of the Applicant to seek that the contact person provided in this form responds within a maximum of 7 days when contacted by Employer. A non- response from the reference could be treated as a poor reference.

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information
Address: Telephone/fax number: ³ E-mail:	<i>[indicate street/number/town or city/country]</i> <i>[insert telephone/fax numbers, including country and city area codes]</i> <i>[insert e-mail address, if available]</i>
Description of the similarity in accordance with Sub-Factor 4.2 of Section III:	
1. Amount	<i>[insert amount in GHS in words and in Figures]</i>
2. Physical size	<i>[insert physical size of activities.]</i>
3. Complexity	<i>[insert description of complexity for example, indicate if works included rehabilitation, construction, or both, type of terrain, cuts on high roadside steep slopes, slope stabilization works, local conditions (if conducted in tropical areas, in developing countries), number of simultaneous work fronts, etc.]</i>
4. Methods/Technology	<i>[insert specific aspects of the methods/technology involved in the contract]</i>
5. Other Characteristics	<i>[insert other characteristics as described in Section V, Scope of Works]</i>

Note: The qualifying information declared above must be that, which is exclusively in the name of legal entity of the Tender alone and should not include any information of the group, parent or sister companies and that must be fully substantiated by attaching ‘Certificates of Completion / Substantial Completion’.

³ Employer reserves the right to check references and contact this person or any other person for reference check. It is in the best interest of the Applicant to seek that the contact person provided in this form responds within a maximum of 7 days when contacted by Employer. A non-response from the reference could be treated as a poor reference.

Form – 4.3

Specific Construction Experience in Key Activities

Tenderer’s Legal Name: _____ Date: _____

JV/Consortium Member’s Legal Name: _____ Tender No.: _____

Subcontractor’s Legal Name: _____ Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	GHS _____		
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	GHS _____	
Employer’s Name ⁴ :	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

Note: The Employer reserves the right to check references including any work on Donor-funded contracts and as per the any Past Performance Database.

The Contractor’s future performance under any contract resulting from these Tender Documents will be subject to Reporting and Considering Past Performance.

Form – 4.3

Specific Construction Experience in Key Activities (Cont.)

Tender's Legal Name: _____ Page _____ of _____ pages

JV/Consortium Member's Legal Name: _____

Subcontractor's Legal Name: _____

Description of the key activities in accordance with Sub-Factor 4.3 of B. Qualification of Section III. Evaluation and Qualification Criteria:	Information

Note: The qualifying information declared above must be that, which is exclusively in the name of legal entity of the Tenderer alone and should not include any information of the group, parent or sister companies and that must be fully substantiated by attaching appropriate supporting documentation such as copies of certified IPCs etc.

Form - 5
Key Equipment

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tender.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

Note: Employer reserves the right to verify the information provided on equipment.

Form – 6.1
Tenderer’s Proposed Key Personnel

[The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to provide the required key personnel listed in Sub-Factor 6 of B. Qualification of Section III. Evaluation and Qualification Criteria by providing the information as per Form – 6.1 and providing the biographical data describing the qualifications and experience of each proposed key personnel in the following Form – 6.2.]

No.	Position	Name	Years of Experience (general)	Years of experience in proposed position
1				
2				
3				
4				
5				
6				
7				
8				

Form – 6.2
Qualification and Experience of Key Personnel

Name of Tenderer:

Position:		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present Employer

Summarize professional experience over the last *[Insert number of years]* years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

Employer reserves the right to check references.

[All CVs of Key Personnel must be signed and dated by them during the Tender preparation period.]

3. Technical Offer

3. Technical Offer

[The information to be provided by the Tenderer in the Technical Offer shall be used for purposes of establishing responsiveness in accordance with ITT Clause 31. This information shall not be incorporated in the Contract. Attach additional pages as necessary.]

1. Environmental, Health and Safety Requirements
 - 1.1 The Contractor will be required to carry out the Works in accordance with the site-specific Environmental Management Plan (“EMP”), to be prepared by it following Contract award, and approved by the Project Manager. Tenderers shall demonstrate that they possess a high level of Environmental and Social (“E&S”) management expertise and can successfully manage the E&S risks associated with the implementation of the Works, as follows:
 - (a) Provide examples of site-specific E&S management plans developed by the Tenderer for similar work over the last 5 years;
 - (b) Demonstrate a successful record implementing effective E&S mitigation measures on similar projects over the last 5 years;
 - (c) Describe proposed E&S staffing, roles and responsibilities, and management structure;
 - (d) Describe the proposed approach to managing E&S impacts during implementation of the Works, including a description of the mitigation measures that will be used and international E&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical E&S issues related to the Works; and
 - (e) Provide 2 references regarding the Tenderer’s development of site-specific EMPs and successful implementation of E&S mitigation measures.
 - 1.2 The Contractor will be required to carry out the Works in accordance with the site-specific Health and Safety Plan to be developed by it following Contract award, and approved by the Project Manager. Tenderers shall demonstrate that they possess a high level of Health and Safety (“H&S”) management expertise and can successfully manage the H&S risks related to the implementation of the Works. To demonstrate, they shall provide the following:
 - (a) Provide examples of H&S management plans developed by the Tenderer for similar work over the last 5 years;
 - (b) Demonstrate a successful record implementing effective H&S mitigation measures on similar projects over the last 5 years;
 - (c) Describe proposed H&S staffing, roles and responsibilities, and management structure;
 - (d) Describe the proposed approach to managing H&S impacts during implementation of the Works, including a summary of mitigation measures that will be used and international

H&S standards that may be applicable; provide enough detail to demonstrate an understanding of the critical H&S issues related to the Works; and

- (e) Provide 2 references regarding the Tenderer’s development of H&S plans and successful implementation of H&S mitigation measures.

2. Programme
- 2.1 Proposed work programme (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tender Documents.
- 2.2 Cash flow projection indicating quarterly projected expenditure throughout the duration of the Contract (taking into consideration advance payment and retention).
3. Resources
- 3.1 Equipment. Same as per Qualification Information Form-5.
- 3.2 Key Personnel. Same as per Qualification Information Forms-6.1 & 6.2.
- 3.4 Subcontractors. Provide information on proposed sub-contracts and firms involved. Refer to **GCC Clause 7** of the **Form of Contract** in **Section V**.

Sections of the Works	Value of sub-contract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

4. Country of Origin
- 4.1 The country(ies) of origin of major items of plant, materials, goods and services proposed to be provided is(are) as follows:

Table of Plant and Materials

Item	Country of Origin
Plant (list all major items)	
Material (list all major items)	
Equipment (list all major items)	
Goods (list all major items)	
Services (list all major items)	

4. Letter of Acceptance

[Letterhead of the Employer]

[The Letter of Acceptance shall be the basis for formation of the Contract as described in ITT Clauses 41 and 42. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Tenderer only after evaluation of Tenders has been completed, subject to any review required.]

[insert date]

Identification No: and: [insert identification number]

Title of Contract:

To: [insert name and address of the Contractor]

This is to notify you that your Tender dated [insert date] for execution of the [insert name of the Contract and identification number, as given in the Tender Documents] for the Contract Price of the equivalent⁴ of [insert amount in numbers and words] [insert name of currency], as corrected and modified⁵ in accordance with the Instructions to Tenderers is hereby accepted by the Employer. [insert one of the following (a) or (b) options]⁶

- (a) We accept that [insert name proposed by Tenderer] be appointed as the Adjudicator.⁷
- (b) We do not accept that [insert name proposed by Tenderer] be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to [insert name of the Appointing Authority], we are hereby requesting [insert name], the Appointing Authority, to appoint the Adjudicator in accordance with **ITT Sub-Clause 44.1**.⁸

You are hereby instructed to (a) proceed with the execution of the said Works in accordance with the Contract (b) sign and return the attached Agreement, and (c) forward the performance security pursuant to **GCC Sub-Clause 4.2** within 28 days after receipt of this Letter of Acceptance.

Authorized Signature:

Name and Title of Signatory:
[insert proper name of the Employer]

Attachment: Agreement

⁴ Delete “of the equivalent” if the Contract Price is expressed wholly in one currency.

⁵ Delete “corrected and” or “and modified” if not applicable.

⁶ Delete this entire section if the Adjudicator originally proposed by the Employer is accepted by the Tender.

⁷ To be used only if the Contractor disagrees in the Tender with the Adjudicator proposed by the Employer in the Instructions to Tender, and has accordingly offered another candidate.

⁸ To be used only if the Contractor disagrees in the Tender with the Adjudicator proposed by the Employer in the ITT, has accordingly offered another candidate, and the Employer does not accept the counterproposal.

PART II

Section V. Agreement and General Conditions of Contract

Agreement

This CONTRACT AGREEMENT (this “Contract”) is made as of the [day] of [month], [year], between [full legal name of the Employer] (the “Employer”), on the one part, and [full legal name of the Contractor] (the “Contractor”), of the other part:

RECITALS

WHEREAS

- (a) the Employer desires that the Works known as [insert Contract Title and Details] should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

NOW, THEREFORE, the parties to this Contract agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (i) the Letter of Acceptance;
 - (ii) the Letter of Tender;
 - (iii) the Addenda Nos _____ (if any);
 - (iv) the Particular Conditions;
 - (v) the General Conditions;
 - (vi) the Specification;
 - (vii) the Drawings;
 - (viii) the Bills of Quantities; and
 - (ix) any other documents
3. In consideration of the payments to be made by the Employer to the Contractor as set forth in this Contract, the Contractor hereby covenants with the Employer to provide the Works (as defined in this Contract) and to remedy defects therein in conformity in all respects with the provisions of this Contract.
4. Subject to the terms of this Contract, the Employer hereby covenants to pay the Contractor in consideration of the provision of the Works, the Contract Price (as defined in this Contract) or such other sum as may become payable under the provisions of this Contract at the times and in the manner prescribed by this Contract.

