



Republic of Ghana

Public Procurement Authority

**STANDARD TENDER DOCUMENT  
FOR  
FRAMEWORK AGREEMENT (WORKS)**

**National Competitive Tender**

**TRIAL EDITION**

**20<sup>th</sup> March 2020**



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# Standard Tender Document for Framework Agreement (Works)

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### **PART 1 PRIMARY PROCURMENT PROCEDURES**

#### **Introduction**

#### **Section I Invitation for Tenders (IFT)**

The Invitation for Tenders provides information that enables potential Tenderers to decide whether to participate in the Tender or not. The information contained in the Invitation for Tenders must conform to the Tender documents and in particular to the relevant information in the Tender Data Sheet.

#### **Section II Instructions to Tenderers (ITT)**

This Section provides information to help Tenderers prepare their Tenders. It contains details on the submission, opening, and evaluation of Tenders received during the Primary Procurement process. It also provides an overview of the Secondary Procurement process for the award of a Call-off Contract(s) once the Framework Agreement(s) is concluded. This is more fully described in the Framework Agreement. This Section is to be used without modification.

#### **Tender Data Sheet (TDS)**

The Tender Data Sheet includes provisions that are specific to each Primary Procurement process and that supplement the Instructions to Tenderers.

#### **Section III Evaluation and Qualification Criteria**

This Section specifies the criteria for the evaluation of Tenders and the qualification of Tenderers, including the methodology, which results in the determination of which Tenderers will be invited to conclude a Framework Agreement(s).

#### **Section IV Tender Forms**

This Section includes the forms for Tender submission, Letter of Tender, Price Schedules, Tender Securing Declaration, Qualification Information, to be completed and submitted by the Tenderer as part of its Tender.



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**Section V Bills of Quantities**

This Section includes the description of items comprising the works, and an estimate of the volume/quantity of each item, Delivery/construction and Completion Schedules.

**Section VI Technical Specifications**

This Section includes references to the applicable Standard Technical Specifications and the Drawings that describe the Works to be procured.

**Section VII Framework Agreement Forms**

This Section includes the forms for the Notification to Conclude a Framework Agreement and the Framework Agreement

**Section VIII Framework Agreement General Provisions**

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This Section sets out the Specific Provisions of the Framework Agreement.

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# Introduction

This Standard Tender Document (STD) is to be used for establishing a Framework Agreement for the procurement of Works using National Competitive Tendering Procedures. It is intended to be used for Procurement of Medium Works where the proposed works are moderately large value (i.e. more than GHS 200,000.00 up to GHS 15,000,000.00)<sup>1</sup>.

The subsequent procurement of the Works is undertaken through a Secondary Procurement process and the award of a Call-off Contract.

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

To obtain further information on the use of this STD, contact:

Chief Executive Officer  
Public Procurement Authority  
Accra, Ghana

<http://www.ppaghana.gov.gh>





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# **Invitation for Tenders Framework Agreement(s) Works**

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**Section I – Invitation for Tenders  
Framework Agreement(s) for Works  
(Primary Procurement)**

**Procurement of:**  
*[insert identification of the Works]*

**Procurement Entity/Lead Entity/Procurement Agent:** *[insert name of entity doing this Primary Procurement]*

**Framework Agreement Title:** *[insert short title for the FWA]*

**Package No.:** *[as per the Procurement Plan]*

**IFT Issued on:** *[insert date when IFT was issued]*

- 1. The \_\_\_\_\_ *[insert name of Procurement Entity (ies)]* intends to apply part of its/their budgetary allocation to fund eligible payments under Call-off Contracts that may be awarded under the *[Framework Agreement (FWA)/Framework Agreements (FWAs)]* concluded through this IFT Primary Procurement process.

**BRIEF DESCRIPTION OF WORKS:** \_\_\_\_\_  
Scope

**Permits**

Work will be undertaken under the following permits which will be provided and paid for by the Procurement Entity or the Contractor as designated below

Building Permit

Environmental permit

.....

.....

- 2. The Procurement Entity/Lead Entity/Procurement Agent is undertaking the Primary Procurement with a view to concluding *[a Framework Agreement / Framework Agreements.]* The Procurement Entity/Lead Entity/Procurement Agent *[select the appropriate option: is the sole Entity under the Framework Agreement[s]. / is an Entity acting on behalf of [another/a group of] Entity[ies] / is a Procurement Agent (but not itself a Procurement Entity) acting on behalf of [a/a group of] Procurement Entity[ies]].* The Procurement Entity/Lead

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Entity/Procurement Agent now invites sealed Tenders from eligible Tenderers for *[insert brief description of Works required, including estimated quantities over the Term of the Framework Agreement(s), indicative location(s), indicative completion schedule(s) etc. if known]*.

3. The *[Framework Agreement]* to be concluded will be *[choose one of the following two options: “Single-User.” OR “Multi-User.”]* *[For Single-User FWA add the following: “The Single-User entitled to procure under the [Framework Agreement] is [insert legal name of the Entity.]”]* *[For Multi-User FWAs add the following: “A list of the users (participating Procurement Entities) entitled to procure under the [Framework Agreement] is provided in the Tender document.”]*
4. The *[Framework Agreement]* to be concluded will be *[choose one the following two options: “Single-Contractor.” OR “Multi-Contractor.”]*.
5. The selection of an FWA Contractor to be awarded a Call-off Contract will be done through a Secondary Procurement process as defined in the Framework Agreement. However, the conclusion of a Framework Agreement shall not impose any obligation on the Procurement Entity to procure Works under a Call-off Contract. The conclusion of a Framework Agreement does not guarantee that an FWA Contractor will be awarded a Call-off Contract. Tendering will be conducted through the National Competitive Tendering procedures specified in the Public Procurement Act, 2003 (Act 663) as amended.
6. Tenderers may submit Tenders for one or more *[choose one of the following: “items” OR “lots”]*.
7. The *[Framework Agreement(s)]* shall be concluded for a Term of *[insert the number of years, note: The Term should not exceed 3 years]* from the commencement date stated in the Framework Agreement.
8. The Primary Procurement shall establish a Closed Framework Agreement(s). This means no new firm (s) may conclude Framework Agreement during the Term of Framework Agreement
9. Interested eligible Tenderers may obtain further information from *[insert name of Procurement Entity/Lead Entity/Procurement Agent, insert name and e-mail of officer in charge]* and inspect the Tender document during office hours *[insert office hours if applicable i.e. 0900 to 1700 hours]* at the address given below *[state address at the end of this IFT]*. The Eligibility requirements include:
  - *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 to Commence Business*
  - *Valid Registration Certificate from PPA*

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10. The Tender document may be procured by interested Tenderers upon the submission of a written application to the address below and upon payment of a nonrefundable fee<sup>1</sup> of *[insert amount and currency]*. The method of payment will be *[insert method of payment]*.<sup>2</sup> The document will be sent by *[insert delivery procedure]*.
  11. Tenders must be delivered to the address below *[state address]*<sup>3</sup> on or before *[insert time and date]*. Electronic Tendering [*“will” OR “will not”*] be permitted. Late Tenders will be rejected. Tenders will be publicly opened in the presence of the Tenderers’ designated representatives and anyone who chooses to attend, at the address below on *[insert time and date]*.
  12. The address(es) referred to above is (are): *[insert detailed address(es)]*

*[Insert name of Procurement Entity/Lead Entity/Procurement Agent]*

*[Insert name of officer and title]*

*[Insert postal address and/or street address, Ghana Post GPS code, city and country]*

*[Insert telephone number, country and city codes]*

*[Insert email address]*

*[Insert website address]*

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<sup>3</sup> *Substitute the address for Tender submission if it is different from address for inquiry and issuance of Invitation for Tenders document.*

# Section II - Instructions to Tenderers (ITT)

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## Section II. Instructions to Tenderers

<b>A. General</b>	
<b>1 Scope of Tender</b>	<p>1.1 In connection with the Invitation for Tenders (IFT) Framework Agreement(s) Works, specified <b>in the Tender Data Sheet (TDS)</b>, the Procurement Entity, as specified <b>in the TDS</b>, issues this Invitation for Tenders (IFT) document as part of the Primary Procurement process for Works, and may lead to Framework Agreement(s) being concluded with the successful Tenderer(s). The name and identification of this IFT are specified <b>in the TDS</b>.</p> <p>1.2 Throughout this Tender document:</p> <ul style="list-style-type: none"> <li>(a) <b>“in writing”</b> means communicated in written form (e.g. by mail, e-mail, including if specified <b>in the TDS</b>, distributed or received through the electronic-procurement system used by the Procurement Entity) with proof of receipt;</li> <li>(b) if the context so requires, <b>“singular”</b> means <b>“plural”</b> and vice versa;</li> <li>(c) <b>“Day”</b> means calendar day, unless otherwise specified as <b>“Business Day”</b>. A Business Day is any day that is an official working day. It excludes official public holidays;</li> <li>(d) <b>“Call-off Contract”</b> means a contract awarded, under a Framework Agreement, through a Secondary Procurement process, for the construction of the Works. The parties to the contract are the Procurement Entity and the Contractor;</li> <li>(e) <b>“Closed Framework Agreement”</b>: A Closed Framework Agreement is where no new Procuring Entities may conclude Framework Agreement(s) during the Term of the Framework Agreement;</li> <li>(f) <b>“Country”</b> means Ghana;</li> <li>(g) <b>“Delivery Period”</b> is the specified period from the date of formation of a Call-off contract to the delivery/completion of the Works;</li> <li>(h) <b>“Framework Agreement (FWA)”</b> means the agreement between the Procurement Entity and Contractor(s) (the successful Tenderer(s)), to establish the terms and procedures governing the award of Call-off contracts under the agreement;</li> </ul>



	<ul style="list-style-type: none"><li>(i) <b>“FWA Supplier”</b> means a Contractor in a FWA;</li><li>(j) <b>“Lead Procurement Entity”</b> when named in the Framework Agreement, a Lead Procurement Entity is a party to the Framework Agreement, in its capacity as: (a) the lead Entity acting on behalf of all participating Procurement Entities in managing and administering the Framework Agreement, and (b) as a Procurement Entity in its own right;</li><li>(k) <b>“Multi-User Framework Agreement”</b> means a Framework Agreement where there is more than one Procurement Entity permitted to procure through a Call-off Contract;</li><li>(l) <b>“Multi-Contractor Framework Agreement”</b> means where more than one Tenderer concludes a Framework Agreement for the construction of the works;</li><li>(m) <b>“Primary Procurement”</b> means the procurement process that results in concluding a Framework Agreement(s) with a successful Tenderer(s), as described in this IFT;</li><li>(n) <b>“Procurement Agent”</b> when named in the Framework Agreement, is a party to the Framework Agreement, but only in its capacity to conclude the Framework Agreement(s) with successful Contractors, and, as the Entity responsible for managing and administering the Framework Agreement, on behalf of the Procurement Entity or Procurement Entities, once it has been concluded. A Procurement Agent is not a Procurement Entity under the Framework Agreement;</li><li>(o) <b>“Procurement Entity”</b> means the Entity that conducts public procurement under the Public Procurement Act;</li><li>(p) <b>“Secondary Procurement”</b> means the process described in the Framework Agreement and followed by a Procurement Entity to select an FWA Contractor, and award a Call-off Contract for the construction of the Works;</li><li>(q) <b>“Single-User Framework Agreement”</b> means a Framework Agreement where only one User (Entity) concludes the FWA;</li><li>(r) <b>“Single-Contractor Framework Agreement”</b> means a Framework Agreement where only one Tenderer concludes a Framework Agreement for the completion of the works;</li><li>(s) <b>“Supplier or Contractor”</b> means a Tenderer that has concluded a Framework Agreement through the Primary Procurement process and may be considered for the award of a Call-off Contract, to deliver/complete the works. A Supplier or Contractor may also be referred to as a “FWA Supplier or Contractor”;</li></ul>
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	<p>(t) <b>“Term”</b> means the duration of a Framework Agreement starting on the Commencement Date</p> <p>(u) <b>“Works”</b> includes work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure or surface and site preparation, excavation, erection, assembly, installation of plant, fixing of equipment and laying out of materials, decoration and finishing, and any incidental activity under a procurement contract</p>
<p><b>2 Source of Funds</b></p>	<p>2.1 The Entity intends to apply a portion of its Budgetary Allocations to eligible payments under Call-off Contracts to be awarded under the Framework Agreement(s) for which this Tender document is issued.</p>
<p><b>3 Corrupt and Fraudulent Practices</b></p>	<p>3.1</p> <p>The Government of the Republic of Ghana requires that Tenderers under the contracts financed from public funds, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following terms shall be interpreted as indicated:</p> <p>a. <b>“corrupt practice”</b> means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and</p> <p>b. <b>“fraudulent practice”</b> means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the benefits of free and open competition;</p> <p>3.2 The Procurement Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;</p> <p>3.3 Furthermore, Tenderers shall be aware of the provision stated in <b>Section VIII</b> (Framework Agreement General Provisions).</p>
<p><b>4 Eligible Tenderers</b></p>	<p>4.1 This Invitation for Tenders is open to all eligible Contractors who meet the following requirements unless otherwise indicated in the <b>Tender Data Sheet</b>.</p> <p>Valid GRA Tax Clearance Certificate  Valid SSNIT Clearance Certificate  Valid VAT Registration Certificate (if applicable)</p>

	<p>Valid Business Registration Certificate Valid Certificate of Incorporation Valid Certificate to Commence Business Valid Registration Certificate from the Public Procurement Authority</p> <p>4.2 State Owned Enterprises may participate only if they are legally and financially autonomous, operate under commercial law, and are not a dependent agency of the Procurement Entity.</p> <p>4.3 In the case of a Joint Venture (JV):</p> <p>All parties to the JV shall be jointly and severally liable; and A JV shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all parties of the JV during the Tendering process and, in the event the JV is awarded the Contract, during execution.</p> <p>4.4 Tenderers should not be associated or not have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by any of the Procurement Entities to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of works to be procured under this Invitation for Tenders.</p> <p>4.5 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the Public Procurement Authority.</p>
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<b>B. Contents of the IFT Document</b>	
<b>5 Sections of Tender Document</b>	<p>5.1 The Tender document consists of Parts 1 and 2, which includes all sections, schedules, annexes and should be read in conjunction with any addenda issued in accordance with <b>ITT 7</b>.</p> <p><b>PART 1 – PRIMARY PROCUREMENT</b></p> <p>Section I - Invitation for Tenders (IFT)</p> <p>Section II - Instructions to Tenderers (ITT)</p> <p>Section III - Evaluation and Qualification Criteria</p> <p>Section IV - Tender Forms</p> <p>Section V – Bill of Quantities</p> <p>Section VI - Technical Specifications</p> <p>Section VII – Framework Agreement Forms</p> <p>Section VIII - Framework Agreement General Provisions</p> <p>Section IX - Framework Agreement Specific Provisions</p> <p>Section X – List of Procurement Entities (if Applicable)</p> <p><b>PART 2 – SECONDARY PROCUREMENT</b></p> <p>Section XI – Secondary Procurement Methods</p> <p>Section XII – Formation of Call off Contracts</p> <p>Section XIII – Communicating Award of call off contracts</p> <p>Section XIV – Complaint about award of call off contract</p> <p>Section XV – Call off contract General Provisions</p> <p>Section XVI – Call off contract Specific Provision</p> <p>Section XVII – Secondary Procurement Forms</p> <p>Section XVIII – List of Procurement Entities (if Applicable)</p>

