



EMBASSY OF INDIA

KHARTOUM - SUDAN



FINAL PRESENTATION

BOOK (8) : CONDITIONS OF CONTRACT



Prepared By : Perfection Engineering

Feb.2016



**GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS**

Name of Work: - Construction of Chancery-cum-Residential Complex for the Embassy of India, Khartoum

Tender Documents

PERIOD OF COMPLETION: 30 Months

Government of India
Embassy of India
Location: **Khartoum**
Address: **Amarat Street1, Plot 2, Block 12 DH, Eastern Ext.**
Country name : **Sudan**
Tel: **+ 249 183 574 001/2/3**

Tender Contents

A. Technical Bid Documents:

Document –I	: Invitation to Tender
Document - II	: Instruction to Bidders
Document - III	: Eligibility documents
Document - IV	: Conditions of contract including standard formats for Bid Security/ Guarantee etc.
Document –V	: Appendix to Tender
Document - VI	: SPECIFICATIONS (attached as Separate document)
Document - VII	: Architectural, Structural Drawings, Arrangement drawings etc. (Attached as Separate document)

Documents about the bidders, resources, company brochures, construction methodology, experience, management techniques, and any other information about bidder – These documents can be supplied and attached by bidders.

B. Financial Bid Documents:

Document -VIII	: Financial bid letter (Lump sum fixed price to be quoted on this form by Bidder).
Document – IX	: Schedule of Items (BOQ) for Variations – Schedule of Quantity for Civil, Electro-Mechanical, Elevator, Landscaping, Security, Development works etc as applicable. Item/Quantity to be modified/confirmed and rate of each item to be quoted by Bidder.

A. Technical Bid Documents

DOCUMENT-I
Invitation to Tender

**Embassy of India
Khartoum**

INVITATION TO TENDER

1. The Embassy of India, Khartoum for and on behalf of President of India, invites lump-sum tenders from reputed contractors registered for undertaking construction works in Khartoum, Sudan for the following works:

Name of work	Approx. Built-up area	Period of Construction
Construction of the Chancery-cum-Residential Complex for Embassy of India, Khartoum	4700 sqm	30 months

2. Contractors who fulfill the following requirements shall be eligible to apply. These criteria are indicative. Exact details are available in tender documents.
- (i) Experience of having satisfactorily completed three similar works, each costing not less than US\$ 2.150.000 or two works each costing not less than US\$ 3.200.000 or one work costing not less than US\$ 4.310.000 during the last 7 years up to the last date of submission of tenders.
 - (ii) Should have average annual financial turnover of not less than US\$ 2.700.000 (excluding VAT) on construction works during the immediate last three consecutive financial years.
 - (iii) Bidding company should not have incurred any loss in more than two years during the last five financial years.
 - (iv) Should have a bank solvency (Credit Facility) of US\$ 2.150.000 as per details in tender.
3. The cost of tender documents is SDG 5000 . Tender documents can be obtained from PERFECTION ENGINEERING against a non-refundable payment (Cash).

4. The last date of receipt of application to purchase tender documents will be on 18th December 2016 up to 3:00 PM.

5. **Tender Security/Bid Security /Earnest Money Deposit:** The Applicant must submit with his Tender the Tender Security/Bid Security / Earnest Money Deposit (EMD)/Tender Bond in the sum of US\$ 55,000 .

Tender Security/Bid Security/ EMD/Tender Bond shall be acceptable by bank transfer/bank draft/pay order in favour of Embassy of India, Khartoum or bank guarantee (as per enclosed proforma in Tender Document). The other terms and conditions related with the EMD/Tender Bond shall remain same as mentioned in the tender document.

The tender security /EMD / Tender Bond shall remain valid for a period of Ninety (90) days from last date of submission of tender.

6. Tender documents supported with prescribed annexures should be submitted in sealed envelope, duly superscribed with the name of work and the date of opening. The document will be received at EMBASSY OF INDIA - KHARTOUM up to 12:00 PM on 21th December 2016 and will be opened on the same day at 12:30 PM in presences of tenderers representatives.

7. If any information furnished by the applicant is found incorrect at a later stage, he/she shall be liable to be debarred from the tendering process. The Embassy of India, Khartoum reserves its right to verify the particulars furnished by the applicant independently.

8. The Embassy of India, Khartoum reserves the right to reject any prospective applicant without assigning any reason.

9. The tender notice is also published on web site of Indian Embassy www.eoikhartoum.in

Head of Chancery
Embassy of India

DOCUMENT-II

Instructions to Bidders

Government of India
Embassy of India
Location: **Khartoum**
Address: **Amarat Street1, Plot 2, Block 12 DH, Eastern Ext.**
Country name : **Sudan**
Tel: **00249-183 574 001/2/3**

INSTRUCTION TO BIDDERS

Construction of Chancery-cum-Residential Complex for the Embassy of India, Khartoum

1. The Tender Documents comprise:

A. Technical Bid Documents:

Document –I	: Invitation to Tender
Document - II	: Instruction to Bidders
Document - III	: Eligibility documents
Document - IV	: Conditions of contract including standard formats for Bid Security/ Guarantee etc.
Document –V	: Appendix to Tender
Document - VI	: SPECIFICATIONS (attached as Separate document)
Document - VII	: Architectural, Structural Drawings, Arrangement drawings etc. (Attached as Separate document)

Documents about the bidders, resources, company brochures, construction methodology, experience, management techniques, and any other information about bidder – These documents can be supplied and attached by bidders.

B. Financial Bid Documents:

Document -VIII	: Financial bid letter (Lump sum fixed price to be quoted on this form by Bidder).
Document – IX	: Schedule of Items (BOQ) for Variations – Schedule of Quantity for Civil, Electro-Mechanical, Elevator,

Landscaping, Security, Development works etc as applicable. Item/Quantity to be modified/confirmed and rate of each item to be quoted by Bidder.

2. The Employer will not be responsible to compensate for any expense or losses which may be incurred by the Applicant in the preparation and submittal of his Tender.
3. This is a LUMPSUM FIXED PRICE TENDER with Extent of work as shown on drawings, specifications and scope of works. The Bidder shall examine the Tender Documents and all Addenda (if any) before submitting his Tender and shall become fully, informed as to the extent, quality, type and character of operations involved in the Works and shall visit and acquaint himself with the Site of the Works. No consideration or compensation will be given for any alleged misunderstanding of the articles to be furnished.
4. Bidders are required to quote Lump sum prices on “**Form of Tender**”. Contractor shall satisfy himself about the quantities in the **Schedule of Quantity (BOQ)** supplied in Tender Document. They are free to add items, change quantities which are needed for completion of the job. These quantities shall not form part of the agreement however the unit rates quoted shall be used for variation purpose.
5. All Tender documents must be returned properly filled in and completed in all respects in accordance with the conditions and Provisions of the Tender Documents. No alteration shall be made by Bidders to the Tender Document unless otherwise permitted.
6. The Lumpsum Fixed Price/amount and rates for variations must be quoted both in figures and words and the currency must be in **USD** only. In case of any discrepancy between figures or words, the amount or rates quoted in words shall be taken to be correct for this tender.
7. The Lumpsum Fixed Price/amount shall be submitted according to the “**Form of Tender**”, with suitable entries, including appropriate signatures, made in all blank spaces. The form shall not be altered. The Tenderer shall strictly comply with all the conditions stated in the Tender Documents. The **Form of Tender** must be signed by a person or persons authorized to sign the Tender and shall be dated. Evidence of signature authority, such as a Power of Attorney, shall be provided with the Tender. The unit rates quoted in **Schedule of Quantity** of the tender documents shall be used towards variation as per the tender conditions.
8. **Decision on bid will be taken based on the final price quoted on the Form of Tender.** Lump sum Fixed Price/Amount as quoted in the “**Form of Tender**” shall be the basis for deciding the tender quote and the L1 bidder.
9. Any mismatch in the final quoted price on **Form of Tender** and Total amount worked out on rates in **Schedule of Quantity**, the final price quoted on **Form of Tender** shall be considered for comparison of bids and decision on bid.

If amount quoted on Form of tender is more than amount worked out on schedule of quantity, the rates on Schedule of Quantity shall not be altered/adjusted. If amount quoted on Form of Tender is less than amount worked out on Schedule of quantity, the Rates on schedule of quantity shall be adjusted in the ratio to match with quoted final price on the Form of Tender.

10. The Tenderer must submit with his Tender a Tender Security (Bid Security) of **55,000 US\$ (US\$ Fifty Five Thousands)** to Employer in the form of a demand draft drawn on any acceptable Bank or a Bank guarantee in favour of Employer (Embassy of India). This Tender Security (Bid Security) must be valid for **90 Days** and shall be as per the **proforma annexed** with tender documents. The Bid Security of unsuccessful bidders will be returned after the award of work while Bid Security of successfully bidder can be adjusted against retention money at discretion of Employer.
11. Forfeiture of bid security and Contract Security -(a) If any bidder withdraws his tender before the expiry of the validity period, or before the issue of letter of acceptance, whichever is earlier, or makes any modification in the terms and conditions of the tender which are not acceptable to the employer, then the Employer shall, without prejudice to any other right or remedy, be at liberty to forfeit the entire earnest money absolutely.(b) If Lowest Bidder fails to furnish the prescribed Performance Guarantee within the prescribed period, or sign the agreement in time or doesn't respond to request for clarification of its purpose or fails to provide required information during evaluation process or is found to be non-responsive, the bid Security is absolutely forfeited automatically without any notice. (c) In case the contractor fails to commence the work on commencement date as specified in the tender documents or such time period as mentioned in letter of award or from the date of handing over to the site, whichever is later, the Employer shall without prejudice to any right or remedy, be at liberty to forfeit whole of the bid security and Performance Guarantee.
12. The Tender shall be submitted in sealed envelopes as described below:-

Envelope "A"	Tender Security (Bid Security)
Envelope "B"	Technical Bid Documents
Envelope "C"	Financial Bid Document

And addenda or other enclosures as required in the tender.