Section V Agreement and General Conditions of Contract

IN WITNESS whereof the parties hereto have caused this Contract to be executed in accordance with the laws of Ghana as of the day, month and year first indicated above.

For **[full legal name of the Employer]**:
Signature

For **[full legal name of the Contractor]**:
Signature

Name

Name

Witnessed By:

Witnessed By:

Conditions of Contract

For CONSTRUCTION

FOR BUILDING AND ENGINEERING WORKS
DESIGNED BY THE EMPLOYER

General Conditions

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS
INTERNATIONAL FEDERATION OF CONSULTING ENGINEERS
INTERNATIONALE VEREINIGUNG BERATENDER INGENIEURE
FEDERACION INTERNACIONAL DE INGENIEROS CONSOLTORES

General Conditions

CONTENTS

1. GENERAL PROVISIONS

- 1.1 Definitions
- 1.2 Interpretation
- 1.3 Communications
- 1.4 Law and Language
- 1.5 Priority of Documents
- 1.6 Contract Agreement
- 1.7 Assignment
- 1.8 Care and Supply of Documents
- 1.9 Delayed Drawings or Instructions
- 1.10 Employer's Use of Contractor's Documents
- 1.11 Contractors Use of Employer's Documents
- 1.12 Confidential Details
- 1.13 Compliance with Laws
- 1.14 Joint and Several Liability

2. THE EMPLOYER

- 2.1 Right of Access to the Site
- 2.2 Permits, Licences or Approvals
- 2.3 Employer's Personnel
- 2.4 Employer's Financial Arrangements
- 2.5 Employer's Claims

3. THE ENGINEER

- 3.1 Engineer's Duties and Authority
- 3.2 Delegation by the Engineer
- 3.3 Instructions of the Engineer
- 3.4 Replacement of the Engineer
- 3.5 Determinations

4. THE CONTRACTOR

- 4.1 Contractors General Obligations
- 4.2 Performance Security
- 4.3 Contractor's Representative
- 4.4 Subcontractors
- 4.5 Assignment of Benefit of Subcontract
- 4.6 Co-operation
- 4.7 Setting Out
- 4.8 Safety Procedures
- 4.9 Quality Assurance
- 4.10 Site Data
- 4.11 Sufficiency of the Accepted Contract Amount
- 4.12 Unforeseeable Physical Conditions
- 4.13 Rights of Way and Facilities
- 4.14 Avoidance of Interference
- 4.15 Access Route
- 4.16 Transport of Goods
- 4.17 Contractor's Equipment
- 4.18 Protection of the Environment
- 4.19 Electricity, Water and Gas
- 4.0 Employer's Equipment and Free-Issue Material
- 4.21 Progress Reports
- 4.22 Security of the Site
- 4.23 Contractor's Operations on Site
- 4.24 Fossils

5. NOMINATED SUBCONTRACTORS

- 5.1 Definition of "nominated Subcontractor"
- 5.2 Objection to Nomination
- 5.3 Payments to nominated Subcontractors
- 5.4 Evidence of Payments

6. STAFF AND LABOUR

- 6.1 Engagement of Staff and Labour
- 6.2 Rates of Wages and Conditions of Labour
- 6.3 Persons in the Service of Employer
- 6.4 Labour Laws
- 6.5 Working Hours
- 6.6 Facilities for Staff and Labour
- 6.7 Health and Safety
- 6.8 Contractor's Superintendence
- 6.9 Contractor's Personnel
- 6.10 Records of Contractor's Personnel and Equipment
- 6.11 Disorderly Conduct

7. PLANT, MATERIALS AND WORKMANSHIP

- 7.1 Manner of Execution
- 7.2 Samples
- 7.3 Inspection
- 7.4 Testing
- 7.5 Rejection
- 7.6 Remedial Work
- 7.7 Ownership of Plant and Materials
- 7.8 Royalties

8. COMMENCEMENT, DELAYS AND SUSPENSION

- 8.1 Commencement of Works
- 8.2 Time for Completion
- 8.3 Programme
- 8.4 Extension of Time for Completion
- 8.5 Delays Caused by Authorities
- 8.6 Rate of Progress
- 8.7 Delay Damages
- 8.8 Suspension of Work
- 8.9 Consequences of Suspension
- 8.10 Payment for Plant and Materials in Event of Suspension
- 8.11 Prolonged Suspension
- 8.12 Resumption of Work

9. TESTS ON COMPLETION

- 9.1 Contractor's Obligations
- 9.2 Delayed Test
- 9.3 Retesting
- 9.4 Failure to Pass Tests on Completion

10. EMPLOYER'S TAKING OVER

- 10.1 Taking Over of the Works and Sections
- 10.2 Taking Over of Parts of the Works
- 10.3 Interference with Tests on Completion
- 10.4 Surfaces Requiring Reinstatement

11. DEFECTS LIABILITY

- 11.1 Completion of Outstanding Work and Remedying Defects
- 11.2 Cost of Remedying Defects
- 11.3 Extension of Defects Notifications Period
- 11.4 Failure to Remedy Defects
- 11.5 Removal of Defective Work
- 11.6 Further Tests

- 11.7 Right Access
- 11.8 Contractor to Search
- 11.9 Performance Certificate
- 11.10 Unfulfilled Obligations
- 11.11 Clearance of Site

12. MEASUREMENT AND EVALUATION

- 12.1 Works to be Measured
- 12.2 Method of Measurement
- 12.3 Evaluation
- 12.4 Omissions

13. VARIATIONS AND ADJUSTMENTS

- 13.1 Right to Vary
- 13.2 Value Engineering
- 13.3 Variation Procedure
- 13.4 Payment in Applicable Currencies
- 13.5 Provisional Sums
- 13.6 Daywork
- 13.7 Adjustments for Changes in Legislation
- 13.8 Adjustments for Changes in Cost

14. CONTRACT PRICE AND PAYMENT

- 14.1 The Contract Price
- 14.2 Advance Payment
- 14.3 Application for Interim Payment Certificate
- 14.4 Schedule of Payments
- 14.5 Plant and Materials intended for the Works
- 14.6 Issue of Interim Payment Certificate
- 14.7 Payment
- 14.8 Delayed Payment
- 14.9 Payment of Retention Money
- 14.10 Statement at Completion
- 14.11 Application for Final Payment Certificate
- 14.12 Discharge
- 14.13 Issue of Final Payment Certificate
- 14.14 Cessation of Employer's Liability
- 14.15 Currencies of Payment

15. TERMINATION BY EMPLOYER

- 15.1 Notice to Correct
- 15.2 Termination by Employer
- 15.3 Valuation at Date of Termination
- 15.4 Payment after Termination
- 15.5 Employer's Entitlement to Termination

16. SUSPENSION AND TERMINATION BY CONTRACTOR

- 16.1 Contractor's Entitlement to Suspend Work
- 16.2 Termination by Contractor
- 16.3 Cessation of Work and Removal of Contractor's Equipment
- 16.4 Payment on Termination

17. RISK AND RESPONSIBILITY

- 17.1 Indemnities
- 17.2 Contractor's Care of the Work
- 17.3 Employer's Risks
- 17.4 CONSEQUENCES OF Employer's Risks
- 17.5 Intellectual and Industrial Property Rights
- 17.6 Limitation of Liability

18. INSURANCE

- 18.1 General Requirements for Insurance
- 18.2 Insurance for Works and Contractor's Equipment
- 18.3 Insurance against injury to Persons and Damage to Property
- 18.4 Insurance for Contractor's Personnel

19. FORCE MAJEURE

- 19.1 Definition of Force Majeure
- 19.2 Notice of Force Majeure
- 19.3 Duty to Minimize Delay
- 19.4 Consequences of Force Majeure
- 19.5 Force Majeure Affecting Subcontractor
- 19.6 Optional Termination, Payment and Release
- 19.7 Release from Performance under the Law

20. CLAIMS, DISPUTES AND ARBITRATION

- 20.1 Contractor's Claims
- 20.2 Appointment of the Dispute Adjudication Board
- 20.3 Failure to Agree Dispute Adjudication Board
- 20.4 Obtaining Dispute Adjudication Board's Decision
- 20.5 Amicable Settlement
- 20.6 Arbitration
- 20.7 Failure to Comply with Dispute Adjudication Board's Decision
- 20.8 Expiry of Dispute Adjudication Board's Appointment