	<p>5.2 Unless obtained directly from the Procurement Entity, the Procurement Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or addenda to the Tender document in accordance with <b>ITT 7</b>. In case of any contradiction, documents obtained directly from the Procurement Entity shall prevail.</p> <p>5.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender document and to furnish with its Tender all information or documentation as is required by the Tender document.</p>
<p><b>6 Clarification of Tender Document, Site Visit, Pre-Tender Meeting</b></p>	<p>6.1 A Tenderer requiring any clarification of the Tender document shall contact the Procurement Entity in writing at the Procurement Entity’s address specified <b>in the TDS</b>. The Procurement Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline specified <b>in the TDS</b>. The Procurement Entity shall forward copies of its response to all Tenderers who have acquired the Tender document in accordance with <b>ITT 5.2</b>, including a description of the inquiry but without identifying its source. If so specified <b>in the TDS</b>, the Procurement Entity shall also promptly publish its response at the web page identified <b>in the TDS</b>. Should the clarification result in changes to the essential elements of the Tender document, the Procurement Entity shall amend the Tender document following the procedure under <b>ITT 7</b> and <b>ITT 21.2</b>.</p>
<p><b>7 Amendment of Tender Document</b></p>	<p>7.1 At any time prior to the deadline for submission of Tenders, the Procurement Entity may amend the Tender document by issuing addenda.</p> <p>7.2 Any Addendum issued shall be part of the Tender document and shall be communicated in writing to all who have obtained the Tender document from the Procurement Entity in accordance with <b>ITT 5.2</b>. The Procurement Entity shall also promptly publish the addendum on the PPA and Procurement Entity’s web page in accordance with <b>ITT 7.1</b>.</p> <p>7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procurement Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to <b>ITT 20.2</b>.</p>
<p><b>C. Preparation of Tenders</b></p>	
<p><b>8 Cost of Tendering</b></p>	<p>8.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, in relation to this Primary Procurement process, (and if successful any Secondary Procurement process) and the Procurement Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.</p>

<b>9 Language of Tender</b>	9.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procurement Entity, shall be written in <b>English</b> .
<b>10 Documents Comprising the Tender</b>	<p>10.1 The Tender shall comprise the following:</p> <ul style="list-style-type: none"> <li>(a) Letter of Tender prepared in accordance with <b>ITT 11</b>;</li> <li>(b) Price Schedules: completed in accordance with <b>ITT 13</b> and <b>ITT 14</b>;</li> <li>(c) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with <b>ITT 18.3</b>;</li> <li>(d) Qualifications: documentary evidence in accordance with <b>ITT 15</b> establishing the Tenderer’s qualifications to conclude a Framework Agreement and perform any Call-off Contract, if awarded;</li> <li>(e) Tenderer's Eligibility: documentary evidence in accordance with <b>ITT 17</b> establishing the Tenderer’s eligibility to Tender;</li> <li>(f) any other document required <b>in the TDS</b>.</li> </ul> <p>10.2 In addition to the requirements under <b>ITT 10.1</b>, Tenders submitted by a JV shall include a copy of the Joint Venture agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture 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.</p>
<b>11 Letter of Tender and Price Schedules</b>	11.1 The Letter of Tender and Price Schedules shall be prepared using the relevant forms furnished in <b>Section IV</b> , Tender Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under <b>ITT 22.3</b> . All blank spaces shall be filled in with the information requested.
<b>12 Alternative Tenders</b>	12.1 Alternative Tenders shall not be permitted in this Primary Procurement process unless otherwise stated in the <b>TDS</b> .
<b>13 Tender Prices and Discounts</b>	<p>13.1 The prices and unconditional discounts quoted by the Tenderer in the Letter of Tender and in the Priced Bill of Quantities shall conform to the requirements specified below.</p> <p>13.2 Tenderers shall provide their prices in the Priced Bill of Quantities as specified <b>in the TDS</b>.</p> <p>13.3 The price to be quoted in the Letter of Tender in accordance with <b>ITT 11.1</b> shall be, as specified <b>in the TDS</b>.</p>

	<p>13.4 The Tenderer shall indicate the methodology for the application of any unconditional discounts in the Letter of Tender, in accordance with <b>ITT 11.1</b>.</p> <p>13.5 For the purpose of Secondary Procurement, the price(s) offered by the Tenderer shall be treated as set out in the Framework Agreement Specific Provisions.</p> <p>13.6 Prices shall be quoted as specified in each Priced Bill of Quantities included in <b>Section IV</b>, Tender Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procurement Entity. This shall not in any way limit the Procurement Entity’s right to award a Call-off contract on any of the terms offered.</p>
<p><b>14 Currencies of Tender and Payment</b></p>	<p>Prices shall be quoted in Ghanaian Cedis (GHC) and payments made in Ghana Cedis (GHC).</p>
<p><b>15 Documents Establishing the Eligibility and Qualifications of the Tenderer</b></p>	<p>15.1 To establish Tenderer’s eligibility in accordance with <b>ITT 4</b>, Tenderers shall complete the Letter of Tender, included in <b>Section IV</b>, Tender Forms.</p> <p>15.2 The documentary evidence of the Tenderer’s qualifications to conclude a Framework Agreement, and/or to perform any Call-off Contract(s) if awarded, shall establish to the Procurement Entity’s satisfaction:</p> <p>(a) that the Tenderer meets each of the qualification criterion specified in <b>Section III</b>, Evaluation and Qualification Criteria.</p>
<p><b>16 Period of Validity of Tenders</b></p>	<p>16.1 Tenders shall remain valid for the Tender Validity period specified <b>in the TDS</b>. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procurement Entity in accordance with <b>ITT 20.1</b>). A Tender valid for a shorter period shall be rejected by the Procurement Entity as nonresponsive.</p> <p>16.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procurement Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. A Tenderer may refuse the request to extend the validity of their Tenders. A Tenderer granting the request shall not be required or permitted to modify its Tender.</p>
<p><b>17 Tender Securing Declaration</b></p>	<p>17.1 Tender -Securing Declaration is required in relation to the Primary Procurement process.</p>

	17.2 The Tender Securing Declaration shall cover the Minimum Quantity or Value specified in the FWA <b>TDS</b> .
<b>18 Format and Signing of Tender</b>	<p>18.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in <b>ITT 10</b> and clearly mark it “ORIGINAL.” In addition, the Tenderer shall submit copies of the Tender, in the number specified <b>in the TDS</b> and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.</p> <p>18.2 Tenderers shall mark as “CONFIDENTIAL” information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.</p> <p>18.3 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 <b>in the TDS</b> 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 signing the Tender.</p> <p>18.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representative(s).</p> <p>18.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.</p>
<b>D. Submission and Opening of Tenders</b>	
<b>19 Sealing and Marking of Tenders</b>	<p>19.1 The Tenderer shall deliver the Tender in a single, sealed envelope (one-envelope Tendering process). Within the single envelope, the Tenderer shall place the following separate, sealed envelope</p> <ul style="list-style-type: none"> <li>(a) in an envelope marked “ORIGINAL”, all documents comprising the Tender, as described in <b>ITT 10</b>; and</li> <li>(b) in an envelope marked “COPIES”, all required copies of the Tender; and,</li> </ul> <p>19.2 The inner and outer envelopes, shall:</p> <ul style="list-style-type: none"> <li>(a) bear the name and address of the Tenderer;</li> <li>(b) be addressed to the Procurement Entity <b>ITT 20.1</b>;</li> </ul>



	<p>(c) bear the specific identification of this Tendering process indicated in <b>ITT 1.1</b>; and</p> <p>(d) bear a warning not to open before the time and date for Tender opening.</p> <p>19.3 If all envelopes are not sealed and marked as required, the Procurement Entity will assume no responsibility for the misplacement or premature opening of the Tender.</p>
<p><b>20 Deadline for Submission of Tenders</b></p>	<p>20.1 Tenders must be received by the Procurement Entity at the address and no later than the date and time specified <b>in the TDS</b>. When so specified <b>in the TDS</b>, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified <b>in the TDS</b>.</p> <p>20.2 The Procurement Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender document in accordance with <b>ITT 7</b>, in which case all rights and obligations of the Procurement Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.</p>
<p><b>21 Late Tenders</b></p>	<p>21.1 The Procurement Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with <b>ITT 20</b>. Any Tender received by the Procurement Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer in accordance with procedures stipulated by the PPA.</p>
<p><b>22 Withdrawal, Substitution, and Modification of Tenders</b></p>	<p>22.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with <b>ITT 18.3</b>, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:</p> <p>(a) prepared and submitted in accordance with <b>ITT 18</b> and <b>ITT 19</b> (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and</p> <p>(b) received by the Procurement Entity prior to the deadline prescribed for submission of Tenders, in accordance with <b>ITT 20</b>.</p> <p>22.2 Tenders requested to be withdrawn in accordance with <b>ITT 22.1</b> shall be returned unopened to the Tenderers.</p> <p>22.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of</p>

	the period of Tender validity specified by the Tenderer on the Letter of Tender or any extension thereof.
<b>23 Tender Opening</b>	<p>23.1 Except as in the cases specified in <b>ITT 21</b> and <b>ITT 22.2</b>, the Procurement Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified <b>in the TDS</b> in the presence of Tenderers’ designated representatives and anyone who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with <b>ITT 20.1</b>, shall be as specified <b>in the TDS</b>.</p> <p>23.2 First, 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. If the withdrawal envelope does not contain a “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. 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.</p> <p>23.3 Next, 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.</p> <p>23.4 Next, 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.</p> <p>23.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the Tender Prices, including any unconditional discounts, and any other details as the Procurement Entity may consider appropriate.</p> <p>23.6 Only Tenders and unconditional discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Letter of Tender and the Price Schedules are to be initialed by representatives of the Procurement Entity attending Tender opening in the manner specified <b>in the TDS</b>.</p> <p>23.7 The Procurement Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with <b>ITT 20.1</b>).</p>

	<p>23.8 The Procurement Entity shall prepare a record of the Tender opening that shall include, as a minimum;</p> <ul style="list-style-type: none"> <li>(a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;</li> <li>(b) the Tender Price, per lot (item) if applicable, including any unconditional discounts;</li> </ul> <p>23.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Tenderers.</p>
<b>E. Evaluation and Comparison of Tenders</b>	
<b>24 Confidentiality</b>	<p>24.1 Information relating to the evaluation of Tenders and recommendation to conclude a Framework Agreement(s), shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification to Conclude the Framework Agreement is transmitted to the successful tenderer in accordance with <b>ITT 36.1</b>.</p> <p>24.2 Any effort by a Tenderer to influence the Procurement Entity in the evaluation or decision to conclude a Framework Agreement(s) may result in the rejection of its Tender.</p> <p>24.3 Notwithstanding <b>ITT 24.2</b>, from the time of Tender opening to the time of the Framework Agreement being concluded, if any Tenderer wishes to contact the Procurement Entity on any matter related to the Tendering process, it should do so in writing.</p>
<b>25 Clarification of Tenders</b>	<p>25.1 To assist in the examination, evaluation, comparison of Tenders, and qualification of Tenderers, the Procurement Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procurement Entity shall not be considered. The Procurement Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procurement Entity in the Evaluation of the Tenders, in accordance with <b>ITT 29</b>.</p> <p>25.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procurement Entity's request for clarification, its Tender may be rejected.</p>

<p><b>26 Deviations, Reservations and Omissions</b></p>	<p>26.1 During the evaluation of Tenders, the following definitions apply:</p> <ul style="list-style-type: none"> <li>(a) “Deviation” is a departure from the requirements specified in the Tender document;</li> <li>(b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender document; and</li> <li>(c) “Omission” is the failure to submit part or all of the information or documentation required in the Tender document.</li> </ul>
<p><b>27 Determination of Responsiveness</b></p>	<p>27.1 The Procurement Entity’s determination of a Tender’s responsiveness is to be based on the contents of the Tender itself, as defined in <b>ITT 10</b>.</p> <p>27.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. Mandatory responsiveness requirements include meeting eligibility criteria specified in <b>ITT 4.1</b>, signature of the Tender by authorized signatory, provision of the required securities. Additional responsiveness requirements are indicated in the <b>TDS</b>. A material deviation, reservation, or omission is one that:</p> <ul style="list-style-type: none"> <li>(a) if accepted, would: <ul style="list-style-type: none"> <li>(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Framework Agreement; or</li> <li>(ii) limit in any substantial way, inconsistent with the Tender document, the Procurement Entity’s rights or the Tenderer’s obligations under the Framework Agreement; or</li> </ul> </li> <li>(b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.</li> </ul> <p>27.3 If a Tender is not substantially responsive to the requirements of Tender document, it shall be rejected by the Procurement Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.</p>
<p><b>28 Nonconformities, Errors and Omissions</b></p>	<p>28.1 Provided that a Tender is substantially responsive, the Procurement Entity may waive any nonconformities in the Tender.</p> <p>28.2 Provided that a Tender is substantially responsive, the Procurement Entity shall rectify quantifiable nonmaterial nonconformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified <b>in the TDS</b>.</p>

<p><b>29 Correction of Arithmetical Errors</b></p>	<p>29.1 Provided that the Tender is substantially responsive, the Procurement Entity shall correct arithmetical errors on the following basis:</p> <ul style="list-style-type: none"> <li>(a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Procurement Entity there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;</li> <li>(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</li> <li>(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.</li> </ul> <p>29.2 Tenderers shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with <b>ITT 29.1</b>, shall result in the rejection of the Tender.</p>
<p><b>30 Margin of Preference</b></p>	<p>30.1 A margin of Preference where applicable shall be provided in accordance with Guidelines provided by PPA as specified in the <b>TDS</b>.</p>
<p><b>31 Evaluation of Tenders</b></p>	<p>31.1 The Procurement Entity shall use the criteria and methodologies listed in <b>this ITT and Section III</b>, Evaluation and Qualification Criteria in deciding to conclude a Framework Agreement(s). No other evaluation criteria or methodologies shall be permitted.</p> <p>31.2 The Procurement Entity will evaluate and compare only the Tenders determined to be substantially responsive in accordance with <b>ITT 27</b></p> <p>31.3 To evaluate a Tender the Procuring Entity/Lead Entity/Procurement Agent shall consider the following:</p> <ul style="list-style-type: none"> <li>a) evaluation will be done for Items or Lots, as specified in <b>the TDS</b>; and the Tender Price as quoted in accordance with <b>ITT 13</b>;</li> <li>b) price adjustment for correction of arithmetic errors in accordance with <b>ITT 29.1</b>;</li> <li>c) price adjustment due to unconditional discounts offered in accordance with <b>ITT 13.4</b>;</li> <li>d) price adjustment due to quantifiable nonmaterial nonconformities in accordance with <b>ITT 28.2</b>;</li> </ul>