The envelopes containing "A", "B" & "C" of offers shall be duly super scribed with Name of Work and above titles. Envelopes A, B and C to be put in another sealed envelope with the name of work written on top. The envelope "A" containing Tender Security (Bid Security) shall be opened first. Bidders who have not submitted valid Tender Security (Bid Security) as mentioned above shall be summarily rejected. Technical bids (Envelope B) of only those bidders who have submitted Tender Security (Bid Security) shall be opened immediately thereafter. Both Bid Security and Technical bids envelopes shall be opened in presence of bidders or their representatives. After evaluation of Technical Bids, a list of qualified bidders will be prepared by the Employer. Qualified bidders will be

informed and Financial bid (Envelope C) of qualified bidders shall then be opened at notified time, date and place in presence of bidders or their representatives.

13. In case the tender is not decided during validity period of tender i.e. within **90** days from date of opening of tender. The employer may request to extend the validity of tender and Bid Security for a further specified period beyond **90** days. Bidder(s) shall be at liberty to extend the validity of tender and Bid Security for the specified period or withdraw from tender. Once the validity is extended in writing by bidder(s), They will not be permitted to withdraw from tender. If bidder(s) withdraws his offer after such extension, the employer shall be at liberty to forfeit the Bid Security absolutely.
14. The Performance Guarantee of **five percent (5%)** of the **Accepted Contract Amount** in the form of Bank Guarantee shall be submitted as described in the conditions of contract.

The Performance Guarantee shall remain valid for a period to cover the execution of the works as a Guarantee to secure the proper carrying out, the handing over and recovery of compensation of such other sums that may become due to the Employer from the contractor under the terms of the contract and shall not have been paid by him on demand.
15. Without prejudice to anything contained in the foregoing paragraphs, the contractor shall always maintain the Performance Guarantee at the full amount until the completion of work in accordance with the terms and conditions of the contract. If the contractor fails to maintain the Performance Guarantee in the full amount, the employer may by registered letter sent to the contractor, terminate his employment under the contract without necessity for any legal or other formality or reference to judicial proceedings.
16. The acceptance of the Tender shall be conditional and not finally binding upon the Employer until the Performance Guarantee has been duly provided and the actual contract signed between the Employer and the contractor. Should the contractor fail to sign the contract within the stipulated time or to provide the Performance Guarantee within the period allowed or for any other reason withdraw his participation in the Tender, the Employer may withdraw his acceptance of the Tender without any notice or other formality and may enter into a new Agreement for the execution of the Works or any part of it and thereupon the amount of Bid security shall be confiscated by the Employer without any necessity for any legal or other formality or reference to judicial proceedings of proof of damage and without prejudice to the right of the Employer. No payment shall be released to the contractor unless the Agreement is signed.
17. Any further information or clarification which the Applicant may require in order to complete his Tender may be obtained from:

***Embassy of India
Khartoum,
Sudan.***

All information requested by and supplied to one bidder will be supplied to all bidders.

18. Queries

A pre-bid meeting for all bidders will be held **at 3:00 PM on Wednesday 7th of December 2016**. Bidder's queries should be submitted in writing to the Consultant (PERFECTION ENGINEERING) and should be received **on or before Tuesday 6th December 2016**. No queries will be accepted or answered thereafter.

19. At any time prior to the date of opening of the proposals the Employer may issue an addendum in writing to all applicants to whom the Tender documents have been issued, deleting, varying or extending any item.

Unless it is in formal manner described above, any representation or explanation to the Bidder shall not be considered valid or binding on the Employer as to the meaning of anything connected with the Tender Document.

20. The date and time for submission may be deferred by an official notification in writing issued by the Employer to all Bidders. Tenders received after this date will not be considered.

21. Tender may be disqualified for any reason including, but not limited to the following:

- i. If tenderer sets forth any conditions which are unacceptable to the Employer.
- ii. If any tender is submitted under a name other than the name of the individual firm partnership or corporation that was issued the Tender Document.
- iii. If there is evidence of collusion between Bidders.
- iv. If Tender sets forth any offer to conditionally discount, reduce or modify its tender.
- v. If Bid price is disclosed before opening of Financial Bid.

22. **The attention of Bidders is drawn as to compliance with laws and regulations concerning safety and health, labor regulations, social insurance, labor taxes, tax deduction, import restrictions duties and levies, company's tax, input tax and output tax (VAT) etc. All rates and sum inserted against items of works shall be exclusive of Value Added Tax.**

In addition, Bidders must obtain all relevant information from the relevant Authorities concerning all details and costs in respect of temporary services, deviation of traffic, construction of temporary footpaths and pedestrian walkways, closing part of the road and pavement, temporary electrical, water, telephone connections, etc and shall allow for same in their Bids.

23. **Schedule of Quantity** is enclosed in Financial Bid Documents. Bidders are requested to quote the rates of individual items. In case, the bidders feel that any item is left out and is required for completion of the work, the same can be added in

the **Schedule of Quantity** with full nomenclature of the item. Bidders shall satisfy himself of the quantities given in the **Schedule of Quantity**. These quantities shall be taken as guidance to assess the approx quantum of work involved in the project. The Contractor may add to items, quantities to the items, supplied in **Schedule of Quantity** as per the scope of the work, drawings and specifications provided in the tender document. As already clarified the quantities in **Schedule of Quantity** shall not form part of the agreement and in no way have any bearing of the completion of the work as defined in the tender documents, however the rates quoted shall be used for variation. It shall be the responsibility of the bidder to satisfy himself of the completion of the documents for the scope, drawings, specifications, given to him. Nothing extra shall be payable if any additional information or detail is provided later on for carrying out the works stated in the documents.

24. Bidder shall have deemed to have read carefully all the Tender Documents, Specifications and drawings etc. The quoted Lumpsum Fixed price is inclusive and complete in all respect to make buildings functional as per the standard of mission work.
25. **Price escalation in rates due to any reason such as increase in prices of material, equipment & labor, fuel (petrol, diesel, gas etc), electricity & water, levy of new taxes, hike in any tax rate, Cess or due to delay in completion etc shall not be applicable.**
26. Payment:-
All the payment shall be released as progress payments on the basis of certificate signed by the Consultant. The detailed work schedule and the payment schedule would be furnished by the contractor to employer/consultant who will approve it before it forms the part of the agreement. However in the event of non-compliance of the payment schedule or otherwise due to the reasons acceptable to the Architect, the progress payment shall be made on the basis of evaluation of work done by the Consultant. All permissible deduction shall be effected during the Progress Payment.
27. Scope of Work:-
The works required for Construction of the Chancery-cum-Residential Complex the Embassy of India, Khartoum complete with all services and external works as more particularly shown and specified in other sections of the contract documents.

The tenders shall examine the drawings, specifications and details provided and bring any omissions / discrepancies viz-a-viz scope to the notice of the employer, and obtain clarification prior to the submission of the fixed price lump sum tender.

The mechanical and electrical installations are included in the scope of the tender. The installations will be carried out by a specialized Sub-contractor. The contractor shall submit details and the experience of Sub-contractors.

The Employer shall not be responsible for any missing details and drawings which would otherwise be required for completion of job as per the local mandatory norms

or Sound Engineering practices so as to make buildings functional as per the specifications envisaged in the tender documents. The Contractor shall quote accordingly.

The employer reserves the right to waive any deficiency in any tender where such waiver is in the interest of the employer except that no proposal will be accepted if the Earnest Money Deposit or/any of the preceding statutory documents was not submitted with the tender.

28. Commencement date of the works shall be effected after **forty two (42)** days from the date of issue of acceptance letter of intent or handing over the site, whichever is later. This 42 days period will be defined as the mobilization period.
29. The Period of Completion for the whole of the Works is 30 months/ days calculated from the **Forty two** days from the Commencement date.
30. The retention money will be **Five Percent (5%)** of the value of the executed works. Retention money release shall be regulated as per terms and condition of the contract.
31. The amount of Liquidated Damages payable by the Contractor to the Employer will be calculated **@ 0.5% of accepted tender cost per week** to be computed on per day basis. The total amount of liquidated damage shall be limited to 10% of accepted tender cost.
32. The Defects Liability period shall be **Three Hundred Sixty Five (365) days**.
33. The Employer will not be bound to accept the lowest or any tender or to give a reason for the rejection of any Tender.
34. The Applicant must submit with his offer a list of Sub Contractors and Specialist names whom he proposes to use on the Works in the Tender. The Employer however, will always have the right to accept or reject any pre-approved subcontractor even after formal award of Contract and/or commencement of work with or without cause.
35. The successful Tenderer shall be responsible for co-coordinating his work with various Sub-contractors and other bid-pack Contractors employed on the Works co-coordinating his work between various trades, obtaining all the necessary information from subcontractors for the purpose of the overall programming of his works; supplying all the normal attendance to all subcontractors and assuming the overall responsibility for the aforesaid.

DOCUMENT – III

Eligibility documents

ELIGIBILITY DOCUMENTS

Construction of Chancery-cum-Residential Complex for the Embassy of India, Khartoum

1.0 ELIGIBILITY DOCUMENTS:

APPENDIX (1) : ELIGIBILITY DOCUMENTS

- (i) Letter of transmittal.
- (ii) General Information.
- (iii) Form (A) : Financial Statement
- (iv) Form (B) : Similar Completed Works.
- (v) Form (C) : Similar Works Now Proceeding.
- (vi) Form (D) : Performance Report of Similar Works.
- (vii) Form (E) : Detail of Technical and Administrative Personnel.
- (viii) Form (F) : Details of Construction Plant and Equipment.
- (ix) Form (G) : Proforma for Solvency Certificate.