APPENDIX

GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT

INDEX OF SUB-CLAUSES

Definitions listed alphabetically

1.1.4.1	Accepted Contract Amount	1.1.4.7	Interim Payment Certificate
1.1.1.9	Appendix to Tender	1.1.6.5	Laws
1.1.3.1	Base Date	1.1.1.3	Letter of Acceptance
1.1.1.10	Bill of Quantities	1.1.1.4	Letter to Tender
1.1.3.2	Commencement Date	1.1.4.8	Local Currency
1.1.1.1	Contract	1.1.5.3	Materials
1.1.1.2	Contract Agreement	1.1.2.1	Party
1.1.4.2	Contract Price	1.1.4.9	Payment Certificate
1.1.2.3	Contractor	1.1.3.8	Performance Certificate
1.1.6.1	Contractor's Documents	1.1.6.6	Performance Security
1.1.5.1	Contractor's Equipment	1.1.5.4	Permanent Works
1.1.2.7	Contractor's Personnel	1.1.5.5	Plant
1.1.2.5	Contractors Representative	1.1.4.10	Provisional Sum
1.1.4.3	Cost	1.1.4.11	Retention Money
1.1.6.2	Country	1.1.1.7	Schedule
1.1.2.9	DAB	1.1.5.6	Section
1.1.3.9	day	1.1.6.7	Site
1.1.1.10	Daywork Schedule	1.1.1.5	Specification
1.1.3.7	Defects Notification Period	1.1.4.12	Statement
1.1.1.6	Drawings	1.1.2.8	Subcontractor
1.1.2.2	Employer	1.1.3.5	Taking-Over Certificate
1.1.6.3	Employer's Equipment	1.1.5.7	Temporary Works
1.1.2.6	Employer's Personnel	1.1.1.8	Tender
1.1.2.4	Engineer	1.1.3.6	Tests after Completion
1.1.2.10	FIDIC	1.1.3.4	Tests on Completion

1.1.4.4	Final Payment Certificate	1.1.3.3	Time for Completion
1.1.4.5	Final Statement	1.1.6.8	Unforeseeable
1.1.6.4	Force Majeure	1.1.6.9	Variation
1.1.4.6	Foreign Currency	1.1.5.8	Works
1.1.5.2	Goods	1.1.3.9	year

General Conditions

5. General Provisions

- 1.1 Definitions** In the Conditions of Contract (“these Conditions”), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.
- 1.1.1 The Contract**
- 1.1.1.1 “**Contract**” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2 “**Contract Agreement**” means the contract agreement (if any) referred to in **Sub-Clause 1.6 [Contract Agreement]**.
- 1.1.1.3 “**Letter of Acceptance**” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.”
- 1.1.1.4 “**Letter of Tender**” means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- 1.1.1.5 “**Specification**” means the document entitled specialization, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.
- 1.1.1.6 “**Drawings**” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.
- 1.1.1.7 “**Schedules**” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Materials, data, lists, and schedules of rates and/r prices.

**1.1.2
Parties and
Persons**

- 1.1.1.8 “**Tender**” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract
- 1.1.1.9 “**Appendix to Tender**” means the completed pages titled appendix to tender which are appended to and form part of the Letter of Tender.
- 1.1.1.1 “**Bill of Quantities**” and “**Daywork Schedule**” means (the documents so named (if any) which are comprised in the Schedules.
- 1.1.2.1 “**Party**” means the Employer or the Contractor, as the context requires.
- 1.1.2.2 “**Employer**” means the person named as employer in the Appendix to Tender and the legal successors in title to this person.
- 1.1.2.3 “**Contractor**” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 “**Engineer**” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Appendix to Tender, or other person appointed from time to time by the Employer and notified to the Contractor under **Sub-Clause 3.4** [Replacement of the Engineer].
- 1.1.2.5 “**Contractor’s Representative**” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under **Sub-Clause 4.3** [Contractor’s Representative], who acts on behalf of the Contractor.
- 1.1.2.6 “**Employer’s Personnel**” means the Engineer, the assistants referred to in **Sub-Clause 3.2** [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
- 1.1.2.7 “**Contractor’s Personnel**” means the Contractor’s Representative and all personnel whom the Contractor utilizes on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor, and any other personnel assisting the Contractor in the execution of the Works.

**1.1.3
Dates, Tests,
Periods and
Completion**

- 1.1.2.8 “**Sub-Contractor**” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 “**DAB**” means the person or three persons so named in the Contract, or other person(s) appointed under **Sub-Clause 20.2** [Appointment of the Dispute Adjudication Board] or **Sub-Clause 20.3** [Failure to Agree Dispute Adjudication Board].
- 1.1.2.1 “**FIDIC**” means the Federation Internationale des (C Ingenieurs-Conseils, the International federation of consulting engineers.
- 1.1.3.1 “**Base Date**” means the date 28 days prior to the latest date for submission of the Tender
- 1.1.3.2 “**Commencement Date**” means the date notified under **Sub-Clause 8.1** [Commencement of Works].
- 1.1.3.3 “**Time for Completion**” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Appendix to Tender (with any extension under Sub-Clause 8.4 [Extension of Time for Completion], calculated from the Commencement Date.
- 1.1.3.4 “**Tests on Completion**” means the test which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under **Clause 9** [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.5 “**Taking-Over Certificate**” means a certificate issued under Clause 10 [Employer’s Taking Over].
- 1.1.3.6 “**Tests after Completion**” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the provisions of the Particular Conditions after the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.7 “**Defects Notification Period**” means the period for notifying defects in the Works or a Section (as the case may be) under **Sub-Clause 11.1** [Completion of Outstanding Work and Remedying Defects], as stated in the Appendix to Tender (with any extension under

Sub-Clause 11.3 [Extension of Defects Notification Period], calculated from the date on which the Works or Section is completed as certified under **Sub-Clause 10.1** [Taking Over of the Works and Sections].

1.1.3.8 “Performance Certificate” means the certificate issued under **Sub-Clause 11.9** [Performance Certificate].

1.1.3.9 **day**” means a calendar day and **“year”** means 365 days.

1.1.4 Money and Payments

1.1.4.1 “Acceptance Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the Remediating of any defects.

1.1.4.2 **“Contract Price”** means the price defined in **Sub-Clause 14.1** [*The Contract Price*], and includes adjustments in accordance of with the Contract.

1.1.4.3 **“Cost”** means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.4 **“Final Payment Certificate”** means the payment certificate issued under **Sub-Clause 14.13** [Issue of Final Payment Certificate].

1.1.4.5 **“Final Payment Statement”** means the statement defined in **Sub-Clause 14.11** [Application for Final Payment Certificate].

1.1.4.6 **“Foreign Currency”** means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

1.1.4.7 **“Interim Payment Certificate”** means a payment certificate issued under **Clause 14** [Contract Price and Payment], other than the Final Payment Certificate.

1.1.4.8 **“Local Currency”** means the currency of the Country.

1.1.4.9 **“Payment Certificate”** means a payment certificate issued under **Clause 14** [Contract Price and Payment].

1.1.4.1 **“Provisional Sum”** means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under **Sub-Clause 13.5**

[Provisional Sums].

1.1.4.1 “**Retention Money**” means the accumulated retention
1 moneys which the Employer retains under **Sub-Clause 14.3** [Application for Interim Payment Certificate] and pays under **Sub-Clause 14.9** [Payment of Retention Money].

1.1.4.1 “**Statement**” means a statement submitted by the
2 Contractor as part of an application, under **Clause 14** [Contract Price and Payment], for a payment certificate.

**1.1.5
Works and Goods**

1.1.5.1 “**Contractor’s Equipment**” means all apparatus, machinery, vehicle and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment exclude Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

1.1.5.2 “**Goods**” means Contractor’s Equipment, Materials, Plant and temporary Works, or any of them as appropriate.

1.1.5.3 “**Materials**” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

1.1.5.4 “**Permanent Works**” means the permanent works to be executed by the Contractor under the Contract.

1.1.5.5 “**Plant**” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

1.1.5.6 “**Section**” means a part of the Works specified in the Appendix to Tender as a Section (if any).

1.1.5.7 “**Temporary Works**” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 “**Works**” means the Permanent Works and the Temporary Works, or either of them as appropriate.

**1.1.6
Other Definitions**

- 1.1.6.1 “**Contractor’s Documents**” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.1.6.2 “**Country**” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 “**Employer’s Equipment**” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification: but does not include Plant which has not been taken over by the Employer.
- 1.1.6.4 “**Force Majeure**” is defined in **Clause 19**[*Force Majeure*].
- 1.1.6.5 “**Laws**” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “**Performance Security**” means the security (or securities, if any) under **Sub-Clause 4.2**[*Performance Security*].
- 1.1.6.7 “**Site**” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “**Unforeseeable**” means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.
- 1.1.6.9 “**Variation**” means any change to the Works, which is instructed or approved as a variation under **Clause 13**[*Variations and Adjustments*].

**1.2
Interpretation**

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or

agreement” require the agreement to be recorded in writing, and

- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

**1.3
Communications**

Where these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Appendix to Tender, and
- (b) delivered, sent or transmitted to the address for the recipient’s communications as stated in the Appendix to Tender. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

**1.4
Law and Language**

The Contract shall be governed by the law of the country (or another jurisdiction) stated in the Appendix to Tender.

If there are versions of any part of the Contract which are written in more than one language, the version which is in the ruling language stated in the Appendix to Tender shall prevail.

The language for communications shall be that stated in the Appendix to Tender. If no language is stated there, the language

for commutations shall be the language in which the Contract (or most of it) is written.

**1.5
Priority of
Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender
- (d) the Special Conditions,
- (e) these General Conditions,
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

**1.6
Contract Agreement**

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless they agree otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

**1.7
Assignment**

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

**1.8
Care and Supply of
Documents**

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or requires further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's

Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

1.9
Delayed Drawings
or Instructions

The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and details of the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1 [Contractor's Claims]** to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under **Sub-Clause 8.4 [Extension of Time for Completion]**, and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determinations]** to agree or determine these matters.