	<p>e) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including day works, where priced competitively;</p> <p>f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.</p> <p>31.4 The Procurement Entity reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Tender documents or otherwise result in unsolicited benefits for the Purchaser will not be taken into account in Tender evaluation</p> <p>31.5 If applicable, the estimated effect of the price adjustment provisions in the Framework Agreement(s) (which determines the Contract Price for a Call-off Contract), applied over the Term of the Framework Agreement, shall not be taken into account in the Primary Procurement Tender evaluation.</p>
<b>32 Comparison of Tenders</b>	32.1 The Procurement Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with <b>ITT 31</b> to determine the ranking of Tenders based on the lowest evaluated cost.
<b>33 Qualification of the Tenderer(s)</b>	<p>33.1 Before concluding a Framework Agreement(s), the Procurement Entity shall determine, to its satisfaction, whether the eligible Tenderer(s) with substantially responsive Tender(s) that are able to meet the Framework Agreement criteria, meet(s) the qualifying criteria specified in <b>Section III</b>, Evaluation and Qualification Criteria.</p> <p>33.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to <b>ITT 15</b>. The determination shall not take into consideration the qualifications of other firms such as the Tenderer’s subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.</p> <p>33.3 An affirmative determination shall be a prerequisite for the conclusion of the Framework Agreement (s) to the Tenderer. A negative determination shall result in disqualification of the Tender.</p>
<b>34 Procurement Entity’s Right to Accept Any</b>	34.1 The Procurement Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to the conclusion of a Framework Agreement(s), without thereby

<b>Tender, and to Reject Any or All Tenders</b>	incurring any liability to Tenderers. In case of annulment, all Tenders submitted shall be promptly returned to the Tenderers.
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<b>F. Conclusion of a Framework Agreement</b>	
<b>35 Framework Agreement Criteria</b>	<p>35.1 This is a Closed Framework Agreement, i.e., no new firm(s) may conclude Framework Agreement(s) during the Term of the Framework Agreement.</p> <p>35.2 The Procurement Entity shall specify <b>in Section III</b> Evaluation and Qualification Criteria, the criteria that will apply in the selection of Tenderer(s), with whom a Framework Agreement(s) may be concluded.</p>
<b>36 Notification to Conclude a Framework Agreement</b>	36.1 Prior to the expiration of the Tender Validity Period, the Procurement Entity shall transmit to the successful Tenderer(s) a Notification to Conclude a Framework Agreement, attaching the Framework Agreement for signature by the Tenderer.
<b>37 Obligation to Procure</b>	37.1 The conclusion of a Framework Agreement shall not impose any obligation on the Entity to procure any Works under the Framework Agreement.
<b>38 Debriefing by the Procurement Entity</b>	38.1 Debriefings of unsuccessful Tenderers may be done in writing or verbally (over the phone or video conference) or in person. The Tenderers shall bear their own costs of attending such a debriefing meeting as provided for under <b>Section VIII</b> .
<b>39 Signing the Framework Agreement</b>	<p>39.1 Unless an earlier deadline is stipulated <b>in the TDS</b>, the Tenderer shall sign, date and return the Framework Agreement within twenty-eight (28) days of receipt of the same.</p> <p>39.2 In case of Multi-User Framework Agreement, the Procurement Agent/ Lead Entity shall sign each Framework Agreement on behalf of all participating Entities.</p>
<b>40 Publication of the Conclusion of Framework Agreement Notice</b>	40.1 The Procurement Entity shall promptly issue notice of contract award on the website of the Public Procurement Authority or as provided in Regulations.
<b>41 Procurement Related Complaint</b>	41.1 The procedures for making a Procurement-related Complaint are as specified <b>in the Public Procurement Act, 2003 (Act 663)</b> as amended.



## Tender Data Sheet (TDS)

The following specific data for the Works to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions **in the TDS** shall prevail over those in ITT.

*[Where an e-procurement system is used, modify the relevant parts of the TDS accordingly to reflect the e-procurement process.]*

*[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT.]*

<b>A. General</b>	
<b>ITT 1.1</b>	<p>The Procurement Entity is: <i>[insert name of the Procurement Entity]</i></p> <p>The Procurement Entity is <i>[select the capacity in which the Procurement Entity is acting, from one of the following:]</i></p> <p><i>OPTION 1: “the Entity that will conclude, administer and manage the Framework Agreement, and be the sole Procurement Entity under the Framework Agreement.”</i></p> <p><i>OR</i></p> <p><i>OPTION 2: “the Entity acting for, and on behalf of, [select “the Procurement Entity” or “all participating Procurement Entities”] in concluding the Framework Agreement.”</i></p> <p>The reference number of the Invitation for Tenders (IFT) is: <i>[insert reference number of the Invitation for Tenders]</i></p> <p>The name of the IFT is: <i>[insert name of the IFT]</i></p> <p><i>[if applicable and if this is for a Single- Contractor FWA, include the following:]</i> The number and identification of lots (contracts) comprising this IFT is: <i>[insert number and identification of lots (contracts).]</i></p>
<b>ITT 1.2 (a)</b>	<p><i>[delete if not applicable]</i></p> <p><b>Electronic –Procurement System</b></p> <p>The Procurement Entity shall use the following electronic-procurement system to manage this Procurement process:</p> <p><i>[insert name of the e-system and URL address or link]</i></p> <p>The electronic-procurement system shall be used to manage the following aspects of the Procurement process:</p> <p><i>[list aspects here and modify the relevant parts of the TDS accordingly e.g., issuing IFT document, submissions of Tenders, opening of Tenders]</i></p>

<b>ITT 4.1</b>	Additional provisions on eligibility of Tenderers: <i>[state revisions to ITT 4.1 if any]</i>
<b>ITT 4.3</b>	The maximum number of members in a Joint Venture (JV) shall be: <i>[insert a number]</i> .
<b>ITT 4.5</b>	A list of debarred firms and individuals is available at: <a href="http://www.ppaghana.gov.gh">http://www.ppaghana.gov.gh</a>
<b>B. Contents of the IFT Document</b>	
<b>ITT 7.1</b>	<p>For <b>clarification of Tender purposes</b> only, the Procurement Entity’s address is:  <i>[insert the information as required below. This address may be the same as or different from that specified under ITT 20.1 for Tender submission]</i></p> <p>Attention: <i>[insert full name of person, if applicable]</i></p> <p>Address: <i>[insert street address and number]</i></p> <p>Floor/ Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of city or town]</i></p> <p>Ghana Post GPS Code: <i>[insert Ghana Post (GPS) code, if applicable]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Telephone: <i>[insert telephone number, including country and city codes]</i></p> <p>Email address: <i>[insert email address, if applicable]</i></p> <p>Requests for clarification should be received by the Procurement Entity no later than: <i>[insert a date; or the number of Business Days “before the deadline for submission of Tenders”]</i>.</p> <p>Web page: <i>[in case used, identify the website with free access where Primary Procurement information is published]</i></p>
<b>C. Preparation of Tenders</b>	
<b>ITT 10.1 (f)</b>	The Tenderer shall submit the following additional documents in its Tender: <i>[list any additional document not already listed in ITT 10.1 that must be submitted with the Tender]</i>
<b>ITT 13.2</b>	<p><i>[Note: For Single-Contractor FWA, providing the estimated items and quantities over the FWA should reasonably enable Tenderers to offer their unit prices in a competitive manner. However, for Multi-Contractor FWA, the Procurement Entity may choose, depending on the nature and type of procurement, to provide either the estimated quantities over the FWA period or the range of call off quantities. Choose either Option 1 or Option 2 below]</i></p> <p><i>Option 1- Single-Contractor FWA</i></p> <p>Prices quoted for a <u>lot</u> (contract) shall correspond at least to <i>[insert figure as</i></p>

	<p><i>applicable, e.g. one hundred]</i> percent of the items specified for the lot (contract) in the Price Schedules. Prices quoted for <u>each item</u> of a lot shall correspond to <i>one hundred</i> percent of the estimated quantities over the FWA period specified in the Price Schedules for the item.</p> <p><i>Or</i></p> <p><i>Option 2- Multi-Contractor FWA</i></p> <p>Tenderers may quote their unit prices against any item and estimated quantities over the FWA period or one or more of the ranges of Call-off quantities for the item as specified in the Schedule of Prices.]</p>
<b>ITT 13.3</b>	<p><i>[ Consistent with TDS ITT 13.2 above, choose either Option 1 or Option 2 below:]</i></p> <p><i>Option 1- Single-Contractor FWA</i></p> <p>The price to be quoted in the Letter of Tender in accordance with <b>ITT 11.1</b> shall be the total Tender price for the specified items or Lots, as applicable.</p> <p><i>Option 2- Multi-Contractor FWA</i></p> <p>The price to be quoted in the Letter of Tender in accordance with <b>ITT 11.1</b> shall be (i) the total Tender prices against the estimated quantities over the FWA period or (ii) the unit Tender price against the range of Call-off quantities, as specified in the Schedule of prices.]</p>
<b>ITT 16.1</b>	The <b>Tender validity period</b> shall be <i>[insert the term of the Framework Agreement]</i> days.
<b>ITT 18.1</b>	In addition to the original of the Tender, the <b>number of copies</b> to be delivered to the Procurement Entity is <i>[insert number (insert figure)]</i> copies.
<b>ITT 18.3</b>	The written confirmation of <b>authorization to sign</b> on behalf of the Tenderer shall consist of <i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Tender on behalf of the Tenderer]</i> .
<b>D. Submission and Opening of Tenders</b>	
<b>ITT 20.1</b>	<p>For <b>Tender submission purpose</b> only, the Procurement Entity’s address is: <i>[This address may be the same as or different from that specified under ITT 7.1 for clarifications]</i></p> <p>Attention: <i>[insert full name of person, if applicable]</i></p> <p>Street Address: <i>[insert street address and number]</i></p> <p>Floor/ Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of city or town]</i></p> <p>Ghana Post GPS Code: <i>[insert Ghana Post (GPS) code, if applicable]</i></p>

	<p>Country: <i>[insert name of country]</i></p> <p><b>The deadline for Tender submission is:</b></p> <p>Date: <i>[insert month, day and year, e.g. June 15<sup>th</sup>,2020]</i></p> <p>Time: <i>[insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.]</i></p> <p><i>[Note: The date and time should be the same as those provided in the Invitation for Tenders, unless subsequently amended pursuant to ITT 20.2.]</i></p> <p>Tenderers <i>[insert “shall” or “shall not”]</i> have the option of submitting their Tenders electronically.</p> <p><i>[Note: The following provision should be included, and the required information inserted <u>only</u> if Tenderers have the option of submitting their Tenders electronically. Otherwise omit.]</i></p> <p><i>[The electronic Procurement submission procedures shall be: [insert a description of the electronic Procurement submission procedures that must be followed]</i></p>
<b>ITT 23.1</b>	<p>The <b>Tender opening</b> shall take place at:</p> <p>Street Address: <i>[insert street address and number]</i></p> <p>Floor/ Room number: <i>[insert floor and room number, if applicable]</i></p> <p>City: <i>[insert name of city or town]</i></p> <p>Country: <i>[insert name of country]</i></p> <p>Date: <i>[insert month, day and year, e.g. June 15<sup>th</sup>, 2020]</i></p> <p>Time: <i>[insert time and identify if a.m. or p.m. e.g. 10:30 a.m.] [Date and time should be the same as those given for the deadline for submission of Tenders (ITT 22).]</i></p> <p><i>[Note: The following provision should be included, and the required corresponding information inserted only if Tenderers have the option of submitting their Tenders electronically. Otherwise omit.]</i></p> <p>The <b>electronic Tender opening</b> procedures shall be: <i>[insert a description of the electronic Tender opening procedures that shall apply.]</i></p>
<b>ITT 23.6</b>	<p>The Letter of Tender shall be numbered and initialed by <i>[insert number]</i> representatives of the Procurement Entity conducting Tender opening.</p>
<b>E. Evaluation and Comparison of Tenders</b>	
<b>ITT 27.2</b>	<p>Additional responsiveness requirement is: <i>(insert additional responsiveness requirements)</i></p>
<b>ITT 28.2</b>	<p>The adjustment shall be based on the <i>[select “average” or “highest”]</i> price of the item or component as quoted in other substantially responsive Tenders. If the price of</p>

	the item or component cannot be derived from the price of other substantially responsive Tenders, the Procurement Entity shall use its best estimate.
<b>ITT 30.1</b>	Margin of Preference is ( <i>applicable/not applicable</i> )
<b>ITT 31.3(a)</b>	<p>Evaluation will be done for [<i>Select: “Items” or “Lots (contracts)”</i>]  [<i>For Single-Contractor FWA, Select one of the two options below as appropriate</i>]  [<i>OPTION 1</i>  “Tenders will be evaluated on item by item basis.”]  <i>or</i>  [<i>OPTION 2:</i>  “Tenders will be evaluated lot by lot. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. An item not listed in the Price Schedule shall be assumed to be not included in the Tender, and provided that the Tender is substantially responsive, the [<i>select “average” or “highest”</i>] price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.”]  [<i>For Multi-Contractor FWA, insert the following</i></p> <p><i>OPTION 1: If range of Call-off quantities is provided insert the following:</i>  “Tenders will be evaluated for each range of Call-off quantities of an item”</p> <p><i>OPTION 2: if the estimated quantities over the FWA period is provided insert one of the following as applicable:</i></p> <p>[<i>OPTION 2-1:</i>  “Tenders will be evaluated on item by item basis.”]  <i>or</i>  [<i>OPTION 2-2:</i>  “Tenders will be evaluated lot by lot. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. An item not listed in the Price Schedule shall be assumed to be not included in the Tender, and provided that the Tender is substantially responsive, the [<i>select “average” or “highest”</i>] price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.”]</p>

**F. Concluding a Framework Agreement****ITT 39.1****Signing the Framework Agreement**

The Tenderer shall sign, date and return the Framework Agreement within [*insert number of days (insert in figures)*] days of receipt of the same.