APPENDIX (2) : CRITERIA FOR ELIGIBILITY

APPENDIX (3) : EVALUATION CRITERIA FOR ELIGIBILITY

APPENDIX (4) : FINANCIAL CAPABILITY

APPENDIX (5) : EXPERIENCE IN SIMILAR WORKS

APPENDIX (6) : ORGANIZATION INFORMATION

APPENDIX (7) : AWARD OF CONTRACT

APPENDIX (8) : STANDARD BID BODN FORM

APPENDIX (9) : STANDARD PERFORMANCE BOND FORM

APPENDIX (10) : STATEMENT OF COMPLIANCE WITH CONDITIONS OF CONTRACT AND TECHNICAL SPECIFICATIONS

APPENDIX (11) : FORM OF TENDER

APPENDIX (12) : OTHER INFORMATION

SECTION – III: PRE- QUALIFICATION INFORMATION

APPENDIX (1) : ELIGIBILITY DOCUMENTS

LETTER OF TRANSMITTAL

From

To

Government of India

Embassy of India

Location: **Khartoum**

Address: **Amarat Street1, Plot 2, Block 12 DH, Eastern Ext.**

Country name : **Sudan**

Tel:+ **249 183 574 001/2/3**

Sub: Construction of the Chancery-cum-Residential Complex for the Embassy of India, Khartoum.

Sir,.

Having examined the details given in the press notice and document for the above work / we hereby submit the eligibility application and relevant documents and information.

1. I / We hereby certify that all the statements made and information supplied in the enclosed forms 'A to H' and accompanying statements are true and correct.
2. I / We have furnished all information and details necessary for eligibility and have no further pertinent information to supply.
3. I / We submit the requisite certified solvency certificate and authorize The Head of Chancery, Ambassador of India, Location, Country to approach the bank issuing the solvency certificate to confirm the correctness thereof. We also authorize The Head of Chancery, High Commission of India, Country location, to approach my / our bankers, individuals, employers, firms and corporations to verify my / our statements, competency and general reputation.
4. I / We submit the following certificates in support of our suitability, technical know-how and capability for having successfully completed the following similar

works. (Certificate from Project Manager in Proforma D in respect of each work mentioned below should be enclosed.)

Name of work	Certificate from/Nature of work	Contract amount

Date of submission:

Signature(s) of Bidder(s).

Enclosures:

Date of Submission:

Signature of Applicant(s)

GENERAL

1.a) Name of Contractor _____

b) Registered Address _____

Registered Address in **Country Name** _____

c) Telephone No.

d) Fax No.

e) E-mail:

f) Contact Names of senior representative of Main Contractors / Partners

2. Type of Works carried out:

3. What is the nature of the Company / Firm? (Give details on separate sheets, if necessary)

a) Independent _____

b) Supported by technical resources from some other source.

4. Name, Address and experience of Consultants/Sub-contractors are Enclosed at page's no. to

Form “A”

1. Financial Statement:

a) Authorized Capital (Give break up) _____

b) Issued and paid up Capital _____

Annual turnover for construction work excluding VAT for the last immediate five financial years	In country of origin (in case based out of <i>Country name</i>)	<u>In Sudan</u>	In other Country/ Countries

Provide copies of annual reports or audited balance sheets, Profit and loss accounts along with Audit reports and statement for the last five years. A certificate from Chartered Accountant authenticating the annual turnover (excluding VAT) shall also be enclosed.

2. Details of loans and other financial commitments

3. Current Financial Position
as on date

Currency

Amount

a) Cash & Bank Balance

b) Current Assets

c) Current Liabilities

d) Working Capital

e) Net Worth

4. a) Name and Address of Auditors

b) Can the Employer make a reference to the Auditors directly?

No/Yes

5. Applicant's financial arrangements for the proposed work of Indian Embassy

	<u>Currency</u>	<u>Amount</u>
a) Own resources		
b) Bank Credits		
c) Others (Specify)		

6. Certificate of financial soundness from the Banker/s of applicant.

Enclosed at page

7. Solvency Certificate
(as per the proforma enclosed at Form "G")

Enclosed at page

8. a) Name and address of the Bankers (from whom references can also be obtained).

b) Can such reference be obtained directly by the Employer?

No/Yes

9. Business Association to which the Company belongs;

10. Number of years experience as a Contractor briefly as follows

Enclosed at pages

a) In Country name

b) In country of origin

c) Internationally - Countries Experience No of years.

Signature of Applicant (s)

Form “B”

(a) Similar Works completed at ----- during the last 7 years as per press notice condition

Title, Location and Brief Description of work	Value In <i><u>local</u></i> <i><u>Currency</u></i>	Client	Consultant	Contract Period for Completion	Actual period for Completion	Litigation / Arbitration pending, with details	Client certificate at page

Signature of Applicant (s)

Form “B”

(b) Similar Works completed in locations other than at ----- during the last 7 years
as per press notice condition

Title, Location and Brief Description of work	Value in USD	Client	Consultant	Contract Period for Completion	Actual period for Completion	Litigation / Arbitration pending, with details	Client certificate at page No.

Signature of Applicant (s)

Form “C”

(a) Similar Works now proceeding at Sudan

Title, Location and Brief Description of work	Value In <i>Local Currency</i>	Client	Consultant	Due date for completion	Up to date progress in percentage	Slow progress if any, and reasons thereof	Client certificate at page No.

Signature of Applicant (s)

Form “C”

(b) Similar Works now proceeding at locations other than at Suan

Title, Location and Brief Description of work	Value in USD	Client	Consultant	Due date for completion	Up to date progress in percentage	Slow progress if any, and reasons thereof	Client certificate at page No.

Signature of Applicant (s)

FORM 'D'

PERFORMANCE REPORT OF SIMILAR WORKS AS DEFINED IN ELIGIBILITY CRITERIA

1. Project Name and Location:
2. Clients, Owners references name.
3. Project Architects
4. Name of Contractor
5. Total Cost of Project (***Value in Local Currency***) excluding VAT
6. Date of Commencement, Date of Completion, Current Status
7. Amount of compensation levied for delayed completion if any
8. Amount of reduced rate items, if any
9. Size of Building in Square Meters
10. No. of Floors & No. of Basement
11. Type of building (Please also specify whether building meets similar work definition i.e. Building of Reinforced Cement Concrete framed structures including all utility services such as Modern office buildings, Hotels, Shopping Malls, Embassies, Apartment Complex etc.).

12. Performance reports

i) Quality of work	Very good	Good	Fair	Poor
ii) Financial soundness	Very good	Good	Fair	Poor
iii) Technical Proficiency	Very good	Good	Fair	Poor
iv) Resourcefulness	Very good	Good	Fair	Poor
v) General behavior	Very good	Good	Fair	Poor

Dated:

Project Manager or equivalent

FORM 'E'

STRUCTURE AND ORGANISATION

1. Name and address of applicant :

2. Telephone No. :

Fax No. :

Email address :

3. Legal status of the applicant (attach
Copies of original document defining
The legal status)

- a) An Individual
- b) A proprietary firm
- c) A firm in partnership
- d) A limited company or corporation

4. Particulars of registration with various
Government bodies (attach attested photocopy)

S.No.	Organization / place of registration	Registration No.
i		
ii		
iii		
iv		

5. Name and Titles of Directors and officers with
designation to be concerned with this work.

6. Designation of individuals authorized to act for the
organization.

7. Was the applicant ever required to suspend
construction for period of more than six months
continuously after commencing construction?
If so, give the name of the project
and reason for not completing the work.

8. Has the applicant, or any constituent partner in

case of partnership firm, ever abandoned the awarded work before its completion? If so, give name of the project and reasons for abandonment.

9. Has the applicant or any constituent partner in case of partnership firm, ever been debarred / black-listed for tendering in any organization at any time? If so, give details.

10. Has the applicant or any constituent partner in case of partnership firm, ever been convicted by a court of law? If so give details.

11. Any other information considered necessary but not included above.

Signature of Applicant(s)

FORM 'E-I'

**DETAILS OF TECHNICAL AND ADMINISTRATIVE PERSONNEL TO BE
EMPLOYED FOR THE WORK**

S.No.	Name	Position	Educational Qualification	General experience	Relevant experience and details of work carried out	How these would be involved in this work	Remarks

Signature of Applicant(s)

N.B Attach CV, educational qualification, professional license & experience document

FORM 'F'

**DETAILS OF CONSTRUCTION PLANT AND EQUIPMENT LIKELY TO BE
USED IN CARRYING OUT THE WORK**

S.No.	Name of equipment	Model	Capacity	Age	Condition	OWNERSHIP STATUS	Current location	Remarks

Signature of Applicant(s)

N.B Attach the ownership certificate or rental agreement from equipment Rental Company.

FORM 'G'

**PROFORMA FOR SOLVENCY CERTIFICATE FROM A SCHEDULED/
REPUTED BANK**

This is to certify that to the best of our knowledge and information that M/s /Mr..... having marginally noted address, a customer of our bank are/is respectable and can be treated as good for any engagement up to a limit of Local Currency..... (Local Currency_..... only).

This certificate is issued without any guarantee or responsibility on the bank or any of the officers.

(Signatures)
For the Bank

NOTE (1) Bankers certificates should be on letter head of the Bank, sealed in cover addressed to tendering authority.

(2) In case of partnership firm, certificate should include names of all partners as recorded with the Bank.

APPENDIX (2) : CRITERIA FOR ELIGIBILITY

2.1 The applicant should have valid Registration/ License for construction projects at Khartoum, Sudan.

The applicant should have valid Tax Payment Certificate, valid Zakat Payment Certificate (applicable to Moslem Contractors), valid Registration Certificate with VAT, valid Registration Certificate with Sudanese Contractors Union and valid Registration Certificate with Organizing Council for Contractors Firms.

2.2 The Applicant should have satisfactorily completed three similar works, each costing not less than US\$ 2150000 or two works each costing not less than US\$ 3200000 or one work costing not less than US\$ 4310000 during the last 7 years up to the last date of submission of tenders. ***The above costing is excluding VAT.***

Similar works means – Building (executed and completed under single contract) of Reinforced Cement Concrete framed structures including all utility services for international clients such as modern office buildings, hotels, shopping malls, embassies, apartment complex etc. Certificate for completed similar work in proforma D shall be referred. The work in which compensation has been levied for delayed completion shall not be considered for eligibility. Under the para (12) of performance report in proforma D, if any of the parameter has been graded fair or below for a work, that work shall not be considered for eligibility.