However, if and to the extent that the Engineer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, cost or profit.

1.10
Employer's Use of
Contractor's Documents

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using

modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works.
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs, and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

**1.11
Contractor's Use of
Employer's Documents**

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

**1.12
Confidential Details**

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance with the Contract.

**1.13
Compliance with Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
 - (b) the Contractor shall give notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and
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completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

**1.14
Joint and Several
Liability**

if the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

2. The Employer

**2.1.
Right of Access to The
Site**

The Employer shall give the Contractor right of access to and possession of, parts of the Site within the time (or times) stated in the Appendix to Tender. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Appendix to Tender, the Employer shall give the Contractor right access to, and possession of, the Site within such times as may be required to enable the Contractor to proceed in accordance with the programme submitted under **Sub-Clause 8.3 [Programme]**.

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1 [Contractor's Claims]** to:

- (a) An extension of time for any such delay, if completion is or will be delayed under **Sub-Clause 8.4 [Extension of Time for Completion]**, and
- (b) Payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determinations]** to agree or

determine these matters.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost of profit.

**2.2.
Permits and Licences or
Approvals**

The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

- (a) By obtaining copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) For the Contractor's applications for any permits, licences or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain under **Sub-Clause 1.13** [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

**2.3.
Employer's Personnel**

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other Contractors on the Site.

- (a) co-operate with the Contractor's efforts under **Sub-Clause 4.6**[Co-operation], and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of **Sub-Clause 4.8** [*Safety Procedures*] and under **Sub-Clause 4.18** [*Protection of the Environment*].

**2.4.
Employer's Financial
Arrangements**

The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable them to pay the Contract Price (as estimated at that time) in accordance with **Clause 14** [*Contract Price and Payment*]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

**2.5.
Employer's Claims**

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under **Sub-Clause 4.19** [Electricity, Water and Gas), under **Sub-Clause 4.20** [Employer's Equipment and Free-Issue Material], or for other services requested by the Contractor.

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with **Sub-Clause 11.3** [*Extension of Defects Notification Period*].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3. The Engineer

**3.1.
Engineer's Duties and
Authority**

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (or the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer.
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract, and
- (c) any approval, check, certificates, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliance.

**3.2.
Delegation by the
Engineer**

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and /or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with **Sub-Clause 3.5 [Determinations]**.

Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in **Sub-Clause 1.4 [Law and Language]**.

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work,

Plant or Materials;

- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

**3.3
Instructions of the
Engineer**

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instruction from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, **Clause 13** [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing, if the Engineer or a delegated assistant:

- (a) give an oral instruction,
- (b) receives a written confirmation of the instruction from (or on behalf of) the Contractor, within two working days after given the instruction, and
- (c) does not reply by issuing a written rejection and /or instruction within two working days after receiving the confirmation, then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

**3.4.
Replacement of Engineer**

If the Employer intends to replace the Engineer, the Employer shall, not less than 42 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. The Engineer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer, with supporting particulars.

**3.5.
Determinations**

Whenever these Conditions provide that the Engineer shall proceed in accordance with this **Sub-Clause 3.5** to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

4. The Contractor

**4.1.
Contractor's General
Obligations**

The Contractors shall design (to the extent specified in the Contract), execute and complete the works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in **Sub-Clause 1.4 [Law and Language]**, and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as built" documents and operation and

maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under **Sub-Clause 10.1** [*Taking Over of the Works and Sections*] until these documents and manuals have been submitted to the Engineer.

4.2
Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount and currencies stated in the Contract Data and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Employer. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

The Contractor shall deliver the performance Security to the Employer with 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contract has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry day, the Contractor shall extend the validity of the Performance Security until the Work have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security,
- (b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under **Sub-Clause 2.5** [Employer's Claims] or Clause 20 [Claims, Disputes and Arbitration], which 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42

days after receiving the Employer's notice requiring the default to be remedied, or

- (d) Circumstances which entitle the Employer to termination under **Sub-Clause 15.2** [*Termination by Employer*], irrespective of whether notice of termination has been given.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

**4.3
Contractor's
representatives**

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under **Sub-Clause 3.3** [Instructions of the Engineer].

The Contractor's Representative may delegate any powers, function and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed

by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communication defined in **Sub-Clause 1.4** [Law and Language]

4.4
Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults for any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers of Materials, or of a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Engineer not less than 28 days' notice of eth intended date of the commencement of each Subcontractor's work, and of eth commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [*Assignment of Benefit of Subcontract*] (if or when applicable) or in the event of termination under **Sub-Clause 15.2** [*Termination by Employer*].

4.5
Assignments of Benefit of Subcontract

If Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6
Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other Contractor's employed by the Employer, and
- (c) the personnel of any legally constituted public authorities.

Who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment. Temporary Works or access arrangements which are the responsibility of the Contractor.

If under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

4.7
Setting Out

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

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1** [Contractor's Claims] to;

- (a) an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 8.4 [*Extension of Time for Completion*]. And
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8 The Contractor shall:

Safety Procedures

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [*Employer's Taking Over*], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

**4.9
Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

**4.10
Site Data**

The Employer shall have made available to the Contractor for his information, prior to the Base Data, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which are practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to

have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation).

- (a) The form and nature of the Site, including sub-surface conditions
- (b) The hydrological and climatic conditions,
- (c) The extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects.
- (d) The Laws, procedures and labour practices of the Country, and
- (e) The Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11
Sufficiency of the
Accepted Contract
Amount

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in **Sub-Clause 4.10** [*Site Data*].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12
Unforeseeable Physical
Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutions, which the Contractor encounters at the Site when execution the Works, including sub-surface and hydrological conditions out excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The

Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instruction which the Engineer may give. If an instruction constitutes a Variation, **Clause 13** [*Variations and Adjustments*] shall apply.

If and to the extent that the Contractor encounters physical conditions which Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to **Sub-Clause 20.1** [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under **Sub-Clause 8.4** [*Extension of Time for Completion*], and
- (b) payment of any such Cost, shall be included in the Contract Price,

After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under subparagraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under subparagraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer may take account of any evidence of the physical conditions foreseen by the Contractor which submitting the Tender, which may be made available by the Contractor, but shall not be bound by the any such evidence.

**4.13
Rights of Way and
Facilities**

The Contractor shall bear all costs of and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purpose of the Works

**4.14
Avoidance of
Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

**4.15
Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable effects to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. The efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes,
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions,
- (c) the Employer shall not be responsible for any claims which may arise from the use of otherwise of any access route,
- (d) the Employer does not guarantee the suitability or availability of particular access routes, and
- (e) Costs due to non-suitability or non-availability, for the sue required by the Contractor, of access routes shall be borne by the Contractor.

**4.16
Transport of Goods**

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;

- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Engineer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

**4.17
Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

**4.18
Protection of the
Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the value indicated in the Specification, and shall not exceed the values prescribed by applicable Laws.

**4.19
Electricity, Water and
Gas**

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.

The Contractor shall be entitled to use for the purposes of the Works such suppliers of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with **Sub-Clause 2.5 [Employer's Claims]** and **Sub-Clause 3.5 [Determinations]**. The Contractor shall pay these amounts to the Employer.

**4.20
Employer's Equipment
and Free-Issue Material**

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices

stated in the Specification. Unless otherwise stated in the Specification:

- (a) the Employer shall be responsible for the Employer's Equipment, except that,
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Engineer in accordance with **Sub-Clause 2.5 [Employer's Claims]** and **Sub-Clause 3.5 [Determinations]**. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from visual inspection.

**4.21
Progress Report**

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as

defined in Clause 5 [*Nominated Subcontractors*],

- (b) photographs showing the status of manufacturer and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site
- (d) the details described in **Sub-Clause 6.10** [Records of Contractor's Personnel and Equipment],
- (e) copies of quality assurance documents, test results and certificates of Materials,
- (f) list of notices given under **Sub-Clause 2.5** [*Employer's Claims*] and notices given under **Sub-Clause 20.1** [*Contractor's Claims*],
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations, and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22

Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorized persons off the Site, and
- (b) authorized persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by Employer's or the Engineer, as authorized personnel of the Employer's other contractors on the Site.

4.23

Contractor's Operations

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from the part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfill obligations under the Contract.

**4.24
Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1** [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under **Sub-Clause 8.4** [*Extension of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine these matters.

**5.
Nominated
Subcontractors**

**5.1
Definition of "Nominated
Subcontractor"**

In the Contract, "nominated Subcontractor" means a Subcontractor;

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under **Clause 13** [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor.

**5.2
Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength,
- (b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees, or
- (c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as well enable the Contractor to discharge his obligations and liabilities under the Contract, and
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfill these liabilities.

**5.3
Payments to Nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with subparagraph (b) of **Sub-Clause 13.5** [Provisional Sums], except as stated in **Sub-Clause 5.4** [Evidence of Payments].

**5.4
Evidence of Payments**

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Engineer, or

- (b) (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
- (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement.

Then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6. Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

6.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

6.3 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour amongst the Employer's Personnel.

6.4 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.5 Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the Appendix to Tender, unless:

- (a) otherwise stated in the Contract,

- (b) the Employer given consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise Engineer.

**6.6
Facilities for Staff and
Labour**

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

**6.7
Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangement are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instruction and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

**6.8
Contractor's
Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfill the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in **Sub-Clause 1.4** [Law and Language] and of the

operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

**6.9
Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

**6.10
Records of Contractor's
Personnel and
Equipment**

The Contractors shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

**6.11
Disorderly Conduct**

Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, to prevent peace and protection of persons and property on and near the Site.