*[Note: The normal time for signing is 28 days. However, with an FWA there is no Performance Security to be arranged at this stage, so the time for signing may be reduced.]*

## Section III - Evaluation and Qualification Criteria

This Section contains the criteria that the Procurement Entity shall use to conclude a Framework Agreement(s). The criteria and methodology described is to evaluate Tenders and qualify Tenderers. No other factors, methods or criteria shall be used other than specified in this IFT document for the Primary Procurement process.

*[The Procurement Entity shall select the criteria deemed appropriate for the Primary Procurement process, insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]*

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## 1. Evaluation of Tenders (ITT 31)

### Evaluation Criteria (ITT 31)

The Procurement Entity’s evaluation of a Tender may take into account, in addition to the Tender Price quoted in accordance with **ITT 13**, one or more of the following factors as specified in **ITT 31.3** using the following criteria and methodologies.

<p><b>1. Adequacy of Technical Offer</b>, in accordance with ITT 10.1 , will be evaluated as follows:</p> <p>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 <b>Section VI- Technical Specifications, Performance Requirements, and Drawings</b>.</p>
<p><b>2. Adequacy of Environmental, Social, Health and Safety Plans</b>, in accordance with <b>ITT 31.3</b>, will be evaluated as follows:</p> <p>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&amp;S”) management expertise to successfully manage the E&amp;S risks associated with the implementation of the proposed Works in accordance with Employer Environmental Guidelines and the requirements of Ghana’s environmental legislation.</p>
<p><b>3. Alternative Proposals</b>, if permitted under <b>ITT 12</b>, will be evaluated as follows: <b>Applicable/Not Applicable</b>.</p> <p><b>4. Multiple Lots, Discounts:</b></p> <p>Works are grouped in a single contract hence consideration for Multiple Lots is not applicable. Pursuant to <b>Sub-Clause 31</b> 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 the Tenderer, if permitted under <b>ITT 13</b>.</p>



## 2. Criteria to conclude a Framework Agreement(s) (ITT 35)

*[Select the appropriate option and add such additional criteria, as is appropriate]*

### **Criteria for a Single-Contractor Framework Agreement:**

The Procurement Entity will conclude the Framework Agreement with the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- (a) substantially responsive to the Tender document; and
- (b) the lowest evaluated cost [, and]
- (c) *[Insert any additional criteria e.g. criteria related to selection based on a geographic spread of Contractors.]*

OR

### **Criteria for a Multi-Contractor Framework Agreement:**

The Procurement Entity will conclude Framework Agreements with the Tenderers that meet the qualification criteria and whose Tenders have been determined to be substantially responsive as follows;

- (a) All Tenderers shall be ranked in terms of evaluated cost(s), with the first ranked being the lowest evaluated cost, the second ranked being the second lowest evaluated cost, and so on.
- (b) The Procurement Entity will conclude an FWA with:
  - (i) All the Tenderers ranked in (a) above if no maximum number of Contractors is specified in **ITT 1.2 (I)**.
  - (ii) the Tenderers ranked first up to the maximum number of Contractors (y) specified in the **ITT 1.2 (I)**.
- (c) If the number of Tenderers is less than the minimum (x) specified in the **ITT 1.2 (I)**, the Procurement Entity may decide to invite new Tenders. Alternatively, the Procurement Entity may conclude the FWA with all those Tenderers where, an insufficient number of Tenders are received, or an insufficient number of Tenders meet the criteria for conclusion of Framework Agreements.
- (d) *[Insert any additional criteria e.g. criteria related to selection based on a spread of geographic locations.]*

## 3. Post Qualification Criteria (ITT 33)

After determining the substantially responsive Tender which offers the lowest-evaluated cost in accordance with **ITT 32**, the Procurement Entity shall carry out the post-qualification of the Tenderer in accordance with **ITT 33**, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer's qualifications.

- 
- (a) The Procurement Entity will determine to its satisfaction whether the Tenderer selected as having submitted the lowest evaluated responsive Tender is qualified to satisfactorily perform the Contract.
  - (b) The determination will take into account the Tenderer's financial, technical and production capabilities/ resources. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, as well as such other information as the Procurement Entity deems necessary and appropriate.
  - (c) An affirmative determination will be a prerequisite for award of the Contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procurement Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

Sub-Factor	1. Eligibility Criteria				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
<b>1.1 Nationality</b>	Nationality in accordance with <b>Section VIII – 4.1</b>	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
<b>1.2 Conflict of Interest</b>	No conflicts of interests as described in <b>ITT 4.4</b>	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
<b>1.3 Ineligibility</b>	Not having been deemed ineligible based on any of the criteria set forth in <b>ITT 4.5</b>	Must meet requirement	Existing or intended joint venture must meet requirement	Must meet requirement	N / A
<b>1.4 Government Owned Entity</b>	Compliance with conditions of <b>ITT 4.2.</b>	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

Sub-Factor	1. Eligibility Criteria				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
<b>2.1 History of Non-performing Contracts</b>	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
<b>2.2 Failure to Sign a Contract</b>	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	1. Eligibility Criteria				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
<b>2.3 Pending Litigation</b>	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
<b>3.1 Historical Financial Performance</b>	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 Tenderer’s Financial position and its prospective long term profitability. (i) Average coefficient of Current ratio (Current Assets /Current Liabilities): $\geq 1.2$ (ii) Average coefficient of Debt Ratio (Total Debt/Total Assets) $\leq 0.75$	Must meet requirement	N / A	Must meet requirement	N / A
<b>3.2 Average Annual</b>	Minimum average annual construction turnover for each year as set forth below, calculated as total certified payments	Must meet requirement	Must meet requirement	Must meet	Must meet

<b>3. Financial Situation</b>					
	<b>Requirement</b>	<b>Tender</b>			
		<b>Single Entity</b>	<b>Joint Venture or Association</b>		
			<b>All members combined</b>	<b>Each member</b>	<b>At least one member</b>
<b>Construction Turnover</b>	received for contracts in progress or completed, within last 5 years. <b>(i) For Award of this <u>Contract</u> GHS xxxx million or equivalent.</b>			25% of the requirement	40% of the requirement
<b>3.3 Financial Resources</b>	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: <b>(i) For Award of this <u>Contract</u> GHS million or equivalent.</b>  (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

<b>4. EXPERIENCE</b>					
<b>Sub-Factor</b>	<b>Requirement</b>	<b>Tender</b>			
		<b>Single Entity</b>	<b>Joint Venture or Association</b>		
			<b>All members combined</b>	<b>Each member</b>	<b>At least one member</b>
<b>4.1 General Construction Experience</b>	Experience in <b>XX</b> 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	Must meet requirement	N/A	Must meet requirement	N/A

Sub-Factor	4. EXPERIENCE				
	Requirement	Tender			
		Single Entity	Joint Venture or Association		
			All members combined	Each member	At least one member
	in each year.				
<b>4.2 Similar Construction Experience</b>	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: <b>GHSxxxx million or equivalent;</b> that has been completed and that are similar to the proposed works.	Must meet requirement	Must meet requirement	N/A	Must meet requirement
<b>4.3 Specific Construction Experience in Key Activities</b>	For the above or other contracts executed during the last five years, minimum construction experience in following key activities: A) <b><u>Monthly Rate of Production:</u></b>  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

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# Letter of Tender

## Primary Procurement - Framework Agreement Works

*INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE DOCUMENT*

*The Tenderer must prepare this Letter of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*

*Note: All italicized text is to help Tenderers in preparing this form.*

### **Framework Agreement – Works**

**Date of this Tender submission:** *[insert date (as day, month and year) of Tender submission]*

**Invitation for Tender No.:** *[insert identification]*

**Alternative No.:** *[insert identification No if this is a Tender for an alternative]*

**To:** *[insert complete name of Procurement Entity]*

- (a) **No reservations:** We have examined and have no reservations to the IFT document, including addenda issued in accordance with Instructions to Tenderers (**ITT 7**);
- (b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with **ITT 4**;
- (c) **Tender Securing Declaration:** *[select OPTION 1 or 2 as applicable]*

#### *OPTION 1*

*“We have neither been suspended nor declared ineligible by the Procurement Entity(ies) based on execution of a Tender-Securing Declaration in Ghana with **ITT 17** or*

#### *OPTION 2*

*“We have been suspended or declared ineligible by the following entities based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in the Procurement Entity’s Country in accordance with **ITT 17** *[insert name of entities]*”;*

- (d) **Conformity:** We offer to execute, in conformity with the IFQ document and in accordance with **Section V-** Schedule of Requirements, the following Works : *[insert a brief description of the Works]*;
- (e) **Tender Price:** *[Select one of the following four options with respect to Tender Price]*

**For Multi Contractor FWA**

*OPTION 1- [If range of Call-off quantities is provided by the Procurement Entity in the Price Schedules]*

“The unit price/s of our Tender excluding any discounts offered in item (g) below is [insert the unit price/s of the Tender in words and figures, against the range of quantities provided by the Procurement Entity in the Price Schedules in the table below]”

*OPTION 2- [If estimated quantities over FWA period is provided by the Procurement Entity in the Price Schedules]*

Item No.	Description	Range of Quantities	Tender Unit Price and Currency
1.	...	... - ...	
		... - ...	
		... - ...	
2.	...		
3.	...		

“The total price of our Tender, excluding any discounts offered in item (g) below is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]”

**For Single Contractor FWA**

*OPTION 3- [For Single Lot]*

“The total price of our Tender, excluding any discounts offered in item (f) below is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]”

*OPTION 4 - [For Multiple Lots]*

“The total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]”

- (f) **Unconditional Discounts:** The unconditional discounts offered are: [Specify in detail each unconditional discount offered.]
- The exact method of calculations to determine the net price after application of unconditional discounts is shown below: [*Specify in detail the method that shall be used to apply the discounts*];
- (g) **Tender Validity Period:** Our Tender shall be valid for the period specified in **TDS 16.1** (as amended, if applicable) from the date fixed for the Tender submission deadline specified in **TDS 20.1** (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) **Performance Security:** If our Tender is accepted and we conclude a Framework Agreement, we understand that we may be required, as a condition of a subsequent Call-off Contract, to obtain a performance security;
- (i) **One Tender per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and meet the requirements of **ITT 4.5**;
- (j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Authority;
- (k) **Not Bound to Procure:** We understand that there is no obligation on the Procurement Entity(ies) to procure any Works from any FWA Contractor during the Term of the Framework Agreement.
- (l) **No expectation of Call-off Contract:** We confirm that no undertaking or any form of statement, promise, representation or obligation has been made by the Procurement Entity in respect of the total quantities or value of the Works that may be ordered by it, or any participating Procurement Entity(ies), in accordance with this Framework Agreement. We acknowledge and agree that we have not submitted this Tender on the basis of any such undertaking, statement, promise or representation. If we conclude a Framework Agreement, we have no legitimate expectation of being awarded a Call-off Contract under the Framework Agreement.
- (m) **Not Bound to Accept:** In relation to this Primary Procurement, we understand that you are not bound to accept any Tender that you may receive.
- (n) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

**Name of the Tenderer:** \*[insert complete name of the Tenderer]

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:**

\*\*[insert complete name of person duly authorized to sign the Tender]

**Title of the person signing the Tender:** *[insert complete title of the person signing the Tender]*

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

- \* In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as Tenderer.
- \*\* Person signing the Tender shall have the power of attorney given by the Tenderer. The power of attorney shall be attached with the Tender Schedules.

## Tenderer Information Form

### Primary Procurement - Framework Agreement Works

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

**Date:** *[insert date (as day, month and year) of Tender submission]*

**Package No.:** *[insert number of IFT process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information <b>Name:</b> <i>[insert Authorized Representative's name]</i> <b>Address:</b> <i>[insert Authorized Representative's Address]</i> <b>Telephone:</b> <i>[insert Authorized Representative's telephone]</i> <b>Email Address:</b> <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with <b>ITT 15</b> <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with <b>ITT 4.3</b> . <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with <b>ITT 4.2</b> documents establishing: <ul style="list-style-type: none"> <li>• Legal and financial autonomy</li> <li>• Operation under commercial law</li> <li>• Establishing that the Tenderer is not under the supervision of the Procurement Entity.</li> </ul>
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Tenderer's JV Members Information Form Primary Procurement - Framework Agreement Works

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below.  
The following table shall be filled in for the Tenderer and for each member of a Joint  
Venture]].*

Date: *[insert date (as day, month and year) of Tender submission]*

Package No.: *[insert number of IFT process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Tenderer's JV Member's authorized representative information <b>Name:</b> <i>[insert name of JV's Member authorized representative]</i> <b>Address:</b> <i>[insert address of JV's Member authorized representative]</i> <b>Telephone numbers:</b> <i>[insert telephone numbers of JV's Member authorized representative]</i> <b>Email Address:</b> <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with <b>ITT 15</b> . <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procurement Entity, in accordance with <b>ITT 4.2</b> .
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## **Section V – Bills of Quantities**



## Notes for Preparing the Estimate Bills of Quantities

*The Estimate shall be included in the IFT document by the Procurement Entity, and shall cover, at a minimum, a description of the Works and , indicative quantities that may be executed under a Framework Agreement/s, Delivery/Completion Periods*

### Bill of Quantities

#### Bill No. 1: General Items

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
101	Performance Bond/Guarantee	sum	item	—	
102	Insurance of the Works	sum	item	—	
103	Insurance of Contractor's Equipment	sum	item	—	
104	Third-Party Insurance	sum	item	—	
105	Allow for maintenance of Works for 12 months after completion	month			
106	—etc.—				
112	Provide and equip Engineer's offices	nr			
113	Maintain Engineer's offices for 24 months, including services	month			
114	—etc.—				
121	Provide diversion road	sum	item	—	
122	Provide for traffic control and maintenance of diversion road	month		—	
123	—etc.—				
132	Provide for cleaning up the Site on completion	sum	item	—	
	—etc.—				
Total for Bill No. 1					_____
(carried forward to Summary, p. ____)					











### Daywork Summary

	<i>Amount<sup>a</sup></i> (       )	<i>%</i> <i>Foreign</i>
1. Total for Daywork: Labour		
2. Total for Daywork: Materials		
3. Total for Daywork: Contractor's Equipment		
Total for Daywork (Provisional Sum) (carried forward to Bid Summary, p. ____)	_____	_____

a. The Employer should insert local currency unit.