2.3 The Applicant should have average annual financial turnover of not less than US\$ 2700000 (excluding VAT) on construction works during the immediate last three consecutive financial years. This should be duly audited by a Chartered Accountant. Year in which no turnover is shown would also be considered for working out the average.

2.4 The Applicant should not have incurred any loss in more than two years during the last five financial years. This fact shall be duly certified by the Chartered Accountant.

2.5 Should have a bank solvency of US\$ 2150000 as per details in tender.

2.6 The applicant should own the following minimum major construction equipment required for the proper and timely execution of work. Else, he should certify that he would be able to manage the equipment by hiring etc. and submit the list of firms from whom he proposes to hire.

Nº	Equipment type & Characteristic	Min no Required
1	Excavator 1.5m3 or above	2
2	Loader 2m3 or above	2
3	Dump truck 16m3 and above	06
4	Roller 10 ton	2

5	Hand Tamper	4
6	Mobile Crane 20T or above	1
7	Concrete pump	2
8	Concrete Mixer 750Lt	4
9	Vibrator	12
10	HCB production machine	2
11	Metal Scaffolding (m2)	2000
12	Form work (m2)	3000
13	Surveying Instruments	Total Station
		Leveling instrument
14	Generator 60 KVA	2
15	Welding Machine	2

2.7 The applicant should have minimum the following professionals and administrative personnel for the execution of the project:

№	Position	Personnel	Qualification	Experience	
				General	Relevant
1	Project Manager	1	Professional Architect /Engineer	15	8
2	Project Engineer	2	Professional Engineer / Architect	10	5
3	Office Engineer	2	Graduate Engineer	5	3
4	Site Engineer	4	Graduate/ Diploma Engineer	8	4
5	Surveyor	2	Diploma	5	3
6	Project Administrator	1	Administrator (BA)	8	4
7	Assistant Administrator	1	Diploma	6	4
8	Financial officer	1	Diploma	6	4
9	Safety Engineer	2	Diploma	5	3

2.8 The applicant should submit list of all completed works in the last 5 years and list of all works in hand.

2.9 Joint Venture (JV) firms formed specifically for this tender shall not be permitted.

APPENDIX (3) : EVALUATION CRITERIA FOR ELIGIBILITY

3.1 For the purpose of eligibility, application will be evaluated in following manner:

The documents submitted by the applicant will be scrutinized for the criteria prescribed above and the applicant's eligibility for the work will be determined.

3.2 Even though applicants may satisfy the above requirements, he would be liable to disqualification if he has:

- i. Made misleading or false representation or deliberately suppressed information in the forms, statements and enclosures required in the pre-qualification document.
- ii. Record of poor performance such as abandoning work, not properly completing the contract or financial failures / weaknesses.
- iii. Disclosed bid price before opening of financial bid.

APPENDIX (4) : CAPABILITY

Applicant should furnish the following financial information:

- i. Annual financial statement for the last five financial years (**Form A**). This should be supported by audited balance sheets and profit and loss accounts duly audited / certified by a Chartered Accountant.
- ii. Solvency certificate from reputed bank. (**Form G**)

APPENDIX (5) : EXPERIENCE IN CIVIL WORKS HIGHLIGHTING EXPERIENCE IN SIMILAR WORKS.

5.1 Applicant should furnish the following:-

- i. A list of all works of similar nature successfully completed during the last five years as per the press notice condition (**Form 'B'**).
- ii. List of the projects under execution or awarded (**Form 'C'**).

5.2 Particulars of completed works and performance of applicant duly authenticated / certified by an officer not below the rank of Project Manager or equivalent should be furnished separately for each work completed (**Form 'D'**).

APPENDIX (6) : ORGANISATION INFORMATION

Applicant is required to submit the following in respect of his organization (**in form 'E' and 'E-1'**).

- i. Name and postal address including telephone, fax number, e-mail etc.
- ii. Copies of original documents defining the legal status place of registration and principal place of business including the registration and permission from the Country Names Government/ local authorities for taking up construction works in Country Name.

- iii. Name and title of Directors and officers to be concerned with the work, with designation of individuals authorized to act for the organization.
- iv. Information on any litigation in which the applicant was involved during the last five years, including any current litigation.
- v. Authorization for Employer to seek detailed references.
- vi. Number of Technical and Administrative employees in parent company, subsidiary company **(in Form 'E-I')**

APPENDIX (7) : AWARD CRITERIA

7.1 The employer reserves the right without being liable for any damages or obligation to inform the applicant to: -

- i. Amend the scope and value of contract.
- ii. Reject any or all the applications without assigning any reason.

7.2 For any of the above actions, the Employer shall neither be liable for any damages nor be under any obligation to inform the Applicants of the grounds for the same.

7.3 Any effort on the part of the applicant or his agent to exercise influence or to pressurize the Employer would result in rejection of his application. Canvassing of any kind is prohibited.

APPENDIX (8) : STANDARD BID BOND FORM (SPECIMEN)

(Bid Bonds not in accordance with this format will not be accepted)

letter of Guarantee No

Name of the Project

Date of Issuance

To : EMBASSY OF INDIA - KHARTOUM

Dear Sir,

Advised through

(Name of ISSUING bank In Sudan)

upon request of messrs , (Name of Tender) we hereby agree to issue this irrevocable and unconditional letter of guarantee to the amount of (Amount in words) in your favors from the account of (name of Tenderer) as bid Bond for your invitation to tender reference (Tender number) and engage ourselves to pay you immediately and at first demand the sum ofUSD upon receipt of your written request addressed to us stating that (Name of Tenderer) have withdrawn their tender during the period of its validity or any extension thereof or after such tender has been accepted by you or their failure to enter into the Contract after such acceptance or their failure in posting the performance bond within ten (10) days of being formally notified of acceptance or any related reason . Such payment will be made without any restriction or condition and without recourse, and notwithstanding any objection from (the Name of Tenderer)

the Guarantee shall be valid for 180 (one Hundred and Eighty) days from the date of submission of Tender or any extent ion thereof .

Banker's Authorized Signature for (Name of Banker)

APPENDIX (9) : STANDARD PERFORMANCE BOND FORM (SPECIMEN)

Date

To : EMBASSY OF INDIA - KHARTOUM

Dear Sirs,

PERFORMANCE BOND NO.....

FOR SDG

We the undersigned (Name of Bank) whose registered office is athave taken notice of letter of intent issued / Contract signed on.....

By your Good selevs.....

To (Name of Contractor) whose Head Office is at.....

.....hereinafter referred as the “ Contractor “ for (name of Project) in the total Contract price of.....

.(.....USD)

In consideration of above, we, (name of Bank) as Guarantor , hereby irrevocably and unconditionally undertake on behalf of the Contractor to pay you immediately the sum ofUSD (.....USD) upon receipt of written request addressed to above mentioned Contractor failed to fulfill all or any of his obligations under the above mentioned Contract, at first demand and such payment shall be made without any restriction or conditions and without recourse and notwithstanding any objection from the Contractor .

This Guarantee shall be valid until

(Contractual date of completion) and shall be extended before expiry if the completion certificate has not been issued by the Employer .

yours faithfully ,

FOR AND ON BEHALF OF

(Name of Bank)

signature

(Authorized Signature)

APPENDIX (10) : STATEMENT OF COMPLIANCE WITH CONDITIONS OF CONTRACT AND TECHNICAL SPECIFICATIONS

(The Tenderer shall sign this Statement and submit it along with his tender , failing this, the tender shall be rejected)

FROM

To : EMBASSY OF INDIA - KHARTOUM

STATEMENT OF COMPLIANCE

TENDER NO

We undertake to abide by all that is required to be carried out to complete the Works satisfactorily as per Specification including special features , facilities , proper performance , additional equipment , etc. even though such provision may exceed the minimum requirements of the Employer's specification as defined in Tender Documents .

We undertake to comply with all the terms and conditions and technical Specifications of the Tender Documents including condition of Contract except the following non-compliant items : (Attach separate sheets , if necessary) .

Refer to drawings or

Specifications as specified

As proposed

Remarks

Signature of the Tenderer

Dated

APPENDIX (11) : FORM OF TENDER

(Note : The Appendice and Annexes form part of the Tender . Tenderers are required to complete all blank spaces and sign Tender forms , Appendice and Annexes)

To : EMBASSY OF INDIA - KHARTOUM

Sir ,

Having examined the Form of Tender, General Instructions to Tenderers Condition of Contract , Specification , Bills of Quantities , Drawings and any Addenda or Bulletins thereto issued during the course of the tendering period , for the execution of the above named Works, We the undersigned , offer to construct, complete and maintain the whole of the said works , in conformity with the form of tender , General Instruction to Tenderers , Condition of Contract , Specifications , Bills of Quantities, Drawings, Addenda and Bulletins for the Lump Sum rate quoted by us in financial bid letter

We hereby undertake without reserve whatsoever to execute the said works in conformity with the Condition contained in the Contract Documents, having understood the meaning and Scope of the Works and all such Documents, precisely and clearly and having considered them as mutually complementary, explanatory, cumulative , additive and not alternative and having evaluated for ourselves and at our entire responsibility the nature and difficulties , if any , of the said Works in the preparation of this offer .

We undertake if our Tender is accepted commence the Works within30 days from the date specified in your commencement order , and to complete and deliver the whole of the Works comprised in the Contract withindays* calculated form the stated date to commence (i.e., total completion period including mobilization).

Company Name

Signature

Stamp

Date

APPENDIX (12) : OTHER INFORMATION

Document – IV

Conditions of contract

Conditions of Contract for **PLANT and Design-Build**

FOR ELECTRICAL AND MECHANICAL WORKS
AND FOR BUILDING AND ENGINEERING
WORKS DESIGNED BY THE CONTRACTOR

General Conditions

1st Edition 1999

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

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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 specification, 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/or 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 **“Schedule of Guarantees”** and **“Schedule of Payments”** mean the documents so named (if any) which are comprised in the Schedules.

1.1.2
Parties and Persons

1.1.3
Dates, Tests, Periods
and Completion

- 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 “**Contract or**” 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).
- 1.1.14 “**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 “**Contract or’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 utilises 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 “**Subcontractor**” 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 Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.
- 1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works].
- 1.1.3.3 “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Appendix to Tender (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.
- 1.1.3.4 “**Tests on Completion**” means the tests 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“Accepted 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 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 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 Certificates*] 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, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes 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” mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6 Other Definitions

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

1.1.6.3 “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

1.1.6.4 “Force Majeure” is defined in Clause 19 [*Force Majeure*].

1.1.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally

constitu
ted
public
authorit
y.

1.1.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [*Performance Security*].

1.1.6.7 “Site” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

1.1.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the date for submission of the Tender.

1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [*Variations and Adjustments*].

1.2

Interpretation

1.4

Law and Language

1.3

Communications

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

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.
- (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.

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

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 Particular 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.

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:

1.7

Assignment

- (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.

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 request further copies at the cost of the Contractor.

1.8

Care and Supply of Documents

Each of the Contractor's Documents shall be in the 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
Errors in Employer's
Requirements

1.11
Contractor's Use of Employer's Documents

1.10
Employer's Use of
Contractor's Documents

matters described in sub-paragraph (a) and (b) above related to this extent.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

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 (i) whether and (if so) to what extent the error could not reasonably have been so discovered, and (ii) the

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.

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the employer's requirements other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not,

without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12

Confidential Details

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

1.13

Compliance with Laws

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

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Requirements 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 all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the design, 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.

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.

The 2 Employer

2.1

Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all 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 of 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 or profit.

2.2

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.

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 subparagraphs (a), (b) and (c) of Sub-Clause 4.8 [*Safety Procedures*] and under Sub-Clause 4.18 [*Protection of the Environment*].

2.4

Employer's Financial Arrangements

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

2.5

Employer's Claims

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

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension

of the Defects
Notification Period
shall be given before
the expiry of such
period.

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

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

3 The Engineer

3.1	
Engineer's Duties and Authority	Delegation by the Engineer

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.

he 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, certificate, 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-compliances.

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

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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 authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3

Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions 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 instructions 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. These instructions shall be given in writing.

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 Employer shall not replace the Engineer with a person against whom the Contractor raises reasonable objection by notice to the Employer, with supporting particulars.~~

3.5

Determinations

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

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*].

4

The Contractor

4.1

Contractor's General Obligations

The Contractor shall design, execute and complete the Works in accordance with the Contract and shall remedy any defects in the works. When completed, the works shall be fit for purposes for which the works are intended as defined in the contract.

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, of all methods of construction and of all the 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.

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 Appendix to Tender. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by an entity and from within 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 Performance Security is valid and enforceable until the Contractor 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 date, the Contractor shall extend the validity of the Performance Security until the Works 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*], within 42 days after this agreement or determination,
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or
- (d) circumstances which entitle the Employer to termination under Sub-Clause 15.2 [*Termination by Employer*], irrespective of whether notice of termination has been given.

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

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

4.3

Contractor's Representative

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, functions 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 communications defined in Sub-Clause 1.4 [*Law and Language*].

4.4

Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of 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 to 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.

4.5

Nominated Subcontractors

In this sub-clause "nominated Subcontractor" means a subcontractor whom the Engineer, under clause 13[Variations and Adjustments], instructs the contractor to employ as a subcontractor. 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 as soon as practicable, with supporting particulars.

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 contractors 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.

The contractor shall be responsible for his construction activities on the site, and shall co-ordinate his own activities with those of other contractors to the extent (if any) specified in the Employer's Requirements.

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 Employer's Requirements.

4.7
Setting Out

4.10
Site Data

4.8

Safety Procedures

4.9

Quality Assurance

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 Works.

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

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and

shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to:

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

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

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.

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.

The Employer shall have made available to the Contractor for his information, prior to the Base Date, 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 was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

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

4.11

Sufficiency of the
Accepted Contract
Amount

The Contractor shall be deemed to:

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

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

4.12

Unforeseeable Physical
Conditions

~~In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydro- logical conditions but 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 instructions 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 are 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, which 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 sub-paragraph (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 when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.

4.13

Rights of Way and Facilities

The Contractor shall bear all costs 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 purposes of the Works.

4.14

Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

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

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

4.15

Access Route

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These 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 or
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 use required by the Contractor, of access routes shall be borne by the Contractor.

4.16	
	4.20

Transport of Goods

Employer's Equipment and Free-Issue Material

4.17	
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Contractor's
Equipment

4.18	
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Protection of the
Environment

4.19	
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Electricity, Water and
Gas

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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 Employer 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.

The Contractor shall be responsible for all Contractors' 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.

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

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

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 supplies 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 those 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.

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

- (a) the Contractor shall give the Engineer not less than 21 days'

- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving 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 Employer's Requirements. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

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

4.21

Progress Reports

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

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

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (b) photographs showing the status of manufacture 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
environme
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aspects
and public
relations;
and

- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22

Security of the Site

Unless otherwise stated in the Particular Conditions:

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

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 that 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 fulfil obligations under the Contract.

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.

4.24

Fossils

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

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

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

5 Design

5.1 General Design obligations

The Contractor warrants that he, his designers and design subcontractors have the experience and capability necessary to the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times, until the expiry date of the relevant Defects notification period.

Upon receiving notice under Sub-Clauses 8.1 [commencement of works], the contractor shall scrutinise the employer's Requirement (including design criteria and calculation, if any) and the items of reference mentioned in Sub-Clause [setting calculation if any) and the items of reference mentioned in sub clause 4.7 [setting out] With the period stated in the Appendix to Tender, calculated from the commencement Date, the Contractor shall give notice to the Engineer of any error fault or other defect found in the Employer requirement or these items of reference,

After receiving this notice , the engineer shall determine whether clause 13 [variations and Adjustment] shall be applied and shall give notice to the contractor accordingly. If and o the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error fault or other defect when examining the site and the Employer Requirements before submitting the Tender , the Time for completion shall not be extended and the Contractor price shall not be adjusted .

5.2 Contractor's Document

The contractor's Documents shall comprise the technical documents specified in the Employer's Requirements ,documents required to satisfy all regulatory approvals, and the documents described in Sub-clause 5.6 [as Built Documents and sub clauses 5.7 operation and Maintenance Manuals] unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defended in s Sub- Clause 1.21 [Law and language]

The contractor shall prepared all Contract's Documents and shall also prepare any other documents necessary to instruct the Contractor's personnel . The Employer's personnel shall have the right to inspect the preparation of all these documents wherever they are being prepared.

If the Employer's requirement describe the Contractor's Documents which are to be submitted to the Engineer for review and /or for approval, they shall be submitted

accordingly, together with a notice as described below. In the following provisions of this Sub-clause (i) review period “means the period required by the engineer for review and (if so specified) for approval, an (ii) “contractor’s Documents” exclude any Documents which are not specified as being required to be submitted for review and /or for approval.

Unless otherwise stated in the Employer’s Requirements, each review period shall not exceed 21 days calculated from the date in which the Engineer receives a contractor’s Documents and the Contractor notice. The notice shall state that the Contractor’s Documents is considered ready. both for review (and approval , if so specified) in accordance with this Sub-clause and for use. The notice shall also state that the Contractor’s document complies with the contract or extent to which it does not comply

The Engineer may ,with review period, give notice to the contractor that a contractor’s Documents fails (to the extent stated) to comply with the contract, if a Contractor’s Documents so fails to comply, it shall be rectified, resubmitted and reviewed (and , if specified approved) in accordance with this Sub-Clause, at the Contractor’s Cost.

For each part of the Works and except to the extent that the prior approval or consent of the Engineer shall have been obtained:

- (a) In the case of a Contractor’s Document which has (as specified) been submitted for the Engineer’s approval:
 - (i) The Engineer shall give notice to the Contractor that the Contractor’s Document is approved , with or without comments, or that it fail (to the extent stated to comply with the contract;
 - (iii) Execution of such part the works shall not commence until the Engineer has approved the contractor’s Documents ;and
 - (iii) The Engineer shall be deemed to have approved the Contractor’s Document upon the expiry of the review periods for all the Contractor’s Document upon the expiry of the review periods for all the Contractor’s documents which are relevant to the Design and execution of such part unless the Engineer has previously notified otherwise in accordance with sub paragraph(i);
- (b) Execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor’s Documents which were relevant to its design and execution;
- (c) Execution of such part of Works shall be in accordance with these reviewed (and, if specified, approved) Contractor’s Documents; and

(d) If the contractor wishes to modify and design or document which has previously been submitted for review (and, if specified approval), the Contractor shall immediately give notice to the /engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

5.5 Training

5.6 As-Built

Documents

The engineer instruct that further Contractor's Documents are required the Contractor shall prepare them promptly .

Any such approval or consent, or any review (under these sub-Clause or otherwise), shall not relieve the Contractor from any obligation or responsibility.

5.3 Contractor's Undertaking

5.7 Operation and Maintenance Manuals

5.4 Technical Standards And Regulations

The Contractor undertakes that the design the Contractor's Documents, the execution and the completed works will be in accordance with;

- (a) The Laws in the Country, and
- (b) The documents forming the Contract, as altered or modified by variations.

The design, the Contractor's Documents, the execution and the completed Works shall comply with the country's technical standards, building, construction and environmental laws , laws applicable to the product being produced from the works, and other standards specified in the Employers Requirements, applicable to the Works , or defined by the applicable Laws.

All these Laws shall, in respect of the Works and each Section , be those prevailing when the Works or Section taken over by the Employer under clause 10 [employer's Taking over] References in the Contract to published standards shall be understood to be reference to the edition applicable on the Base Date , unless stated otherwise.

If changed or new applicable standards come in to force in the Country after the Base Date, the Contractor shall give notice to the Engineer and (if appropriate) submit proposal for compliance. In the event that;

- (a) The Engineer determined that compliance is required , and
- (b) The proposal for compliance constitute a variation,

Then the Engineer shall initiate a Variation in accordance with clause 13 [variations and Adjustments]

of the worked and sections] until this training g has been completed .

The contractor shall prepare, and keep up to date, a complete set of “ as built” records of the execution of the works showing the exact as built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this sub-Clause. Two copies shall be supplied to the Engineer prior to the commencement of the Test on completion.

In addition , the contractor shall supply to the Engineer as built drawings of the Works, showing all works as executed , and submit them to the Engineer for review under sub-Clause 5.2 [contractor's Documents]. The contractor shall obtain the consent of the Engineer as to their size, the referencing system and other relevant details.

Prior to the issue of any Taking –Over Certificate, the Contractor shall supply to the Engineer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's requirements. The works shall not be considered to be completed for the purpose of taking –over under sub-Clause 10.1 [taking over of the works and sections] until the Engineer has received these documents.

Prior to commencement of the Test on Completion the Contractor shall supply to the Engineer provision operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the plant.

5.8 Design Error

The contractor shall carry out the training of Employer's personnel in the operation and maintenance of the works to the extent specified in the Employer's requirements. If the contract specifies training which is to be carried out before taking over the works shall not be considered to be completed for the purpose of taking –over under sub-clause 10.1 [Taking over

inadequacies or other defects are found in the contractor's Documents, they and the works shall be corrected at the Contractor's cost notwithstanding any consent or approval under this clause.

The works shall not be considered to be completed for the purpose of taking over under Sub-clause 10.1 [taking Over of the Works and Sections] until the Engineer has received final operation and maintenance manuals in such detail, and any other manual specified in the Employer's requirements for these purposes.

If errors omissions, ambiguities, inconsistencies,

General Conditions

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Staff and Labour

6.1

Health and Safety

Engagement of
Staff and Labour

6.2

Rates of Wages and
Conditions of Labour

6.3

Persons in the Service
of Employer

6.4

Labour Laws

6.5

Working Hours

6.6

Facilities for Staff
and Labour

6.7
General Conditions

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

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.

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

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 require his employees to obey all applicable Laws, including those concerning safety at work.

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

- (a) otherwise stated in the Contract,
- (b) the Engineer gives 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 the Engineer.

Except as otherwise stated in the Employer's Requirements, 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 Employer's Requirements.

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.

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.

6.11

6.8

Contractor's
Superintendence

Disorderly Conduct

6.9

Contractor's
Personnel

6.10

Records of Contractor's
Personnel and
Equipment

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil 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.

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

- (b) 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.

The Contractor 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.

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

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7 Plant, Materials and Workmanship

7.1 The Contractor shall carry out the manufacture of Plant, the production and
Manner of Execution Testing

7.2 _____
Samples

7.3 _____
Inspection

7.4 _____

manufacture of
Materials, and
all other
execution of
the Works:

- (c) recognised good practice, and
with properly equipped facilities and non-hazardous Materials, except as
otherwise specified in the Contract.

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The Contractor shall submit the following samples of Materials, and relevant
information, to the Engineer for review in accordance with the procedures for
contractor's Documents described in sub-clause 5.2 [Contractor's Document]:

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

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

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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.

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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.

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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.

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

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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.

- (b) in a proper
workmanlike
and careful
manner, in
accordance
with
General Conditions

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests 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 tests 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 Contract Price.

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

7.5

Rejection

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

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting 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.

7.6

Remedial Work

~~Notwithstanding any previous test or certification, the Engineer 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 Plant 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 Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:

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

8

Commencement, Delays and Suspension

8.1

Commencement of Works

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

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

8.2

Time for Completion

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

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

8.3

Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of Works*]. The Contractor shall also submit a revised programme whenever the previous programme

is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [*Nominated Subcontractors*]),
- (c) the sequence and timing of inspections and tests 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 notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [*Variation Procedure*].

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

8.4

Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [*Contractor's Claims*] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [*Taking Over of the Works and Sections*] is or will be delayed by any of the following causes:

- (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 under 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, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [*Contractor's Claims*]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may

increase, but shall not decrease, the total extension of time.

8.5 Suspension of Work
Delays Caused by
Authorities

8.6 _____
Rate of Progress

8.7 _____
Delay Damages

8.8 _____
General Conditions

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 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 notice, the Engineer shall proceed in accordance with 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 faulty design, workmanship or materials, or 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 property in accordance with the Engineer's instructions.

8.11

Prolonged Suspension

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

8.12

Resumption of Work

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

9 Tests on Completion

9.1

Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-clause 5.6 [As-Built Documents] and Sub-Clause 5.7 [Operation and Maintenance Manual].

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.

Unless otherwise stated in the particular condition , the Tests on completion shall

carried out in the following sequences:

- (a) pre- commissioning tests, which shall include the appropriate inspection and (“ dry” or “Cold”) functional tests to demonstrate that each item of plant can safely undertake the next stage (b);
- (b) Commissioning tests, which shall include the specified operational test to demonstrate that the works or section can be operated safely and as specified , under all available operating conditions; and
- (c) Trial operation, which shall demonstrate that the works or section perform reliably and in accordance with the Contract

;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 Tests 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 fails 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 and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3

Retesting

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

9.4

Failure to Pass Tests on Completion

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

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (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 require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [*Employer's Claims*] and Sub-Clause 3.5 [*Determinations*].

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

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

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

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

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2

Taking Over of Parts of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

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

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

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest 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 Damages*], 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 Tests 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.

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.

10.4

Surfaces Requiring Reinstatement

11 Defects Liability

11.1

Completion of Outstanding Work and Remedying Defects

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

- (a) complete any work which is outstanding on the date stated in a Taking-Over

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

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

11.2

Cost of Remedying Defects

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

- (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's 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 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.

11.5	11.11
Removal of Defective Work	Clearance of Site

11.6	
Further Tests	

11.7	
Right of Access	

11.8	
Contractor to Search	

11.9	
Performance Certificate	

11.10	
Unfulfilled Obligations	

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.

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.

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.

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.

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.

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment 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.

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.

Test after 12 completion

12.1
Procedure for Tests after
Completion

12.3

Retesting

12.2
Delayed Tests

If tests after Completion are specified in the Contract, this Clause shall apply, unless otherwise stated in the Particular Conditions, the Employer shall:

- (a) provide all electricity, equipment, fuel instruments, labor, material, and suitably qualified and experienced staff, as are necessary to carry out the tests after Completion efficient, and
- (b) Carry out the Tests after Completion in accordance with the manuals supplied by the Contractor under Sub- Clause 5.7 [operation and Maintenance Manuals] and such guidance as the Contractor may be required to give during the course of these Tests; and in the presence of such Contractor's Personnel as either Party may reasonably request;

The Tests after Completion shall be out as soon as is reasonably practicable after the Works or Selection have been taken over by the Employer. The Employer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer.

General Conditions

If the Contractor does not attend at the time and place agreed, the Employer may proceed with the Tests after Completion, which shall be deemed to have been made in the Contractor's presence, and the Contractor shall accept the readings as accurate.

The results of the Tests after Completion shall be compiled and evaluated by both Parties. Appropriate account shall be taken of the effect of the Employer's prior use of the Works.

If the Contractor incurs Cost as a result of any unreasonable delay by the Employer to the Tests after Completion, 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 Prices.

After receiving this notice, the Engineer shall proceed in accordance with Sub- Clause 3.5 [determination] to agree or determine this cost and profit.

If, for reasons not attributable to the Contractor, a Test after Completion on the works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or section shall be deemed to have passed this Test after Completion.

If the Works, or a Section, fail to pass the Tests after Completion:

12.4

Failure to pass test after Completion

Contractor shall subject to Sub-Clause 2.5 [employer's Claims] pay these costs to the employer.

If the following condition apply, namely

- (d) (a) The works , or a Section, fail to pass any or all of the Tests after Completion
- (e) (b) The relevant sum payable as non-performance damages for this failure is stated (or its mentioned of Calculator is defined in the Contract, and
- (f) (c)The contractor pays this relevant sum to the Employer during the Defects Notification Periods.

Then the works or Section shall be deemed to have passed these Tests after Completion

- (a) (a) Sub-paragraph (b) of Sub- Clause 11.1 Completion of Outstanding Work and Remedying Defects] shall apply and
If the Works, or a Section , fail to pass a Test after completion and the Contractor proposes to make adjustments of modification to the works or such Section, the contractor may be instructed by (or on behalf of) the Employer that right of access to the Works or section cannot be given until a time that is convenient to the Employer.
The Contractor shall then remain liable to carry out the adjustments or modification and to satisfy this Test, within a reasonable period of receiving notice by (or on Behalf of) the Employer of the time that is convenient to the Employer. However, if the Contractor does not receive this notice during the Relevant Defects Notification Period, The Contractor shall be relieved of this Obligation and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion.
- (b) (b) Either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.
- (c) If and to the extent that this failure and retesting are attribute to any the matters listed in Sub-paragraphs (a) to (d) of Sub- Clause 11.2 : cost of Remedying Defects] and cause the Employer to incur additional costs, the
If the contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or plant by the Contractor, either to investigate the cause of a failure to pass a Test after Completion or to carry out any adjustments or modifications, 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.

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. A variation shall not comprise the omission of any work is carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) (i) the Contractor cannot readily obtain the Goods required for the Variation, (ii) it will reduce the safety or suitability of the works or (iii) it will have an adverse impact on the achievement of schedule of guarantees. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

13.2

Value Engineering

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

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

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.

Upon instructing or approving of a variation, the Engineer shall proceed in accordance with sub-clause 3.5 [*Determinations*] to agree or determine adjustments to the contract price and the schedule of payments. This adjustments shall include reasonable profit, shall take account of the contractor's submissions under sub-clause 13.2 [*value engineering*] if applicable.

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 the proportions of various currencies specified for payment of the Contract Price.

13.5

Provisional Sums

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

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

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

For work of a minor or incidental nature, the Engineer 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 shall not apply.

13.6

Daywork

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 Certificates*].

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.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, 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, 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.

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

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

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant

table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

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

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

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

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

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

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

14 Contract Price and Payment

14.1

The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [*Evaluation*] and be subject to adjustments in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*];
- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the works which the contractor required to execute and

- (d) any quantities or price data which may be set out in a schedule shall be used for the purposes stated in the schedule may be in applicable for other purposes.

However , if any part of the works is to be paid according to quantity supplied or work done the provision for measurement and evaluation shall be as stated in the particular conditions. The contract price shall be determined accordingly, subject to adjustments in accordance with the contract.

14.2

Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (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, this 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 Certificates*]) 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 within 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 amortisation 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 such time as the advance payment has been repaid.

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

14.3

Application for Interim Payment Certificates

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 Certificates.

The Contractor shall submit a Statement in six copies to the Engineer after the end of the period of payment stated in the Contract (if not stated, after 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 Reports*].

The Statement shall include the following items, as applicable,
General Conditions

:

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

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5

Plant and Materials intended for the Works

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

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

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

- (a) the Contractor has:
 - (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

- (b) the 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 is included under sub-paragraph (a) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6

Issue of Interim Payment Certificates

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

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

give notice to the
Contractor accordingly.

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

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

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

14.7

Payment

The Employer shall pay to the Contractor:

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

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

14.8

Delayed Payment

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

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

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

14.9

Payment of Retention Money

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

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for

payment to the Contractor. If a Taking-Over Certificate was issued for a Section,

The relevant percentage 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.

However, if any work remains to be executed under Clause 11 [*Defects Liability*], or clauses 12 [Test after completion], the Engineer shall be intended to withhold certification of the estimated cost of this work until it has been executed.

The relevant percentage for each section shall be the percentage value of the section as stated in Appendix to tender. If the percentage value of a section is not stated in the Appendix to Tender, no percentage of either half of the retention money shall be realized under this Sub-Clause in respect of such section.

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:

14.11

Application for Final Payment Certificate

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

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

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) an 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 Engineer) a Final Statement.

14.12

Discharge

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

14.13

Issue of Final Payment Certificate

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

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

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

14.14

Cessation of Employer's Liability

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

- (a) in the Final Statement and also
- (b) (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.

The Contract Price shall be paid in the currency or currencies named 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:

14.15

Currencies of Payment

- (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 deductions 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 proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [*Application for Interim Payment Certificates*] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Appendix to Tender shall be made in the currencies and proportions specified in the Appendix to Tender;

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

15 Termination by Employer

15.1

Notice to Correct

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 disfavour 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 Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice 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 Contractor's 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 the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents 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 sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3

Valuation at Date of Termination

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

15.4

Payment after Termination

After a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Employer may:

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

15.5

Employer's Entitlement to Termination

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be

paid in accordance
with Sub-Clause 19.6
[*Optional Termination,
Payment and
Release*].

16

Suspension and Termination by Contractor

16.1

Contractor's Entitlement to Suspend Work

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.

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 an 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) a 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

16.2

Termination by Contractor

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 by notice terminate the Contract immediately.

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

16.3

Cessation of Work and Removal of Contractor's Equipment

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

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

16.4

Payment on Termination

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

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

17 Risk and Responsibility

17.1

Indemnities

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

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful 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 design execution and completion of the Works and the remedying of any defects, and

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

17.2

Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [*Taking Over of the 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 then 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.

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

17.3

Employer's Risks

- (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, ionising 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

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17.4
Consequences of
Employer's Risks

17.6
Limitation of Liability

17.5

Intellectual and Industrial
Property Rights

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.

In this Sub-Clause, "infringement" means an 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 that 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.

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 or (if a sum is not so stated) the Accepted Contract Amount.

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

18 Insurance

18.1 General Requirements for Insurances

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

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers 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.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers 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, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes

to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any 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 Contractor 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.

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*]).and clause [Tests after Completion]

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-paragraphs (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 an 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 intended for the Works].*

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

18.3

Insurance against Injury to Persons and Damage to Property

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

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

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

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

18.4

Insurance for Contractor's Personnel

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

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

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

19

Force Majeure

19.1

Definition of Force Majeure

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

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

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

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

19.2

Notice of Force Majeure

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

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

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

19.3

Duty to Minimize Delay

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

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

19.4

Consequences of Force Majeure

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

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [*Definition of Force Majeure*] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

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

19.5

Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6

Optional Termination, Payment and Release

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 for 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*].

Upon such termination, the Engineer shall determine the value of the 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 completing 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 Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7

Release from Performance under the Law

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil 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 circumstance:

- (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

Claim, 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.

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- (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 particulars, but shall nevertheless give his response on the principles of the claim within such time.

Each Payment Certificate shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.2

Appointment of the Dispute Adjudication Board

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date stated in the Appendix to Tender.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member ("adjudicator") or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAB consults, shall be

mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The 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 DAB has given its decision in the dispute referred to it under sub-clause 20.4[obtaining dispute Adjudication Board's Decision]. Unless other disputes have been referred to the DAB by that time under sub-clauses 20.4, in which event the relevant date shall be and the DAB has also given decision on those disputes.

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 by 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 responsible for paying one-half of the remuneration of the appointing entity or official.

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, then after a DAB has been appointed pursuant to sub-clause 20.2 [appointment of the DAB] and 20.3 [failure to agree DAB] 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.

20.4

Obtaining Dispute Adjudication Board's Decision

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,

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 the advance payment referred to in clauses 6 of the appendix-general conditions of disputes adjunction agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the parties has paid in full the invoices submitted by each member pursuant to clause 6 of the appendix, the DAB shall not be to give its decisions until such invoices have been paid in full. 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, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [*Failure to Comply with Dispute Adjudication Board's Decision*] and Sub-Clause 20.8 [*Expiry of Dispute Adjudication Board's Appointment*], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.

20.5

Amicable Settlement

Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6

Arbitration

Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,
- (b) the dispute shall be settled by three arbitrators appointed in accordance with these Rules, and
- (c) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*].

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever

relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7

Failure to Comply with
Dispute Adjudication
Board's Decision

20.8

Expiry of Dispute
Adjudication Board's
Appointment

o comply with this decision,

then the other Party may, without prejudice to any other rights 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.

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of 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].
-

(a) neither Party
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APPENDIX

General Conditions of Dispute Adjudication Agreement

1 Definitions

Each "Dispute Adjudication Agreement" is a tripartite agreement by and between:

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Adjudication Agreement as being:
 - (i) the sole member of the "DAB" (or "adjudicator") and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) one of the three persons who are jointly called the "DAB" (or "dispute adjudication board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Appendix. In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2 General Provisions

The Dispute Adjudication Agreement, it shall take effect when the employer, the contractor and each of members (or member) have respectively. Each signed a dispute adjudication agreement.

When the Dispute Adjudication Agreement has taken effect, the Employer and the Contractor shall each give notice to the Member accordingly. If the Member does not receive either notice within six months after entering into the Dispute Adjudication Agreement, it shall be void and ineffective.

This employment of the Member is a personal appointment. No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the parties to it and of the Other Members (if any).

3 Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Engineer, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) treat the details of the Contract and all the DAB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DAB's activities under the Contract and the Dispute Adjudication Agreement, and except to the extent that prior agreement is given by the Employer, the Contractor and the Other Members (if any). The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

6

Payment

The Member shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:

- (a) a daily fee shall be considered as payment in full for:
 - (i) each working day spent reading submissions , attending hearing (if any), preparing decision or making site visits (if any) and
 - (ii) each day or part of a day up to maximum of two days travel time in each direction for the journey (if any) between the Member's home and site or another location of a meeting with other Members(if any) and/or the Employer and Contractor.
- (b) All reasonable expenses incurred in connection with the Member's duties including the cost of secretarial service, telephone calls , courier charges, faxes and telexes, travel expenses, hotel and subsistence costs, a receipt shall be required for each item in excess of five percent of the daily fee referred to in Sub-paragraph (a) this Clause ;and
- (c) Any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident to the Country) under this Clause 6.

The daily fee shall be as specified in the Dispute Adjudication Agreement

Immediately after the Dispute Adjudication Agreement takes effect, the Member shall , before engaging in any activities under the Dispute Adjudication Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (a) an advance or twenty –five (25) percent of the estimated total amount of daily fee to which he/she will be entitled and (b) an advance equal to the estimate total expense that he/she shall incur in connection with his/her duties, payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Adjudication Agreement until each of the Members has been paid in full for invoice submitted under this paragraph.

Thereafter the Member shall submit to the contractor, with a copy to the Employer invoices for the balance of his/he daily face and expenses, less the amounts advanced. The DAB shall not be obliged render its decision until invoice for all daily fees and expense of each member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Contractor shall pay each of the Member's invoices in full within 28 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the

operation of the DAB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Condition of Contract.

7

Default of the
Member

If the Member does not receive payment of the amount due within 28 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the employer and the contractor. The notice shall take effect when receive by them both. Any such notice shall be final and binding on the employer, the Contractor and the Member.

8

Disputes

If the Member fails to comply with any obligation under Clause 4, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DAB which are rendered void or ineffective.

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

Annex PROCEDURAL RULES

- 1 The employer and the Contractor shall furnish to the DAB one copy of all documents which the DAB may request,, including Contract documents , progress reports variation instruction , certificates and other documents pertinent to the matter in dispute. All communications between the DAB and the Employer or the Contractor shall be copied to the other Party. If the DAB comprise three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
- 2 The DAB shall processed in accordance with Sub- Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DAB shall:
 - (a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the others case, and
 - (b) Adopt procedures suitable to the dispute, avoiding unnecessary delay of expense
- 3 The DAB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing
- 4 Except as otherwise agreed in writing by the Employer and the Contractor, the DAB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DAB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
- 5 The Employer and the Contractor empower the DAB, among other things, to:
 - (a) Establish the procedure to be applied in deciding a dispute
 - (b) Decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it.
 - (c) Conduct , any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
 - (d) Take the initiative in ascertaining the facts and matters required for a decision
 - (e) Make use of its own specialist knowledge, if any
 - (f) Decide up on the payment of financing charges in accordance with the Contract,
 - (g) Decide upon any provision relief such as interim or conservatory measures and
 - (h) Open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DAB shall not express any opinions during any hearing concerning the merits of arguments advanced by the Parties. Thereafter, the DAB shall make and given its decision in accordance with Sub-Clause 20.4 or as otherwise agreed by the employer and the Contractor in writing, if the DAB comprise three persons.

- (a) It shall convince in private after a hearing , if any in order to have discussions and prepare its decision
- (b) It shall Endeavour to reach a unanimous decision; if this proves impossible , the applicable decision shall be made by a majority of the members, who may require the minority member to prepare a written report for submission to the Employer and the Contractor, and
- (c) If a Member fails to attend a meeting or hearing , fulfill required function the other two Members may nevertheless proceed to make a decision, unless;
 - (i) Either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Member to not make a decision.

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Form 'J'

Bank Guarantee Proforma for Bid Security

Bank Guarantee No.....

Brief description of contract:- Construction of Chancery-cum-Residential Complex at Khartoum for Embassy of India.

Name and Address of Beneficiary:- Embassy of India, Address Address: Amarat Street1, Plot 2, Block 12 DH, Eastern Ext., Khartoum, Sudan

Date :

Whereas M/s (Name of Contractor with address)_____ have submitted their tender for Name of work : _____ at location for Embassy of India in (Country name)_____, and one of the tender conditions is for the M/s (Name of Contractor with address)_____ to submit a Bank Guarantee for Bid Security amounting to **USD _____/- (USD _____)** or equivalent local currency . In fulfillment of the tender conditions, we, (Name of Bank with address)_____ hereby irrevocably and unconditionally undertake to pay to you within three working days of receipt of your first written demand, without any demur whatsoever and without seeking any reasons, whatsoever, up to the maximum aggregate amount to USD _____/- (USD _____) or equivalent local currency.

This guarantee is valid for a period of **180 Days** and any claim and statement hereunder must be received at the above mentioned office before expiry. After expiry, this guarantee shall become null and void whether returned to us for cancellation or not and any claim or statement received after expiry shall be ineffective.

Notwithstanding anything to the contrary contained hereinabove, the maximum liability under this guarantee is restricted to **USD _____/- (USD _____)** or equivalent local currency.

Notwithstanding anything to the contrary contained hereinabove, this guarantee is valid from **(date of issue)** _____ up to the (date after **180** days from **date of issue**) _____ and claims under this guarantee should be submitted not later than (date after **180 Days** from **date of issue**)_____.

This guarantee may not, without our prior written consent, be transferred or assigned and this guarantee is limited to the payment of a sum of money.

This guarantee shall be governed and construed in accordance with the laws of the (Country Name)____ and is governed by the United Rule for Demand Guarantee (ICC Publication No.758) and shall be subject to exclusive Jurisdiction of the (country Name)_____ Courts.

Date _____

Signatures_____

Document – V

Appendix to tender

APPENDIX TO TENDER

Item	Clause	Data
Employer's name and address	1.1.2.2 & 1.3	Government of India Embassy of India Location: Address: Country name: Tel:
Contractor's name and address	1.1.2.3 & 1.3	Name (to be decided) Address
Engineer's name and address	1.1.2.4 & 1.3	1. Consultant Architect: 2. Civil Engineer: 3. Mechanical Engineer: 4. Electrical Engineer: 5. Quantity Surveyor:
Employer's Personnel – (Consultants appointed by the Employer)	1.1.2.6	N/A
Time for Completion of the works	1.1.3.3	-----months/days
Defects Notification Period	1.1.3.7	365 days
Electronic transmission systems	1.3	Electronic mails and facsimiles
Governing Law	1.4	
Ruling Language	1.4	English
Language for communications	1.4	English
Time for access to the site	2.1	On the commencement date
Amount of Performance Guarantee/Security	4.2	Five per cent (5%) of the Accepted Contract Amount
Normal working hours	6.5	As per local law/local practice. No payment shall be admissible for overtime by Employer.

Commencement of works	8.1	Within 42Days after the Contractor receives the letter of Acceptance or on handing over of site whichever is later
Programme	8.3	Within 14 days after receiving the notice
Delay damages for the works	8.7 &14.15 (b)	0.5 % of Accepted Contract Amount per week of delay to be calculated on per day basis
Maximum amount of delay damages	8.7	Ten per cent (10%) of the Accepted Contract Amount
Clause 8.9 <i>Consequences of suspension sub clause (b) Payment of any such cost, which shall be included in the contract price.</i>	8.9	N/A
Completion of Outstanding work and Remedying Defects (Time to Complete Outstanding work)	11.1 (a)	28 days
If there are Provisional Sums:- Percentage for adjustment of Provisional Sums	13.5 (b)	As per Bills of Quantities/Schedule
Clause 13.8 <i>adjustment for changes in cost</i>	13.8	N/A
Total advance payment	14.2	Ten per cent (10%) of the Accepted Contract Amount against Bank Guarantee.
Start repayment of advance payment, Repayment amortization of advance payment ,	14.2 (a) (Revised), 14.2 (b) (Revised),	The Advance Payment limited to 10% of Accepted Contract Amount at following interest rate can be sanctioned to the contractor on specific request as per term of the contract. (ii) The Advance shall be released only after obtaining an unconditional bank Guarantee bond from a schedule bank for the amount of advance to be released and valid for the contract period. This shall be kept renewed time to time to cover the balance amount and likely period to complete recovery together with interest. The interest on the advance shall be calculated from the date of payment to the date of recovery, both days inclusive. (iii) It shall be ensured that at any point of

		time, Bank Guarantee is available for the amount of outstanding advance. (iv) The recovery should be commenced after 10% of work is completed and the entire amount together with interest shall be recovered by the time 80% of the work is completed.
Interest of advance payment	14.2 (c) (New)	N/A
Percentage of retention	14.3	Five percent (5%) of the total amounts described in Clause 14.3 (a) and (b).
Limit of Retention Money	14.3	Five per cent (5%) of the Accepted Contract Amount (excluding VAT)
Plant and Materials for payment when shipped en route to the site	14.5 (b)	N/A
Plant and Materials for payment when delivered to the site....	14.5 (c)	See list of Clause 14.5 (c) Plant and Materials at Appendix B, to be completed by the Tenderer
Minimum amount of Interim Payment Certificates	14.6	Two per cent (2%) of the Accepted Contract Amount or Minimum one RA bill in a month on submission by Contractor
5.3 Clause 14.8 Delayed payment	14.8	N/A
Currency/Currencies of payment	14.15	USD
Periods for submission of insurance:		
(a) Evidence of insurance Relevant policies	18.1	Within 14 days of the issue of the letter of Acceptance
(b) relevant policies	18.1	Not later than Commencement dates
Insurance of works and Contractor equipment	18.2	Contract value + 15%
Minimum amount of deductible for insurance of the employer's risks	18.2(d)	All liability under this contract in the scope of Contractor
Minimum amount of third party insurance	18.3	USD100, 000 amount of each occurrence. Number of occurrences-unlimited

Insurance of Contractor Personnel	18.4	As per local Bye-laws
Arbitration shall be administered using and by	20.6(a)	UNCITRAL rules of arbitration .

Signature of Contractor

Date:_____

Document – VI
SPECIFICATIONS
(attached as Separate document)

Document – VII
Architectural, Structural Drawings etc.
(Attached as Separate document)

B. Financial Bid Document

Document –VIII
FINANCIAL BID LETTER
(Lump sum fixed price to be quoted on this form by Bidder)

Part-B

FINANCIAL BID LETTER

To : EMBASSY OF INDIA, KKHARTOUM, SUDAN

Sir,

We declare:

We are equipped with the infrastructure/expertise and other facilities required for carrying out the construction for New Building for the Chancery, Staff Residences and Ambassador's Residence works for the Embassy of India, Khartoum, as the requirement of the contract.

We do hereby undertake, that, In the event of acceptance of our bid, for construction of New Building for the Chancery, Staff Residences and Ambassador's Residence works for the Embassy of India, Khartoum, shall be made as stipulated in the work order and the tender terms and conditions to the Bid, Our Tender Offer Price for the above Works all complete as per the requirements of the Contract is USD _____ (USD _____ only),

We enclose herewith the complete Financial Bid as required by you, We have carefully read and understood the terms and conditions of the tender and the conditions of the contract applicable to the tender and we do hereby undertake the said works for construction of New Building for the Chancery, Staff Residences and Ambassador's Residence works for the Embassy of India, Khartoum as per these terms and conditions,

All prices mentioned in our proposal are in accordance with the terms and condition specified in the bidding document and extant statutes/rules etc,

All the prices and other terms and conditions of this proposal are valid for a period of 180 calendar days from the opening of the bids,

We do hereby confirm that our bid prices are all inclusive,

1, Certified that we are:

a sole proprietor firm and the person signing the tender is the sole proprietor / constituted attorney of the sole proprietor,

or

a partnership firm and the person signing the tender is the sole proprietor , he has the authority to refer to arbitration disputes concerning the business of partnership by the virtue of the partnership agreement /by virtue of general power of attorney,

or

Or a company and the person signing the tender is the constituted attorney.

(Note: Delete whatever is not applicable. All Corrections/ deletions should invariably duly attested by the person authorized to sign the tender document.)

2. We do hereby undertake that until a formal contract is prepared and executed, this bid together with your written acceptance thereof, the tender document and placement of letter of intent awarding the contract, shall constitute a binding contract between us.

Dated: Signature of authorized representative

Name of Agency :

Full Address :

Company Seal :

Detail of enclosures :

Document – IX
Schedule of Items (BOQ) for Variations
– Schedule of Quantity for Civil and Electro-
Mechanical Works.

Item/Quantity may be modified and rate of each item to be quoted.
(Attached as Separate document)