**7.
Plant, Materials and
Workmanship**

**7.1
Manner of Execution**

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
 - (b) in a proper workmanlike and careful manner, in accordance with recognized good practice, and
 - (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.
-

**7.2
Samples**

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- (b) additional samples instructed by the Engineer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

**7.3
Inspection**

The Employer's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere) be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment, no such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

**7.4
Testing**

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents, and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the

time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under **Clause 13** [Variations and Adjustments], vary the location of details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional test show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the test shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1** [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under **Sub-Clause 8.4** [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the

After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Employer duly certified Reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5
Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Employer requires this Plant, Materials or workmanship to be retested, the test shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional cost, the Contractor shall subject to **Sub-Clause 2.5** [Employer's Claims] pay these costs to the Employer.

**7.6
Remedial Work**

Notwithstanding any previous test or certification, the Employer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under **sub-paragraph (c)**.

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to **Sub-Clause 2.5** [Employer's Claims] pay to the Employer all costs arising from this failure.

**7.7
Ownership of Plant and
Materials**

Each item of Plan and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is delivered to the Site,
- (b) when the Contractor is entitled to payment of the value of the Plant and Materials under **Sub-Clause 8.10** [*Payment for Plant and Materials in Event of Suspension*].

**7.8
Royalties**

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payment for:

- (a) natural Materials obtained from outside the Site, and
 - (b) the disposal of material from demolitions and
-

excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

**8. Commencement,
Delays and Suspension**

**8.1
Commencement of
Works**

The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance.

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

**8.2
Time for Completion**

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [*Taking Over of the Works and Sections*].

**8.3
Programme**

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (c) the sequence and timing of inspections and test specified in the Contract, and

- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notices to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under **Sub-Clause 13.3 [Variation Procedure]**.

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

**8.4
Extension of Time for
Completion**

The Contractor shall be entitled subject to **Sub-Clause 20.1 [Contractor's Claims]** to an extension of the Time for Completion if and to the extent that completion for the purpose of **Sub-Clause 10.1 [Taking Over of the Works and Sections]**.

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure] or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time a Sub-Clause of these Conditions.
- (c) exceptionally adverse climatic conditions,

- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, the impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5
Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable.

Then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of **Sub-Clause 8.4** [*Extension of Time for Completion*].

8.6
Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under **Sub-Clause 8.3** [*Programme*].

other than as a result of a cause listed in **Sub-Clause 8.4** [*Extension of Time for Completion*], then the Engineer may instruct the Contractor to submit, under **Sub-Clause 8.3** [*Programme*], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the number of Contractor's Personnel

and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to **Sub-Clause 2.5** [*Employer's Claims*] pay these costs to the Employer, in addition to delay damages (if any) under **Sub-Clause 8.7** below.

8.7
Delay Damages

If the Contractor fails to comply with **Sub-Clause 8.2** [Time of Completion], the Contractor shall subject to **Sub-Clause 2.5** [*Employer's Claims*] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Appendix to Tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to Tender.

These delay damages shall be the only damages due from the Contractor for such default, other than in event of termination under **Sub-Clause 15.2** [*Termination by Employer*] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

8.8
Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following **Sub-Clause 8.9, 8.10** and **8.11** shall not apply.

8.9
Consequences of Suspension

If the Contractor suffers delay and/ or Incurs Cost from complying with the Engineer's. Instructions under **Sub-Clause 8.8** [*Suspension of Work*] and /or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1** [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be, under **Sub-Clause 8.4** [*Extension of Time for Completion*], and
- (b) payment of any such cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance this **Sub-Clause 3.5** [*Determinations*] to agree or

determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's failure to protect, store or secure in accordance with **Sub-Clause 8.8** [*Suspension of Work*].

8.10
Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and /or Materials as the Employer's properly in accordance with the Engineer's instructions.

8.11
Prolonged Suspension

If the suspension under **Sub-Clause 8.8** [*Suspension of Work*] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under **Clause 13** [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under **Sub-Clause 16.2** [*Termination by Contractor*].

8.12
Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

9. Tests on Completion

9.1
Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with **Sub-Clause 7.4** [Testing], after providing the documents in accordance with sub-paragraph (d) of **Sub-Clause 4.1** [Contractor's General Obligations]

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

**9.2
Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, **Sub-Clause 7.4** [Testing] (fifth paragraph) and /or **Sub-Clause 10.3** [Interference with Tests on Completion] shall be applicable.

If the Test on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor falls to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, **Sub-Clause 7.5** [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

**9.4
Failure to Pass Tests on
Completion**

If the Works, or a Section, fail to pass the Tests on completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under **Sub-Clause 7.5**
 - (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of **Sub-Clause 11.4** [Failure to Remedy Defects]; or
 - (c) issue a Taking-Over Certificate, if the Employer so requests. In the event of sub-paragraph (c), the
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Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under **Sub-Clause 2.5 [Employer's Claims]** and **Sub-Clause 3.5 [Determinations]**.

10. Employer's Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in **Sub-Clause 9.4 [Failure to Pass Tests on Completion]**, the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in **Sub-Clause 8.2 [Time for Completion]** and except as allowed in subparagraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28

days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

**10.2
Taking Over of Parts of
the Works**

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works. The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued A Taking –Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earlier opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to **Sub-Clause 20.1** [*Contractor's Claims*] to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the

case may be) as a whole. The Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determinations]** to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under **Sub-Clause 8.7 [Delay Damaged]**, and shall not affect the maximum amount of these damages.

**10.3
Interference with Tests
on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Test on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and /or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1 [Contractor's Claims]** to:

- (a) an extension of time for any such delay, if completion is our will be delayed, under **Sub-Clause 8.4 [Extension of Time for Completion]**, and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determinations]** to agree or determine these matters.

**10.4
Surface Requiring
Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11. Defects Liability

**11.1
Completion of
Outstanding Work and
Remedying Defects**

In order that the Works are Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

**11.2
Cost of Remedying
Defects**

All work referred to in sub-paragraph (b) of **Sub - Clause 11.1** [*Completion of Outstanding Work and Remedying Defects*] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

any design for which the Contractor is responsible,

Plant, Materials or workmanship not being in accordance with the Contract, or

Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and **Sub-Clause 13.3** [Variation Procedure] shall apply.

**11.3
Extension of Defects
Notification Period**

The Employer shall be entitled subject to **Sub-Clause 2.5** [*Employer Claims*] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and /or Materials was suspended under **Sub-Clause 8.8** [*Suspension of Work*] or **Sub-Clause 16.1** [*Contractor's Entitlement to Suspend Work*], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and /or Materials would otherwise have expired.

**11.4
Failure to Remedy
Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied.

The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under **Sub-Clause 11.2** [*Cost of Remedying Defects*], the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no or responsibility for this work: and the Contractor shall subject to **Sub-Clause 2.5** [*Employer's Claims*] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage,
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with **Sub-Clause 3.5** [Determinations]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing cost s and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**11.5
Removal of Defective
Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

**11.6
Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under **Sub-Clause 11.2** [*Cost of Remedying Defects*], for the cost of the remedial work.

**11.7
Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

**11.8
Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under **Sub-Clause 11.2** [Cost of Remedying Defects], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with **Sub-Clause 3.5** [Determinations] and shall be included in the Contract Price.

**11.9
Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

**11.10
Unfulfilled Obligations**

After the Performance Certificate has been issued, each Party shall remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

**11.11
Clearance of Site**

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items.

The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

**12.
Measurement and
Evaluation**

**12.1
Works to be Measured**

The Works shall be measured, and valued for payment, in accordance with this Clause.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- (b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

**12.2
Method of Measurement**

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

**12.3
Evaluation**

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determinations]** to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above **Sub-Clauses 12.1** and **12.2** and the

appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of work, if:

- (a)
 - (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,
 - (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,
 - (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
 - (iv) this item is not specified in the Contract as a “fixed rate item”; or
- (b)
 - (i) the work is instructed under **Clause 13** [*Variations and Adjustments*],
 - (ii) no rate or price is specified in the Contract for this item, and
 - (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

12.4
Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount,
- (b) the omissions of the work will result (or has resulted) in this sum not forming part of the Contract Price,
- (c) this cost is not deemed to be included in the evaluation of any substituted work.

Then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine this cost,

which shall be included in the Contract Price.

13.
Variations and
Adjustments

13.1
Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required for the Variation. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction

Each Valuation may include:

- (a) changes to be quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2
Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in **Sub-Clause 13.3** [*Variation Procedure*].

If a proposal, which is approved by the Employer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties.

- (a) the Contractor shall design this part,
- (b) sub-paragraph (a) to (d) of **Sub-Clause 4.1** [*Contractor's General Obligations*] shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) such reduction in contract value, resulting from the change, excluding adjustments under **Sub-Clause 13.7** [*Adjustments for Changes in Legislation*] and **Sub-Clause 13.8** [*Adjustments for Changes in Cost*], and
 - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall be a fee.

13.3
Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to **Sub-Clause 8.3** [*Programme*] and to the Time for Completion, and

- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under **Sub-Clause 13.2** [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with **Clause 12** [*Measurement and Evaluation*], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4
Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work and to proportions of various currencies specified for payment of the Contract Price.

13.5
Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct.