### Summary of Specified Provisional Sums

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
1			
2	2.8	Supply and install equipment in pumping station	
3			
4	4.32	Provide for ventilation system in subway tunnel	
etc.			
Total for Specified Provisional Sums			4,750,000
(carried forward to Grand Summary (B), p. ____ )			



## Grand Summary

Contract Name:

Contract No.:

<i>General Summary</i>	<i>Page</i>	<i>Amount</i>
Bill No. 1: Preliminary Items		
Bill No. 2: Earthworks		
Bill No. 3: Drainage Structures		
—etc.—		
Subtotal of Bills	(A)	
Total for Daywork (Provisional Sum)	(B)	
Specified Provisional Sums <sup>a</sup> included in subtotal of bills	(C)	
Total of Bills Plus Provisional Sums (A + B + C)	(D)	
Add Provisional Sum <sup>a</sup> for Contingency Allowance	(E)	[sum] <sup>b</sup>
Bid Price (D + E) (Carried forward to Form of Bid)	(F)	

a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

b. To be entered by the Employer.

## **Section VI - Technical Specifications**

*The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Works required by the Procurement Entity. The Procurement Entity shall prepare the detailed TS take into account that:*

- *The TS shall make use of best practices.*
- *Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:*
  - (a) *Standards of materials and workmanship required*
  - (b) *Any sustainable procurement technical requirements shall be clearly specified. The sustainable procurement requirements shall be specified to enable evaluation of such a requirement on a pass/fail basis.*
  - (c) *Detailed tests required (type and number).*

**Detailed Technical Specifications and Standards** *[insert whenever necessary].*

*[Insert detailed description of TS]*

- Standard Specifications for road and bridge works issued by the Ghana Highway Authority



## **Inspections and Tests**

The following inspections and tests shall be performed: *[insert list of inspections and tests]*

## **Section VII - Framework Agreement Forms**

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# Notification to Conclude a Framework Agreement

*[Use letterhead paper of the Procurement Entity]*

*[Date]*

To: *[name and address of successful Tenderer]*

**Notification to Conclude a Framework Agreement**  
**Framework Agreement No. *[insert FWA reference number]***

This is to notify you that your Tender dated *[insert date]* to conclude a Framework Agreement in relation to the delivery/completion of *[insert short title for Works ]* is hereby accepted by our Entity.

Please sign, date and return the Framework Agreement within *[insert the applicable period for signing of the FWA in accordance of the ITT]* days of receipt of the same.

**Authorized Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Name of Entity:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

Attachment: Framework Agreement

## A. Framework Agreement Form

*[This form is to be completed by the Procurement Entity in accordance with the instructions provided in italicized text. The italicized text should be deleted from the final document.]*

**Note:** *the terminology in relation to the parties to the Framework Agreement changes from the terminology used in relation to the parties involved in the IFQ Primary Procurement process. In the Primary Procurement process the Procurement Entity is responsible for establishing the FWA(s). However, the parties to the FWA will be the “Procurement Entity (ies)” and, where appropriate, a “Lead Procurement Entity” or a “Procurement Agent” acting on behalf of a Procurement Entity(ies) and responsible for managing and administering the FWA. In the FWA, the successful Tenderer(s) is called the “Contractor”. This covers the Contractor’s capacity as both a holder of an FWA and as a Contractor under a Call off Contract.]*

This Framework Agreement [*insert reference number of the Framework Agreement*] is made for the delivery/completion of [*insert brief description of Works*]

on the [*insert: number*] day of [*insert: month*], [*insert: year*]

between

*[Select one of the three OPTIONS below]*

*[OPTION 1: for Single User Framework Agreement]*

**the Procurement Entity (ies)** [*insert complete name of the Procurement Entity/ies, the type of legal entity, (for example, “an Entity of the Ministry of the Government of {insert name of Country of Procurement Entity/ies}”, or “a corporation incorporated under the laws of Ghana*

*[OPTION 2: for a Multi-User Framework Agreement with a Lead Procurement Entity that is responsible for managing and administering the Framework Agreement, and that is also a Procurement Entity,]*

between

**the Lead Procurement Entity** [*insert complete name of the Lead Procurement Entity, the type of legal entity, or “a corporation incorporated under the laws of Ghana and having its principal place of business at [insert Lead Procurement Entity’s address] as a Procurement Entity in its own right under the framework agreement and as the Entity responsible for the management and administration of the Framework Agreement for use by the other participating Procurement Entities listed in Section [insert number] to this Framework Agreement (Procurement Entity(ies)) and*



*[OPTION 3: for a Multi-User Framework Agreement with an Entity, that is not a Procurement Entity, but that is responsible for the management and administration of the Framework Agreement, for use by the Procurement Entities.]*

between

**the Procurement Agent** *[insert complete name of the type of legal entity, or “a corporation incorporated under the laws of Ghana and having its principal place of business at [insert Procurement Agent’s address] as the Entity responsible for the management and administration of the Framework Agreement for use by the participating Procurement Entity listed in Section [insert number] to this Framework Agreement (Procurement Entity(ies)) and*

**the Contractor** *[insert name of the Contractor], a corporation incorporated under the laws of [insert country of Contractor] and having its principal place of business at [insert Contractor’s address] (Contractor).*

This Framework Agreement is subject to the provisions described in the Sections listed below, and any amendments.

This Framework Agreement concludes a standing offer by the Contractor to deliver/complete works for the Procurement Entity(ies) during the Term of the Framework Agreement, as and when the Procurement Entity(ies) wishes to procure them, through a Call-off Contract.

The following documents shall be deemed to form and be read and construed as part of this Framework Agreement and, where indicated, to any Call-off Contract awarded under this Framework Agreement.

**Section VIII:** Framework Agreement General Provisions

**Section IX:** Framework Agreement Specific Provisions

**Section X:** List of Procurement Entities (if applicable)

IN WITNESS whereof, the Parties to this Framework Agreement have caused this Framework Agreement to be executed in accordance with the laws of *[insert the name of the Framework Agreement governing law country]* on the day, month and year indicated above.

*[Select one of the three options below]*

*[OPTION 1: for Single User Framework Agreement]*

“For and on behalf of the Procurement Entity:”

*[OPTION 2: for a Multi-User Framework Agreement with a Lead Procurement Entity that is responsible for managing and administering the Framework Agreement, and that is also a Procurement Entity]*

“For and on behalf of the Lead Procurement Entity:”

*[OPTION 3: - for a Multi-User Framework Agreement with an Entity, that is not a Procurement Entity, but that is responsible for the management and administration of the Framework Agreement, for use by the participating Procurement Entities.*

“For and on behalf of the Procurement Agent”

Signed: *[insert signature]*

Full name: *[name of person signing]*

Entity: *[insert the name of Entity]*

In the capacity of: *[insert title or other appropriate designation]*

In the presence of *[insert identification of official witness]*

For and on behalf of the Contractor:

Signed: *[insert signature of authorized representative(s) of the Contractor]*

Full name: *[name of person signing]*

In the capacity of: *[insert title or other appropriate designation]*

In the presence of *[insert identification official of witness]*

# Section VIII: Framework Agreement General Provisions (FWAGP)

*[the following text must not be modified by the Procurement Entity.]*

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# Section VIII

## Framework Agreement General Provisions

### (FWAGP)

- 1 Definitions**
- 1.1 The following words and expressions shall have the meanings hereby assigned to them
- (a) “**Base Price**” is the Framework Agreement (FWA) unit price prior to any price adjustment in accordance with **FWA Specific Provision FWAGP 8.1**.
  - (b) “**Business Day**” is any day that is an official working day of the Procurement Entity. It excludes the Procurement Entity’s official public holidays.
  - (c) “**Call-off Contract**” is a contract awarded under a Framework Agreement, through a Secondary Procurement process, for the supply of Goods, and any Related Services.
  - (d) “**Closed Framework Agreement**” is where no new firm(s) may conclude Framework Agreement(s) during the Term of the Framework Agreement.
  - (e) “**Commencement Date**” is the date this Framework Agreement is signed by both parties, being the commencement of the Term.
  - (f) “**Contract Price**” is the price payable to the Contractor as specified in the Call-off Contract, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
  - (g) “**Day**” means calendar day.
  - (h) “**In Writing**” means communicated or recorded in written form. It includes, for example: mail, e-mail, or communication through an electronic procurement system (provided that the electronic system is accessible, secure, ensures integrity and confidentiality, and has sufficient audit trail features).
  - (i) “**Lead Procurement Entity**”, when named in the Framework Agreement, means a party to the Framework Agreement, as a Procurement Entity in its own right under the framework agreement and as the Entity responsible for

the management and administration of the Framework Agreement for use by the other participating Procurement Entities as specified in the **FWA Specific Provisions**. All communications, including notices, in relation to the Framework Agreement, are to be addressed to the Lead Procurement Entity. All communications, including notices, in relation to a Call-off Contract, are to be addressed to the Procurement Entity named in the Call-off Contract.

- (j) **“Multi-User Framework Agreement”** means a Framework Agreement where there is more than one Procurement Entity permitted to Procurement Entity through a Call-off Contract, as specified in the **FWA Specific Provisions**;
- (k) **“Procurement Agent”**, when named in the Framework Agreement, is a party to the Framework Agreement, but only in its capacity as the Entity responsible for managing and administering the Framework Agreement for use by the participating Procurement Entities. All communications, including notices, in relation to the Framework Agreement, are to be addressed to the Procurement Agent.
- (l) **“Procurement Entity”** is the Entity(ies) that is/are permitted to procure Works from a Contractor under a Call-off Contract awarded through a Framework Agreement. Where appropriate, for the purpose of interpretation of the Framework Agreement, the term Procurement Entity includes Lead Procurement Entity, or Procurement Agent.
- (m) **“Secondary Procurement”** is the method used to select a Contractor and award a Call-off Contract under this Framework Agreement.
- (n) **“Single-User Framework Agreement”** means a Framework Agreement where there is only one Procurement Entity, as specified in the **FWA Specific Provisions**.
- (o) **“Supplier or Contractor”** means the person, private or government entity, or a combination of the above, who has concluded a Framework Agreement to deliver/complete the works for a Procurement Entity, from time to time, under a Call-off Contract.
- (p) **“Term”** means the duration of this Framework Agreement as described in the **FWA Specific Provisions** starting on the Commencement Date.

- 2 Framework Agreement Documents**
- 2.1 This Framework Agreement (FWA) shall be read as a whole. Where a document is incorporated by reference into this Framework Agreement, it shall be deemed to form, and be read and construed, as part of this Framework Agreement.
- 2.2 This Framework Agreement comprises the documents specified in the **FWA Specific Provisions**.
- 3 Contractor's obligations**
- 3.1 Contractor shall offer to deliver/complete (standing offer), the Works described in the Framework Agreement: for the Term of this Framework Agreement, in accordance with the terms and conditions stipulated in this Framework Agreement.
- 3.2 During the Term of the Framework Agreement, the Contractor shall continue to be eligible and qualified, as per the qualification and eligibility criteria stipulated in the Primary Procurement process and the provisions of sub-paragraphs 3a. to 3c. below The Contractor shall notify the Procurement Entity immediately, in writing, if it ceases to be qualified and/or ceases to be eligible.
- 3.3 Contractor undertakes to deliver/complete the Works under a Call-off Contract. The Works delivered shall be:
- (a) of the quality, type and as otherwise specified in the Framework Agreement, **Section V: Bills of Quantities**,
  - (b) at the Contract Price specified in the Call-off Contract, and
  - (c) in such quantities, at such times and to such locations as specified in the Call-off Contract.
- 3.4 The Contractor agrees that the Call-off Contract General Conditions of Contract set out in the Framework Agreement, and Call-off Contract Special Conditions of Contract set out in a Call-off Contract, shall apply to the delivery/completion of the Works.
- 4 Continued Qualification and Eligibility**
- 4.1 The Contractor shall continue to have the nationality of an eligible country as specified in the **FWA Specific Provisions**. A Contractor or subcontractor shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in, and operates in conformity with, the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be.
- 4.2 The Procurement Entity may require, during the Term of the Framework Agreement, evidence of the Contractors continued qualification and eligibility. Failure to provide such evidence, as requested, may result in the Contractor being disqualified from participating in a Secondary Procurement process, and/or being

awarded a Call-off Contract, and/or the termination of the Framework Agreement.

- 5 Term** 5.1 This Framework Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the provisions of this Framework Agreement, or the general law, shall continue until the end of the Term specified in the **FWA Specific Provisions**.
- 6 Representative** 6.1 The representatives for each party, who shall be the primary point of contact for the other party in relation to matters arising from this Framework Agreement, are specified in the **FWA Specific Provisions**. Should the representative be replaced, the party replacing the representative shall promptly inform the other party In Writing of the name and contact details of the new representative. Any representative appointed shall be authorized to make decisions on the day to day operation of the Framework Agreement.
- 7 Role of Lead Procurement Entity or Procurement Agent** 7.1 Where there is a Lead Procurement Entity or Procurement Agent that is a party to the Framework Agreement, their role is to manage and administer the Framework Agreement(s) for use by the participating Procurement Entity (ies). All communications, including notices, in relation to the Framework Agreement are to be made to the Lead Procurement Entity or Procurement Agent. The Lead Procurement Entity or Procurement Agent is responsible for all matters pertaining to the Framework Agreement including, for example, amendments, suspension and termination of the Framework Agreement. For matters relating to individual Call-off Contracts, all communications, including notices, must be made to the Procurement Entity named in the Call-off Contract.
- 7.2 Where no Lead Procurement Entity or Procurement Agent has been appointed, the named Procurement Entity is responsible for managing and administering the Framework Agreement and the provisions in **FWAGP 6.1** above, in relation to communications and notices etc., apply to the Procurement Entity.
- 8 Contract Price** 8.1 The Contract Price for each Call-off Contract shall be determined as specified in the **FWA Specific Provisions**.
- 9 Performance Security** 9.1 The Procurement Entity may require a Performance Security from the Contractor in relation to the performance of a specific Call-off Contract. In this event, the Contractor shall comply with the

relevant provisions relating to Performance Security contained in the Call-off Contract Special Conditions of Contract.