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under **Sub-Clause 13.3** [*Variation Procedure*]; and /or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in **Clause 5** [*Nominated Subcontractors*]) or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the

percentage rate stated in the Appendix to Tender shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6
Dayworks

For work of a minor or incidental nature, the Employer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under **Sub-Clause 14.3** [*Application for Interim Payment Certificate*].

13.7
Adjustments for
Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

**13.8
Adjustments for
Changes in Cost**

In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data included in the Appendix to Tender. If there is no such table of adjustment data, the Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots\dots\dots$$

Where:

“**P_n**” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “**n**”, this period being a month unless otherwise stated in the Appendix to Tender,

“**a**” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments,

“**b**”, “**c**”, “**d**”, ...are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials,

“**L_n**”, “**E_n**”, “**M_n**”, ... are the base cost indices or reference prices, for period “**n**”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which

the particular Payment Certificate relates), and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” (stated in the table) is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under **Sub-Clause 12.3 [Evaluation]** and be subject to adjustments in accordance with the Contract,
- (b) the Contractor shall pay all taxes, duties and fees

required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in **Sub-Clause 13.7** [*Adjustments for Changes in Legislation*],

- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - (i) of the Works which the Contractor is required to execute, or
 - (ii) for the purposes of **Clause 12** [*Measurement and Evaluation*], and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

14.2
Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of installments (if more than one), and the applicable currencies and proportions, shall be as stated in the Appendix to Tender.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Appendix to Tender, the Sub-Clause shall not apply.

The Engineer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement (under **Sub-Clause 14.3** [*Application for Interim Payment Certificate*]) and after the Employer receives (i) the Performance Security in accordance with **Sub-Clause 4.2** [*Performance Security*] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from with a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance

payment has not been repaid by the date **28 days** prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

The advance payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Appendix to Tender.

- (a) deductions shall commence in the Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds ten per cent (10%) of the Accepted Contract Amount less Provisional Sums, and
- (b) deductions shall be made at the amortization rate of one quarter (25%) of the amount of each Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until time as the advance payment has been repaid.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under **Clause 15** [*Termination by Employer*], **Clause 16** [*Suspension and Termination by Contractor*] or **Clause 19** [*Force Majeure*] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

14.3
Application for Interim
Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to when the Contract considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with **Sub-Clause 4.21** [*Progress Report*].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with **Sub-Clause 13.7** [*Adjustments for Changes in*

Legislation] and **Sub-Clause 13.8** *[Adjustments for Changes in Cost]*;

- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Appendix to Tender;
- (d) any amounts to be added and deducted for the advance payment and repayments in accordance with **Sub-Clause 14.2** *[Advance Payment]*;
- (e) any amounts to be added and deducted for Plant and Materials in accordance with **Sub-Clause 14.5** *[Plant and Materials intended for the Works]*;
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under **Clause 20** *[Claims, Disputes and Arbitration]*; and
- (g) the deduction of amounts certified in all previous Payment Certificate.

14.4
Schedule of Payments

If the Contract includes a schedule of payments specifying the installments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payment shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 *[Application for Interim Payment Certificates]*,
- (b) Sub-Clause 14.5 *[Plant and Materials intended for the Works]* shall not apply; and
- (c) if these installments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 *[Determinations]* to agree or determine revised installments, which shall take account of the extent to which progress is less than that on which the installments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the

Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

**14.5
Plant and Materials
intended for the Works**

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of **Sub-Clause 14.3**, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of **Sub-Clause 14.3** [*Application for Interim Payment Certificates*].

If the lists referred to in sub-paragraphs (b) (i) or (c) (i) below are not included in the Appendix to Tender, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

- (a) the Contractor has:
 - (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence.
and either:
- (b) then relevant Plant and Materials:
 - (i) are those listed in the Appendix to Tender for payment when shipped,
 - (ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and
 - (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in **Sub-Clause 14.2**

[Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;
or

- (c) the relevant Plant and Materials
 - (i) are those listed in the Appendix to Tender for payment when delivered to the Site, and
 - (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value of included under sub-paragraph (a) of **Sub-Clause 14.3** [*Application for Interim Payment Certificates*]. At that time, the Payment Certificates shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6
Issue of Interim Payment
Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with supporting particulars.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Appendix to Tender. In this event, the Engineer shall give notice to the contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of

rectification or replacement may be withheld until rectification or replacement has been completed, and /or

- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Employer may in any Payment Certificates make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

**14.7
Payment**

The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within **42 days** after issuing the Letter of Acceptance or within **21 days** after receiving the documents in accordance with **Sub-Clause 4.2** [Performance Security] and **Sub-Clause 14.2** [*Advance Payment*], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

**14.8
Delayed Payment**

If the Contractor does not receive payment in accordance with **Sub-Clause 14.7** [*Payment*], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in **Sub-Clause 14.7** [*Payment*], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

**14.9
Payment of Retention
Money**

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be two-fifths (40%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be two-fifths (40% of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price. However, if any work remains to be executed under **Clause 11 [Defects Liability]**, the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these remains to be executed under **Clause 11 [Defects Liability]**, the under **Sub-Clause 13.7 [Adjustments for Changes in Legislation]** and **Sub-Clause 13.8 [Adjustments for Changes in Cost]**.

**14.10
Statement at Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with **Sub-Clause 14.3 [Application for Interim Payment Certificates]**, showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract, Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with **Sub-Clause 14.6** [*Issue of Interim Payment Certificates*].

**14.11
Application for Final
Payment Certificate**

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer.

- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the “Final Statement”.

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) and Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under **Sub-Clause 20.4** [*Obtaining Dispute Adjudication Board’s Decision*] or **Sub-Clause 20.5** [*Amicable Settlement*], the Contractor shall then prepare and submit to the Employer (with a copy to the Employer) a Final Statement.

**14.12
Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

**14.13
Issue of Final Payment
Certificate**

Within **28 days** after receiving the Final Statement and written discharge in accordance with **Sub-Clause 14.11** [*Application for Final Payment Certificate*] and **Sub-Clause 14.12** [*Discharge*], the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state:

- (a) the amount which is finally due, and

- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with **Sub-Clause 14.11** [*Application for Final Payment Certificate*] and **Sub-Clause 14.12** [*Discharge*], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14
Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15
Currencies of Payment

The Contract Price shall be paid in the currency or currencies name in the Appendix to Tender. Unless otherwise stated in the Particular Conditions, if more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Appendix to Tender, except as otherwise agreed by both Parties.
 - (ii) payments and deduction under **Sub-Clause 13.5** [*Provisional sums*] and **Sub-Clause 13.7** [*Adjustments for Changes in Legislation*] shall be made in the applicable currencies and proportion; and
 - (iii) other payments and deductions under subparagraphs (a) to (b) of **Sub-Clause 14.3**

[Application for Interim Payment certificates]
shall be made in the currencies and proportions
specified in **sub-paragraph (a)(i)** above;

- (b) Payment of the damages specified in the **Appendix to Tender** Shall be made in the currencies and proportions specified in the **Appendix to Tender**;
- (c) Other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) If any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) If no rates of exchange are stated in the Appendix to Tender, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

15.1 Notice to Contract

If the Contractor fails to carry out Any obligation under the Contract, The Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with **Sub-Clause 4.2** *[Performance Security]* or with a notice under **Sub-Clause 15.1** *[Notice to Correct]*,
- (b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract.
- (c) Without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with **Clause 8** *[Commencement, Delays and Suspension]*, or

- (ii) to comply with a notice issued under **Sub-Clause 7.5 [Rejection]** or **Sub-Clause 7.6 [Remedial Work]**, within **28 days** after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavor to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving **14 days'** notice to the Contractor, terminate the Contract and expel the Contractor from the terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractors' Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After terminate, the Employer may complete the Works and /or arrange for any other entities may then use any Goods, Contractor's and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be solid by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

**15.3
Valuation at Date of
Termination**

As soon as practicable after a notice of termination under **Sub-Clause 15.2 [Termination by Employer]** has taken effect, the Engineer shall proceed in accordance with **Sub-Clause 3.5 [Determination]** to agree or determine the value of the works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

**15.4
Payment after
Termination**

After a notice of termination under **Sub-Clause 15.2 [Termination by Employer]** The Employer may:

- (a) proceed in accordance with **Sub-Clause 2.5 [Employer's Claims]**,
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 *[Valuation at Date of Termination]*. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

**15.5
Employer's Entitlement
to Termination**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security.

The Employer shall not terminate the Contract under this Sub-Clause in order to execute the works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with **Sub-Clause 16.3** [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with **Sub-Clause 19.6** [*Optional Termination, Payment and Release*].

16.
Suspension and
Termination by
Contractor

16.1
Contractor's Entitlement
to Suspend Works

If the Engineer fails to certify in accordance with **Sub-Clause 14.6** [*Issue of Interim Payment Certificates*] or the Employer fails to comply with **Sub-Clause 2.4** [*Employer's Financial Arrangements*] or **Sub-Clause 14.7** [*Payment*], the Contractor may, after giving not less than **21 days'** notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under **Sub-Clause 14.8** [*Delayed Payment*] and to termination under **Sub-clause 16.2** [*Termination by Contractor*].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and /or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1** [*Contractor's Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed under **Sub-Clause 8.4** [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in

accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine these matters.

16.2
Termination by
Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under **Sub-Clause 16.1** [*Contractor's Entitlement to Suspend Work*] in respect of a failure to comply with **Sub-Clause 2.4** [*Employer's Financial Arrangements*],
- (b) the Engineer fails, within **56 days** after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under Interim Payment Certificate within **42 days** after the expiry of the time stated in **Sub-Clause 14.7** [Payment] within which payment is to be made (except for deductions in accordance with **Sub-Clause 2.5** [Employer's Claims],
- (d) the Employer substantially fails to perform his obligations under the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or **Sub-Clause 1.7** [Assignment].
- (f) prolonged suspension affects the whole of the Works as described in **Sub-Clause 8.11** [Prolonged Suspension],
or
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Contractor may, upon giving **14 days'** notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may be notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation Work and Contractor's After a notice of termination under Sub-Clause 15.5 [*Employer's Removal of Entitlement to Termination*], **Sub-Clause 16.2** [*Termination by Contractor*] or **Sub-Clause 19.6** [*Optional Termination, Payment and Release*] has taken effect, the Contractor shall promptly.

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination After a notice of termination under **Sub-Clause 16.2** [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with **Sub-Clause 19.6** [*Optional Termination, Payment and Release*], and
- (c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of

the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, and

- (ii) is attributable to any negligence, willful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the

Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of **Sub-Clause 18.3** [*Insurance Against Injury to Persons and Damage to Property*].

17.2
Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking Over Certificate is issued (or is deemed to be issued under **Sub-Clause 10.1** [*Taking-Over of Works and Sections*]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall the pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in **Sub-Clause 17.3** [*Employer's Risks*], The Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over

Certificate has been issued and which arose from a previous event for which the Contractor was liable.

**17.3
Employer's Risks**

The risks referred to in **Sub-Clause 17.4** below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) Rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) Riot, commotion or disorder within the Country by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (d) Munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) Use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,
- (g) Design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and
- (h) Any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

**17.4
Consequences of
Employer's Risk**

If and to the extent that any of the risks listed in **Sub-Clause 17.3** above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and /or incurs Cost from rectifying this loss or damage the Contractor shall give a further notice to the Engineer and shall be entitled subject to **Sub-Clause 20.1 [Contractor's Claims]** to:

- (a) an extension of time for any such delay, if completion is or will be delayed under **Sub-Clause 8.4 [Extension**

- of Time for Completion*], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of **Sub-Clause 17.3** [*Employer's Risks*], reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine these matters.

**17.5
Intellectual and
Industrial Property
Rights**

In this Sub-Clause, “infringement” means and infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within **28 days** of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Contract, or
- (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission

which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6
Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under **Sub-Clause 16.4** [*Payment on Termination*] and **Sub-Clause 17.1** [*Indemnities*].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under **Sub-Clause 4.19** [*Electricity, Water and Gas*], **Sub-Clause 4.20** [*Employer's Equipment and Free-Issue Material*], **Sub-Clause 17.1** [*Indemnities*] and **Sub-Clause 17.5** [*Intellectual and Industrial Property Rights*], shall not exceed the sum stated in the Particular Conditions of (if a sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

18
Insurance

18.1
General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Whenever the Contractor is the insuring Party, each insurance shall be effected with insures and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Whenever the Employer is the insuring Party, each insurance shall be effected with insures and in terms consistent with the details annexed to the Particular Conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer

or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insureds to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Appendix to Tender (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in **Sub-Clause 18.2** [insurance for Works and Contractor's Equipment] and **Sub-Clause 18.3** [*Insurance against injury to Persons and Damage to Property*].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of the insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or

not recovered from the insurers shall be borne by the Contractor and /or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to **Sub-Clause 2.5** [*Employer's Claims*] or **Sub-Clause 20.1** [*Contractor's Claims*], as applicable.

18.2
Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under subparagraph (a) of **Sub-Clause 18.1** [*General Requirements for Insurances*], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under **Clause 11** [*Defects Liability*]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in **Sub-Clause 17.3** [*Employer's Risks*],

- (d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraph (c), (g) and (h) of **Sub-Clause 17.3** [*Employer's Risks*], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Appendix to Tender (if a amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country, subject to **Sub-Clause 14.5** [*Plant and Materials interned for the Works*].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to **Sub-Clause 2.5** [*Employer's Claims*] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under **Sub-Clause 18.1** [*General Requirements for Insurances*].

**18.3
Insurance against Injury
to Persons and Damage
to Property**

The insuring Party shall insure against each Party's liability for any loss, property damage, death or bodily injury which may occur to any physical property (except things insured under **Sub-Clause 18.2** [Insurance for Works and Contractor's Equipment) or to any person (except persons insured under **Sub-Clause 18.4** [*Insurance for Contractor's Personnel*], which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the **Appendix to Tender**, with no limit on the number of occurrences. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause.

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under **Sub-Clause 18.2**) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in **Sub-Clause 17.3** [*Employer's Risks*], except to the extent that cover is available at commercially reasonable terms.

**18.4
Insurance for
Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The Employer and the Engineer shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or

neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contract and Subcontractors,
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within **14 days** after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

**19.3
Duty to Minimize Delay**

Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

**19.4
Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligation under the Contract by Force Majeure of which notice has been given under **Sub-Clause 19.2** [*Notice of Force Majeure*], and suffers delay and /or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to **Sub-Clause 20.1** [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Engineer shall proceed in accordance with **Sub-Clause 3.5** [*Determinations*] to agree or determine these matters.

**19.5
Force Majeure Affecting Subcontractor**

If the Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

**19.6
Optional Termination**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under **Sub-Clause 19.2** [Notice of Force Majeure], or of multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of

the Contract. In this event, the termination shall take effect **7 days** after the notice is given, and the Contractor shall proceed in accordance with **Sub-Clause 16.3** [Cessation of Work and Removal of Contractor's Equipment].

Payment and Release

Upon such termination, the Engineer shall determine the Value of work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completion the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractors' staff and labour employed wholly in connection with the Works at the date of termination.

**19.7
Release from
Performance Under the
Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstances:

the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

the sum payable by the Employer to the Contractor shall be the same as would have been payable under **Sub-Clause 19.6** [Optional Termination, Payment and Release] if the Contract had been terminated under **Sub-Clause 19.6**.

**20.
Claims, Disputes and
Arbitration**

**20.1
Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and /or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than **28 days** after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of **28 days**, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within **42 days** after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within **28 days**

after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particular, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

**20.2
Appointment of the
Dispute Adjudication
Board**

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date stated in the Appendix to Tender.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member (“adjudicator”) or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DBA for it to give its opinion. Neither Party shall consult the DAB on any matter without the agreement of the other Party.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace (or to be available to replace) any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declaims to act or is unable to act as a result of death, disability, resignation or termination of appointment.

If any of these circumstances occurs and no such replacement is available, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the discharge referred to in **Sub-Clause 14.12 [Discharge]** shall have become effective.

20.3
Failure to Agree Dispute
Adjudication Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DAB by the date stated in the first paragraph of Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*],
- (b) either Party fails to nominate a member (for approval

by the other Party) of a DAB of three persons by such date,

- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official named in the Appendix to Tender shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be reasonable for paying one-half of the remuneration of the appointing entity or official.

**20.4
Obtaining Dispute
Adjudication Board's
Decision**

If a dispute (or any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contractor the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all such additional information, further access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DAB and approved by the Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB's decision, then either

Party may, within **28 days** after receiving the decision, given notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of **84 days** (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in **Sub-Clause 20.7** [Failure to Comply with Dispute Adjudication Board's Decision] and **Sub-Clause 20.8** [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within **28 days** after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5
Amicable Settlement

Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6
Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
- (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- (c) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) shall have full power to open up, review and revise any certificate determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on

any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7
Failure to Comply with
Dispute Adjudication
Board's Decision

In the event that:

- (a) neither Party has given notice of dissatisfaction within the period stated in **Sub-Clause 20.4** [*Obtaining Dispute Adjudication Board's Decision*],
- (b) the DAB's related decision (if any) has become final and binding, and
- (c) a Party fails to comply with this decision,

then the other Party may, without prejudice to any other right it may have, refer the failure itself to arbitration under **Sub-Clause 20.6** [Arbitration]. **Sub-Clause 20.4** [*Obtaining Dispute Adjudication Board's Decision*] and **Sub-Clause 20.5** [*Amicable Settlement*] shall not apply to this reference.

20.8
Expiry of Dispute
Adjudication Board's
Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contractor the execution of the Works and there is no DAB in place, whether by reason or the expiry of the DAB's appointment or otherwise.

- (a) **Sub-Clause 20.4** [*Obtaining Dispute Adjudication Board's Decision*] and **Sub-Clause 20.5** [*Amicable Settlement*] shall not apply, and
- (b) the dispute may be referred directly to arbitration under **Sub-Clause 20.6** [Arbitration].

SECTION VI. SPECIAL CONDITIONS OF CONTRACT

Section VI. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

A. General	
GCC 1.1.2.2	The Employer is: [Insert complete name]
GCC 1.1.2.11	The Funding Agency is: [Insert complete name]
GCC 1.1.2.4	The Engineer is: [Insert name, address, telephone, fax numbers and e-mail] Insert complete name]
GCC 1.1.3.2	The Start Date shall be: [
GCC 1.1.3.3	The Intended Completion Date for the whole of the Works shall be [Insert number of days deemed appropriate here]
GCC 1.1.6.7	The Site is located at [Insert address of Site] and is defined in drawings No. [Insert numbers]
GCC 1.1.5.8	The Works consist of: [insert brief summary, including relationship to other contracts under the Project]
GCC 1.1.5.6	Sectional Completions [Insert details of sections here]
GCC 1.3	The Employer's address for the purpose of communications shall be: [state full address, telephone, fax and e-mail] The Contractor's address for the purpose of communications shall be: [state full address, telephone, fax and e-mail]
GCC 1.4	The governing law is that of the Republic of Ghana The ruling language shall be English Language This Contract shall be executed in the [insert language for communications <u>only</u> if different from the ruling language] language.
GCC 1.5	The following documents also form an integral part of this Contract: [Insert detailed list additional documents forming part of the Contract]
GCC 1.6	The Parties [Insert "shall" or "shall not"] enter into contract within 28 days after the Contractor receives the Letter of Acceptance. [If not, provide details as to the alternative deadline]
GCC 1.14	The individuals of firms in a joint venture, consortium or association [insert "shall be" or "shall not be"] jointly and severally liable
GCC 2.1	The Site Possession Date(s) shall be: [insert location(s) and date(s), as relevant and applicable]
GCC 2.2	Permits, approvals and / or licenses, or public service undertakings to be acquired by the Employer: [Insert full details]
GCC 2.2	Permits, approvals and / or licenses, or public service undertakings to be acquired by the Contractor: [Insert full details]
GCC	Schedule of Other Contractors: [insert detailed schedule of other Contractors, if appropriate]
GCC 18. 2, 18.3, 18.4	The minimum insurance amounts and deductibles shall be: (a) for the Works, Plant and Materials: [insert amounts] (b) for loss or damage to Equipment: [insert amounts] (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: [insert amounts] (d) for personal injury or death: i. of the Contractor's employees: [insert amount]

	ii. of other people: [insert amount]
GCC A6	Fees and types of reimbursable expenses to be paid to the Adjudicator: [insert hourly fees and reimbursable expenses] .
GCC 20.2	Appointing Authority for the Adjudicator: Ghana Institution of Surveyors
GCC 20.6	<p>i) <u>For small contracts / Domestic Contractors</u> The institution whose arbitration procedures shall be used is: [Stipulate institution whose Rules of Arbitration shall apply]</p> <p>ii) <u>For Larger Contracts / Foreign Contractors</u> [It is recommended that the arbitration procedures of an international institution be utilized. It is recommended to select one body among those listed below (or designate an institution); and then insert the corresponding wording] “United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules: Any dispute, controversy, or claim arising out of or relating to this Contract, or breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force” OR “Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC): All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.” OR “Rules of the [insert designated institution] of International Arbitration: Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination shall be referred to and finally resolved by arbitration under the [insert name of designated institution] of International Arbitration which rules are deemed to be incorporated by reference to this clause.” The place of arbitration shall be: [insert city and country; NB.: for international arbitration, specify neutral location]</p>
B. Time Control	
GCC 8.3	The Contractor shall submit for approval a Programme for the Works within [Insert number] days from the date of the Letter of Acceptance.
	The period between Program updates is [insert number] days. The amount to be withheld for late submission of an updated Program is: [Insert amount]
	The Contractor shall warn the Project Manager copied to the Employer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of work, increase the Contract Price, or delay the execution of the Works.
C. Quality Control	
GCC 4.2	The Performance Security shall be: [insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the Employer] in the form of:
GCC 8.7	The liquidated damages for the whole of the Works are: [insert percentage] of the final Contract Price, per day.
	The maximum amount of liquidated damages for the whole of the Works is: [insert percentage] of the final Contract Price.
GCC 11	The Defects Liability Period is: [Insert number] days. <i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i>
D. Cost Control	

GCC 13.4	The currency of the Employer’s country is: GHS
GCC 13.8	<p>This Contract [Insert “shall” or “shall not”] be subject to price adjustment in accordance with GCC Clause 13. [Price adjustment is mandatory for contracts for which the time completion exceeds eighteen (18) months] The coefficients for adjustment of prices are:</p> <p>(a) For currency of [Insert currency]</p> <ol style="list-style-type: none"> i. [Insert percentage] percent nonadjustable element (coefficient A). ii. [Insert percentage] percent adjustable element (coefficient B). <p>(b) For [Insert name of international currency]:</p> <ol style="list-style-type: none"> i. [Insert percentage] percent nonadjustable element (coefficient A). ii. [Insert percentage] percent adjustable element (coefficient B). <p>The Index I for local currency shall be [Insert index] The Index I for the specified international currency shall be [Insert index]</p> <p>[These proxy indices shall be proposed by the Contractor, subject to acceptance by the Employer. The Ministry of Roads and Highways and Building and Roads Research Institute/Ghana Institution of Surveyors (BRRI/GhIS) are the legitimate and acceptable sources of indices.]</p>
GCC 14.2	Total Advance Payments shall be: [insert amount(s) and currency] and shall be paid to the Contractor no later than [insert date(s)]
GCC 14.3	The proportion of payments retained is: [Insert percentage] [The retention amount is usually to be kept close to 5 percent and shall in no case exceed 10 percent]
E. Finishing the Contract	
GCC 4.1d	The date by which “as built” Drawings are required is: [insert date]
GCC 4.1d	The date by which operating and maintenance manuals are required is: [insert date]
GCC 8.7	The maximum number of days is: [insert number; consistent with GCC Clause 8.7 (Liquidated Damages)]
GCC 9.4	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, shall be: [insert percentage]
GCC 10.1	The Employer shall take over the site and the Works immediately after the Project Manager’s issues a Certificate of Completion.

Section VII. Security Forms

Form of Tender Security (Bank Guarantee)

*[If required, the **bank** shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets.]*

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ *[Name and Address of the Employer]*

Date: _____

TENDER GUARANTEE No.: _____

We have been informed that *[name of the Tenderer]* (hereinafter called the "Tenderer") has submitted to you its Tender dated (hereinafter called the "TENDER") for the execution of *[name of Contract]* under Invitation for Tender No. *[IFT number]*.

Furthermore, we understand that, according to your conditions, TENDER must be supported by a Tender guarantee.

At the request of the Tenderer, we *[name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[amount in figures]* (*[amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the TENDER conditions, because the Tenderer:

- (a) has withdrawn its TENDER during the period of TENDER validity specified by the Tender in its TENDER; or
- (b) having been notified of the acceptance of its TENDER by you during the period of TENDER validity, (i) has failed or refused to execute the Contract or (ii) has failed or refused to furnish the performance security, in accordance with the Instructions to Tender.

This guarantee will expire: (a) if the Tender is the successful Tender, upon our receipt of copies of the Contract signed by the Tenderer and the performance security issued to you upon the instruction of the Tenderer; or (b) if the Tender is not the successful Tender, upon the earlier of (i) our receipt of a copy of your notification to the Tenderer of the name of the successful Tender; or (ii) twenty-eight days after the expiration of the Tenderer's TENDER.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[signature(s)]

Tender Securing Declaration

[The Tenderer shall fill in this Form in accordance with the instructions indicated .]

Date: *[insert date (as day, month and year) of Tender Submission]*
ICT No.: *[insert number of Tendering process]*
Alternative No.: *[insert identification No if this is a Tender for an alternative]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, tender must be supported by a Tender -Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for Tendering in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:
 - (a) have withdrawn our Tender during the period of tender validity specified by us in the Tendering Data Sheet; or
 - (b) having been notified of the acceptance of our Tender by the Purchaser during the period of tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.
3. We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender
4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the Tender. If the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

Name: *[insert complete name of person signing the Tender Securing Declaration]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Tenderer]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Performance Bank Guarantee
(Unconditional)

*[The **bank of the successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if the Employer requires this type of security.]*

[insert bank's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of the Employer]*

Date: *[insert date]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert name of Contractor]* (hereinafter called the "Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called the "Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than twenty-eight days from the date of issuance of the Certificate of Completion, calculated based on a copy of such Certificate which shall be provided to us, or on the *[insert number day of insert month, insert year]*, whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signature(s) of an authorized representative(s) of the bank]

Bank Guarantee for Advance Payment

The **bank of the successful Tenderer** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets, if an Advance Payment is to be provided under the Contract.

[insert bank's name, and address of issuing branch or office]

Beneficiary: *[insert name and address of the Employer]*

Date: *[insert date]*

ADVANCE PAYMENT GUARANTEE No.: *[insert number]*

We have been informed that *[insert name of Contractor]* (hereinafter called the "Contractor") has entered into Contract No. *[insert reference number of the Contract]* dated *[insert date]* with you, for the execution of *[insert name of Contract and brief description of Works]* (hereinafter called the "Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment is to be made against an advance payment guarantee in the sum or sums indicated below.

At the request of the Contractor, we *[insert name of bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Contractor on its account number *[insert account number]* at *[insert name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the Interim Payment Certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the *[insert number]* day of *[insert month]*, *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[insert signature(s) of authorized representative(s) of bank]

PART III
WORKS REQUIREMENTS

SECTION VIII
BILL OF QUANTITIES

Bills of Quantities

The Bills of Quantities are provided in a separate volume which forms part of these Tender Documents.

SECTION IX
SPECIFICATIONS AND PERFORMANCE REQUIREMENTS

Specifications

The Specifications are provided in a separate volume which forms part of these Tender Documents.

**SECTION X
DRAWINGS**

Drawings

The Drawings are provided in a separate volume which forms part of these Tender Documents.