- 10 Language** 10.1 This Framework Agreement, and any Call-off Contract, as well as all correspondence and documents relating to this Framework Agreement, and any Call-off Contract, exchanged by the Procurement Entity and Contractor, shall be written in **English**.
- 11 Notices** 11.1 Any notice given by one party to the other pursuant to this Framework Agreement shall be In Writing to the address specified in the **FWA Specific Provisions**. A notice shall be effective when delivered, or on the notice’s effective date, whichever is later.
- 12 Fraud and Corruption** 12.1 The Government of the Republic of Ghana requires that Tenderers under the contracts financed from public funds, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following terms shall be interpreted as indicated:
- a. “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
  - b. “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the benefits of free and open competition;
- 12.2 The Procurement Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- 13 Confidential Information** 13.1 The Procurement Entity and the Contractor shall keep confidential and shall not, without the consent In Writing from the other, divulge to any third party any documents, data, or other information furnished directly or indirectly by either party in connection with the Framework Agreement.
- 13.2 The obligation of a party under **FWAGP 13. 1.** above, shall not apply to information that:



- (a) now, or in future, enters the public domain through no fault of that party.
  - (b) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party.
  - (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 14 Governing Law**
  - 14.1 This Framework Agreement, and any Call-off Contract, shall be governed by, and interpreted in accordance with, the laws of Ghana, unless otherwise specified in the **FWA Specific Provisions**, or the Special Conditions of Contract as set out in any Call-off Contract.
- 15 Change to the Framework Agreement**
  - 15.1 Any change to this Framework Agreement, including an extension of the Term, must be In Writing and signed by both Parties. A change can be made at any time after this Framework Agreement has been signed by both Parties, and before it expires.
- 16 Termination of the Framework Agreement**
  - 16.1 The Procurement Entity, without prejudice to any other remedy for breach of the Framework Agreement, may terminate this Framework Agreement immediately, by notice In Writing to the Contractor, if:
    - (a) in the judgement of the Procurement Entity, the Contractor has engaged in Fraud and Corruption, or
    - (b) during the Term of the Framework Agreement, the Contractor ceases to be qualified or eligible as per **FWAGP 4**, or
    - (c) the Contractor purports to assign, or otherwise transfer or dispose of this Framework Agreement, in whole, or in part, without the prior written consent of the Procurement Entity/Lead Entity/Procurement Agent, or
    - (d) the Contractor becomes bankrupt or otherwise insolvent.
  - 16.2 The Procurement Entity/Lead Entity/Procurement Agent may terminate this Framework Agreement, in whole or in part, by notice In Writing sent to the Contractor, at any time, for its convenience. The notice of termination shall specify that the termination is for the Procurement Entity/Lead Entity/Procurement Agent's convenience, the extent to which the performance of the contractor under the Framework Agreement is terminated, and the date upon which such termination becomes effective.

- 17 Consequence of expiry or termination**
- 17.1 Upon expiry, or earlier termination of this Framework Agreement, all Call-off Contracts entered into under this Framework Agreement shall continue in full force and effect unless otherwise terminated under the Call-off Contract General or Specific Conditions of Contract. However, no further Call off Contracts shall be awarded once the Framework Agreement is terminated.
- 18 Dispute resolution in relation to this Framework Agreement**
- 18.1 In the case of a dispute arising out of, or in connection with this Framework Agreement, the Parties shall, in good faith, make every reasonable effort to communicate and cooperate with each other with a view to amicably resolving the dispute.
- 18.2 Where parties have exhausted the process described in **FWAGP 19.1**, the parties may, by mutual agreement, nominate and refer the dispute to an adjudicator/mediator to assist in the resolution of the dispute. Parties will meet their own costs associated with such a referral and split the costs of the adjudicator/mediator. In appointing the adjudicator/mediator parties should agree whether or not the adjudicator's/mediator's decision is to be final and binding.
- 19 Dispute resolution in relation to Call-off Contracts**
- 19.1 The Procurement Entity/Lead Entity/Procurement Agent and the Contractor for a Call-off Contract shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 19.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procurement Entity/Lead Entity/Procurement Agent or the Contractor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this provision shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery/completion of the Works under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **FWA Specific Provisions**.
- 19.3 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

- (b) the Procurement Entity/Lead Entity/Procurement Agent shall pay the Contractor any monies due the Contractor.

## Section IX: Framework Agreement Specific Provisions

The following Framework Agreement Specific Provisions (FWASP) shall supplement and/or amend the Framework Agreement General Provisions (FWAGP). Whenever there is a conflict between the FWAGP and FWASP, the provisions of the FWASP shall prevail.

*[This section is to be completed by the Purchasing Entity as per the instructions provided in italicized text. The italicized text should be deleted from the final document.]*

<b>Framework Agreement General Provision</b>	<b>Description</b>
<b>FWAGP 1.1 (i) Works</b>	This Framework Agreement relates to the Procurement Entity/Lead Entity/Procurement Agent and delivery/completion , under a separate Call-off Contract, of <i>[insert short title that describes the type of Works]</i> . The Works , are more fully described in <b>Section V: Bills of Quantities</b> <b>Section VI: Technical Specifications, Drawings and Inspections and Tests.</b>
<b>FWAGP 1.1 (l), (m) &amp; (s) Single/Multi-User</b>	<i>[state either “This is a Single-User Framework Agreement.” or “This is a Multi-User Framework Agreement. All participating Procurement Entities/Lead Entities/Procurement Agents are listed at [insert Section number]”]</i>
<b>FWAGP 2.2 Framework Agreement Documents</b>	This Framework Agreement comprises the following documents.: <ol style="list-style-type: none"> <li>a. Framework Agreement, including all Sections,</li> <li>b. Notice of Conclusion of a Framework Agreement, and</li> <li>c. Letter of Tender (from Primary Procurement process)</li> </ol>
<b>FWAGP 3.4 Contractor’s Obligations</b>	<i>[For rapidly changing technologies such as information systems (computers, software, communication technology etc.) specify that this requirement applies.]</i>
<b>FWAGP 4. Eligibility</b>	At the present time, firms, from the following countries are excluded from this Framework Agreement as being ineligible.  <i>[[insert a list of the countries following approval by PPA to apply the restriction or state “none”].]</i>

<p><b>FWAGP 5.1 Term</b></p>	<p>The Term of this Framework Agreement is [enter number of years] years. [NOTE: the maximum Term permissible is 3 years] from the Commencement Date.</p>
<p><b>FWAGP 6.1 Representatives</b></p>	<p><b><u>Procurement Entity’s Representatives</u></b> Selection one of the following OPTIONS</p> <p><i>OPTION 1: for a Single-User Framework Agreement use the following text]</i></p> <p>The name and contact details of the Procurement Entity’s Representative under this Framework Agreement, and the address for notices in relation to this Framework Agreement, are:</p> <p>Name: Title/position: Address: Phone: Mobile: E-mail:</p> <p><i>OR</i></p> <p><i>[OPTION 2: for a <u>Multi-User Framework Agreement with a Lead Procurement Entity</u> that is responsible for managing and administering the Framework Agreement and is also a Procurement Entity insert the name of the Lead Procurement Entity’s Representative and list all other participating Procurement Entities’ Representatives:]</i></p> <p>The name and contact details of the Lead Procurement Entity under this Framework Agreement, and the address for notices in relation to this Framework Agreement, are:</p> <p>Name: Title/position: Address: Phone: Mobile: E-mail:</p> <p>The Representatives for all other participating Procurement Entities are listed in Section [insert number] to this Framework Agreement.</p>

	<p>OR</p> <p><i>[OPTION 3: for a <u>Multi-User Framework Agreement concluded by a central purchasing authority</u> (that is <u>not</u> also a Procurement Entity) insert the following]</i></p> <p>The name and contact details of the Procurement Agent under this Framework Agreement, and the address for notices in relation to this Framework Agreement, are:</p> <p>Name:</p> <p>Title/position:</p> <p>Address:</p> <p>Phone:</p> <p>Mobile:</p> <p>E-mail:</p> <p>The Representatives for all participating Procurement Entities are listed in Section <i>[insert number]</i> to this Framework Agreement.</p>
<p><b>FWAGP 6.1 Representatives</b></p>	<p><b><u>Contractor’s Representatives</u></b></p> <p>The name and contact details of the Contractor’s Representative, for the purposes of this Framework Agreement, and the address for notices in relation to this Framework Agreement are:</p> <p>Name:</p> <p>Title/position:</p> <p>Address:</p> <p>Phone:</p> <p>Mobile:</p> <p>E-mail:</p>
<p><b>FWAGP 8.1 Contract Price</b></p>	<p>The Contract Price that will apply to the Procurement Entity under a Call-off Contract shall be: <i>[modify as appropriate]</i></p> <p><b>For Direct Selection:</b></p> <p>the Base Price stipulated in the Framework Agreement, subject to provisions below.</p> <p>or</p> <p><b>For Mini-competition:</b></p>

	<p>the successful competitive quotation.</p>
<p><b>FWAGP 8.1</b> <b>Contract Price</b></p>	<p><b>Adjustments to the Base Price</b>  <i>[Select one of the two options]</i></p> <p><i>[OPTION 1:</i>          “The Base Price offered by the Contractor, as stipulated in the FWA, or the price offered after mini-competition, shall apply to the Call-off Contract. The Base Price shall not be subject to any price adjustment during a Secondary Procurement, and/or an award of a Call-off Contract.”]</p> <p><i>OR</i></p> <p><i>[OPTION 2:</i>          “The Base Price shall be subject to an adjustment as follows:          For Call-off Contracts awarded through a Secondary Procurement method involving direct selection, (i.e. not awarded through a mini-competition), the price adjustment below shall be applied to that Contractor’s Base Price to determine the Call-off Contract Price.          The formulae shall be of the following general type:  <math display="block">P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots</math>         where:          “<b>P<sub>n</sub></b>” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “<b>n</b>”, this period being a month unless otherwise stated in the Appendix to Tender,          “<b>a</b>” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments,          “<b>b</b>”, “<b>c</b>”, “<b>d</b>”, ...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,          “<b>L<sub>n</sub></b>”, “<b>E<sub>n</sub></b>”, “<b>M<sub>n</sub></b>”, ... are the base cost indices or reference prices, for period “<b>n</b>”, 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          “<b>L<sub>o</sub></b>”, “<b>E<sub>o</sub></b>”, “<b>M<sub>o</sub></b>”, ... 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.</p>

	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p><b>FWAGP 3.1 &amp; 8.1</b> <b>Contract Price</b></p>	<p>if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Ghana where the Project Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery/Completion Period and/or the Base Price, then such Delivery/Completion Period and/or Base Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Framework Agreement. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with <b>FWAGP 8.1</b>.</p>



<p><b>FWAGP 20.2</b></p> <p><b>Dispute Resolution in relation to Call-off Contract.</b></p>	<p>The rules of procedure for arbitration proceedings shall be as follows:</p> <p>a. [<i>describe the proceedings that are to apply e.g.</i>]</p> <p>The Procurement Entity/Lead Entity/Procurement Agent and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.</p> <p>If, after twenty-eight (28) days from the commencement of such informal negotiations, the Procurement Entity/Lead Entity/Procurement Agent and the Contractor have been unable to resolve amicably a Contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the Special Conditions of Contract. These mechanisms may include, but are not restricted to, conciliation mediated by a third party, adjudication in an agreed national or international forum, and/or national and international arbitration.</p>
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## **PART 2: Secondary Procurement**

This Section contains the methods and the criteria that the Procurement Entity/Lead Entity/Procurement Agent shall use to conduct a Secondary Procurement process to select a Contractor and award a Call-off Contract under this Framework Agreement. No other factors, methods or criteria shall be used other than specified in this IFQ document for the Secondary Procurement process.

*[The Procurement Entity/Lead Entity/Procurement Agent shall select the criteria deemed appropriate for the Secondary Procurement process, using the samples text provided below or other acceptable wording, and delete the text in italics.]*

*The Secondary Procurement methodology(ies) to be described in this Section must be consistent with the Secondary Procurement method(s) set out in the Invitation for Tenders which resulted in the conclusion of the Framework Agreement.]*

## Section XI

### 1. Secondary Procurement Method(s)

The Secondary Procurement method(s) that apply to the selection of a Contractor for the award of a Call-off Contract under this Framework Agreement [is/are] *[insert the types of the Secondary Procurement Method(s) that apply. This may include methods used as examples below, or any other method(s) approved by PPA.]*:

- (i) competitive quotations through mini-competition,
- (ii) direct selection based on location, and
- (iii) direct selection based on balanced division of the Works.
- (iv) *[add any other applicable method]*

The procedure for the application of the procurement methods outlined under paragraph 1 above are the following.

#### 1.1 **Competitive quotations (mini-competition)** *[delete if not applicable as per paragraph 1 above]*

The Procurement Entity/Lead Entity/Procurement Agent will prepare a Request for Quotation (RFQ) and invite all eligible Contractors holding a Framework Agreement that includes the Works to be procured under the Call-off contract, to submit competitive quotations.

The RFQ will include:

- (a) the Description and scope of Works to be procured
- (b) Works location(s)
- (c) delivery/completion date(s) or schedule
- (d)
- (e) details of any inspections or tests that are additional to those described in the Framework Agreement
- (f) the criteria to be applied to the evaluation of quotations
- (g) the award criteria, e.g.: The Procurement Entity/Lead Entity/Procurement Agent shall award the Call-off Contract to the Contractor whose Tender(s) has been determined to be substantially responsive to the RFQ; and the lowest evaluated cost.
- (h) deadline for submission of quotations
- (i) reference the Call-off Contract Terms and Conditions of supply, which are to apply to the procurement
- (j) request to Contractors to demonstrate that they continue to be eligible and qualified to deliver/complete the Works
- (k) *any other relevant information.*

#### 1.2 **Direct selection based on location** *[delete if not applicable as per paragraph 1 above]*

The Procurement Entity/Lead Entity/Procurement Agent will select an eligible Contractor holding a Framework Agreement, to deliver /complete the Works, based on which Contractor is best able to deliver/complete the Works,

The Procurement Entity/Lead Entity/Procurement Agent will issue a Call-off Contract using the prices/pricing mechanism set out in the Framework Agreement, or as adjusted by the agreed price adjustment formula, if applicable and any changes in any Laws and Regulations in accordance with FWAGP 14.1.

**1.3 Direct selection based on balanced division of the works** *[delete if not applicable as per paragraph 1 above]*

The Procurement Entity/Lead Entity/Procurement Agent will rotate the award of Call-of Contracts amongst all eligible Contractors holding a Framework Agreement, based on a balanced division of delivery/completion linked to an upper limit. The upper limit is: [insert upper limit in value or quantity].

The first Call-off Contract(s) will be awarded to the Contractor whose Framework Agreement has the lowest evaluated cost. The first Contractor will continue to be awarded Call-off Contracts until the total value/quantity of all Call-off Contracts awarded reaches the upper value/quantity limit.

A second contractor, whose Framework Agreement has the second lowest evaluated cost, will then be awarded the subsequent Call-off Contracts until the total value/quantity of all Call-off Contracts awarded reaches the upper value/quantity limit. And so on.

The Procurement Entity/Lead Entity/Procurement Agent will issue a Call-off Contract using the prices/pricing mechanism set out in the Framework Agreement, or as adjusted by the agreed price adjustment formula, if applicable and any changes in any Laws and Regulations in accordance with FWAGP 14.1.

*[add any other applicable method]*

## SECTION XII

### 2. Formation of Call-off Contract

The Procurement Entity/Lead Entity/Procurement Agent shall confirm that the selected Contractor continues to be qualified and eligible in accordance with Framework Agreement prior to the formation of the Call-off Contract. The Call-off Contract is formed when one of the following conditions are met depending on the method of selection used for the Secondary procurement.

*[Describe the procedure(s) that applies to the formation of the Call-off Contract. Be specific e.g.]*

**2.1 For competitive quotations through mini-competition using a Request for Quotation,** the Call-off contract is formed when: *[select one of the three Options]*

**OPTION 1**

“the Procurement Entity/Lead Entity/Procurement Agent issues, the Letter of Award of Call-off Contract to the successful Contractor.” *[add if applicable: “Following the formation of contract, through offer and acceptance, the Procurement Entity/Lead Entity/Procurement Agent and Contractor shall sign a Call-off Contract as per the form contained in the Framework Agreement.”]* *OR*

**OPTION 2**

“the Procurement Entity/Lead Entity/Procurement Agent transmits, to the successful Contractor, a Call-off Contract for signature and return, and the Call-off Contract is signed by both the Procurement Entity/Lead Entity/Procurement Agent and the Contractor. The date that the Call-off Contract is formed, is the date that the last signature is executed.”

**OPTION 3**

“the Procurement Entity/Lead Entity/Procurement Agent transmits, to the successful Contractor, a Procurement Entity/Lead Entity/Procurement Agent order for the Works and the contractor accepts the order.” *(describe how this will happen, e.g. through return email, signed Procurement Entity/Lead Entity/Procurement Agent Order, etc.).*

**2.2 For direct selection based on location or balanced division of the Works,** the Call-off contract is formed when the Procurement Entity/Lead Entity/Procurement Agent transmits, to the successful Contractor, a Call-off Contract for signature and return, and the Call-off Contract is signed by both the Procurement Entity/Lead Entity/Procurement Agent and the Contractor. The date that the Call-off Contract is formed, is the date that the last signature is executed, or the date agreed by the parties.

## **SECTION XIII**

### **3. Communication and Award of Call-off Contract**

*[Describe the process to announce the award of a Call-off Contract e.g.]*

The Procurement Entity/Lead Entity/Procurement Agent shall, at the same time as awarding the contract, communicate the award of the Call-off Contract in the case of:

- a. Direct Selection to all FWA Contractors for the items included in the Call-off Contract.
- b. selection based on competitive quotations (through mini-competition) to all Contractors invited to submit quotations.

The communication must be by the quickest means possible, e.g. by email, and include, as a minimum, the following information:

- c. the name and address of the successful Contractor
- d. the Scope of Works being procured
- e. the contract price
- f. a statement of the reason(s) the recipient Contractor was unsuccessful

## **Section XIV**

### **4. Complaint About Award of Call-off Contract**

An unsuccessful Contractor may complain about the decision to award a Call-off Contract. In this case the process for making a complaint will be in accordance with the provisions in the Public Procurement Act, 2003 (Act 663), as amended.

Draft

# **SECTION XV: Call-off Contract 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:

In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

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 Special Conditions;
- (v) the General Conditions;
- (vi) the Specification;
- (vii) the Drawings;
- (viii) the Bills of Quantities; and
- (ix) any other documents

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.

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.

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]:

For [full legal name of the Contractor]:

Signature

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**

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## General Conditions

### 1. 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 Quantities, data, lists, and schedules of rates and/r prices.

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 entitled appendix to tender which are appended to and form part of the Letter of Tender.

1.1.1.10 **“Bill of Quantities”** and **“Daywork Schedule”** means the documents so named (if any) which are comprised in the Schedules.

**1.1.2  
Parties and  
Persons**

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.

1.1.2.8 **“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].

1.1.2.10 **“FIDIC”** means the Federation Internationale des Ingenieurs-Conseils, the International federation of consulting engineers.

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

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 Remedying 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].

1.1.4.10 **“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].

1.1.4.11 **“Retention Money”** means the accumulated retention 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].

1.1.4.12 **“Statement”** means a statement submitted by the 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.

1.1.5.8 **“Country”** means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

- 1.1.5.9 **“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.
- 1.1.5.10 **“Force Majeure”** is defined in Clause 19[*Force Majeure*].
- 1.1.6.11 **“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

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### 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 other 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 communications 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**

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### **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.

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## 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.

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## 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 thesis 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.

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**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.

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**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 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.

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**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

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**Permits, 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.

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**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*].

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**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.

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**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.

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### **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 (for 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.

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### 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.

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### 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).

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### 3.4

**Replacement of the 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

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#### **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.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [*Claims, Disputes and Arbitration*].

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## **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.

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## 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.

**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*].

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**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 the intended date of the commencement of each Subcontractor's work, and of the 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*].

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#### 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.

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#### 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.

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#### 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 subparagraphs (a) and (b) above related to this extent.

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#### 4.8

**Safety Procedures**

The Contractor shall:

- (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.

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**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.

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**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.

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#### 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.

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#### 4.12

##### **Unforeseeable Physical**

In this Sub-Clause, "physical conditions" means natural physical

## Conditions

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 sub-paragraph (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.

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#### 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

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#### 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.

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#### 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.

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#### 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.

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#### 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.

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#### 4.18

##### **Protection of the**

The Contractor shall take all reasonable steps to protect the

**Environment**

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.

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**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.

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**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 com 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.

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#### 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 hit 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.

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#### 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.

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#### 4.23

##### **Contractor's Operations on Site**

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.

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#### 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.

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## 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
- (c) whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor.

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### 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.

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## **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.

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**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 arrangements 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 instructions 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.

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**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.

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**6.9**

**Contractor's**

The Contractor's Personnel shall be appropriately qualified, skilled

**Personnel**

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.

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**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.

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**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.

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**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.

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**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 labeled 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.

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## 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 a 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.

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## **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.

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### **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*].

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### **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.

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## 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.

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## 8.5

### **Delays Caused by Authorities**

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid done 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.

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## 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.

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## 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.

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**9. Tests on Completion**

**9.1**

**Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with Clause and 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.

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### 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.

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### 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 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].

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## 10. Employer's Taking Over

### 10.1

#### **Taking Over of the**

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on



## **Works and Sections**

*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 sub-paragraph (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 Parts of the Works**

The Engineer may, at the sole discretion of the Employer, issue a **of** 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 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.

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### 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.

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## 11. Defects Liability

### 11.1

#### **Completion of Outstanding Work and Remediating 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.

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### 11.2

#### **Cost of Remediating Defects**

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

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) 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 costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

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**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.

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**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.

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**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.

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**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.

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**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.

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### 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.

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### 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.

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### 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:

(i) the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.

(ii) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

### 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.

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### **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.

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#### **13.2**

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### **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.

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### **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.

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#### 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.

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#### 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.

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## 13.6

### **Daywork**

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:

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

where:

“**P<sub>n</sub>**” 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,

“**Ln**”, “**En**”, “**Mn**”, ... 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.

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## 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.

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### 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

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#### **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 which the Contractor 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.

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**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 installments 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.

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**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.

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## 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.

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**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.

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**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.

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**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*].

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**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
- (d) 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*].

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**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.

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**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.

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**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.

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#### 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) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 *[Statement at Completion]*.

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.

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#### 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
    - (ii) other payments and deductions under sub-paragraphs (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.
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## 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 terminating, 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.

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**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.

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**15.4**

**Payment after Termination**

After a notice of termination under Sub-Clause 15.2 [Termination by 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.

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**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 15.6.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 15.6 [Optional Termination, Payment and Release].

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**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.*

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## 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.

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### 16.3

#### **Cessation Work and Contractor's Equipment**

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.

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## 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*].

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## 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.

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### 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.

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**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.

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**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.

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## 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.

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## **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 insured 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, 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 amounts or 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.

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## 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 sub-paragraph (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*].

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### 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,
- (c) 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.

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## 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.

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## 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,
- (v) 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
- (vi) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

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## 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.

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### 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.

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### 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.

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### 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.

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### 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.

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### **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:

- (a) 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
  - (b) 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 p[roceed 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.

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## 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.

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## 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.

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## 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**

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.

**Settlement**

**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 XVI. SPECIAL CONDITIONS OF  
CONTRACT**

### Section XVI. 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.

<b>A. General</b>	
<b>GCC 1.1.2.2</b>	The Employer is: <b>[Insert complete name]</b>
<b>GCC 1.1.2.11</b>	The Funding Agency is: <b>[Insert complete name]</b>
<b>GCC 1.1.2.4</b>	The Engineer is: <b>[Insert name, address, telephone, fax numbers and e-mail] [Insert complete name]</b>
<b>GCC 1.1.3.2</b>	The Start Date shall be: <b>[Insert date]</b>
<b>GCC 1.1.3.3</b>	The Intended Completion Date for the whole of the Works shall be <b>[Insert number of days deemed appropriate here]</b>
<b>GCC 1.1.6.7</b>	The Site is located at <b>[Insert address of Site]</b> and is defined in drawings No. <b>[Insert numbers]</b>
<b>GCC 1.1.5.8</b>	The Works consist of: <b>[insert brief summary, including relationship to other contracts under the Project]</b>
<b>GCC 1.1.5.6</b>	Sectional Completions <b>[Insert details of sections here]</b>
<b>GCC 1.3</b>	The Employer’s address for the purpose of communications shall be: <b>[state full address, telephone, fax and e-mail]</b> The Contractor’s address for the purpose of communications shall be: <b>[state full address, telephone, fax and e-mail]</b>
<b>GCC 1.4</b>	The governing law is that of the <b>Republic of Ghana</b> The ruling language shall be <b>English Language</b> This Contract shall be executed in the <b>[insert language for communications <u>only</u> if different from the ruling language]</b> language.
<b>GCC 1.5</b>	The following documents also form an integral part of this Contract: <b>[Insert detailed list additional documents forming part of the Contract]</b>
<b>GCC 1.6</b>	The Parties <b>[Insert “shall” or “shall not”]</b> enter into contract within 28 days after the Contractor receives the Letter of Acceptance. <b>[If not, provide details as to the alternative deadline]</b>
<b>GCC 1.14</b>	The individuals of firms in a joint venture, consortium or association <b>[insert “shall be” or “shall not be”]</b> jointly and severally liable
<b>GCC 2.1</b>	The Site Possession Date(s) shall be: <b>[insert location(s) and date(s), as relevant and applicable]</b>
<b>GCC 2.2</b>	Permits, approvals and / or licenses, or public service undertakings to be acquired by the Employer: <b>[Insert full details]</b>
<b>GCC 2.2</b>	Permits, approvals and / or licenses, or public service undertakings to be acquired by the Contractor: <b>[Insert full details]</b>
<b>GCC 18.2, 18.3, 18.4</b>	The minimum insurance amounts and deductibles shall be: (a) for the Works, Plant and Materials: <b>[insert amounts]</b> (b) for loss or damage to Equipment: <b>[insert amounts]</b> (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: <b>[insert amounts]</b> (d) for personal injury or death:

	<p>i. of the Contractor’s employees: <b>[insert amount]</b></p> <p>ii. of other people: <b>[insert amount]</b></p>
<b>GCC A6</b>	Fees and types of reimbursable expenses to be paid to the Adjudicator: <b>[insert hourly fees and reimbursable expenses]</b> .
<b>GCC 20.2</b>	Appointing Authority for the Adjudicator: <b>Ghana Institution of Surveyors</b>
<b>GCC 20.6</b>	<p>i) For small contracts / Domestic Contractors The institution whose arbitration procedures shall be used is: <b>[Stipulate institution whose Rules of Arbitration shall apply]</b></p> <p>ii) For Larger Contracts / Foreign Contractors [It is recommended that the arbitration procedures of an international institution be utilized. It is recommended to select one body among those listed below <del>(or designate an institution)</del>; and then insert the corresponding wording] <b>“United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules:</b> 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 <b>“Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC):</b> 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 <b>“Rules of the [insert designated institution] of International Arbitration:</b> 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 <b>[insert name of designated institution]</b> of International Arbitration which rules are deemed to be incorporated by reference to this clause.” The place of arbitration shall be: <b>[insert city and country; NB.: for international arbitration, specify neutral location]</b></p>
<b>B. Time Control</b>	
<b>GCC 8.3</b>	The Contractor shall submit for approval a Programme for the Works within <b>[Insert number]</b> days from the date of the Letter of Acceptance.
	The period between Program updates is <b>[insert number]</b> days. The amount to be withheld for late submission of an updated Program is: <b>[Insert amount]</b>
	The Contractor shall warn the Project Manager <b>copied to the Employer</b> at the earliest opportunity of specific likely future events or circumstances that may adversely affect <del>the quality of work,</del> increase the Contract Price, or delay the execution of the Works.
<b>C. Quality Control</b>	
<b>GCC 4.2</b>	The Performance Security shall be: <b>[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]</b> in the form of:
<b>GCC 8.7</b>	The liquidated damages for the whole of the Works are: <b>[insert percentage]</b> of the final Contract Price, per day.
	The maximum amount of liquidated damages for the whole of the Works is: <b>[insert percentage] of the final Contract Price.</b>
<b>GCC 11</b>	The Defects Liability Period is: <b>[Insert number]</b> days. _____ <i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i>



<b>D. Cost Control</b>	
<b>GCC 13.4</b>	The currency of the Employer’s country is: <b>GHS</b>
<b>GCC 13.8</b>	<p>This Contract <b>[Insert “shall” or “shall not”]</b> 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 <b>[Insert currency]</b> _____</p> <p style="padding-left: 20px;">i. <b>[Insert percentage]</b> percent nonadjustable element (coefficient A).  ii. <b>[Insert percentage]</b> percent adjustable element (coefficient B).</p> <p>(b) For <b>[Insert name of international currency]</b>:</p> <p style="padding-left: 20px;">i. <b>[Insert percentage]</b> percent nonadjustable element (coefficient A).  ii. <b>[Insert percentage]</b> percent adjustable element (coefficient B).</p> <p>The Index I for local currency shall be <b>[Insert index]</b>  The Index I for the specified international currency shall be <b>[Insert index]</b></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 (BRR/GhIS) are the legitimate and acceptable sources of indices.]</p>
<b>GCC 14.2</b>	Total Advance Payments shall be: <b>[insert amount(s) and currency]</b> and shall be paid to the Contractor no later than <b>[insert date(s)]</b>
<b>GCC 14.3</b>	The proportion of payments retained is: <b>[Insert percentage]</b> [The retention amount is usually to be kept close to 5 percent and shall in no case exceed 10 percent]
<b>E. Finishing the Contract</b>	
<b>GCC 4.1d</b>	The date by which “as built” Drawings are required is: <b>[insert date]</b>
<b>GCC 4.1d</b>	The date by which operating and maintenance manuals are required is: <b>[insert date]</b>
<b>GCC 8.7</b>	The maximum number of days is: <b>[insert number; consistent with GCC Clause 8.7 (Liquidated Damages)]</b>
<b>GCC 9.4</b>	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, shall be: <b>[insert percentage]</b>
<b>GCC 10.1</b>	The Employer shall take over the site and the Works immediately after the Project Manager’s issues a Certificate of Completion.

# **SECTION XVII: Secondary Procurement Forms**

## **Secondary Procurement Forms**

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## Request for Quotation

### Secondary Procurement under a Framework Agreement (method: mini-competition)

<b>From:</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's legal name]</i>
<b>Procurement Entity/Lead Entity/Procurement Agent's Representative:</b>	<i>[Insert name of Procurement Entity/Lead Entity/Procurement Agent's Representative]</i>
<b>Title/Position:</b>	<i>[Insert Representatives title or position]</i>
<b>Address:</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's address]</i>
<b>Telephone:</b>	<i>[Insert Representatives telephone number]</i>
<b>Email:</b>	<i>[Insert Representatives email address]</i>

<b>To:</b>	<i>[Insert Contractor's legal name]</i>
<b>Contractor's Representative:</b>	<i>[Insert name of Contractor's Representative]</i>
<b>Title/Position:</b>	<i>[Insert Representatives title or position]</i>
<b>Address:</b>	<i>[Insert Contractor's address]</i>
<b>Telephone:</b>	<i>[Insert Representatives telephone number]</i>
<b>Email:</b>	<i>[Insert Representatives email address]</i>

<b>Framework Agreement (FWA):</b>	<i>[Insert short title of FWA]</i>
<b>FWA Date:</b>	<i>[Insert FWA Date]</i>
<b>FWA Reference No.</b>	<i>[Insert FWA reference]</i>

<b>RFQ Ref No.:</b>	<i>[Insert reference]</i>
<b>RFQ Date:</b>	<i>[Insert date of RFQ]</i>
<b>RFQ issued:</b>	This RFQ has been transmitted by: "post" or "email" or "hand delivery/construction"

**Attachments:**

- Annex 1: Procurement Entity/Lead Entity/Procurement Agent's Requirements
- Annex 2: Quotation Form

Annex 3: Call-off Contract for Works [this may be the Call-off Contract Form or another acceptable template]

Dear [insert name of Contractor's Representative],

**1. Request for Quotation (RFQ)**

- a. With reference to above Framework Agreement (FWA), you are invited to submit your most competitive Quotation in this Secondary Procurement process. The Quotation is for the Works described in Annex 1: Procurement Entity/Lead Entity/Procurement Agent's Requirements, attached to this RFQ.

**2. Price**

- a. Your Quotation must be submitted in the format contained in Annex 2: Supplier Quotation Form.
- b. Your Quotation, cannot be higher than the Base Price for the Works as established in the Framework Agreement: Price Schedules adjusted for any change in Laws and Regulations in accordance with FWA Specific Provisions. [OR use the following text if the Base Price is subject to a price adjustment: Your Quotation cannot be higher the Base Price for the Works as established in the Framework Agreement: Price Schedules, adjusted by applying the price adjustment formula and any adjustment for change in Laws and Regulations in accordance with FWA Specific Provisions"]
- c. The price that you quote shall be fixed and shall not be subject to any further adjustment.
- d. The Quotation shall be in the same currency(ies) specified in the Framework Agreement: Price Schedules.
- e. The Quotation will be valid for a period of [insert number of calendar days]

**3. Performance Security** [delete if no performance security is required]

- a. If your Quotation is successful, you will be required to provide a Performance Security in accordance with the Call-off Contract.

**4. Clarifications**

- a. If you require clarification(s) regarding this RFQ, send your request in writing (email or hard copy or through e-procurement system if available) to our above-named Representative before [insert date and time]. We shall forward copies of our response to all Suppliers including a description of the inquiry but without identifying its source.

**5. Submission of Quotations**

- a. Quotations are to be submitted in the form attached at Annex 2 and [insert method e.g. in hard copy with 3 copies, by email, through e-procurement system].
- b. The deadline for submission of Quotations is [insert time, day, month, year].
- c. The address for submission of Quotations is:

Attention: [insert full name of person, if applicable]

Street Address: *[insert street address and number]*

Floor/ Room number: *[insert floor and room number, if applicable]*

City: *[insert name of city or town]*

Ghana Post GPS Code: *[insert Ghana Post GPS code, if applicable]*

Country: *[insert name of country]*

**6. Opening of Quotations**

- a. Quotations will be opened in the presence of Suppliers, or their representatives who choose to attend, at *[insert time]* on *[insert day, month, year same as or immediately after the deadline for the submission of Quotations.]*

**7. Evaluation of Quotations**

- a. Quotations will be evaluated according to the criteria and methodology described in the Framework Agreement: Secondary Procurement.

**8. Contract**

- a. Attached, as Annex 3 to this RFQ, is the draft Call-off Contract that will apply to this Secondary Procurement. If successful, you will be required to sign a Call-off Contract on the same, or similar terms. *[Instructions: complete a draft Call-off Contract for this procurement and attach it to this RFQ]*

On behalf of the Procurement Entity/Lead Entity/Procurement Agent:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

# RFQ ANNEX 1: Requirements

## Completion

							<b>Completion</b>

							<i>Completion</i>

## Technical Specifications, Drawings, Inspections and Tests

The Technical Specifications, Drawings, Inspections and Tests as are described in the Framework Agreement **Section V**: Schedule of Requirements.

*[Add any additional information consistent with the information provided in the Schedule of Requirements]*

## RFQ ANNEX 2: Supplier Quotation Form

<b>From:</b>	<i>[Insert Contractor's legal name]</i>
<b>Contractor's Representative:</b>	<i>[Insert name of Contractor's Representative]</i>
<b>Title/Position:</b>	<i>[Insert Representatives title or position]</i>
<b>Address:</b>	<i>[Insert Contractor's address]</i>
<b>Email:</b>	<i>[Insert Contractor's email address]</i>

<b>To:</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's legal name]</i>
<b>Procurement Entity/Lead Entity/Procurement Agent's Representative:</b>	<i>[Insert name of Procurement Entity/Lead Entity/Procurement Agent's Representative]</i>
<b>Title/Position:</b>	<i>[Insert Representatives title or position]</i>
<b>Address:</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's address]</i>

<b>Framework Agreement (FWA)</b>	<i>[Insert short title of FWA]</i>
<b>FWA Reference No.</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's FWA reference]</i>
<b>Date of Framework Agreement:</b>	<i>[Insert FWA date]</i>

<b>RFQ Ref No.:</b>	<i>[Insert Procurement Entity/Lead Entity/Procurement Agent's reference]</i>
<b>Date of Quotation:</b>	<i>[Insert date of Quotation]</i>

Dear *[insert name of Procurement Entity/Lead Entity/Procurement Agent's Representative]*

### SUBMISSION OF QUOTATION

#### 1. Conformity and no reservations

In response to the above named RFQ we offer to execute the Works as per this Quotation and in conformity with the RFQ, Delivery/construction and Completion Schedules, Technical Specifications, Drawings, Inspections and Tests. We confirm that we have examined and have no reservations to the RFQ, including the Call-off Contract.



**2. Eligibility and conflict of interest**

We declare that we continue to be qualified and meet the eligibility requirements and that we have no conflict of interest. We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by PPA.

**3. Tender Price**

The total price of our Tender, excluding any unconditional discounts offered in item (g) below is *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*.

**4. Unconditional Discounts**

The unconditional discounts offered are: *[Specify in detail each discount offered.]*

The exact method of calculations to determine the net price after application of unconditional discounts is: *[Specify in detail the method that shall be used to apply the discounts]*.

**5. Quotation Validity Period**

Our Quotation shall be valid for the period specified in RFQ, and it shall remain binding upon us and may be accepted at any time before it expires.

**6. Performance Security** *[delete if no performance security is required]*

If we are awarded the Call-off Contract, we commit to obtain a Performance Security in accordance with the RFQ.

**7. Commissions, gratuities, fees**

We have paid, or will pay the following commissions, gratuities, or fees with respect to this Quotation or execution of a Call-off Contract *[If none has been paid or is to be paid, indicate "none. "]*

<b>Name of Recipient</b>	<b>Address</b>	<b>Reason</b>	<b>Amount</b>

**8. Not Bound to Accept**

We understand that you reserve the right to:

- a.** accept or reject any Quotation and are not bound to accept the lowest evaluated cost Quotation, or any other Quotation that you may receive, and
- b.** annul the RFQ process at any time prior to the award of a Call of Contract without incurring any liability to Contractors.

**9. Fraud and Corruption**

We hereby certify that we have taken steps to ensure that no person acting for us, or on our behalf, engages in any type of Fraud and Corruption.

On behalf of the Contractor:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

# Sample Letter of Award of Call-off Contract

*[modify as appropriate]*

*[use letterhead paper of the Procurement Entity/Lead Entity/Procurement Agent]*

*[date]*

To: *[name and address of the Contractor]*

Subject: **Notification of Award of Call-off Contract No. . . . .**

In reference to the Framework Agreement *[insert reference number and date]*

*[For mini-competition, add the following: “and your Quotation *[insert reference number and date]* has been accepted.”]*

please find inclosed herewith the Call-off Contract. You are requested to sign the Call-off contract within *[insert no of days]*.

*[Insert the following if Performance Security is required: “You are also requested to furnish a Performance Security within *[insert no of days]* in accordance with the Conditions of Call-off Contract, using for that purpose one of the Performance Security Forms included in the Framework Agreement Secondary Procurement Forms. “]*

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Entity: \_\_\_\_\_

**Attachment: Call-off Contract**

## Call-off Contract for Works

<b>Framework Agreement (FWA):</b>	<i>[insert short title of FWA]</i>
<b>FWA Date:</b>	<i>[insert FWA date]</i>
<b>FWA reference number:</b>	<i>[insert FWA reference number]</i>
<b>Works:</b>	<i>[short title for type of Works]</i>

<b>Procurement Entity/Lead Entity/Procurement Agent:</b>	<b>Contractor:</b>			
<i>[name of Procurement Entity/Lead Entity/Procurement Agent]</i> <i>[address]</i>	<i>[name of Contractor]</i> <i>[address]</i>			
<b>WORKS (GCC 1.1 i)</b>				
<b>Code</b>	<b>Product name</b>	<b>Quantity</b>	<b>Unit price</b>	<b>Total</b>
<i>[insert code]</i>	<i>[description of Works]</i>	<i>[number]</i>	<i>[price]</i>	<i>[amount]</i>
Special instructions/comments:		<b>Total</b>		




**Contract Documents (GCC 2)**

1) 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.

- (a) Letter of Award of Call-off Contract
- (b) Contractor’s Quotation (if applicable)
- (c) Addenda No. \_\_\_\_ (if any)
- (d) Special Conditions of Call-off Contract

and by reference the following documents:

- (e) Framework Agreement,
- (f) Section VIII- Framework Agreement General Provisions,
- (g) Section IX- Framework Agreement Specific Provisions
- (h) Section V: Bill of Quantities *[insert relevant items from section V as applicable to the Call-off contract such as technical specifications, any drawings, and inspection and tests]*
- (i) Section XV: Call-off Contract General Provisions
- (j) *[List any other document]*

2) In consideration of the payments to be made by the Procurement Entity/Lead Entity/Procurement Agent to the Contractor as specified in this Call-off Contract, the Contractor hereby covenants with the Procurement Entity/Lead Entity/Procurement Agent to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

3) The Procurement Entity/Lead Entity/Procurement Agent hereby covenants to pay the Contractor in consideration of the execution of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

For and on behalf of the Procurement Entity/Lead Entity/Procurement Agent

Signed: *[insert signature]*

in the capacity of *[insert title or other appropriate designation]*

In the presence of *[insert identification of official witness]*

Date: \_\_\_\_\_

For and on behalf of the Contractor

Signed: *[insert signature of authorized representative(s) of the Contractor]*

in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert identification of official witness]*

Date: \_\_\_\_\_

Attachment

1. Special Conditions of Call-off Contract
2. Contractor's Quotation (if applicable)
3. *[Any other documents]*

## Performance Security

Date:

To: [name of Procurement Entity/Lead Entity/Procurement Agent]

[address of Procurement Entity/Lead Entity/Procurement Agent]

WHEREAS [*name and address of Supplier*] (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. [*reference number of the contract*] dated \_\_\_\_\_ [*yy/mm/dd*] to supply [*description of Works*] (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Contractor such a Bank guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantors and responsible to you, on behalf of the Contractor, up to a total of [amount of the guarantee in words and figures Ghanaian Cedis], and we undertake to pay you, upon your first written demand such sum being payable in the types and proportions of currencies in which the contract price is payable, and without cavil or argument, any sum or sums within the limits of [*amount of guarantee in Ghana Cedis*] as aforesaid, without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be executed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from liability under this Guarantee, and we hereby waive notice of any such change, addition or modification.

This Guarantee is valid until a date 28 day from the date of issue of the Certificate of Acceptance.

Signature and seal of the Guarantors

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[name of bank]

---

[address]

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[date]

## **Advance Payment Security Demand Guarantee**

Date:

To: [name of Procurement Entity/Lead Entity/Procurement Agent]

[address of Procurement Entity/Lead Entity/Procurement Agent]

[name of Contract]

Gentlemen and/or Ladies;

In accordance with the payment provision included in the Special Conditions of Contract, to provide for advance payment, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[name of the Procurement Entity]*, (hereinafter called “the Procurement Entity”) a bank guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of guarantee in figures and words in Ghanaian Cedis]*.

We, the *[name of the bank]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procurement Entity on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of guarantee in figures and words in Ghanaian Cedis]*.

We further agree that no change or addition to or other modification of the terms of the Works to be performed thereunder or of any of the Contract documents which may be made between the Procurement Entity and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until the Procurement Entity receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal of the Bank

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[name of Bank]

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[address]

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[date]

List of Procurement Entities (if applicable)



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[delete this section if this is a Single-User FWA i.e. single Procurement Entity FWA]

The following entities are participating in this Framework Agreement.

#	Name of Procurement Entity	Address	Representative
1.	[insert complete name of Lead Procurement Entity #1] [insert the type of legal entity]	[insert the address of the principle place of business]	Name: Title/position: Phone: Mobile: E-mail:
2.	[insert complete name of Procurement Entity #2] [insert the type of legal entity]	[insert the address of the principle place of business]	Name: Title/position: Phone: Mobile: E-mail:
3.	[insert complete name of Procurement Entity #3] [insert the type of legal entity]	[insert the address of the principle place of business]	Name: Title/position: Phone: Mobile: E-mail: