

**BIHAR STATE HIGHWAYS PROJECT**  
**BID DOCUMENT**  
**FOR**  
**CIVIL WORKS**

**Improvement/Upgradation, Widening and Strengthening of  
Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road  
(SH-103) under Civil work Contract Package No. BSHP-  
III(Phase-2)/Pkg-7/SH-103**

Invitation No. – BSHP-III(Phase-2)/ Pkg-7/SH-103/ 2021-22, Patna, Dated 17.02.2022



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**ASIAN DEVELOPMENT BANK**

# STANDARD BIDDING DOCUMENT

## Procurement of Works

- Single-Stage: Two-Envelope Bidding Procedure -

*Not to be used as a Bid Document, Only for Reference*

Asian Development Bank  
June 2018

# Procurement of Works

## BIDDING DOCUMENT

for

Procurement

of

**Improvement/Upgradation, Widening and Strengthening  
of Ch: 21.88 Km. to Govindpur of Manjhay -  
Govindpur Road (SH-103) under Civil work Contract  
Package No. BSHP-III(Phase-2)/Pkg-7/SH-103**

**Issued on** : 17/02/2022

**Invitation for Bids No.** : BSHP-III(Phase-2)/ Pkg-7/SH-103/2021-22

**OCB No.** : BSHP-III(Phase-2)/ Pkg-7/SH-103

**Employer** : Bihar State Road Development Corporation Ltd.

**Country** : India

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## Preface

This Bidding Document for the Procurement of Works has been prepared by Bihar State Road Development Corporation Limited and is based on the Standard Bidding Document for the Procurement of Works (*SBD Works*) issued by the Asian Development Bank dated June, 2018.

ADB's *SBD Works* has the structure and the provisions of the Master Procurement Document entitled "Bidding Documents for the Procurement of Works", prepared by multilateral development banks and other public international financial institutions, except where ADB-specific considerations have required a change.

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# Table of Contents - Summary Description

## PART I BIDDING PROCEDURES

<b>Section 1 - Instructions to Bidders (ITB)</b> .....	<b>1-1</b>
This section specifies the procedures Bidders should follow when preparing and submitting their Bids. Information is also provided on the submission, opening, evaluation of bids, and on the award of contract.	
<b>Section 2 - Bid Data Sheet (BDS)</b> .....	<b>2-1</b>
This section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 (Instructions to Bidders).	
<b>Section 3 - Evaluation and Qualification Criteria (EQC)</b> .....	<b>3-1</b>
This section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.	
<b>Section 4 - Bidding Forms (BDF)</b> .....	<b>4-1</b>
This section contains the forms to be completed by the Bidder and submitted as part of its Bid.	
<b>Section 5 - Eligible Countries (ELC)</b> .....	<b>5-1</b>
This section contains the list of eligible countries.	

## PART II REQUIREMENTS

<b>Section 6 - Employer's Requirements (ERQ)</b> .....	<b>6-1</b>
This section contains the Specifications, Drawings, and Supplementary Information that describe the Works to be procured, Personnel Requirements, and Equipment Requirements.	

## PART III CONDITIONS OF CONTRACT AND CONTRACT FORMS

<b>Section 7 - General Conditions of Contract (GCC)</b> .....	<b>7-1</b>
This section contains the general clauses that govern the Contract. These General Conditions shall be the Conditions of Contract for Construction, Multilateral Development Bank Harmonized Edition, prepared by the Fédération Internationale des Ingénieurs-Conseil (FIDIC MDB Edition, June 2010). These Conditions are subject to the variations and additions set out in Section 8 (Particular Conditions of Contract).	
<b>Section 8 - Particular Conditions of Contract (PCC)</b> .....	<b>8-1</b>
This section contains provisions that are specific to each contract and that modify or supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.	
<b>Section 9 - Contract Forms (COF)</b> .....	<b>9-1</b>
This section contains forms that, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.	

# Section 1: Instructions to Bidders

This Section specifies the procedures to be followed by Bidders in the preparation and submission of their Bids. Information is also provided on the submission, opening, evaluation of bids, and award of contract.

## Table of Clauses

<b>A. General</b> .....	<b>1-3</b>
1. Scope of Bid.....	1-3
2. Source of Funds.....	1-3
3. Fraud and Corruption.....	1-3
4. Eligible Bidders.....	1-5
5. Eligible Materials, Equipment, and Services.....	1-7
<b>B. Contents of Bidding Document</b> .....	<b>1-7</b>
6. Sections of Bidding Document.....	1-7
7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting.....	1-8
8. Amendment of Bidding Document.....	1-9
<b>C. Preparation of Bids</b> .....	<b>1-9</b>
9. Cost of Bidding.....	1-9
10. Language of Bid.....	1-9
11. Documents Comprising the Bid.....	1-9
12. Letters of Bid and Schedules.....	1-10
13. Alternative Bids.....	1-10
14. Bid Prices and Discounts.....	1-10
15. Currencies of Bid and Payment.....	1-11
16. Documents Comprising the Technical Proposal.....	1-12
17. Documents Establishing the Qualifications of the Bidder.....	1-12
18. Period of Validity of Bids.....	1-13
19. Bid Security/Bid-Securing Declaration.....	1-13
20. Format and Signing of Bid.....	1-14
<b>D. Submission and Opening of Bids</b> .....	<b>1-14</b>
21. Sealing and Marking of Bids.....	1-14
22. Deadline for Submission of Bids.....	1-15
23. Late Bids.....	1-15
24. Withdrawal, Substitution, and Modification of Bids.....	1-15
25. Bid Opening.....	1-16

**E. Evaluation and Comparison of Bids..... 1-18**

- 26. Confidentiality ..... 1-18
- 27. Clarification of Bids ..... 1-18
- 28. Deviations, Reservations, and Omissions ..... 1-18
- 29. Examination of Technical Bids..... 1-18
- 30. Responsiveness of Technical Bids ..... 1-19
- 31. Nonmaterial Nonconformities ..... 1-19
- 32. Qualification of the Bidder ..... 1-20
- 33. Subcontractors ..... 1-20
- 34. Correction of Arithmetical Errors ..... 1-20
- 35. Conversion to Single Currency ..... 1-21
- 36. Domestic Preference ..... 1-21
- 37. Evaluation and Comparison of Price Bids ..... 1-21
- 38. Abnormally Low Bids..... 1-21
- 39. Unbalanced or Front-Loaded Bids ..... 1-22
- 40. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids..... 1-22
- 41. Notice of Intention for Award of Contract..... 1-23

**F. Award of Contract..... 1-23**

- 42. Award Criteria ..... 1-23
- 43. Notification of Award..... 1-23
- 44. Signing of Contract..... 1-23
- 45. Performance Security..... 1-24
- 46. Bidding-Related Complaints..... 1-24

Not to be used as a Bid Document, Only for Reference



## A. General

### 1. Scope of Bid

- 1.1 In connection with the Invitation for Bids (IFB) indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues this Bidding Document for the procurement of Works as specified in Section 6 (Employer's Requirements). The name, identification, and number of contracts of the open competitive bidding (OCB) are provided in the BDS.
- 1.2 Throughout this Bidding Document,
- (a) the term "in writing" means communicated in written form and delivered against receipt;
  - (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
  - (c) "day" means calendar day.

### 2. Source of Funds

- 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the Asian Development Bank (hereinafter called "ADB") toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
- 2.2 Payments by the ADB will be made only at the request of the Borrower and upon approval by ADB in accordance with the terms and conditions of the Financing Agreement between the Borrower and ADB (hereinafter called "Financing Agreement"), and will be subject in all respects to the terms and conditions of that Financing Agreement. No party other than the Borrower shall derive any rights from the Financing Agreement or have any claim to the funds.

### 3. Fraud and Corruption

- 3.1 ADB's Anticorruption Policy (1998, as amended to date) requires Borrowers (including beneficiaries of ADB-financed activity), as well as Bidders, Suppliers, and Contractors under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
    - (ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
    - (iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
    - (iv) "collusive practice" means an arrangement between two or more

- parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (v) “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
  - (vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
  - (vii) “obstructive practice” means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation, or deliberately making false statements to investigators, with the intent to impede an ADB investigation; (b) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (c) deliberate acts intended to impede the exercise of ADB’s contractual rights of audit or inspection or access to information; and
  - (viii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vii) above and the following: violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;
  - (c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
  - (d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and
  - (e) will have the right to require that a provision be included in bidding documents and in contracts financed by ADB, requiring Bidders, suppliers and contractors to permit ADB or its representative to inspect

<sup>1</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.

3.2 All Bidders, consultants, contractors, suppliers, and other third parties engaged or involved in ADB-related activities have a duty to cooperate fully in any screening or investigation when requested by ADB to do so. Such cooperation includes, but is not limited to, the following:

- (a) being available to be interviewed and replying fully and truthfully to all questions asked;
- (b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;
- (c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;
- (d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);
- (e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and
- (f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.

3.3 All Bidders, consultants, contractors and suppliers shall ensure that, in its contract with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly undertake the foregoing duty to cooperate fully in any screening or investigation when requested by ADB to do so.

3.4 The Employer hereby puts the Bidder on notice that the Bidder or any Joint Venture partner of the Bidder (if any) may not be able to receive any payments under the Contract if the Bidder or any of its Joint Venture partners, as appropriate, is, or is owned (in whole or in part) by a person or entity subject to applicable sanctions.

3.5 Furthermore, Bidders shall be aware of the provision stated in Subclause 1.15 and 15.6 of the Conditions of Contract.

#### 4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, or government-owned enterprise subject to ITB 4.5—or any combination of them with a formal

intent to enter into an agreement or under an existing agreement in the form of a Joint Venture. In the case of a Joint Venture,

- (a) all partners shall be jointly and severally liable; and
- (b) the Joint Venture shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the Joint Venture during the bidding process and, in the event the Joint Venture is awarded the Contract, during contract execution.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with Section 5 (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract including related services.

4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in the bidding process if any of, including but not limited to, the following apply:

- (a) they have controlling shareholders in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- (e) a Bidder participates in more than one bid in this bidding process, either individually or as a partner in a Joint Venture, except for alternative offers permitted under ITB 13 of the Bidding Document. This will result in the disqualification of all Bids in which it is involved. However, subject to any finding of a conflict of interest in terms of ITB 4.3(a)-(d) above, this does not limit the participation of a Bidder as a Subcontractor in another Bid or of a firm as a Subcontractor in more than one Bid; or
- (f) a Bidder, Joint Venture partner, associates, parent company, or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
- (g) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract; or
- (h) a Bidder would be providing goods, works, or nonconsulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm.

- 4.4 A firm shall not be eligible to participate in any procurement activities under an ADB-financed, -administered, or -supported project while under temporary suspension or debarment by ADB pursuant to its Anticorruption Policy (see ITB 3), whether such debarment was directly imposed by ADB, or enforced by ADB pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. A bid from a temporary suspended or debarred firm will be rejected.
- 4.5 Government-owned enterprises in the Employer's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Employer.
- 4.6 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid-Securing Declaration.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.
- 4.8 Firms shall be excluded if by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country or any payments to persons or entities in that country.
- 4.9 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

**5. Eligible Materials, Equipment and Services**

- 5.1 The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as defined in ITB 4.2, and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment, and services.
- 5.2 For purposes of ITB 5.1 above, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

**B. Contents of Bidding Document**

**6. Sections of Bidding Document**

- 6.1 The Bidding Document consist of Parts I, II, and III, which include all the sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITB 8.

**PART I Bidding Procedures**

- Section 1 - Instructions to Bidders (ITB)
- Section 2 - Bid Data Sheet (BDS)
- Section 3 - Evaluation and Qualification Criteria (EQC)
- Section 4 - Bidding Forms (BDF)
- Section 5 - Eligible Countries (ELC)

**PART II Requirements**

Section 6 - Employer's Requirements (ERQ)

**PART III Conditions of Contract and Contract Forms**

Section 7 - General Conditions of Contract (GCC)

Section 8 - Particular Conditions of Contract (PCC)

Section 9 - Contract Forms (COF)

- 6.2 The IFB issued by the Employer is not part of the Bidding Document.
- 6.3 The Employer is not responsible for the completeness of the Bidding Document and their addenda, if they were not obtained directly from the source stated by the Employer in the IFB.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.
- 7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting**
- 7.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his inquiries during the pre-bid meeting, if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than 21 days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Bid and entering into a contract for construction of the works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than 1 week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all

Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Bidding Document**

8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda.

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids, pursuant to ITB 22.2

**C. Preparation of Bids**

**9. Cost of Bidding**

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**10. Language of Bid**

10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents Comprising the Bid**

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid shall comprise the following:

- (a) Letter of Technical Bid;
- (b) Bid Security or Bid-Securing Declaration, in accordance with ITB 19;
- (c) alternative Bids, if permissible, in accordance with ITB 13;
- (d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (e) documentary evidence in accordance with ITB 17, establishing the Bidder's qualifications to perform the contract;
- (f) Technical Proposal in accordance with ITB 16; and

(g) any other document required in the BDS.

11.3 The Price Bid shall comprise the following:

- (a) Letter of Price Bid;
- (b) completed Price Schedules, in accordance with ITB 12 and ITB 14;
- (c) alternative price Bids, at Bidder's option and if permissible, in accordance with ITB 13; and
- (d) any other document required in the BDS.

11.4 In addition to the requirements under ITB 11.2, Bids submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful Bid shall be signed by all partners and submitted with the Bid, together with a copy of the proposed agreement.

**12. Letters of Bid and Schedules**

12.1 The Letters of Technical Bid and Price Bid, and the Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section 4 (Bidding Forms). The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested and as required in the BDS.

**13. Alternative Bids**

13.1 Unless otherwise indicated in the BDS, alternative Bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Document must first price the Employer's design as described in the Bidding Document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works. Such parts will be identified in the BDS and described in Section 6 (Employer's Requirements). The method for their evaluation will be stipulated in Section 3 (Evaluation and Qualification Criteria).

**14. Bid Prices and Discounts**

14.1 The prices and discounts quoted by the Bidder in the Letter of Price Bid and in the Bill of Quantities shall conform to the requirements specified below.

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.



- 14.3 The price to be quoted in the Letter of Price Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the Bid.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Price Bid, in accordance with ITB 12.1.
- 14.5 The prices shall be either fixed or adjustable as specified in the BDS.
- (a) In the case of Fixed Price, prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account. A Bid submitted with an adjustable price will be treated as nonresponsive and rejected.
- (b) In the case of Adjustable Price, prices quoted by the Bidder shall be subject to adjustment during performance of the contract to reflect changes in the cost elements such as labor, material, transport, and contractor's equipment in accordance with the provisions of the Conditions of Contract. A Bid submitted with a fixed price will be treated as nonresponsive and be rejected. The Bidder shall furnish the indexes and weightings for the price adjustment formulas in the Tables of Adjustment Data included in Section 4 (Bidding Forms) and the Employer may require the Bidder to justify its proposed indexes and weightings. Any bid that omits indexes and weightings shall be subject to clarification with the Bidder.
- 14.6 If so indicated in ITB 1.1, bids are being invited for individual contracts or for any combination of contracts (packages). Bidders wishing to offer any price reduction for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Price reductions or discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all contracts are submitted and opened at the same time.
- 14.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

**15. Currencies of Bid and Payment**

- 15.1 The unit rates and the prices shall be quoted by the Bidder entirely in the currency specified in the BDS.
- 15.2 Bidders shall indicate the portion of the bid price that corresponds to expenditures incurred in the currency of the Employer's country in the Schedule of Payment Currencies included in Section 4 (Bidding Forms).
- 15.3 Bidders expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Employer's country and wishing to be paid accordingly may indicate the other currencies in the Schedule of Payment Currencies included in Section 4 (Bidding Forms).
- 15.4 The rates of exchange to be used by the Bidder for currency conversion during bid preparation shall be the selling rates for similar transactions prevailing on

the date 28 days prior to the deadline for submission of bids published by the source specified in the BDS. If exchange rates are not so published for certain currencies, the Bidder shall state the rates used and the source. Bidders should note that for the purpose of payments, the exchange rates confirmed by the source specified in the BDS as the selling rates prevailing 28 days prior to the deadline for submission of Bids shall apply for the duration of the Contract so that no currency exchange risk is borne by the Bidder.

15.5 Foreign currency requirements indicated by the Bidders in the Schedule of Payment Currencies shall include but not limited to the specific requirements for

- (a) expatriate staff and labor employed directly on the Works;
- (b) social, insurance, medical and other charges relating to such expatriate staff and labor, and foreign travel expenses;
- (c) imported materials, both temporary and permanent, including fuels, oil and lubricants required for the Works;
- (d) depreciation and usage of imported Plant and Contractor's Equipment, including spare parts, required for the Works;
- (e) foreign insurance and freight charges for imported materials, Plant and Contractor's Equipment, including spare parts; and
- (f) overhead expenses, fees, profit, and financial charges arising outside the Employer's country in connection with the Works.

15.6 Bidders may be required by the Employer to clarify their foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Payment Currencies are reasonable and responsive to ITB 15.3 above, in which case a detailed breakdown of its foreign currency requirements shall be provided by the Bidder.

15.7 Bidders should note that during the progress of the Works, the foreign currency requirements of the outstanding balance of the Contract Price may be adjusted by agreement between the Employer and the Contractor in order to reflect any changes in foreign currency requirements for the Contract, in accordance with Subclause 14.15 of the Conditions of Contract. Any such adjustment shall be effected by comparing the percentages quoted in the bid with the amounts already used in the Works and the Contractor's future needs for imported items.

**16. Documents  
Comprising the  
Technical Proposal**

16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule, and any other information as stipulated in Section 4 (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders' proposal to meet the work requirements and the completion time.

**17. Documents  
Establishing the  
Qualifications of the  
Bidder**

17.1 To establish its qualifications to perform the Contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding information sheets included in Section 4 (Bidding Forms).

17.2 Domestic Bidders, individually or in Joint Ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the

criteria for eligibility as described in ITB 36.

**18. Period of Validity of Bids**

18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Employer. A bid valid for a shorter period shall be rejected by the Employer as nonresponsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended 28 days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its Bid.

**19. Bid Security/Bid-Securing Declaration**

19.1 Unless otherwise specified in the BDS, the Bidder shall furnish as part of its Bid, in original form, either a Bid-Securing Declaration or a bid security as specified in the BDS. In the case of a bid security, the amount and currency shall be as specified in the BDS.

19.2 If a Bid-Securing Declaration is required pursuant to ITB 19.1, it shall use the form included in Section 4 (Bidding Forms). The Employer will declare a Bidder ineligible to be awarded a Contract for a specified period of time, as indicated in the BDS, if the Bid-Securing Declaration is executed.

19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be, at the Bidder's option, in any of the following forms:

- (a) an unconditional bank guarantee
- (b) an irrevocable letter of credit,
- (c) a cashier's or certified check, or
- (d) SWIFT message in the form of MT760.

all from a reputable source from an eligible country as described in Section 5 (Eligible Countries). In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section 4 (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The bid security shall be valid for 28 days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 Unless otherwise specified in the BDS, any Bid not accompanied by a substantially compliant bid security or Bid-Securing Declaration, if one is required in accordance with ITB 19.1, shall be rejected by the Employer as nonresponsive.

19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned promptly upon the successful Bidder's furnishing of the performance security pursuant to ITB 45.

19.6 If a bid security is specified pursuant to ITB 19.1, the bid security of the successful Bidder shall be returned promptly once the successful Bidder has signed the Contract and furnished the required performance security.

- 19.7 The bid security may be forfeited or the Bid Securing Declaration executed, if
- (a) notwithstanding ITB 24.3, a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letters of Technical Bid and Price Bid, except as provided in ITB 18.2; or
  - (b) the successful Bidder fails to
    - (i) sign the Contract in accordance with ITB 44;
    - (ii) furnish a performance security in accordance with ITB 45;
    - (iii) accept the arithmetical correction of its Bid in accordance with ITB 34; or
    - (iv) furnish a domestic preference security, if so required.
- 19.8 If the bid security is required as per ITB 19.1, the bid security of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the bid security shall be in the name of any or all of the Joint Venture partners. If the Bid-Securing Declaration is required as per ITB 19.1, the Bid-Securing Declaration of a Joint Venture shall be in the name of the Joint Venture that submits the Bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned in ITB 4.1.

**20. Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original set of the Technical Bid and one original set of the Price Bid comprising the Bid as described in ITB 11 and clearly mark it "ORIGINAL - TECHNICAL BID" and "ORIGINAL - PRICE BID." Alternative Bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the Technical and Price Bids, in the number specified in the BDS, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. If a Bidder submits a deficient authorization, the Bid shall not be rejected in the first instance. The Employer shall request the Bidder to submit an acceptable authorization within the number of days as specified in the BDS. Failure to provide an acceptable authorization within the period as stated in the Employer's request shall cause the rejection of the Bid. If either the Letter of Technical Bid or Letter of Price Bid or Bid-Securing Declaration (if applicable) is not signed, the Bid shall be rejected.
- 20.3 Any amendments such as interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

**D. Submission and Opening of Bids**

**21. Sealing and Marking of Bids**

- 21.1 Bidders may always submit their Bids by mail or by hand. When so specified in the BDS, Bidders shall have the option of submitting their Bids

electronically. Procedures for submission, sealing, and marking are as follows:

- (a) Bidders submitting Bids by mail or by hand shall enclose the original of the Technical Bid, the original of the Price Bid, and each copy of the Technical Bid and each copy of the Price Bid, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL - TECHNICAL BID,” “ORIGINAL - PRICE BID,” and “COPY NO... - TECHNICAL BID” and “COPY NO.... - PRICE BID.” These envelopes, the first containing the originals and the others containing copies, shall then be enclosed in one single envelope per set. If permitted in accordance with ITB 13, alternative Bids shall be similarly sealed, marked and included in the sets. The rest of the procedure shall be in accordance with ITB 21.2 and ITB 21.5.
- (b) Bidders submitting Bids electronically shall follow the electronic bid submission procedures specified in the BDS.

21.2 The inner and outer envelopes shall

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Employer in accordance with BDS 22.1; and
- (c) bear the specific identification of this bidding process indicated in the BDS 1.1.

21.3 The outer envelopes and the inner envelopes containing the Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid, in accordance with ITB 25.1.

21.4 The inner envelopes containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB 25.7.

21.5 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.

**22. Deadline for Submission of Bids**

22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS.

22.2 The Employer may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**23. Late Bids**

23.1 The Employer shall not consider any Bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

**24. Withdrawal, Substitution, and Modification of Bids**

24.1 A Bidder may withdraw, substitute, or modify its Bid – Technical or Price – after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2 (except for withdrawal notices, which do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except for withdrawal notices, which do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION”; and
- (b) received by the Employer no later than the deadline prescribed for submission of Bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified by the Bidder on the Letters of Technical Bid and Price Bid or any extension thereof.

## 25. Bid Opening

25.1 The Employer shall open the Technical Bids in public at the address, on the date and time specified in the BDS in the presence of Bidders` designated representatives and anyone who chooses to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS. The Price Bids will remain unopened and will be held in custody of the Employer until the specified time of their opening. If the Technical Bid and the Price Bid are submitted together in one envelope, the Employer may reject the entire Bid. Alternatively, the Price Bid may be immediately resealed for later evaluation.

25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.

25.3 Second, outer envelopes marked “SUBSTITUTION” shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB 25.1. No envelope shall be substituted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.

25.4 Next, outer envelopes marked “MODIFICATION” shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical Bids. Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids, both Original as well as Modification, will remain unopened in accordance with ITB 25.1.

25.5 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded:

- (a) the name of the Bidder;
- (b) whether there is a modification or substitution;

- (c) the presence of a bid security or Bid-Securing Declaration, if required; and
- (d) any other details as the Employer may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Technical Bid are to be initialed by at least three representatives of the Employer attending bid opening. No Bid shall be rejected at the opening of Technical Bids except for late bids, in accordance with ITB 23.1.

- 25.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum, the name of the Bidder and whether there is a withdrawal, substitution, or modification; alternative proposals; and the presence or absence of a bid security or Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted online when electronic bidding is permitted.
- 25.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.
- 25.8 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially nonresponsive to the requirements of the Bidding Document and return their Price Bids unopened.
- 25.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders' representatives who choose to attend at the address, on the date, and time specified by the Employer. The Bidder's representatives who are present shall be requested to sign a register evidencing their attendance.
- 25.10 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded:

- (a) the name of the Bidder;
- (b) whether there is a modification or substitution;
- (c) the Bid Prices, including any discounts and alternative offers; and
- (d) any other details as the Employer may consider appropriate.

Only Price Bids discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. Unless otherwise specified in the BDS, all pages of the Letter of Price Bid and Bill of Quantities are to be initialed by at least three representatives of the Employer attending bid opening. No Bid shall be rejected at the opening of Price Bids.

25.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum, the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids on time, and posted online when electronic bidding is permitted.

## **E. Evaluation and Comparison of Bids**

- 26. Confidentiality**
- 26.1 Information relating to the examination, evaluation, comparison, and postqualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on the Contract award is communicated to all Bidders.
- 26.2 Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it may do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Price Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Price Bids, in accordance with ITB 54.
- 27.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 28. Deviations, Reservations, and Omissions**
- 28.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 29. Examination of Technical Bids**
- 29.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted.



29.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer shall be rejected.

- (a) Letter of Technical Bid;
- (b) written confirmation of authorization to commit the Bidder;
- (c) Bid Security or Bid-Securing Declaration, if applicable; and
- (d) Technical Proposal in accordance with ITB 16.

**30. Responsiveness of Technical Bid**

30.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

30.2 A substantially responsive Technical Bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

- (a) if accepted, would:
  - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
  - (ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

30.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 16, Technical Proposal, in particular, to confirm that all requirements of Section 6 (Employer's Requirements) have been met without any material deviation, reservation, or omission.

30.4 If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

**31. Nonmaterial Nonconformities**

31.1 Provided that a Bid is substantially responsive, the Employer may waive any nonconformities in the Bid that do not constitute a material deviation, reservation, or omission.

31.2 Provided that a Technical Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the Price Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

- 31.3 Provided that a Technical Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section 3 (Evaluation and Qualification Criteria).
- 32. Qualification of the Bidder**
- 32.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether Bidders meet the qualifying criteria specified in Section 3 (Evaluation and Qualification Criteria).
- 32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1. Unless permitted in the BDS, the determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, Subcontractors (other than Specialist Subcontractors if permitted in ITB 33.2 of the Bidding document) or any other firm(s) different from the Bidder.
- 32.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder's Price Bid. The Employer reserves the right to reject the bid of any bidder found to be in circumstances described in GCC 15.2(e). A negative determination shall result into the disqualification of the Bid, in which event the Employer shall return the unopened Price Bid to the Bidder.
- 33. Subcontractors**
- 33.1 Unless otherwise stated in the BDS, the Employer does not intend for the contractor to execute any specific elements of the Works through nominated subcontractors.
- 33.2 If subcontractors are proposed for any of the key activities listed in Section 3 (Evaluation and Qualification) Criteria 2.4.2, they shall be considered as "Specialist Subcontractors" and shall meet qualification requirements for the relevant key activities.
- 34. Correction of Arithmetical Errors**
- 34.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:
- (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected.
  - (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected.
  - (c) If there is a discrepancy between the bid price in the Summary of Bill of Quantities and the bid amount in item (c) of the Letter of Price Bid, the bid price in the Summary of Bill of Quantities will prevail and the bid amount in item (c) of the Letter of Price Bid will be corrected.
  - (d) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject

to (a), (b) and (c) above.

34.2 If the Bidder that submitted the lowest evaluated bid does not accept the correction of errors, its Bid shall be disqualified and its bid security may be forfeited or its Bid-Securing Declaration executed.

**35. Conversion to Single Currency**

35.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS.

**36. Domestic Preference**

36.1 Unless otherwise specified in the BDS, domestic preference shall not apply.

**37. Evaluation and Comparison of Price Bids**

37.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

37.2 To evaluate the Price Bid, the Employer shall consider the following:

- (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;
- (b) price adjustment for correction of arithmetic errors in accordance with ITB 34.1;
- (c) price adjustment due to discounts offered in accordance with ITB 14.4;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 35;
- (e) adjustment for nonmaterial nonconformities in accordance with ITB 31.3;
- (f) assessment whether the bid is abnormally low in accordance with ITB 38; and
- (g) application of all the evaluation factors indicated in Section 3 (Evaluation and Qualification Criteria).

37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

37.4 If this Bidding Document allows Bidders to quote separate prices for different contracts, and the award to a single Bidder of multiple contracts, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Price Bid, is specified in Section 3 (Evaluation and Qualification Criteria).

37.5 The Employer shall compare all substantially responsive Bids to determine the lowest evaluated Bid price, in accordance with ITB 37.2.

**38. Abnormally Low bids**

38.1 An abnormally low bid is one where the bid price, in combination with other elements of the bid, appears to be so low that it raises concerns as to the capability of the Bidder to perform the contract for the offered bid price.

38.2 When the offered bid price appears to be abnormally low, the Employer shall undertake a three-step review process as follows:

- (a) identify abnormally low costs and unit rates by comparing them with the

engineer's estimates, other substantially responsive bids, or recently awarded similar contracts;

- (b) clarify and analyze the bidder's resource inputs and pricing, including overheads, contingencies and profit margins; and
- (c) decide whether to accept or reject the bid.

38.3 With regard to ITB 38.2 (b) above, the Employer will seek a written explanation from the bidder of the reasons for the offered bid price, including a detailed analysis of costs and unit prices, by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities. This may also include information regarding the economy of the manufacturing process; the services to be provided, or the construction method to be used; the technical solutions to be adopted; and any exceptionally favorable conditions available to the bidder for the works, equipment or services proposed.

38.4 After examining the explanation given and the detailed price analyses presented by the bidder, the Employer may:

- (a) accept the bid, if the evidence provided satisfactorily accounts for the low bid price and costs, in which case the bid is not considered abnormally low;
- (b) accept the bid, but require that the amount of the performance security be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss. The amount of the performance security shall generally be not more than 20% of the contract price; or
- (c) reject the bid if the evidence provided does not satisfactorily account for the low bid price, and make a similar determination for the next ranked bid, if required.

**39. Unbalanced or Front-Loaded Bids**

39.1 If the Bid, which results in the lowest evaluated Bid Price, is seriously unbalanced or front-loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed, as well as the pricing and sources of materials, equipment and labor.

39.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:

- (a) accept the Bid; or
- (b) accept the Bid, but require that the total amount of the Performance Security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract subject to ITB 45.2; or
- (c) reject the Bid and make a similar determination for the next ranked bid.

**40. Employer's Right to Accept Any Bid, and to Reject Any or All Bids**

40.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

- 41. Notice of Intention for Award of Contract** 41.1 If Standstill provisions apply as specified in the BDS, the standstill period shall be defined in the BDS to specify the duration subsequent to notification of intention for award of contract (before making the actual contract award) within which any unsuccessful bidder can challenge the proposed award.

## **F. Award of Contract**

- 42. Award Criteria** 42.1 The Employer shall award the Contract to the Bidder whose offer has been determined in line with ITB 37 to ITB 39 above to be the lowest evaluated Bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.
- 43. Notification of Award**
- 43.1 Prior to the expiration of the period of bid validity and upon expiry of the standstill period specified in ITB 41.1, or upon satisfactory resolution of a complaint filed within standstill period, if applicable, the Employer shall transmit the Notification of Award using the form included in Section 9 (Contract Forms) to the successful Bidder, in writing, that its Bid has been accepted.
- 43.2 Unless standstill period applies, upon notification of award, unsuccessful Bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their Bids were not selected. The Employer shall promptly respond in writing and/or in a debriefing meeting to any unsuccessful Bidder who, after publication of contract award, requests a debriefing.
- 43.3 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 43.4 Within 2 weeks of the award of contract or expiry of the standstill period, where such period applies, or, if a complaint has been filed within the standstill period, upon receipt of ADB's confirmation of satisfactory resolution of the complaint, the borrower shall publish in an English language newspaper or widely known and freely accessible website the results identifying the bid and lot or package numbers, as applicable and the following information:
- (a) name of each Bidder who submitted a Bid;
  - (b) bid prices as read out at bid opening;
  - (c) name and evaluated prices of each Bid that was evaluated;
  - (d) name of Bidders whose bids were rejected and the reasons for their rejection; and
  - (e) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded.
- 44. Signing of Contract** 44.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.
- 44.2 Within 28 days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

**45. Performance Security**

- 45.1 Within 28 days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, subject to ITB 38 and ITB 39, using for that purpose the Performance Security Form included in Section 9 (Contract Forms), or another form acceptable to the Employer. If the institution issuing the performance security is located outside the country of the employer, it shall have a correspondent financial institution located in the country of the employer to make it enforceable.
- 45.2 Failure of the successful Bidder to submit the abovementioned Performance Security or to sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event, the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.
- 45.3 The above provision shall also apply to the furnishing of a domestic preference security if so required.

**46. Bidding-Related Complaints**

- 46.1 The procedures for dealing with Bidding-Related Complaints arising out of this bidding process are specified in the BDS.

Not to be used as a Bid Document, Only for Reference

## Section 2: Bid Data Sheet

This Section consists of provisions that are specific to each procurement and supplement the information or requirements included in Section 1 (Instructions to Bidders).

### A. General

<b>ITB 1.1</b>	The number of the Invitation for Bids (IFB) is: <b>BSHP-III(Phase-2)/Pkg-7/SH-103/2021-22</b>																																				
<b>ITB 1.1</b>	The Employer is: <b>Bihar State Road Development Corporation Limited</b>																																				
<b>ITB 1.1</b>	<p>The name, identification number and identification of lots of the Open competitive bidding (OCB) are as below :</p> <p>The bids are being invited at the same time and date for the following Civil Contract Packages :</p> <table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Civil Works Contract Package</th> <th>SH No.</th> <th>Road Name</th> <th>Length (Km)</th> <th>Time for Completion (day)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>BSHP III(Phase-2)/ Pkg-2/SH-99</td> <td>99</td> <td>Baysi -Bahadurganj-Dighal Bank Road</td> <td>65.350</td> <td>1093</td> </tr> <tr> <td>2</td> <td>BSHP III(Phase-2)/ Pkg-5/SH-105</td> <td>105</td> <td>Bettiah -Narkatiyaganj Road</td> <td>35.700</td> <td>821</td> </tr> <tr> <td>3</td> <td>BSHP III(Phase-2)/ Pkg-6/SH-103</td> <td>103</td> <td>Manjhway to Ch: 21.88 Km. of Manjhway-Govindpur Road</td> <td>21.88</td> <td>821</td> </tr> <tr> <td>4</td> <td>BSHP III(Phase-2)/ Pkg-7/SH-103</td> <td>103</td> <td>Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road</td> <td>21.88</td> <td>821</td> </tr> <tr> <td colspan="4" style="text-align: center;">Total</td> <td>143.119</td> <td></td> </tr> </tbody> </table> <p>Bidders may submit bids for Civil Works Construction Package-7 (BSHP-III (Phase-2)/Pkg-7/SH-103) and for any one or more than one of the 3 other Civil works Construction Packages i.e. <b>Civil Works Contract Package-2 - BSHP III(Phase-2)/ Pkg-2/SH-99, Civil Works Contract Package-5 - (BSHP III(Phase-2)/ Pkg-5/SH-105) &amp; Civil Works Contract Package-6 - (BSHP III(Phase-2)/ Pkg-6/SH-103).</b></p> <p><b>However, this document is being issued to the prospective bidders for the Package named below :-</b></p> <p>The name of the open competitive bidding (OCB) is: <b>Improvement/Upgradation, Widening and Strengthening of Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road (SH-103) under Civil works contract Package No. BSHP-III(Phase-2)/ Pkg.-7/SH-103</b></p> <p>The identification number of the OCB is: <b>BSHP-III(Phase-2)/Pkg-7/ SH-103</b></p> <p>The number and identification of lots comprising this OCB is: <b>BSHP-III(Phase-2)/Pkg-7/ SH-103/2021-22</b></p>	Sl. No.	Civil Works Contract Package	SH No.	Road Name	Length (Km)	Time for Completion (day)	1	BSHP III(Phase-2)/ Pkg-2/SH-99	99	Baysi -Bahadurganj-Dighal Bank Road	65.350	1093	2	BSHP III(Phase-2)/ Pkg-5/SH-105	105	Bettiah -Narkatiyaganj Road	35.700	821	3	BSHP III(Phase-2)/ Pkg-6/SH-103	103	Manjhway to Ch: 21.88 Km. of Manjhway-Govindpur Road	21.88	821	4	BSHP III(Phase-2)/ Pkg-7/SH-103	103	Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road	21.88	821	Total				143.119	
Sl. No.	Civil Works Contract Package	SH No.	Road Name	Length (Km)	Time for Completion (day)																																
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Total				143.119																																	
<b>ITB 2.1</b>	The Borrower is: <b>INDIA</b>																																				
<b>ITB 2.1</b>	The name of the Project is: <b>Bihar State Highways-III Project (BSHP-III, Phase-2)</b>																																				

## B. Contents of Bidding Documents

<p><b>ITB 7.1</b></p>	<p>For <b>clarification purposes</b> only, the Employer's address is:</p> <p>Attention: <b>Chief General Manager</b></p> <p>Street address: : Bihar State Road Development Corporation Limited, RCD Mechanical Workshop Campus, (Near Patna Airport), Sheikhpura, Patna, Bihar</p> <p>City: Patna</p> <p>PIN code: 800014</p> <p>Country: INDIA</p> <p>Telephone: +91 – 612 - 2226711</p> <p>Fax: +91 – 612 - 2226723</p> <p>E-mail: bsrdcltd@gmail.com</p>
<p><b>ITB 7.4</b></p>	<p>A Pre-Bid meeting will take place at the following date, time and place :</p> <p>Date: 08/03/2022</p> <p>Time: IST 11:00 hrs.</p> <p>Place: Office of the Chief General Manager, Bihar State Road Development Corporation Ltd., RCD Mechanical Workshop Campus, (Near Patna Airport), Sheikhpura, Patna, Bihar – 800014</p> <p>Contractor may visit the site before Pre-Bid meeting/ before submission of Bid to well acquainted themselves with the project site etc.</p>
<p><b>ITB 8.1 &amp;</b> <b>ITB 8.2</b></p>	<p>All the Addendums / Corrigendum / Response to bid Clarification shall be uploaded on the website : " <a href="http://bsrdcl.bihar.gov.in">http://bsrdcl.bihar.gov.in</a> , <a href="https://state.bihar.gov.in/rcd">https://state.bihar.gov.in/rcd</a> ". All the Addendums, Corrigendum, and Response to Clarifications shall be emailed or faxed to all the perspective Bidders who have purchased bidding documents directly from the Employer.</p>

## C. Preparation of Bids

<p><b>ITB 10.1</b></p>	<p>The language of the Bid is: <b>English</b></p>
<p><b>ITB 11.2 (g)</b></p>	<p>The Bidder shall submit with its Bid the following additional documents: <b>None</b></p> <p><b>However, as issued Bid Document needs to be submitted duly initialed.</b></p>
<p><b>ITB 11.3 (d)</b></p>	<p>The Bidder shall submit with its Price Bid the following additional documents: <b>Nil</b></p>
<p><b>ITB 12.1</b></p>	<p>The units and rates in figures entered into the Bill of Quantities and Daywork Schedule should be typewritten, if written by hand, must be in print form. Bill of Quantities and</p>



	Daywork Schedule not presented accordingly may be considered nonresponsive.
<b>ITB 13.1</b>	Alternative Bids <b>shall not</b> be permitted.
<b>ITB 13.2</b>	Alternative times for completion <b>shall not</b> be permitted.
<b>ITB 13.4</b>	Alternative technical solutions <b>shall not</b> be permitted.
<b>ITB 14.5</b>	The prices quoted by the Bidder shall be subject to adjustment during the performance of the contract in accordance with the provisions of the conditions of contract.
<b>ITB 15.1</b>	The unit rates and the prices shall be quoted by the Bidder entirely in: <b>Indian Rupees (INR) only.</b>
<b>ITB 15.4</b>	The rates of exchange shall be the selling rates 28 days prior to the deadline for submission of bids published by: <b>the Reserve Bank of India.</b>
<b>ITB 16.1</b>	<p>Technical Proposal shall also include a Health and Safety COVID-19 Plan (HS-C19 Plan),-in accordance with-<i>World Health Organization. 2020. Considerations for public health and social measures in the workplace in the context of COVID-19. Geneva. Available here: <a href="https://www.who.int/publications-detail/considerations-for-public-health-and-social-measures-in-the-workplace-in-the-context-of-covid-19">https://www.who.int/publications-detail/considerations-for-public-health-and-social-measures-in-the-workplace-in-the-context-of-covid-19</a>.</i></p> <p>Any bid not accompanied by the HS-C19 Plan shall be rejected by the Employer as nonresponsive. If a Bidder submits a HS-C19 Plan that does not provide sufficient information in accordance to the required submission information listed in the bidding document by the Employer, the Employer shall issue a clarification to request for further information from the Bidder. The Bidder must submit the requested information within 5 working days of receiving such a request. Failure to provide a satisfactory response to the request for further information within the prescribed period of receiving such a request shall cause the rejection of the Bid.</p>
<b>ITB 18.1</b>	The bid validity period shall be <b>180</b> days.
<b>ITB 19.1</b>	<p><b>A Bid Security shall be required, not A Bid Security declaration.</b></p> <p>The amount and currency of the bid security shall be <b>INR 18.78 Million or an equivalent amount in a freely convertible currency.</b></p> <p><b>The Exchange rate to be used in conversion of the Bid Security amount in a freely convertible currency shall be the selling Exchange Rate published by the Reserve Bank of India on the Date 28 days prior to the date for the deadline for Bid Submission (excluding the date of Submission).</b></p>
<b>ITB 19.2</b>	<b>Not Applicable</b>

<b>ITB 19.3</b>	A Bid Security issued by reputable Banks located outside the Employer's Country, or reputable local Banks, including scheduled Banks or Nationalized Banks, in the form of an unconditional Bank Guarantee shall be accepted. In case the bidder submits a Bank Guarantee issued by a foreign Bank from an ADB member Country, the Bank must have a corresponding Bank in India which in turn must issue a counter guarantee on the guarantee issued by the foreign branch to make it enforceable. Employer reserves the right to verify BG.
<b>ITB 19.4</b>	Subject to the succeeding sentences, any bid not accompanied by an irrevocable and callable bid security shall be rejected by the Employer as nonresponsive. If a Bidder submits a bid security that (i) deviates in form, amount, and/or period of validity, or (ii) does not provide sufficient identification of the Bidder (including, without limitation, failure to indicate the name of the Joint Venture or, where the Joint Venture has not yet been constituted, the names of all future Joint Venture Partners), the Employer shall request the Bidder to submit a compliant bid security within <b>14 days</b> of receiving such request. Failure to provide a compliant bid security within the prescribed period of receiving such a request shall cause the rejection of the Bid.
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is <b>one</b> .  In addition to this, the bidders are required to submit a soft copy of CD of duly filled BOQ to facilitate the evaluation process. However, the soft copy of BOQ shall not form part of the bid. In case of any discrepancy between the Hard copy and the Soft copy of BOQ, the Hard Copy shall prevail.  The Soft Copy of the un-priced BOQ shall be enclosed in the envelope containing the original hard copy of the Technical Bid, and The Soft Copy (CD) of the priced BOQ shall be enclosed containing the original hard copy of the Price Bid.
<b>ITB 20.2</b>	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: <b>Power of Attorney demonstrating the authority of the signatory to sign the Bid. The Power of Attorney shall be either (a) notarized, or (b) attested to by an appropriate authority in the Bidder's home Country.</b>
<b>ITB 20.2</b>	The Bidder shall submit an acceptable authorization within <b>14 days</b> ..

#### D. Submission and Opening of Bids

<b>ITB 21.1</b>	Bidders <b>shall not</b> have the option of submitting their Bids electronically.
<b>ITB 21.1 (b)</b>	Electronic Bid Submission <b>shall not be permitted</b> .
<b>ITB 22.1</b>	For <b>bid submission purposes</b> only, the Employer's address is:  Attention: <b>Chief General Manager</b> Street address: : Bihar State Road Development Corporation Limited, RCD Mechanical Workshop Campus, (Near Patna Airport), Sheikhpura, Patna, Bihar

	<p>City: Patna          PIN code: 800014          Country: INDIA          Telephone: +91 – 612 - 2226711          Fax: +91 – 612 - 2226723          E-mail: bsrcltd@gmail.com</p> <p><b>The deadline for bid submission is:</b>          Date: : 08/04/2022          Time: IST 12 : 00 Hrs.</p>
<b>ITB 25.1</b>	<p>The opening of the Technical Bid shall take place at:          Attention: <b>Chief General Manager</b>          Street address: : Bihar State Road Development Corporation Limited, RCD Mechanical Workshop Campus, (Near Patna Airport), Sheikhpura, Patna, Bihar          City: Patna          PIN code: 800014          Country: INDIA          Telephone: +91 – 612 - 2226711          Fax: +91 – 612 - 2226723          E-mail: bsrcltd@gmail.com          Date: 08/04/2022          Time: IST 12 : 30 Hrs.</p>
<b>ITB 25.1</b>	<b>Electronic bid submission is not permitted.</b>
<b>ITB 25.5</b>	The Letter of Technical Bid shall be initialed by <b>three</b> representatives of the Employer attending Bid opening.
<b>ITB 25.10</b>	The Letter of Price Bid and Bill of Quantities shall be initialed by <b>three</b> representatives of the Employer attending Bid opening.

### E. Evaluation and Comparison of Bids

<b>ITB 32.1</b>	The qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, Subcontractors <b>shall not</b> be permitted.
<b>ITB 33.1</b>	The Employer <b>does not allow</b> for the contractor to execute any specific elements of the Works through nominated subcontractors.

<b>ITB 35.1</b>	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <b>Indian Rupees (INR)</b></p> <p>The source of selling exchange rate shall be: <b>Reserve Bank of India.</b></p> <p>The date for the selling exchange rate shall be: <b>28 days prior to the deadline for submission of Bids.</b></p>
<b>ITB 36.1</b>	Domestic preference <b>shall not</b> apply.
<b>ITB 41.1</b>	Standstill provisions shall not apply.

#### F. Award of Contracts

<b>ITB 46.1</b>	<p>The procedures for Bidding-Related Complaints are referenced in the Procurement Regulations for ADB Borrowers (Appendix 7). The Bidder should submit its complaint following these procedures, in writing, to:</p> <p>For the attention: <b>Chief General Manager</b>  Title/position: <b>Chief General Manager</b>  Employer: <b>Bihar State Road Development Corporation Limited</b>  E-mail address: <b>bsrdcltd@gmail.com</b>  Fax number: <b>+91 – 612 - 2226723</b></p>
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## Section 3: Evaluation and Qualification Criteria

### - Without Prequalification -

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 32 and ITB 36, no other methods, criteria and factors shall be used. The Bidder shall provide all the information requested in the forms included in Section 4 (Bidding Forms).

#### Table of Criteria

<b>1.</b>	<b>Evaluation .....</b>	<b>3-2</b>
	1.1 Adequacy of Technical Proposal .....	3-2
	1.2 Completion Time.....	3-2
	1.3 Technical Alternatives.....	3-2
	1.4 Specialist Subcontractors.....	3-2
	1.5 Quantifiable Nonconformities and Omissions .....	3-2
	1.6 Domestic Preference .....	3-2
	1.7 Other Criteria.....	3-2
	1.8 Multiple Contracts .....	3-3
<b>2.</b>	<b>Qualification.....</b>	<b>3-3</b>
	<b>2.1 Eligibility .....</b>	<b>3-3</b>
	2.1.1 Nationality .....	3-3
	2.1.2 Conflict of Interest.....	3-3
	2.1.3 ADB Eligibility .....	3-3
	2.1.4 Government-Owned Enterprise.....	3-4
	2.1.5 United Nations Eligibility.....	3-4
	<b>2.2 Historical Contract Nonperformance.....</b>	<b>3-5</b>
	2.2.1 History of Nonperforming Contracts.....	3-5
	2.2.2 Suspension Based on Bid-Securing Declaration .....	3-5
	2.2.3 Pending Litigation and Arbitration.....	3-5
	<b>2.3 Financial Situation.....</b>	<b>3-6</b>
	2.3.1 Historical Financial Performance .....	3-6
	2.3.2 Average Annual Construction Turnover .....	3-6
	2.3.3 Financial Resources.....	3-7
	<b>2.4 Construction Experience.....</b>	<b>3-8</b>
	2.4.1 Contracts of Similar Size and Nature .....	3-8
	2.4.2 Construction Experience in Key Activities .....	3-9

## 1. Evaluation

In addition to the criteria listed in ITB 37.2 (a)–(f), other relevant factors are as follows:

### 1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 6 (Employer's Requirements).

### 1.2 Completion Time

An alternative Completion Time **is not permitted**.

### 1.3 Technical Alternatives

Technical alternatives **are not permitted**.

### 1.4 Specialist Subcontractors

Specialist Subcontractors **are not permitted**.

### 1.5 Quantifiable Nonconformities and Omissions

Subject to ITB 14.2 and ITB 37.2, the evaluated cost of quantifiable nonconformities including omissions, is determined as follows:

Pursuant to ITB 31.3, the cost of all quantifiable nonmaterial nonconformities shall be evaluated, including omissions in Daywork where competitively priced but excluding omission of prices in the Bill of Quantities. The Employer will make its own assessment of the cost of any nonmaterial nonconformities and omissions for the purpose of ensuring fair comparison of Bids.

### 1.6 Domestic Preference

Domestic preference shall not **apply**.

### 1.7 Other Criteria

The Employer will take into account the quality of the Health and Safety COVID -19 Plan ('the Plan') attached to the Technical Proposal in its evaluation of the Adequacy of the Technical Proposal.

- The bidder should demonstrate in the Plan the health and safety measures they will put in place on site in relation to COVID-19 prevention and controls, including but not limited to, PPE requirements, site set up, training, induction and mobilization of new personnel, equipment and plants cleaning and other hazard management measures while undertaking site work activities, site visitors health and safety protocols, as well as the approach to the monitoring and reporting of the Plan. The Plan should be fit for purpose for the particular construction works of this contract and be aligned with guidelines on COVID-19 prevention and controls, as well as workplace safety requirements in accordance with World Health Organization, 2020. Considerations for public health and social measures in the workplace in the context of COVID-19. Geneva. Available here: <https://www.who.int/publications-detail/consideration-for-public-health-and-social-measures-in-the-workplace-in-the-context-of-covid-19>. Also refer to ADB SDCC's advisory in relation to COVID-19 health and safety and international good practices.

- Note: The Employer shall evaluate the adequacy of technical responsiveness of the COVID-19 Health and Safety Management Plan in accordance with international good practices (**World Health Organization, 2020**) that are listed as the basis of evaluation in the bidding document.

## 1.8 Multiple Contracts

Bid invitation for 3 other Civil Works Contract packages, i.e. Civil Works Contract Package-2 - BSHP III(Phase-2)/ Pkg-2/SH-99, Civil Works Contract Package-5 - (BSHP III(Phase-2)/ Pkg-5/SH-105) & Civil Works Contract Package-6 - (BSHP III(Phase-2)/ Pkg-6/SH-103) are issued simultaneously, with the same date and time for the deadline for bid submission as that of Civil Works Contract Package No. 7 (BSHP-III (Phase-2)/Pkg-7/SH-103) and pursuant to ITB 37.4, the Employer shall evaluate and compare Bids on the basis of a contract, or a combination of contracts, or as a total of contracts in order to arrive at the least-cost combination for the Employer by taking into account discounts offered by Bidders in case of award of multiple contracts.

If a Bidder as defined in ITB 4.1 submits several successful (lowest evaluated substantially responsive) bids, the evaluation will also include an assessment of the Bidder's capacity to meet the following aggregated requirements as presented in the bid:

- **Average annual construction turnover,**
- **Financial resources,**
- **Equipment to be allocated, and**
- **Personnel to be fielded.**

In case, Bidder submits Bids for multiple Contract packages, then evaluation will be done on the aggregated requirements as mentioned above.

## 2. Qualification

### 2.1 Eligibility

Criteria	Compliance Requirements			Documents
	Single Entity	Joint Venture		Submission Requirements
		All Partners Combined	Each Partner	
Requirement				

#### 2.1.1 Nationality

Nationality in accordance with ITB 4.2.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI - 1; ELI - 2 with attachments
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#### 2.1.2 Conflict of Interest

No conflicts of interest in accordance with ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Technical Bid
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#### 2.1.3 ADB Eligibility

Not having been declared ineligible by ADB, as described in ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Technical Bid
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**2.1.4 Government-Owned Entity**

Bidder required to meet conditions of ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Forms ELI - 1; ELI - 2 with attachments
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**2.1.5 United Nations Eligibility**

Not having been excluded by an act of compliance with a United Nations Security Council resolution in accordance with ITB 4.8.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Technical Bid
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**Not to be used as a Bid Document, Only for Reference**



## 2.2 Historical Contract Nonperformance

### 2.2.1 History of Nonperforming Contracts

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Nonperformance of a contract <sup>a</sup> did not occur as a result of contractor default since 1 January 2016	Must meet requirement	Must meet requirement	Must meet requirement <sup>b</sup>	N/A	Form CON-1

<sup>a</sup> Nonperformance, as decided by the Employer, shall include all contracts where (i) nonperformance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract; and (ii) contracts that were so challenged but fully settled against the contractor. Nonperformance shall not include contracts where the Employer's decision was overturned by the dispute resolution mechanism. Nonperformance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

<sup>b</sup> This requirement also applies to contracts executed by the Bidder as Joint Venture member.

### 2.2.2 Suspension Based on Execution of Bid-Securing Declaration

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Not under suspension based on execution of a Bid-Securing Declaration pursuant to ITB 4.6.	Must meet requirement	Must meet requirement	Must meet requirement	Not applicable	Letter of Technical Bid

### 2.2.3 Pending Litigation and Arbitration

Pending litigation and arbitration criterion shall not apply.

## 2.3 Financial Situation

### 2.3.1 Historical Financial Performance

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Submission of audited financial statements or, if not required by the law of the Bidder's country, other financial statements acceptable to the Employer, for the last <b>three (3) completed financial years</b> to demonstrate the current soundness of the Bidder's financial position. As a minimum, the Bidder's net worth for the last year calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Not applicable	Must meet requirement	Not applicable	Form FIN - 1 with attachments

### 2.3.2 Average Annual Construction Turnover

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
Minimum average annual construction turnover of <b>INR 834.64 Million</b> calculated as total certified payments received for contracts in progress or completed, within <b>the last three(3) completed financial years</b> .	Must meet requirement	Must meet requirement	Must meet <b>25%</b> of the requirement	Must meet <b>40%</b> of the requirement	Form FIN - 2

## 2.3.3 Financial Resources

Criteria	Compliance Requirements			Documents	
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>For Single Entities</p> <p>The Bidder must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its current contract commitments defined in FIN - 4, meet or exceed the total requirement for the Subject Contract of <b>INR 104.33 Million</b></p>	Must meet requirement	Not applicable	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4
<p>For Joint Ventures</p> <p>(1) One partner must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its own current contract commitments defined in FIN - 4, meet or exceed its required share of <b>INR 41.73 Million</b> from the total requirement for the Subject Contract.</p> <p>AND</p>	Not applicable	Not applicable	Not applicable	Must meet requirement	Form FIN – 3 and Form FIN – 4
<p>(2) Each partner must demonstrate that its financial resources defined in FIN - 3, less its financial obligations for its own current contract commitments defined in FIN - 4, meet or exceed its required share of <b>INR 26.08 Million</b> from the total requirement for the Subject Contract.</p> <p>AND</p>	Not applicable	Not applicable	Must meet requirement	Not applicable	Form FIN – 3 and Form FIN – 4
<p>(3) The Joint Venture must demonstrate that the combined financial resources of all partners defined in FIN - 3, less all the partners' total financial obligations for the current contract commitments defined in FIN - 4, meet or exceed the total requirement for the Subject Contract of <b>INR 104.33 Million</b></p>	Not applicable	Must meet requirement	Not applicable	Not applicable	Form FIN – 3 and Form FIN – 4

## 2.4 Construction Experience

### 2.4.1 Contracts of Similar Size and Nature

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>Participation in at least one contract that has been successfully or substantially* completed within the <b>last five (5) years (reckoned from 28 days before the last date of bid submission)</b> and that is similar to the proposed works, where the value of the Bidder's participation exceeds <b>INR 751.18 Million</b>.</p> <p>The similarity of the Bidder's participation shall be based on:</p> <ol style="list-style-type: none"> <li>Construction of at least 16.0 km of road having minimum of 2 lanes; or 8.0 Km of Road having minimum of 4-lanes</li> </ol>	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 50% of the requirement	Form EXP - 1

*Or*

Criteria	Compliance Requirements				Documents
Requirement	Single Entity	Joint Venture			Submission Requirements
		All Partners Combined	Each Partner	One Partner	
<p>Participation in at least two contracts that have been successfully or substantially* completed within <b>the last five (5) years (reckoned from 28 days before the last date of bid submission)</b> and that are similar to the proposed works, where the value of the Bidder's participation in each contract exceeds <b>INR 469.48 Million</b>.</p> <p>The similarity of the Bidder's participation in each contract shall be based on:</p> <ol style="list-style-type: none"> <li>Construction of at least 10.00 km of road having minimum of 2 lanes; or 5.0 Km of Road having minimum of 4-lanes</li> </ol>	must meet requirement	must meet requirement	must meet 25% of the requirement	must meet 50% of the requirement	Form EXP - 1

- \* *substantially Completed* means 90% and above financial achievement and fulfilment of the intended purpose of the project and uninterrupted Traffic movement plying on the alignment.
- In case of specific Construction Experience, if the work had been done in JV, the experience will be calculated in proportion of the stake of the firm in that particular JV (JV agreement of the particular project to be enclosed clearly mention the stake).

### 2.4.2 Construction Experience in Key Activities

May be complied with by the Bidder or by Specialist Subcontractor. If Specialist Subcontractors are proposed by the Bidder for key activities, each Specialist Subcontract must have experience in related key activity as a single entity.

If the key activity is to be undertaken by a Specialist Subcontractor, the Employer shall require evidence of the subcontracting agreement from the Bidder.

Criteria  Requirement	Compliance Requirements		Documents
	Single Entity or Its Specialist Subcontractors	Joint Venture or Its Specialist Subcontractors	Submission Requirement
For the above or other contracts executed during the period stipulated in 2.4.1, a minimum construction experience is required in the following key activities:	Must meet requirement	Must meet requirement	Form E-2
<b>1. Earthwork / Sub-grade - 4,26,243 CUM</b>			
<b>2. Sub-base / Base course (Granular Sub Base/ Wet Mix Macadam) -39,081 CUM</b>			
<b>3. Concrete work in structure - 23,227 CUM</b>			
<b>4. Bituminous Work (Dense Bituminous Macadam/Bituminous Concrete )- 7,138 CUM</b>			

<sup>a</sup> *In the case of a joint venture bidder, at least all partners combined must have the experience in the key activity if the bidder itself (not its subcontractor) will carry out the relevant activity.*

Note:

1. Please indicate 'Key activities only'. In the absence of not meeting any or all of the above activities shall be lead to rejection of bids.
2. In support of the above, the bidder has to submit the copy of Certificate issued by the Principal Employer. Such certificate shall be considered when issued from the Central Government / State Government/ PSU of Central Government /PSU of State Government or any Government Agency. In case of PPP Project only, certificate issued by independent Engineer and countersigned by Employer will only be considered.

# Section 4: Bidding Forms

## - Without Prequalification -

### Table of Forms

<b>Letter of Technical Bid</b> .....	<b>4-4</b>
<b>Letter of Price Bid</b> .....	<b>4-5</b>
<b>Bid Security</b> .....	<b>4-7</b>
<b>Bid-Securing Declaration</b> .....	<b>4-8</b>
<b>Affiliate Company Guarantee</b> .....	<b>4-9</b>
<b>Technical Proposal</b> .....	<b>4-10</b>
Personnel .....	4-11
Form PER – 1: Proposed Personnel .....	4-11
Form PER – 2: Resume of Proposed Personnel .....	4-12
Equipment .....	4-13
Site Organization.....	4-14
Method Statement.....	4-15
Mobilization Schedule.....	4-16
Construction Schedule.....	4-17
Covid-19 specific site Health and Safety Management Plan .....	4-18
<b>Bidders Qualification</b> .....	<b>4-19</b>
Form ELI – 1: Bidder’s Information Sheet .....	4-20
Form ELI – 2: Joint Venture Information Sheet.....	4-21
Form CON – 1: Historical Contract Nonperformance.....	4-22
Form FIN – 1: Historical Financial Performance .....	4-23
Form FIN – 2: Average Annual Construction Turnover .....	4-24
Form FIN – 3: Availability of Financial Resources.....	4-25
Form FIN – 4: Financial Requirements for Current Contract Commitments.....	4-26
Form FIN – 5: Self-Assessment Tool for Bidder's Compliance to Financial Resources .....	4-27
Form FIN – 6: Format of Bank over draft/ unutilized Credit Limit Certificate .....	4-28
Form EXP – 1: Contracts of Similar Size and Nature .....	4-29
Form EXP – 2: Construction Experience in Key Activities .....	4-31
<b>Schedules</b> .....	<b>4-33</b>
Schedule of Payment Currencies .....	4-33
Tables of Adjustment Data .....	4-34
<b>Bill of Quantities</b> .....	<b>4-35</b>

## Letter of Technical Bid

-Note-

*The Bidder must accomplish the Letter of Technical Bid on its letterhead clearly showing the Bidder's complete name and address.*

Date: .....

OCB No.: .....

Invitation for Bid No.: .....

To: *[insert complete name of the Employer]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.
- (b) We offer to execute in conformity with the Bidding Documents the following Works: *[insert narrative]*
- (c) Our Bid consisting of the Technical Bid and the Price Bid shall be valid for a period of *[insert bid validity period as specified in ITB 18.1 of the BDS]* days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (d) Our firm, including any Subcontractors or Suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB 4.2.
- (e) We, including any Subcontractors or Suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3.
- (f) We are not participating, as a Bidder, either individually or as partner in a Joint Venture, in more than one Bid in this bidding process in accordance with ITB 4.3(e), other than alternative offers submitted in accordance with ITB 13.
- (g) Our firm, Joint Venture partners, associates, parent company, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, are not subject to, or not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Asian Development Bank or a debarment imposed by the Asian Development Bank in accordance with the Agreement for Mutual Enforcement of Debarment Decisions between the Asian Development Bank and other development banks.<sup>1</sup>
- (h) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the Contract, are not, or have never been, temporarily

<sup>1</sup> These institutions include African Development Bank, European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), and the World Bank Group. According to paragraph 9 of the Agreement, other international financial institutions may join upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided (Annex B to the Agreement). Upon adherence, such international financial institution shall become a Participating Institution for purposes of the Agreement. Bidders are advised to check [www.adb.org/integrity](http://www.adb.org/integrity) for updates.

suspended, debarred, declared ineligible, or blacklisted by the Employer's country, any international organization, and other donor agency.

If so debarred, declared ineligible, temporarily suspended, or blacklisted, please state details (as applicable to each Joint Venture partner, associate, parent company, affiliate, subsidiaries, Subcontractors, and/or Suppliers):

- (i) Name of Institution: \_\_\_\_\_
- (ii) Period of debarment, ineligibility, or blacklisting [*start and end date*]: \_\_\_\_\_
- (iii) Reason for the debarment, ineligibility, or blacklisting: \_\_\_\_\_

- (i) Our firm's, Joint Venture partners, associates, parent company's affiliates or subsidiaries, including any Subcontractors or Suppliers key officers and directors have not been [*charged or convicted*] of any criminal offense (including felonies and misdemeanors) or infractions/violations of ordinance which carry the penalty of imprisonment.

If so charged or convicted, please state details:

- (i) Nature of the offense/violation: \_\_\_\_\_
- (ii) Court and/or area of jurisdiction: \_\_\_\_\_
- (iii) Resolution [*i.e. dismissed; settled; convicted/duration of penalty*]: \_\_\_\_\_
- (iv) Other relevant details [*please specify*]: \_\_\_\_\_

- (j) We understand that it is our obligation to notify ADB should our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers, be temporarily suspended, debarred or become ineligible to work with ADB or any other MDBs, the Employer's country, international organizations, and other donor agencies, or any of our key officers and directors be charged or convicted of any criminal offense or infractions/violations of ordinance which carry the penalty of imprisonment.
- (k) Our firm, Joint Venture partners, associates, parent company, affiliates or subsidiaries, including any Subcontractors or Suppliers, are not from a country which is prohibited to export goods to or receive any payments from the Employer's country by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
- (l) [We are not a government-owned enterprise] / [We are a government-owned enterprise but meet the requirements of ITB 4.5].<sup>2</sup>
- (m) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid-Securing Declaration in accordance with ITB 4.6.
- (n) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.
- (o) If our Bid is accepted, we commit to mobilizing key equipment and personnel in accordance with the requirements set forth in Section 6 (Employer's Requirements) and our technical proposal, or as otherwise agreed with the Employer.

<sup>2</sup> Use one of the two options as appropriate.



- (p) We understand that any misrepresentation that knowingly or recklessly misleads, or attempts to mislead may lead to the automatic rejection of the Bid or cancellation of the contract, if awarded; and may result in remedial actions, in accordance with ADB’s Anticorruption Policy (1998, as amended to date) and Integrity Principles and Guidelines (2015, as amended from time to time).

Name .....

In the capacity of .....

Signed .....

Duly authorized to sign the Bid for and on behalf of .....

Date .....

*Not to be used as a Bid Document, Only for Reference*

# Letter of Price Bid

-Note-

The Bidder must accomplish the Letter of Price Bid on its letterhead clearly showing the Bidder's complete name and address.

Date: .....

OCB No.: .....

Invitation for Bid No.: .....

To: [insert complete name of the Employer]

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB) 8.

(b) We offer to execute in conformity with the Bidding Documents and the Technical Bid submitted for the following Works : \_\_\_\_\_

(c) The total price of our Bid, excluding any discount offered in item (d) below is:

[-----], [-----],  
The total bid price from the Summary of Bill of Quantities should be entered by the bidder inside this box. Absence of the total bid price in the Letter of Price Bid may result in the rejection of the bid. Total bid price should be entered inside this box in words and figures in INR.

(d) The discounts offered and the methodology for their application are: .....

(e) Our Bid shall be valid for a period of 180 days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

(f) If our Bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents.

Not to be used as a Bid Document, Only for Reference

- (g) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract.<sup>3</sup>

Name of Recipient	Address	Reason	Amount
.....	.....	.....	.....
.....	.....	.....	.....

- (h) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (i) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (j) We agree to permit ADB or its representative to inspect our accounts and records and other documents relating to the bid submission and to have them audited by auditors appointed by ADB.

Name .....

In the capacity of .....

Signed .....

Duly authorized to sign the Bid for and on behalf of .....

Date .....

<sup>3</sup> If none has been paid or is to be paid, indicate "None".

Not to be used as a Bid Document, Only for Reference

## Bid Security Bank Guarantee

[Bank's name and address of issuing branch or office]<sup>4</sup>

**Beneficiary:** [Name and address of the Employer]

**Date:** .....

**Bid Security No.:** .....

We have been informed that [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its bid dated [please specify] (hereinafter called "the Bid") for the execution of [name of contract] under Invitation for Bids No. [please specify] ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we [name of bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [amount in words] [amount in figures] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letters of Technical and Price Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB"); or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the ITB, or (iii) fails or refuses to furnish a domestic preference security, if required.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.<sup>5</sup>

[Authorized signature(s) and bank's seal (where appropriate)]

<sup>4</sup> All italicized text is for use in preparing this form and shall be deleted from the final document.

<sup>5</sup> Or 758 as applicable.

## Bid-Securing Declaration

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

Bid No.: *[insert number of bidding process]*

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

To: *[insert complete name of the Employer]*

We, the undersigned, declare that:

We understand that, according to your conditions, Bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time *[insert number of years as indicated in 19.2 of the Bidding Instructions]*, and, on the date we receive a notification from the Employer, we are in breach of our obligation(s) under the bid conditions, because we

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Invitation and Notice Bid; or
- (b) do not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter “the ITB”); or
- (c) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required; or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB; or (iii) fail or refuse to furnish a domestic preference security, if required.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) 28 days after the expiration of our Bid.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid-Securing Declaration]*

Name: *[insert complete name of person signing the Bid-Securing Declaration]*

Duly authorized to sign the bid for and on behalf of *[insert complete name of the Bidder]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

Corporate Seal *[where appropriate]*

## AFFILIATE COMPANY GUARANTEE

Name of Contract/Contract No.: \_\_\_\_\_

Name and address of Employer: \_\_\_\_\_

\_\_\_\_\_

[together with successors and assigns].

We have been informed that [name of Contractor] (hereinafter called the "Contractor") is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we [name of affiliated company] irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor's satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled under the [Rules or Arbitration provided in the Contract]. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by:..... <div style="text-align: right; margin-right: 100px;">[signature]</div> ..... <div style="text-align: right; margin-right: 100px;">[name]</div> ..... <div style="text-align: right; margin-right: 100px;">[position in parent/subsidiary company]</div>	Signed by: ..... <div style="text-align: right; margin-right: 100px;">[signature]</div> ..... <div style="text-align: right; margin-right: 100px;">[name]</div> ..... <div style="text-align: right; margin-right: 100px;">[position in parent/subsidiary company]</div>
--	---

Date:.....

**-- Note --**

If permitted in accordance with ITB 32.2 of the BDS, the Bidder shall fill out the Affiliate Company Guarantee Form for each subsidiary, parent entity, affiliate, subcontractor, etc. that the Bidder submits for consideration of the Employer in determining its qualifications.

# Technical Proposal

**Personnel**

**Equipment**

**Site Organization**

**Method Statement**

**Mobilization Schedule**

**Construction Schedule**

**COVID-19 specific Site Health and Safety Management Plan**

*Not to be used as a Bid Document, Only for Reference*

## Personnel

### Form PER – 1: Proposed Personnel

Bidder should provide the details of the proposed personnel and their experience record in the relevant Information Forms below for each candidate:

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

**-- Note --**

All titles of positions will be as listed in Section 6 (Employer's Requirements).





## Equipment

### Form EQU: Equipment

The Bidder shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in Section 6 (Employer's Requirements), using the Forms below. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

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

Omit the following information for equipment owned by the Bidder.

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

**Site Organization**

**Not to be used as a Bid Document, Only for Reference**

**Method Statement**

**Not to be used as a Bid Document, Only for Reference**

**Mobilization Schedule**

**Not to be used as a Bid Document, Only for Reference**

## Construction Schedule

**Not to be used as a Bid Document, Only for Reference**

**COVID-19 specific Site Health and Safety Management Plan**

*Not to be used as a Bid Document, Only for Reference*

## Bidders Qualification

To establish its qualifications to perform the contract in accordance with Section 3 (Evaluation and Qualification Criteria) the Bidder shall provide the following information requested in the corresponding Information Sheets.

**Not to be used as a Bid Document, Only for Reference**



**Form ELI - 1: Bidder's Information Sheet**

Bidder's Information	
<b>Bidder's legal name</b>	
<b>In case of a Joint Venture, legal name of each partner</b>	
<b>Bidder's country of constitution</b>	
<b>Bidder's year of constitution</b>	
<b>Bidder's legal address in country of constitution</b>	
<b>Bidder's authorized representative</b> (name, address, telephone number(s), fax number(s), e-mail address)	
<p><b>Attached are copies of the following documents:</b></p> <p><input type="checkbox"/> 1. In case of a single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.</p> <p><input type="checkbox"/> 2. Authorization to represent the firm or Joint Venture named above, in accordance with ITB 20.2.</p> <p><input type="checkbox"/> 3. In case of a Joint Venture, a letter of intent to form a Joint Venture or Joint Venture agreement, in accordance with ITB 4.1.</p> <p><input type="checkbox"/> 4. In case of a government-owned enterprise, any additional documents not covered under 1 above required to comply with ITB 4.5.</p>	

Not to be used as a Bid Document, Only for Reference

**Form ELI - 2: Joint Venture Information Sheet**

Each member of the Joint Venture and Specialist Subcontractor must fill out this form separately.

<b>Joint Venture / Specialist Subcontractor Information</b>	
<b>Bidder's legal name</b>	
<b>Joint Venture Partner's or Specialist Subcontractor's legal name</b>	
<b>Joint Venture Partner's or Specialist Subcontractor's country of constitution</b>	
<b>Joint Venture Partner's or Specialist Subcontractor's year of constitution</b>	
<b>Joint Venture Partner's or Specialist Subcontractor's legal address in country of constitution</b>	
<b>Joint Venture Partner's or Specialist Subcontractor's authorized representative information</b> (name, address, telephone number(s), fax number(s), e-mail address)	
<b>Attached are copies of the following documents.</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and ITB 4.2.</li> <li><input type="checkbox"/> 2. Authorization to represent the firm named above, in accordance with ITB 20.2.</li> <li><input type="checkbox"/> 3. In the case of a government-owned enterprise, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.</li> </ul>	

**Form CON - 1: Historical Contract Nonperformance**

Each Bidder must fill out this form in accordance with Criteria 2.2.1 and 2.2.3 of Section 3 (Evaluation and Qualification Criteria) to describe any history of nonperforming contracts and pending litigation or arbitration formally commenced against it.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

<b>Table 1: History of Nonperforming Contracts</b>			
<b>Choose one of the following:</b> <input type="checkbox"/> No nonperforming contracts. <input type="checkbox"/> Below is a description of nonperforming contracts involving the Bidder (or each Joint Venture member if Bidder is a Joint Venture).			
Year	Description	Amount of Nonperformed Portion of Contract (INR/US\$ in Million)	Total Contract Amount (INR/US\$ in Million)
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]	[insert amount]

<b>Table 2: Pending Litigation and Arbitration</b>			
<b>Choose one of the following:</b> <input type="checkbox"/> No pending litigation and Arbitration. <input type="checkbox"/> Below is a description of all pending litigation and Arbitration involving the Bidder (or each Joint Venture member if Bidder is a Joint Venture).			
Year	Matter in Dispute	Value of Pending Claim in INR/US\$ in Million	Value of Pending Claim as a Percentage of Net Worth
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Employer: [insert full name] Address of Employer: [insert street/city/country] Matter of Dispute: [indicate full description of dispute] Party who initiated the dispute: [indicate "Employer" or "Contractor"] Status: [indicate status of dispute]	[insert amount]	[insert amount]

**Note -**  
 Table 2 of this form shall only be included if Criterion 2.2.3 of Section 3 (Evaluation and Qualification Criteria) is applicable.



**Form FIN - 2: Average Annual Construction Turnover**

Each Bidder must fill out this form.

The information supplied should be the Annual Turnover of the Bidder or each member of a Joint Venture in terms of the amounts billed to clients for each year for work in progress or completed, converted to US dollars at the rate of exchange at the end of the period reported.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

<b>Annual Turnover Data for the Last 3 Years (Construction only)</b>			
<b>Year</b>	<b>Amount Currency (INR in Million)</b>	<b>Exchange Rate</b>	<b>\$ Equivalent</b>

Average Annual Construction Turnover

Not to be used as a Bid Document, Only for Reference

**Form FIN – 3: Availability of Financial Resources**

Bidders must demonstrate sufficient financial resources, usually comprising of Working Capital supplemented by credit line statements or overdraft facilities and others to meet the Bidder's financial requirements for

- (a) its current contract commitments, and
- (b) the subject contract.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

No.	Source of financing	Amount (\$ equivalent)
1	Working Capital (to be taken from FIN - 1)	
2	Unutilized credit limit and overdraft facilities issued by Scheduled Commercial Bank or any other reputed commercial bank located outside India within 28 days of the Bid due date <sup>a</sup>	
Total Available Financial Resources		

<sup>a</sup> To be substantiated by a letter from the bank issuing the Unutilized credit limit and overdraft facilities.

- Note – 1. For financial resources requirements, most recent working capital shall be considered as determined from Fin-1 (In this case year 2020-21)
2. Unutilized credit limit and overdraft facilities Dedicated lines of credit issued specific to this project in Form Fin-6 shall only be considered as financial resource requirement.

**Form FIN- 4: Financial Requirements for Current Contract Commitments**

Bidders (or each Joint Venture partner) should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

In case of a Joint Venture, each Joint Venture Partner must fill out this form separately and provide the Joint Venture Partner's name:

Joint Venture Partner: \_\_\_\_\_

Current Contract Commitments						
No.	Name of Contract	Employer's Contact (Address, Tel, Fax)	Contract Completion Date	Outstanding Contract Value (X) <sup>a</sup>	Remaining Contract Period in months (Y) <sup>b</sup>	Monthly Financial Resources Requirement (X / Y)
1						
2						
3						
4						
Total Monthly Financial Requirement for Current Contract Commitments						INR/US\$. . . . .

<sup>a</sup> Remaining outstanding contract values to be calculated from 28 days prior to the bid submission deadline (INR/US\$ equivalent based on the foreign exchange rate as of the same date).

<sup>b</sup> Remaining contract period to be calculated from 28 days prior to bid submission deadline.

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**Form FIN - 5: Self-Assessment Tool for Bidder’s Compliance to Financial Resources (Criterion 2.3.3 of Section 3)**

This form requires the same information submitted in Forms FIN - 3 and FIN - 4. All conditions of “Available Financial Resources Net of CCC  $\geq$  Requirement for the Subject Contract” must be satisfied to qualify.

**Form FIN - 5A: For Single Entities**

For Single Entities: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
_____ (Name of Bidder)				INR 104.33 Million	

**Form FIN - 5B: For Joint Ventures**

For Joint Ventures: (A)	Total Available Financial Resources from FIN – 3 (B)	Total Monthly Financial Requirement for Current Contract Commitments (CCC) from FIN – 4 (C)	Available Financial Resources Net of CCC $D = (B - C)$	Requirement for the Subject Contract (E)	Results: Yes or No [D must be greater than or equal to E] (F)
One Partner:					
_____ (Name of Partner)				INR 41.73 Million	
Each Partner:					
_____ (Name of Partner 1)				INR 26.08 Million	
_____ (Name of Partner 2)				INR 26.08 Million	
_____ (Name of Partner 3)				.....	
All partners combined	$\Sigma D =$ Sum of available financial resources net of current contract commitments for all partners		$\Sigma D =$ _____	INR 104.33 Million	

**- Note -**

Form FIN - 5 is made available for use by the bidder as a self-assessment tool, and by the Employer as an evaluation work sheet, to determine compliance with the financial resources requirement as stated in 2.3.3. Failure to submit Form FIN - 5 by the Bidder shall not lead to bid rejection.



**Form FIN- 6: Format of Bank over draft/ unutilized Credit Limit Certificate**

**(To be filled on Letter Head of Bank)**

**No.....**

**Date:.....**

**OVER DRAFT/ UNUTILIZED CREDIT LIMIT CERTIFICATE**

This is to certify that M/s ..... (Name of Bidder)..... having Registered Office at ..... (address) and ..... Corporate/Head Office at ....., a customer of our bank, is a reputed company with a good financial standing.

If the contract(s) for the work(s) mentioned below is awarded to above firm, we shall be able to provide over draft/ unutilized credit facilities to the extent of INR..... Crores (..... in words) to meet their working capital requirements for executing the Project(s).

Civil Contract Package No.	Road No.	Name of Project Road (s)	Amount of Overdraft / Unutilized Credit Facilities in INR
		<b>Total</b>	

Not to be used as a Bid Document, Only for Reference

**Form EXP – 1: Contracts of Similar Size and Nature**

Fill out one (1) form per contract.

The exchange rate to be used to calculate the value of the contract for conversion to a specific currency shall be the selling rate of the Borrower's national bank on the date of the contract.

Contract of Similar Size and Nature		
Contract No . . . . . of . . . . .	Contract Identification	
Award Date	Completion Date	
Total Contract Amount	\$ US\$ INR	
	Exchange Rate	
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount
Employer's name Address Telephone number Fax number E-mail		
Description of the Similarity in Accordance with Criterion 2.4.1 of Section 3 (Evaluation and Qualification Criteria)		
<p>Participation in at least one contract that has been successfully or substantially* completed within the <b>last five (5) years (reckoned from 28 days before the last date of bid submission)</b> and that is similar to the proposed works, where the value of the Bidder's participation exceeds <b>INR 751.18 Million.</b></p> <p>The similarity of the Bidder's participation shall be based on: Construction of at least 16.0 km of road having minimum of 2 lanes; or 8.0 Km of Road having minimum of 4-lanes</p> <p style="text-align: center;"><b>Or</b></p> <p>Participation in at least two contracts that have been successfully or substantially* completed within the <b>last five (5) years (reckoned from 28 days before the last date of bid submission)</b> and that are similar to the proposed works, where the value of the Bidder's participation in each contract exceeds <b>INR 469.48 Million.</b></p> <p>The similarity of the Bidder's participation in each contract shall be based on: Construction of at least 10.0 km of road having minimum of 2 lanes; or 5.0 Km of Road having minimum of 4-lanes</p>		

Note:

1. Principal Employer's certificate is mandatory for any claim regarding completion / substantial completion. Such certificate shall be considered when issued from the Central Government / State Government/ PSU of Central Government /PSU of State Government or any Government Agency. **In case of PPP Project only, certificate issued by independent Engineer and countersigned by Employer will only be considered.**
2. Substantial completed means 90% and above financial achievement and fulfilment of the intended purpose of the Project.
3. In case of specific Construction Experience, if the work has been done in JV, the experience will be calculated in proportion of the stake of the firm in that particular JV (JV agreement of the particular project to be enclosed clearly mention the stake).

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**Form EXP - 2: Construction Experience in Key Activities**

Fill out one (1) form per contract.

Each Bidder must fill out this form.

If complied by Specialist Subcontractor, each Specialist Subcontractor must fill out this form and provide the Specialist Subcontractor's name:

Specialist Subcontractor: \_\_\_\_\_

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Contract with Similar Key Activities		
Contract No . . . . . of . . . . .	Contract Identification	
Award Date	Completion Date	
Total Contract Amount	US\$ INR	
	Exchange Rate	
If partner in a Joint Venture or Subcontractor, specify participation of total contract amount	Percent of Total	Amount (in INR & US\$)  Exchange Rate
Employer's name Address Telephone number Fax number E-mail		
Description of the Key Activities in Accordance with Criterion 2.2.2 of Section 3 (Evaluation and Qualification Criteria)		
Earthwork/Subgrade - <b>4,26,243 CUM</b>  Subbase/Base course (Granular Sub Base/ Wet Mix Macadam) - <b>39,081 CUM</b>  Concrete work - <b>23,227 CUM</b>  Bituminous Work (Dense Bituminous Macadam/Bituminous Concrete)- <b>- 7,138 CUM</b>		

**Note:** In support of the above, the bidder has to submit the copy of Certificate issued by the Principal Employer.

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## Schedules

### Schedule of Payment Currencies

For .....insert name of Section of the Works .....

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. In such a case, the Employer should prepare separate tables for each Section of the Works.

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Name of Payment Currency</b>	<b>Amount of Currency</b>	<b>Rate of Exchange to Local Currency</b>	<b>Local Currency Equivalent C = A x B</b>	<b>Percentage of Net Bid Price (NBP) <math>\frac{100 \times C}{NBP}</math></b>
<b>Local Currency</b>		<b>1.00</b>		
<b>Foreign Currency #1</b>				
<b>Foreign Currency #2</b>				
<b>Foreign Currency #3</b>				
<b>Net Bid Price</b>				<b>100.00</b>
<b>Provisional Sums Expressed in Local Currency</b>		<b>1.00</b>		
<b>BID PRICE</b>				

**- Note -**

The rates of exchange shall be the selling rates 28 days prior to the deadline for submission of bids published by the source specified in BDS 15.

**Tables of Adjustment Data (Not Applicable)**

To be entered by the Bidder

Table A - Local Currency

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	A: 0.15 _____ B: _____ C: _____ D: _____ E: _____
<b>Total</b>					1.00

Table B - Foreign Currency (Not Applicable)

**Name of Currency:** .....

[Insert name of currency. If the bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.]

To be entered by the Bidder

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—	—		A: 0.15 _____ B: _____ C: _____ D: _____ E: _____
<b>Total</b>						1.00

**Notes -**

As per GCC 1.1.3.1, "Base Date" means the date 28 days prior to the latest date for submission of the bid.  
Tables of Adjustment Data shall only be included if prices are to be quoted as adjustable prices in accordance with ITB 14.5.

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## Bill of Quantities

(Please refer clause 11.3 of Section 1 "ITB". The Bill of Quantities is being given in a separate volume "Volume-2 Section 4 (b)")

The bid price shall be inclusive of all Environmental, Health and Safety management and compliance cost in relation to COVID-19 prevention and controls and be aligned with guidelines on COVID-19 prevention and controls, as well as workplace safety requirements in accordance with World Health Organization 2020.

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## Section 5: Eligible Countries

This Section contains the list of eligible countries.

1.	AFG	Afghanistan	35.	FSM	Micronesia, Federal States of
2.	ARM	Armenia	36.	MON	Mongolia
3.	AUS	Australia	37.	MYA	Myanmar
4.	AUT	Austria	38.	NAU	Nauru, Republic of
5.	AZE	Azerbaijan	39.	NEP	Nepal
6.	BAN	Bangladesh	40.	NET	Netherlands
7.	BEL	Belgium	41.	NIU	Niue
8.	BHU	Bhutan	42.	NZL	New Zealand
9.	BRU	Brunei Darussalam	43.	NOR	Norway
10.	CAM	Cambodia	44.	PAK	Pakistan
11.	CAN	Canada	45.	PAL	Palau
12.	PRC	China, People's Republic of	46.	PNG	Papua New Guinea
13.	COO	Cook Islands	47.	PHI	Philippines
14.	DEN	Denmark	48.	POR	Portugal
15.	FIJ	Fiji Islands, Republic of	49.	SAM	Samoa
16.	FIN	Finland	50.	SIN	Singapore
17.	FRA	France	51.	SOL	Solomon Islands
18.	GEO	Georgia	52.	SPA	Spain
19.	GER	Germany	53.	SRI	Sri Lanka
20.	HKG	Hong Kong, China	54.	SWE	Sweden
21.	IND	India	55.	SWI	Switzerland
22.	INO	Indonesia	56.	TAJ	Tajikistan
23.	IRE	Ireland	57.	TAP	Taipei, China
24.	ITA	Italy	58.	THA	Thailand
25.	JPN	Japan	59.	TIM	Timor-Leste, Democratic Republic of
26.	KAZ	Kazakhstan	60.	TON	Tonga
27.	KIR	Kiribati	61.	TUR	Turkey
28.	KOR	Korea	62.	TKM	Turkmenistan
29.	KGZ	Kyrgyzstan	63.	TUV	Tuvalu
30.	LAO	Laos, People's Democratic Republic	64.	UKG	United Kingdom
31.	LUX	Luxembourg	65.	USA	United States of America
32.	MYS	Malaysia	66.	UZB	Uzbekistan
33.	MDV	Maldives	67.	VAN	Vanuatu
34.	RMI	Marshall Islands	68.	VIE	Viet Nam

## Section 6: Employer's Requirements

This Section contains the Specifications, Drawings, Supplementary Information that describe the Works to be procured, Personnel Requirements, and Equipment Requirements.

### Table of Contents

Specifications and EMP .....	6-2
Drawings.....	6-3
Supplementary Information Regarding Works to Be Procured .....	6-4
Personnel Requirements .....	6-5
Equipment Requirements.....	6-6

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## **Specifications and EMP**

### **Refer Volume III, Section 6(a)**

A Site Specific Environmental Management Plan (SSEMP) under which the Site Specific Health and Safety Management Plan (SSHSMP) is attached as EMP. The SSHSMP is to be submitted to the Engineer and a confirmation of no objection of the SSHSMP should be obtained from the Engineer prior to commence of site work.]

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## Drawings

Refer Volume-IV, Section-6 (b)

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Supplementary Information  
**Regarding Works to Be Procured**

- Health and Safety COVID-19 Plan (HS-C19 Plan),-in accordance with-*World Health Organization 2020. Considerations for public health and social measures in the workplace in the context of COVID-19. Geneva. Available here: <https://www.who.int/publications-detail/considerations-for-public-health-and-social-measures-in-the-workplace-in-the-context-of-covid-19> shall be the regulations and guidance specific to COVID-19 prevention and controls, and worksite safety measures requirements that are deemed applicable to the contract.*
- **Environmental Management Plan (“EMP”) as Supplementary Information as the Employer’s Requirements has been attached as a part of schedules in part-III (Vol-II) shall also be applicable to the contract.**

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## Personnel Requirements

Using Form PER - 1 and PER - 2 in Section 4 (Bidding Forms), the Bidder must demonstrate that it has personnel who meet the following requirements:

No.	Position	Qualification	Total Experience (years).	Work Experience (years).	Experience in Similar Work (years).
1	Project Manager	B.E Civil	12		10
2	Deputy Project Manager/ Highway Engineer- (1 Nos.)	B.E Civil	7		5
3	Material Engineer	B.E Civil	7		5
4	Bridge/ Structural Engineer	B.E Civil	7		5
5	Asphalt Pavement Engineer	Dip. Civil	7		5
6	Plant and Equipment Engineer	Dip. Mech	7		5
7	Planning and Scheduling Engineer	B.E Civil	7		5
8	Quantity Surveyor	Dip. Civil	7		5
9	Surveyor (1 Nos.)	Dip. Civil	7		5
10	Safety and Environmental Engineer	Diploma/Degree in Civil Engineering with Highway Safety Audit certificate from recognized Institute	3		3

## Equipment Requirements

Using Form EQU in Section 4 (Bidding Forms), the Bidder must demonstrate that it has the key equipment listed below:

No.	Equipment Type and Characteristics	Min. Number Required	Maximum age on 28 days before the submission of bid (years)
1	Hot Mix Plant (Batch type only with electronic & computer controls and vibratory screens, Minimum 100 Tonne / Hour Capacity)	1	5
2	Asphalt Paver finisher with electronic sensors for automatic level control capable of Paving 7 m width.	1	5
3	WMM Paver with electronic sensors for automatic level control, Capable of paving 7 m width.	1	5
4	Motor Grader, 120HP, 100 Cu m/ Hour Capacity	3	5
5	W.M.M. Mixing Plant, 120 Tonne/ Hour Capacity	2	5
6	Hydraulic Excavators, 80 Cu m/ Hour Capacity	2	5
7	Concrete Batching and mixing plant-outline requirements and salient features (20 Cu m/ Hour Capacity) <ul style="list-style-type: none"> <li>• Weighing multi compartment, Computerized integrated system</li> </ul>	1	5
8	Concrete Pumps, Max vertical reach not less than 15m pumping 20 Cu m/ Hour	1	5
9	Pneumatic Tyred Roller, Operating weight not less than 12 tonne; minimum 8 tyred with self inflating system	2	5
10	Vibratory Roller, Minimum 10 Tonne operating wt.	4	5
11	Tandem Vibratory Roller, Minimum 8 Tonne	3	5
12	Tipper/ Trucks (10 Tonne Capacity)	10	5
13	Tipper/ Trucks (20 Tonne Capacity)	15	5
14	Concrete Mixer, 160 HP	1	5
15	Transit Mixer, 5 Cum Capacity	3	5
16	Bitumen Pump Distributor (5 Tonne Capacity)	2	5
17	Mechanical Broom	1	5
18	Hydraulic Cranes, Minimum 25 Tonne Capacity	1	5

**Note – 1.** The key equipment with fixed foundation shall be either owned or leased, otherwise bid shall be treated as non-responsive. For all other equipment including the movable ones, Minimum 50 % of these shall either be owned or leased, 100 % in case of 1 number.

**2.** In case, a Bidder is submitting Bids for multiple contracts, Bidder has to give an undertaking that, in case of award of multiple contracts, the same equipment shall not be used for other contract/ packages.

## Section 7: General Conditions of Contract

The Conditions of Contract consists of two parts, this Section 7 (General Conditions of Contract) and the following Section 8 (Particular Conditions of Contract).

The General Conditions shall be the *Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer*, Multilateral Development Bank Harmonized Edition, prepared by the Fédération Internationale des Ingénieurs-Conseil, or FIDIC (FIDIC MDB Harmonized Construction Contract) available at [FIDIC MDB June 2010](#). The FIDIC MDB Harmonized Construction Contract is exclusive for the use of ADB Borrowers and their project implementing agencies as provided under the License Agreement dated 9 June 2005, between ADB and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the Employer identified in the contract and only for the exclusive purpose of preparing bidding documents for ADB-financed contracts.

The standard text of the General Conditions chosen must be retained intact to facilitate the reading and interpretation by Bidders and its review by ADB. Any amendments and additions to the GCC, specific to the contract in hand, should be introduced in Section 8 (Particular Conditions of Contract), Part A (Contract Data) and Part B (Special Provisions). Clause numbers in the Particular Conditions of Contract (PCC) correspond to those in the General Conditions of Contract (GCC). As per GCC 1.5 (Priority of Documents), the PCC takes precedence over the GCC.

Part A (Contract Data) of the PCC includes data to complement the GCC in a manner similar to the way in which the Bid Data Sheet (BDS) complements the Instructions to Bidders (ITB).

Part B (Specific Provisions) is to be used to introduce country- or project-specific provisions, if so required. Whoever drafts the Specific Provisions should be thoroughly familiar with the provisions of the GCC and with any specific requirements of the Contract. Legal advice is recommended when amending provisions or drafting new ones.

The Conditions of Contract have been prepared for an *à* measurement (unit price or unit rate) type of contract and cannot be used for other types of contract.



## APPENDIX

### General Conditions of Dispute Board Agreement

#### 1. Definitions

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

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being:
  - (i) the sole member of the "DB" (or "dispute board") 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 "DB" 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 Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

#### 2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor, and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor, and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

#### 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.

**4. General Obligations of the Member**

The Member shall

- (a) have no interest, financial or otherwise, in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board 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 Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor, and the Other Members (if any), before entering into the Dispute Board 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 Board 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 Subclause 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 Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received, which shall be maintained in a current working file;
- (j) treat all details of the Contract and all the DB'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
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

**5. General Obligations of the Employer and the Contractor**

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 Dispute Board's activities under the Contract and the Dispute Board Agreement. 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.

Whenever the Employer or the Contractor refers a dispute to the Dispute Board under Subclause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

## 6. Payment

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

- (a) a retainer fee per calendar month, which shall be considered as payment in full for
  - (i) being available on 28 days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee, which shall be considered as payment in full, for
  - (i) each day or part of a day up to a maximum of 2 days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on Site visits, hearings, or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses, including necessary travel expenses (air fare in less than

first class, hotel and subsistence, and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent (5%) of the daily fee referred to in sub-paragraph (b) of this Clause;

- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor, and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 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 is entitled under the Dispute Board 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 Dispute Board; 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 in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Subclause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 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 under Clause 7.

## 7. Termination

At any time, (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor, and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

**8. Default of the Member**

If the Member fails to comply with any of his obligations under Clause 4 (a)-(d) above, he 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 Dispute Board which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the noncompliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the Dispute Board, which are rendered void or ineffective by the said failure to comply.

**9. Disputes**

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination, or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

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## Procedural Rules

Unless otherwise agreed by the Employer and the Contractor, the Dispute Board shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor, and the Dispute Board, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each site visit shall be as agreed jointly by the Dispute Board, the Employer, and the Contractor, or in the absence of agreement, shall be decided by the Dispute Board. The purpose of site visits is to enable the Dispute Board to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavor to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor, and the Engineer and shall be coordinated by the Employer in cooperation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the Dispute Board shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the Dispute Board one copy of all documents which the Dispute Board may request, including Contract documents, progress reports, variation instructions, certificates, and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the Dispute Board comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the Dispute Board in accordance with Subclause 20.4 of the Conditions of Contract, the Dispute Board shall proceed in accordance with Subclause 20.5 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the Dispute Board 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 other's case; and
- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The Dispute Board 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.

Except as otherwise agreed in writing by the Employer and the Contractor, the Dispute Board 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 Dispute Board is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the Dispute Board, among other things, to

- (a) establish the procedure to be applied in deciding a dispute;
- (b) decide upon the Dispute Board'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 Guidelines;

- (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 upon the payment of financing charges in accordance with the Contract;
- (g) decide upon any provisional 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 Dispute Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the Dispute Board shall make and give its decision in accordance with Subclause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the Dispute Board comprises three persons:

- (a) it shall convene in private after a hearing, 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, or to fulfil any 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;
  - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

# Conditions of Contract for Construction

MULTILATERAL DEVELOPMENT BANK HARMONISED EDITION

GENERAL CONDITIONS

June 2010

For Participating Bank use only

Released 30 June 2010

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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

### CONTENTS

- 1 General Provisions
  - 1.1 Definitions
  - 1.2 Interpretation
  - 1.3 Communications
  - 1.4 Law and Language
  - 1.5 Priority of Documents
  - 1.6 Contract Agreement
  - 1.7 Assignment
  - 1.8 Care and Supply of Documents
  - 1.9 Delayed Drawings or Instructions
  - 1.10 Employer's Use of Contractor's Documents
  - 1.11 Contractor's Use of Employer's Documents
  - 1.12 Confidential Details
  - 1.13 Compliance with Laws
  - 1.14 Joint and Several Liability
  - 1.15 Inspections and Audit by the Bank
- 2 The Employer
  - 2.1 Right of Access to the Site
  - 2.2 Permits, Licences or Approvals
  - 2.3 Employer's Personnel
  - 2.4 Employer's Financial Arrangements
  - 2.5 Employer's Claims
- 3 The Engineer
  - 3.1 Engineer's Duties and Authority
  - 3.2 Delegation by the Engineer
  - 3.3 Instructions of the Engineer
  - 3.4 Replacement of the Engineer
  - 3.5 Determinations

- 4 The Contractor
  - 4.1 Contractor's General Obligations
  - 4.2 Performance Security
  - 4.3 Contractor's Representative
  - 4.4 Subcontractors
  - 4.5 Assignment of Benefit of Subcontract
  - 4.6 Co-operation
  - 4.7 Setting Out
  - 4.8 Safety Procedures
  - 4.9 Quality Assurance
  - 4.10 Site Data
  - 4.11 Sufficiency of the Accepted Contract Amount
  - 4.12 Unforeseeable Physical Conditions
  - 4.13 Rights of Way and Facilities
  - 4.14 Avoidance of Interference
  - 4.15 Access Route
  - 4.16 Transport of Goods
  - 4.17 Contractor's Equipment
  - 4.18 Protection of the Environment
  - 4.19 Electricity, Water and Gas
  - 4.20 Employer's Equipment and Free-Issue Materials
  - 4.21 Progress Reports
  - 4.22 Security of the Site
  - 4.23 Contractor's Operations on Site
  - 4.24 Fossils
- 5 Nominated Subcontractors
  - 5.1 Definition of "Nominated Subcontractor"
  - 5.2 Objection to Nomination
  - 5.3 Payments to nominated Subcontractors
  - 5.4 Evidence of Payments
- 6 Staff and labour
  - 6.1 Engagement of Staff and Labour

- 6.2 Rates of Wages and Conditions of Labour
- 6.3 Persons in the Service of Employer
- 6.4 Labour Laws
- 6.5 Working Hours
- 6.6 Facilities for Staff and Labour
- 6.7 Health and Safety
- 6.8 Contractor's Superintendence
- 6.9 Contractor's Personnel
- 6.10 Records of Contractor's Personnel and Equipment
- 6.11 Disorderly Conduct
- 6.12 Foreign Personnel
- 6.13 Supply of Foodstuffs
- 6.14 Supply of Water
- 6.15 Measures against Insect and Pest Nuisance
- 6.16 Alcoholic Liquor or Drugs
- 6.17 Arms and Ammunition
- 6.18 Festival and Religious Customs
- 6.19 Funeral Arrangements
- 6.20 Forced Labour
- 6.21 Child Labour
- 6.22 Employment Records of Workers
- 6.23 Workers' Organisations
- 6.24 Non-Discrimination and Equal Opportunity
- 7 Plant, Materials and Workmanship
  - 7.1 Manner of Execution
  - 7.2 Samples
  - 7.3 Inspection
  - 7.4 Testing
  - 7.5 Rejection
  - 7.6 Remedial Work
  - 7.7 Ownership of Plant and Materials
  - 7.8 Royalties
- 8 Commencement, Delays and Suspension

- 8.1 Commencement of Works
- 8.2 Time for Completion
- 8.3 Programme
- 8.4 Extension of Time for Completion
- 8.5 Delays Caused by Authorities
- 8.6 Rate of Progress
- 8.7 Delay Damages
- 8.8 Suspension of Work
- 8.9 Consequences of Suspension
- 8.10 Payment for Plant and Materials in Event of Suspension
- 8.11 Prolonged Suspension
- 8.12 Resumption of Work
- 9 Tests on Completion
  - 9.1 Contractor's Obligations
  - 9.2 Delayed Tests
  - 9.3 Retesting
  - 9.4 Failure to Pass Tests on Completion
- 10 Employer's Taking Over
  - 10.1 Taking Over of the Works and Sections
  - 10.2 Taking Over of Parts of the Works
  - 10.3 Interference with Tests on Completion
  - 10.4 Surfaces Requiring Reinstatement
- 11 Defects Liability
  - 11.1 Completion of Outstanding Work and Remedying Defects
  - 11.2 Cost of Remedying Defects
  - 11.3 Extension of Defects Notification Period
  - 11.4 Failure to Remedy Defects
  - 11.5 Removal of Defective Work
  - 11.6 Further Tests
  - 11.7 Right of Access
  - 11.8 Contractor to Search
  - 11.9 Performance Certificate

- 11.10 Unfulfilled Obligations
- 11.11 Clearance of Site
- 12 Measurement and Evaluation
  - 12.1 Works to be Measured
  - 12.2 Method of Measurement
  - 12.3 Evaluation
  - 12.4 Omissions
- 13 Variations and Adjustments
  - 13.1 Right to Vary
  - 13.2 Value Engineering
  - 13.3 Variation Procedure
  - 13.4 Payment in Applicable Currencies
  - 13.5 Provisional Sums
  - 13.6 Daywork
  - 13.7 Adjustments for Changes in Legislation
  - 13.8 Adjustments for Changes in Cost
- 14 Contract Price and Payment
  - 14.1 The Contract Price
  - 14.2 Advance Payment
  - 14.3 Application for Interim Payment Certificate
  - 14.4 Schedule of Payments
  - 14.5 Plant and Materials intended for the Works
  - 14.6 Issue of Interim Payment Certificates
  - 14.7 Payment
  - 14.8 Delayed Payment
  - 14.9 Payment of Retention Money
  - 14.10 Statement at Completion
  - 14.11 Application for Final Payment Certificate
  - 14.12 Discharge
  - 14.13 Issue of Final Payment Certificate
  - 14.14 Cessation of Employer's Liability
  - 14.15 Currencies of Payment

- 15 Termination by Employer
  - 15.1 Notice to Correct
  - 15.2 Termination by Employer
  - 15.3 Valuation at Date of Termination
  - 15.4 Payment after Termination
  - 15.5 Employer's Entitlement to Termination for Convenience
  - 15.6 Corrupt and Fraudulent Practices
- 16 Suspension and Termination by Contractor
  - 16.1 Contractor's Entitlement to Suspend Work
  - 16.1 Termination by Contractor
  - 16.3 Cessation of Work and Removal of Contractor's Equipment
  - 16.4 Payment on Termination
- 17 Risk and Responsibility
  - 17.1 Indemnities
  - 17.2 Contractor's Care of the Works
  - 17.3 Employer's Risks
  - 17.4 Consequences of Employer's Risks
  - 17.5 Intellectual and Industrial Property Rights
  - 17.6 Limitation of Liability
  - 17.7 Use of Employer's Facilities/Accommodation
- 18 Insurance
  - 18.1 General Requirements for Insurances
  - 18.2 Insurance for Works and Contractor's Equipment
  - 18.3 Insurance against Injury to Persons and Damage to Property
  - 18.4 Insurance for Contractor's Personnel
- 19 Force Majeure
  - 19.1 Definition of Force Majeure
  - 19.2 Notice of Force Majeure
  - 19.3 Duty to Minimise Delay
  - 19.4 Consequences of Force Majeure
  - 19.5 Force Majeure Affecting Subcontractor

- 19.6 Optional Termination, Payment and Release
- 19.7 Release from Performance
- 20 Claims, Disputes and Arbitration
  - 20.1 Contractor's Claims
  - 20.2 Appointment of the Dispute Board
  - 20.3 Failure to Agree of the Composition of the Dispute Board
  - 20.4 Obtaining Dispute Board's Decision
  - 20.5 Amicable Settlement
  - 20.6 Arbitration
  - 20.7 Failure to Comply with Dispute Board's Decision
  - 20.8 Expiry of Dispute Board's Appointment

APPENDIX: GENERAL CONDITIONS OF DISPUTE BOARD AGREEMENT

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# General Conditions

## 1 General Provisions

### 1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, Parts A and B, 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 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 or letter of bid, 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 “Bill of Quantities”, “Daywork Schedule” and “Schedule of Payment Currencies” mean the documents so named (if any) which are comprised in the Schedules.
- 1.1.1.10 “Contract Data” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

#### 1.1.2 Parties and Persons

- 1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.



- 1.1.2.2 “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].
- 1.1.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.
- 1.1.2.6 “Employer’s Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
- 1.1.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor 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 “DB” means the person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board]
- 1.1.2.10 “FIDIC” means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.
- 1.1.2.11 “Bank” means the financing institution (if any) named in the Contract Data.
- 1.1.2.12 “Borrower” means the person (if any) named as the borrower in the Contract Data.
- 1.1.3 Dates, Tests, Periods and Completion
- 1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.
- 1.1.3.2 “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works].
- 1.1.3.3 “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (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 Specification 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], which extends over 365 days except if otherwise stated in the Contract Data (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 other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.
- 1.1.5.6 “Section” means a part of the Works specified in the Contract Data 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 Other Definitions
- 1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.1.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification, but does not include Plant which has not been taken over by the Employer.
- 1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].
- 1.1.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.1.6.7 “Site” means the places where the Permanent Works are to be executed, including storage and working areas, 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 Base Date.
- 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].

1.1.6.10 "Notice of Dissatisfaction" means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] indicating its dissatisfaction and intention to commence arbitration.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) the word "tender" is synonymous with "bid" and "tenderer" with "bidder" and the words "tender documents" with "bidding documents".

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

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Contract Data.

## 1.3 Communications

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

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

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

## 1.4 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

## 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 – Part A,
- (e) the Particular Conditions – Part B,
- (f) these General Conditions,
- (g) the Specification,
- (h) the Drawings, and
- (i) 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 the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

## 1.7 Assignment

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

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

## 1.8 Care and Supply of Documents

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

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.

If a Party becomes aware of an error or defect 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.

## 1.9 Delayed Drawings or Instructions

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

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

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

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

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

## 1.10 Employer's Use of Contractor's Documents

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

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

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

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

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

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

#### 1.12 Confidential Details

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

#### 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, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) 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 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, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

#### 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.

#### 1.15 Inspections and Audit by the Bank



The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

## 2 The 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 Contract Data. 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 Contract Data, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption 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 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 provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

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

### 2.3 Employer's Personnel

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

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and



- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

## 2.4 Employer's Financial Arrangements

The Employer shall submit, before the Commencement Date and thereafter 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 punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

## 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 Materials], or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

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

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

# 3 The Engineer

## 3.1 Engineer's Duties and Authority

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

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

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;
- (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; and
- (d) any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:

- (A) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
- (B) Sub-Clause 13.1: instructing a Variation, except:
  - (i) in an emergency situation as determined by the Engineer, or
  - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.
- (C) Sub-Clause 13.3: approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (D) Sub-Clause 13.4: specifying the amount payable in each of the applicable currencies

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

### 3.2 Delegation by the Engineer

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

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

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be 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 and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take 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. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

### 3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

### 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, within 28 days from the receipt of the corresponding claim or request except when otherwise specified. 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 (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

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

All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.

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

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

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

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

### 4.2 Performance Security

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

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

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.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

#### 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 in terms of Sub-Clause 6.9 [Contractor's Personnel], 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 shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

#### 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 solely 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; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

#### 4.5 Assignment of Benefit of Subcontract

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

#### 4.6 Co-operation

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

- (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 suffer delay and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

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



## 4.7 Setting Out

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

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

## 4.8 Safety Procedures

The Contractor shall:

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

## 4.9 Quality Assurance

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

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

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

#### 4.10 Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base 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 hydrological 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 notice under 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.

Upon 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 shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

#### 4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or 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 at Base Date. 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 Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the 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.

#### 4.17 Contractor's Equipment

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

#### 4.18 Protection of the Environment

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

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

#### 4.19 Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services that may require for his construction activities and to the extent defined in the Specifications, for the Works.

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

#### 4.20 Employer's Equipment and Free-Issue Materials

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

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

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

#### 4.24 Fossils

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

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

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

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

## 5 Nominated Subcontractors

### 5.1 Definition of "nominated Subcontractor"

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

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

### 5.2 Objection to Nomination

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

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
  - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract,
  - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
  - (iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

### 5.3 Payments to nominated Subcontractors

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

### 5.4 Evidence of Payments

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

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

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

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

## 6 Staff and Labour

### 6.1 Engagement of Staff and Labour

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

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

### 6.2 Rates of Wages and Conditions of Labour

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

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

### 6.3 Persons in the Service of Employer

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

### 6.4 Labour Laws

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

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

### 6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, 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.

## 6.6 Facilities for Staff and Labour

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

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

## 6.7 Health and Safety

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

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 3.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.



## 6.8 Contractor's Superintendence

Throughout the 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.

## 6.9 Contractor's Personnel

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

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

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

## 6.10 Records of Contractor's Personnel and Equipment

The 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.

## 6.11 Disorderly Conduct

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.

## 6.12 Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.



### 6.13 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

### 6.14 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

### 6.15 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

### 6.16 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.

### 6.17 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

### 6.18 Festivals and Religious Customs

The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

### 6.19 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

### 6.20 Forced Labour

The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

### 6.21 Child Labour

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

## 6.22 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

## 6.23 Workers' Organisations

In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.

## 6.24 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

# 7 Plant, Materials and Workmanship

## 7.1 Manner of Execution

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

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

## 7.2 Samples

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

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

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

## 7.3 Inspection

The Employer's Personnel shall at all reasonable times:

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

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

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

## 7.4 Testing

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

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location 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 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

Except as otherwise provided in the Contract, 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 incorporated in the Works;
- (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

## 7.8 Royalties

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

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
- (c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works;
- (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Engineer's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

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.

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

#### 8.5 Delays Caused by Authorities

If the following conditions apply, namely:

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

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

## 8.6 Rate of Progress

If, at any time:

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

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

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

## 8.7 Delay Damages

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

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

## 8.8 Suspension of Work

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

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



## 8.9 Consequences of Suspension

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

- (a) an extension of time for any such delay, if completion is or will be 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 after receiving from the Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

## 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-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].



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

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

## 9.2 Delayed Tests

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

If the 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 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 profit, which shall be included in the Contract Price.

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

### 10.4 Surfaces Requiring Reinstatement

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

## 11 Defects Liability

### 11.1 Completion of Outstanding Work and Remedying Defects

In order that the Works 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 by reason of damage attributable to the Contractor. 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 Employer 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 Removal of Defective Work

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

## 11.6 Further Tests

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

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

## 11.7 Right of Access

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

## 11.8 Contractor to Search

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

## 11.9 Performance Certificate

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

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

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

## 11.10 Unfulfilled Obligations

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

## 11.11 Clearance of Site

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

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

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

## 12 Measurement and Evaluation

### 12.1 Works to be Measured

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

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

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

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

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

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

### 12.2 Method of Measurement

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

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

### 12.3 Evaluation

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

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

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

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

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

## 12.4 Omissions

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

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

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

## 13 Variations and Adjustments

### 13.1 Right to Vary

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



The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

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

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

## 13.2 Value Engineering

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

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

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

- (a) the Contractor shall design this part,
- (b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 13.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
  - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
  - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

## 13.3 Variation Procedure



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

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

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

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

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

#### 13.4 Payment in Applicable Currencies

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

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

#### 13.6 Daywork

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.

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.

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

### 13.8 Adjustments for Changes in Cost

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. 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:

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

where:

"P<sub>n</sub>" is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period "n", this period being a month unless otherwise stated in the Contract Data;

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

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

"L<sub>n</sub>", "E<sub>n</sub>", "M<sub>n</sub>", ... 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

"L<sub>o</sub>", "E<sub>o</sub>", "M<sub>o</sub>", ... 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 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" is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable

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

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

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

## 14 Contract Price and Payment

### 14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;

- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - (i) of the Works which the Contractor is required to execute, or
  - (ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

Notwithstanding the provisions of sub-paragraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

## 14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, 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 Contract Data.

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

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its 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 a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall 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.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

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 in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

### 14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to 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, 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 costs 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 Contract Data 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 Contract Data;
- (d) any amounts to be added for the advance payment (if more than one instalment) and to be deducted for its 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.

### 14.4 Schedule of Payments

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

- (a) the instalments stated 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 instalments are not defined by reference to the actual progress achieved in executing the works, and if actual progress is found to be less or more 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 instalments, which shall take account of the extent to which progress is less or more than that on which the instalments 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 Schedules 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 Schedules 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 Schedules 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 (80%) 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, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

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 Contract Data. 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 any thing 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 instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) the amount certified in the final Payment Certificate within 56 days after the Employer receives this Payment Certificate or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

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, or if not available, the interbank offered rate, 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 half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

#### 14.10 Statement at Completion

Within 14 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and



- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

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

#### 14.11 Application for Final Payment Certificate

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

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

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft 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 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 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 discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines 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.

## 14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
  - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rate of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, 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 Contract Data shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (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 Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

## 15 Termination by Employer

### 15.1 Notice to Contract

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

### 15.2 Termination by Employer

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

- (a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
  - (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
  - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - (i) for doing or forbearing to do any action in relation to the Contract, or
  - (ii) for showing or forbearing to show favour or 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 for Convenience

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 or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by 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 16.4 [Payment on Termination].

## 15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

[For contracts financed by the African Development Bank]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in the Contract execution; and
- (b) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of the Contract to the detriment of the Borrower, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

[For contracts financed by the Asian Development Bank]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- (b) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (d) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

[For contracts financed by the Black Sea Trade and Development Bank and by the European Bank for Reconstruction and Development]

For the purposes of this Sub-Clause, the Bank defines, for the purposes of this provision, the terms set forth below as follows:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence a person, or the threatening of injury to person, property or reputation, in connection with the procurement process or in contract execution in order to obtain or retain business or other improper advantage in the conduct of international business;
- (b) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client of the benefits of free and open competition.

[For contracts financed by the Caribbean Development Bank:]

For the purposes of this Sub-Clause:

- (a) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in the Contract execution;
- (b) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of the Contract;
- (c) "collusive practice" means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non-competitive levels;
- (d) "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract.

[For contracts financed by the Inter-American Development Bank]

For the purposes of this Sub-Clause:

The Bank requires that all Contractors adhere to the Bank's Policies for the Procurement of Works and Goods financed by the Bank. In particular, the Bank requires that all Borrowers (including grant beneficiaries), the executing agencies and contracting agencies, as well as all firms, entities and individuals bidding for or participating in a Bank-financed project, including, inter alia, applicants, bidders, contractors, consulting firms and individual consultants (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the Bank all suspected acts of fraud or corruption of which it has knowledge or becomes aware, during the Bidding Process and throughout the negotiation or execution of a Contract. Fraud and corruption are prohibited.

Fraud and corruption include acts of:

- (a) bribery,
- (b) extortion or coercion,
- (c) fraud, and
- (d) collusion.

The definitions of actions set forth below cover the most common types of corrupt practices, but are not exhaustive. For this reason, the Bank shall also take action in the event of any similar deed or complaint involving alleged acts of corruption, even when these are not specified in the following list. The Bank shall in all cases proceed in accordance with Sub-Clause 15.6.

In pursuance of this policy:

- (a) the Bank defines the terms set forth below as follows:
  - (i) "bribery" meaning the offering or giving of anything of value to influence the actions or decisions of third parties or the receiving or soliciting of any benefit in exchange for actions or omissions related to the performance of duties;
  - (ii) "extortion" or "coercion" meaning the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force, where no actual or actual injury may befall upon a person, his/her reputation or property;
  - (iii) "fraud" meaning any action or omission intended to misrepresent the truth so as to induce others to act in reliance thereof, with the purpose of obtaining some unjust advantage or causing damage to others; and
  - (iv) "collusion" meaning a secret agreement between two or more parties to defraud or cause damage to a person or entity or to obtain an unlawful purpose;
- (b) if the Bank, in accordance with its administrative procedures, demonstrates that any firm, entity or individual bidding for or participating in a Bank-financed project including, inter alia, applicants, bidders, contractors, consulting firms, individual consultants, borrowers (including grant beneficiaries), purchasers, executing agencies and contracting agency (including their respective officers, employees and agents) engaged in an act of fraud or corruption in connection with Bank-financed projects, the Bank may:
  - (i) decide not to finance any proposal to award a contract or a contract awarded financed by the Bank;
  - (ii) suspend disbursement of the operation if it is determined at any stage that evidence is sufficient to support a finding that an employee, agent or representative of the Borrower, Executing Agency or Contracting Agency has engaged in an act of fraud or corruption;
  - (iii) cancel and/or accelerate the payment of, the portion of a loan or grant earmarked for a contract, when there is evidence that the representative of the Borrower, or Beneficiary of a grant, has not taken the adequate remedial measures within a time period which the Bank considers reasonable, and in accordance with the due process guarantees of the Borrowing country's legislation;
  - (iv) issue a reprimand in the form of a formal letter of censure of the firm, entity or individual's behaviour;
  - (v) issue a declaration that an individual, entity or firm is ineligible, either permanently or for a stated period of time, to be awarded contracts under Bank-financed projects except under such conditions as the Bank deems to be appropriate;
  - (vi) refer the matter to appropriate law enforcement authorities; and/or;



- (vii) may impose other sanctions that it deems to be appropriate under the circumstances, including the imposition of fines representing reimbursement of the Bank for costs associated with investigations and proceedings. Such other sanctions may be imposed in addition to or in lieu of other sanctions;
- (c) the Bank has established administrative procedures for cases of allegations of fraud and corruption within the procurement process or the execution of a contract financed by the Bank which are available at the Bank's website ([www.iadb.org](http://www.iadb.org)), as updated from time to time. To that effect any complaint shall be submitted to the Bank's Office of Institutional Integrity (OII) for the appropriate investigation. Allegations may be presented confidentially or anonymously;
- (d) payments are expressly conditional upon the claimant's participation in the procurement process conformed with all applicable Bank policies on Fraud and Corruption described in this Sub-Clause 15.5; and
- (e) the imposition of any sanction referred to paragraph (b) of this Sub-Clause will be public;

The Bank will have the right to require that a Contractor permit the Bank to inspect their accounts and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank. The Bank will have the right to require that Contractors to:

- (a) maintain all documents and records related to the Bank-financed project for five (5) years after completion of the work; and
- (b) require the delivery of any document necessary for the investigation of allegations of fraud or corruption and the availability of employees or agents of the contractor with knowledge of the Bank-financed project to respond to questions from the Bank.

If the Contractor refuses to comply with the Bank's request, the Bank, in its sole discretion, may take appropriate action against the Contractor.

The Contractor represents and warrants:

- (a) that they have read and understood the Bank's prohibition against fraud and corruption and agrees to abide by the applicable rules;
- (b) that they have not engaged in any violation of policies on fraud and corruption described herein;
- (c) that they have not misrepresented or concealed any material facts during the procurement or contract negotiation processes or performance of the contract;
- (d) that neither they nor any of their directors, officers or principal shareholders have been declared ineligible to be awarded Bank-financed contracts or have been convicted of a crime involving fraud or corruption;
- (e) that none of their directors, officers or principal shareholders has been a director, officer or principal shareholder of any other company or entity that has been declared ineligible to be awarded a Bank-financed contract or has been convicted of a crime involving fraud or corruption;
- (f) that all commissions, agents' fees, facilitating payments or revenue-sharing agreements related to the Bank-financed contract or consulting agreement have been disclosed;
- (g) that they acknowledge that the breach of any of these warranties constitute a basis for the imposition of any or a combination of the measures described in this Sub-Clause.

[For contracts financed by the World Bank]

In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

*In this context, “another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organisations taking or reviewing procurement decisions.*

- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

*In this context, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.*

- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

*In this context, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.*

- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

*In this context, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.*

- (v) “obstructive practice” is

- (A) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- (B) acts intended to materially impede the exercise of the Bank’s inspection and audit rights.

*In this context, “party” refers to a participant in the procurement process or contract execution.*

## 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.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer’s Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

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 profit, which shall be included in the Contract Price.

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

## 16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under 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 in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.3 [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],
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events,
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

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.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

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 for Convenience], 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 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 arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer'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.

## 17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Employer's Risks] below, insofar as they directly affect the execution of the Works in the Country, are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, 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,
- (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 taken adequate preventive precautions.

## 17.4 Consequences of Employer's Risks

In 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 subparagraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.

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

## 17.5 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means 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 any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

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

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

## 17.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 12.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

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 Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other 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.

## 17.7 Use of Employer's Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

## 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 acceptable to the Contractor. 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.

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 Contract Data (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.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

## 18.2 Insurance for Works and Contractor's Equipment

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

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

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

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

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs 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, to the extent specifically required in the bidding documents of the Contract, 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 Contract Data (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 Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, 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 insurance shall cover the Employer and the Engineer 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, 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, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout of persons other than the Contractor's Personnel,
- (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 its substantial 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 its 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 Minimise 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 his substantial 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 sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 20.3 [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) other Cost or liabilities which in the circumstances were reasonably and necessarily 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

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 Claims, Disputes and Arbitration

### 20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, if the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, 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.

Each Payment Certificate shall include such additional payment for any claim as has 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.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision].

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 Board

Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and 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 DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board 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 DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

### 20.3 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2, [Appointment of the Dispute Board]
- (b) either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB 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 DB 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 Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. 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.

### 20.4 Obtaining Dispute Board's Decision

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, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB 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 a Notice of Dissatisfaction to the other Party.

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 Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute 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 DB 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 DB's decision, then the decision shall become final and binding upon both Parties.

## 20.5 Amicable Settlement

Where a 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, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

## 20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) if the contract is with foreign contractors,

(i) for contracts financed by all participating Banks except under sub-paragraph (f) (2) below:

international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

(ii) for contracts financed by the Asian Development Bank:

international arbitration (1) with proceedings administered by the arbitration institution specified in the Contract Data and conducted under the rules of arbitration of such institution unless it is specified in the Contract Data that the arbitration shall be conducted under the rules of the United Nations Commission on International Trade Law (UNCITRAL) and if UNCITRAL Rules are so specified then the named arbitration institution shall be the appointing authority and shall administer the arbitration); or (2) if an arbitration institution is not specified in the Contract Data, with proceedings administered by the Singapore International Arbitration Centre (SIAC) and conducted under the SIAC Rules, by one or more arbitrators appointed in accordance with the said arbitration rules.

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators 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 DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB 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 DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

## 20.7 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a final and binding DB 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 Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

## 20.8 Expiry of Dispute Board's Appointment

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 DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) Sub-Clause 20.4 [Obtaining Dispute 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].

# APPENDIX

## A General Conditions of Dispute Board Agreement

### 1 Definitions

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

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Board Agreement as being:
  - (i) the sole member of the "DB" 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 "DB" (or "Dispute 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 Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

### 2 General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,



- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

### 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.

### 4 General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board 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 Board Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board 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 Board 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 Board Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;

- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DB'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
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

## 5 General Obligations of the Employer and the Contractor

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 DB's activities under the Contract and the Dispute Board Agreement. 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.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

## 6 Payment

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

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on 28 days' notice for all Site visits and hearings;
  - (ii) becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.



With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
- (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the Site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on Site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 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 is entitled under the Dispute Board 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 DB; 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 in 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 Conditions of Contract.

If the Member does not receive payment of the amount due within 70 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 under Clause 7.

## 7 Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

## 8 Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he 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 DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

## 9 Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

## PROCEDURAL RULES

- 1 Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.
- 2 The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.
- 3 Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
- 4 The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

- 5 If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed 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 DB 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 other's case, and
  - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
- 6 The DB 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.
- 7 Except as otherwise agreed in writing by the Employer and the Contractor, the DB 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 DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
- 8 The Employer and the Contractor empower the DB, among other things, to:
- (a) establish the procedure to be applied in deciding a dispute,
  - (b) decide upon the DB'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 upon the payment of financing charges in accordance with the Contract,
  - (g) decide upon any provisional 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.
- 9 The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:
- (a) it shall convene in private after a hearing, 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, or to fulfil any 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 Members to not make a decision.

## Section 8: Particular Conditions of Contract

The following Particular Conditions of Contract (PCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

### Part A – Contract Data

Ref. GCC	Subject	Data
1.1.2.2 and 1.3	Employer's name and address	Bihar State Road Development Corporation Ltd. RCD Mechanical Workshop Campus, (Near Patna Airport), Sheikhpura, Patna -800014, Bihar, INDIA
1.1.2.4 and 1.3	Engineer's name and address	To be determined later
1.1.2.11	Bank's name	Asian Development Bank (ADB)
1.1.2.12	Borrower's name	India
1.1.3.3	Time for completion	821 days
1.1.3.7	Defects notification period	365 days.
1.1.5.6	Sections	As defined in annexure-1 – Part A (Particular Conditions of Contract)
1.3	Electronic transmission systems	Facsimile and email
1.4	Governing law	The law of India
1.4	Ruling language	English
1.4	Language for communications	English
2.1	Time for access to the site	For each section Time for Access to site is defined as per Annexure-1 to part-A to Particular Conditions of Contract.
3.1(B)(ii)	Engineer's duties and authority	Variations resulting in an increased/ of the Accepted Contract Amount shall require approval of the Employer.
4.2	Performance security	The performance security will be in the form of an unconditional bank guarantee in the amount of 5 % of the Accepted Contract Amount issued by a reputable bank located outside India, or a reputable local bank including scheduled or nationalized banks, in the format included in Section 9 (Contract Forms). If the institution issuing the security is located outside India, it shall have a correspondent financial institution located in India to make it enforceable. The Performance Security shall be denominated in

		<b>the currency/ies stated in the bid of the successful bidder.</b>
4.8 (b)	<b>Safety Procedures</b>	<p>At the end, add the following:</p> <p>“In particular, the Contractor is responsible for providing site workers with safe and healthy working conditions and establish an operating system to prevent accidents, injuries, and disease.”</p>
4.18	<b>Protection of the Environment</b>	<p>At the end add the following paragraphs:</p> <p>“ The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.</p> <p>The Contractor shall also comply with all reasonable requests of the national and local authorities responsible for enforcing environmental controls.</p> <p>Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Environmental Management Plan (SSEMP) for the Engineer’s no objection showing how he/she intends to comply with environmental laws and regulations and other specific requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the Environmental Impact Assessment (“EIA”) and the Environmental Management Plan (“EMP”) of the project attached in Section 6- Employer’s Requirements. Work shall not commence on the Site until the no objection of SSEMP has been obtained from the Engineer and is being implemented. Such acceptance by the Engineer shall not relieve the Contractor of any of his obligations or responsibilities under the Contract.</p> <p>The Contractor shall (a) establish an operational system for managing environmental impacts, (b) comply with the approved SSEMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSEMP, (c) allocate the budget required to</p>

		<p>ensure that such measures, requirements and actions are carried out, (d) submit semi-annual reports on the compliance of such measures to the Employer.</p> <p>Where unanticipated environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEMP to outline the potential impacts to site works and associated mitigation measures for the Engineer’s approval.”</p>
<p>6.5</p>	<p><b>Normal working hours</b></p>	<p><b>8 hrs per day and 6 days a week (total of 48 hrs per week) as per Labor law of the Country.</b></p>
<p>6.7</p>	<p><b>Health and Safety</b></p>	<p>After the first paragraph, add the following:</p> <p>“ The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.</p> <p>Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Health and Safety Management Plan (SSHSMP) for the Engineer’s no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer’s Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSHSMP has been obtained from the Engineer and is being implemented. Such confirmation of no objection by the Engineer shall not relieve the Contractor of any of his/her obligations or responsibilities under the Contract.</p> <p>Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSHSMP to outline the potential impacts to site works and associated mitigation measures for</p>

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		<p>the Engineer’s no objection.</p> <p>The Contractor shall comply with the approved SSHSMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSHSMP.</p> <p>In particular, the Contractor is required to provide all personnel on site including Employer’s Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc. , in accordance with the Contractor’s SSHSMP. The Contractor should ensure that his Subcontractors comply with the SSHSMP and provide all such necessary equipment to their personnel.</p> <p>The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out.</p> <p>The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer.”</p> <p>Add after the third paragraph the following:</p> <p>“In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Engineer immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country.”</p>
<p>6.25</p>	<p><b>Respectful Work Environment</b></p>	<p>The following sentence shall apply:</p> <p>The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and</p>

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		<p>harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or subcontract, if any form of unethical or inappropriate behavior is identified.</p> <p>The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up-to-date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.</p>
8.3	<b>Programme</b>	Detailed Resource based time Programme be submitted in MS Project, Primavera / or any Relevant Software within 28 days after receiving notice under subclause 8.1 of GCC. Whenever the previous programme becomes inconsistent with targeted financial progress under Annexure-1, Part-A (PCC), the contractor shall submit a revised Resource based time Programme in MS Project.
8.7 and 14.15(b)	<b>Delay damages for the Works</b>	<p><b>0.05 %</b> of the Accepted Contract Amount per day, in the currencies and proportions in which the Contract Price is payable.</p> <p>Delay damage imposed on the account of contractor's default shall be non-refundable.</p>
8.7	<b>Maximum amount of delay damages</b>	10 % of the Accepted Contract Amount.
11.1	<b>Completion of Outstanding Work and Remedying Defects</b>	Notified Outstanding work shall be completed within 84 days after issuing of Taking Over Certificate by the Engineer.
13.5(b)(ii)	<b>Provisional Sums</b>	<b>13%</b>
13.8	<b>Adjustments for Changes in Cost</b>	The Contract Price <b>shall be adjustable</b> during Contract Execution.



14.1	<b>The Contract Price</b>	The following sentence under Clause 14.1 shall <u>not</u> apply:  <i>“Notwithstanding the provisions of sub-paragraph (b), Contractor’s Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.”</i>
14.2	<b>Total advance payment</b>	<b>10 (Ten)% , Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable</b>  <b>An interest free advance of 10 % (ten Percentage) in two equal installment of the Accepted Contract Amount in local currency, for mobilization. Second installment of the mobilization shall be released only after the submission of proof of full utilization of earlier received installment.**</b>
14.2(b)	<b>Repayment amortization of advance payment</b>	<b>12.5 % (Twelve and Half %) . This payment will be totally adjusted prior to 90% of financial achievement or before the original completion time , otherwise it shall be charged along with the applicable bank rate + 3%.</b>
14.3(c)	<b>Percentage of retention</b>	<b>6 (Six) % of IPC</b>
14.3(c)	<b>Limit of Retention Money</b>	<b>5 (Five) % of the Accepted Contract Amount.</b>
14.5(b)(i)	<b>Plant and Materials</b>	<b>Not applicable</b>
14.5(c)(i)		<b>Plant and Materials for payment when delivered to the Site: Materials Comprising of Steel, Cement, Aggregates, Sand, Bitumen and RCC Hume Pipes shall <u>only</u> be applicable.</b>
14.6	<b>Minimum Amount of Interim Payment Certificates</b>	<b>0.5% of Accepted Contract Amount</b>

**\*\*** Acceptable documents as a proof of full utilization of 1st installment shall be the purchase invoices of new equipments/machineries/plants and expenditure made towards establishment of camp and laboratory

15.2	<b>Termination by Employer</b>	<p>This sentence will apply as Subclause 15.2(g):</p> <p>(g) the Engineer gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with Subclause 8.2 (Time for Completion) and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Engineer;</p>
15.6	<b>Corrupt and Fraudulent Practices</b>	<p>The following sentence shall apply:</p> <p>For the purposes of this Subclause:</p> <p>ADB's Anticorruption Policy (1998, as amended to date) requires Borrowers (including beneficiaries of ADB-financed activity), as well as Contractors, Subcontractors, manufacturers, and Consultants under ADB-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB</p> <p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <ul style="list-style-type: none"> <li>(i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;</li> <li>(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</li> <li>(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</li> <li>(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;</li> <li>(v) "abuse" means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;</li> <li>(vi) "conflict of interest" means any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;</li> </ul>

		<p>(vii) “obstructive practice” means (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation, or deliberately making false statements to investigators, with the intent to impede an ADB investigation; (b) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (c) deliberate acts intended to impede the exercise of ADB’s contractual rights of audit or inspection or access to information; and</p> <p>(viii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vii) above and the following violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB Anticorruption Policy, including failure to adhere to the highest ethical standard.</p> <p>(b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;</p> <p>(c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation; and</p> <p>(d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>1</sup> in ADB-financed, -administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent,</p>
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Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).

		<p>engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations.</p> <p>All Bidders, consultants, contractors, suppliers and other third parties engaged or involved in ADB-related activities have a duty to cooperate fully in any screening or investigation when requested by ADB to do so. Such cooperation includes, but is not limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) being available to be interviewed and replying fully and truthfully to all questions asked;</li> <li>(b) providing ADB with any items requested that are within the party's control including, but not limited to, documents and other physical objects;</li> <li>(c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;</li> <li>(d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB's Information and Communications Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);</li> <li>(e) cooperating in any testing requested by ADB, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and</li> <li>(f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.</li> </ul> <p>All Bidders, consultants, contractors and suppliers shall ensure that, in its contract with its sub-consultants, Subcontractors, and other third parties engaged or involved in ADB-related activities, such sub-consultants, Subcontractors, and other third parties similarly undertake the foregoing duty to cooperate fully in any screening or investigation when requested by ADB to do so.</p>
17.6	<b>Maximum total liability of the Contractor to the Employer</b>	The product of one time the Accepted Contract Amount.

18.1	<b>Periods for submission of insurance:</b> <b>(a) evidence of insurance.</b> <b>(b) relevant policies</b>	<b>14 days</b> <b>28 days</b>
18.2(d)	<b>Maximum amount of deductibles for insurance of the Employer's risks</b>	<b>Nil</b>
18.3	<b>Minimum amount of third party insurance</b>	<b>Rs. 500,000 (Five Hundred Thousand) per occurrence, with the no. of occurrences unlimited.</b>
20.2	<b>Date by which the Dispute Board shall be appointed</b>	<b>28 days after the commencement</b>
20.2	<b>The Dispute Board shall be comprised of</b>	<b>Three Members</b>
20.2	<b>List of potential Dispute Board sole members</b>	<b>None</b>
20.3	<b>Appointment (if not agreed) to be made by</b>	<b>Secretary General, Indian Road Congress, New Delhi, India.</b>
<b>20.6</b>	<b>Appointment of Arbitrators</b>	The Arbitrator's appointment will be made by the Secretary General, Indian Road Congress, New Delhi, India.
<b>20.6 (a)</b>	<b>International Arbitration shall be administered by</b>	International arbitration shall be (i) administered by: the Singapore International Arbitration Centre (SIAC) (ii) conducted in accordance with the rules of : SIAC
20.6	<b>Place of Arbitration</b>	<b>The place of arbitration shall be a neutral place mutually agreed by the parties</b>

## ANNEXURE – 1 PART – A (PARTICULAR CONDITIONS OF CONTRACT)

**Time of Completion of whole stretch – 821 Days**

**Summary of Sections of the Works**

**Improvement/Upgradation, Widening and Strengthening of Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road (SH-103) under Civil work contract Package No. BSHP-III(Phase-2)/ Pkg.-7/SH-103**

Sl. No.	Section Name/Description (Sub - Clause 1.1.5.6)	Time for access to the site (Sub-Clause2.1)	Time for Completion (Sub - Clause 1.1.3.3)
1	Section-1 KM 21.880 to KM 42.069 ( Length- 20.189 km)	Within 28 Days from the date of Signing of the Contract Agreement	821 Days

**Summary of Progress targets:**

Section or Whole Work	Time from Date of Commencement	Progress Target (Financial)	Amount to be withheld in case of failure to achieve Progress Target
Improvement/Upgradation, Widening and Strengthening of Ch: 21.88 Km. to Govindpur of Manjhway - Govindpur Road (SH-103) under Civil work contract Package No. BSHP-III(Phase-2)/ Pkg.-7/SH-103, Total Length – 20.189 Km	180 Days	5%	10% of the difference in Target and achievement
	240 Days	10%	
	300 Days	15%	
	450 Days	30%	
	540 Days	50%	
	690 Days	75%	
821 Days	100 %		

1. If extension of time (Sub-Clause -8.4) is granted, the summary of progress targets shall be revised in the same proportion for the extended time and balance Financial Target and in case of failure to achieve this revised Progress/Financial Target. Amount to be withheld shall be 10% of the difference in Revised Target and achievement.
2. Resource based time Programme be submitted in MS Project/ Primavera / or any Relevant Software program to be submitted under Sub-Clause- 8.3 shall be vis-a-vis Financial targets with allocated time in summary of progress targets and same shall be applicable in case of extended time of completion. Engineer shall issue the notice to the contractor if the contractor does not comply accordingly.

**SECTION 8 - PARTICULAR CONDITIONS OF CONTRACT**  
**PART B – SPECIFIC PROVISIONS**

**Sub-Clause 1.5: Priority of Documents**

Insert “(d) Addenda Nos. if any” after serial no. (c), Correct serial no. “(d)” to “(i)” as serial no. “(e)” to “(j)”.

**Sub-Clause 1.6: Contract Agreement**

*At the end of the Sub-Clause add the following:*

**“The submission of acceptable Performance Security pursuant to Sub-Clause 4.2 is, inter-alia, a pre-requisite for entering into the Contract Agreement”**

**Sub-Clause 3.1: Engineer’s Duties and Authority**

*Add the followings point (E) & (F) after point (D) in Para Four for which Employer's specific approval is also required:*

- " (E) Sub-Clause 4.4: approving the subcontracting of the works ; and .
- (F) Sub-Clause 8.4: approving any extension of contractual time limits

**Sub-Clause 4.1: Contractor’s General Obligations**

*Add the following three paras at the end of Sub-Clause 4.1:*

The Contractor shall be required to carry out a total station survey, taking 'L' Section and Cross Sections at every 50 m interval and submit the data to the Engineer for finalization of Centre Line and Finished Road Levels (FRL). Once the Centre Line and the FRLs are finalized and approved by the Engineer for a certain part of the road, the Contractor shall carry out the construction activity after doing an OGL survey with the help of Auto Level. The applicable cross section of the road and the details of structures shall be supplied to the Contractor in the form of "Good for construction Drawings", however, if the contractor has any suggestion on that, he may send the same to the Engineer with proper reasoning. The decision of the Engineer as regard to finality of "Good for Construction Drawing" shall be binding on the contractor. The Contractor shall also check the accuracy of all permanent and temporary bench marks available on the site. If any discrepancy is noted by the Contractor, the same shall be reported to the Engineer and shall be corrected in consultation with the Engineer. The cost of all survey work including construction of bench marks, etc. shall be deemed to have been included in the rates/ prices of various items quoted by the Contractor in the Bill of Quantities.

The detailed designs of major/medium bridges shall be done by the contractor or shall be got proof checked from competent consultants/ institutions (in case they are supplied by the Engineer). The Contractor shall also carry out all Investigations for the purpose of Cross Checking the adequacy of founding levels for different structures. The cost of all such investigations shall be deemed to have been included in the respective rates/ prices quoted by the Contractor in the Bill of Quantities. Design of the bridges done by the contractor shall be required to be approved by the Engineer prior to the execution.

On completion of the Works, the Contractor shall arrange to furnish to the Employer two (2) bound sets and two sets in soft copies (CDs) of all "As built" drawings for every component of the Works at his own cost, all such copies being on Polyester film of quality to be approved by the Engineer or his Representative. The Taking Over Certificate of the Works, as per the provisions of Clause 10 herein,

shall not be issued by the Engineer in the event of the Contractor's failure to furnish the aforesaid "As built" drawings for the entire Works.

The Contractor shall deputize at least his Project Manager or Senior Site Representative to attend all the periodic review meetings notified by the Engineer."

#### **Sub Clause 4.4: Subcontractors**

Replace the words "the whole" in the first line by the words "more than 50%"

#### **Sub-Clause 4.12: Unforeseeable Physical Conditions**

Add the following para at the end

"In addition to notice of any unforeseeable physical conditions, the Contractor shall provide the Engineer with a written notice of any unanticipated environmental or resettlement risks or impacts that arise during construction, implementation or operation of the Plant or Permanent Works, which were not considered in the environmental management plan as provided in Section 6".

#### **Sub-Clause 4.13: Rights of Way and Facilities**

Add the following para at the end

"The Contractor shall comply with (i) the measures and requirements relevant to the Contractor which are set forth in the Resettlement Plan ("RP") attached hereto as Appendix-A, to the extent it concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor implementation of the resettlement plan.

The Contractor shall allocate a budget for compliance with these measures, requirements and actions."

#### **Sub-Clause 4.16: Transport of Goods**

Add the following para at the end as para (d)

"The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to the start of transporting materials, goods and equipment, and construction."

#### **Sub-Clause 4.18: Protection of the Environment**

Add the following para at the end of the sub-clause in 4.18:

"The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations.

The Contractor shall also comply with all reasonable requests of the national and local authorities responsible for enforcing environmental controls.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Environmental Management Plan (SSEMP) for the Engineer's no objection showing how he/she intends to comply with environmental laws and regulations and other specific requirements prescribed in the Contract, addressing all the monitoring and mitigation measures set forth in the Environmental Impact Assessment ("EIA") and the Environmental Management Plan ("EMP") of the project attached in Section 6- Employer's Requirements. Work shall not commence on the Site until the no objection of



SSEMP has been obtained from the Engineer and is being implemented. Such acceptance by the Engineer shall not relieve the Contractor of any of his obligations or responsibilities under the Contract.

The Contractor shall (a) establish an operational system for managing environmental impacts, (b) comply with the approved SSEMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSEMP, (c) allocate the budget required to ensure that such measures, requirements and actions are carried out, (d) submit semi-annual reports on the compliance of such measures to the Employer.

*Where unanticipated environmental risks or impacts become apparent during the Contract, the Contractor is required to update the SSEMP to outline the potential impacts to site works and associated mitigation measures for the Engineer's approval."*

#### **Sub-Clause 4.20: Employer's Equipment and Free-issue Materials.**

This sub-Clause is replaced as below: "No Equipment or material shall be issued to the Contractor by the Employer for the execution of works."

#### **Sub-Clause 4.21: Progress Reports.**

Add the following at the end of the sub-paragraph as

- (i) Monitoring of the obligations in Sub-Clauses 4.18, 6.1, 6.4, 6.7, 6.20 and 6.21

#### **Sub-Clause 6.1: Engagement of Staff and Labour**

Add the following para at the end of Sub-Clause 6.1:

"The Contractor and his Subcontractors 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, including without limiting the foregoing, the laws and regulations set forth in Annexure A and A-1.

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

The Contractor shall be responsible for observance by his Subcontractors of the provisions of the sub-clause 6.4.

#### **Sub Clause 6.7 Health and Safety**

Add the following para after First para:

The Contractor is responsible for establishment of preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks of the construction site work to the health and safety of local communities.

Within 28 days of the Commencement Date the Contractor shall submit a detailed Site Specific Health and Safety Management Plan (SSHSMP) for the Engineer's no objection showing how he/she intends to comply with the local Health and Safety laws and regulations and other specific requirements prescribed in the Contract, taking into account the Supplementary Information in Section 6- Employer's Requirements. Work shall not commence on the Site until the confirmation of no objection of the SSHSMP has been obtained from the Engineer and is being implemented. Such confirmation of no

**objection by the Engineer shall not relive the Contractor of any of his/her obligations or responsibilities under the Contract.**

**Where unanticipated health and safety hazards or risks become apparent during the Contract, the Contractor is required to update the SSHSMP to outline the potential impacts to site works and associated mitigation measures for the Engineer's no objection.**

**The Contractor shall comply with the approved SSHSMP and any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time to monitor the implementation of the project EMP through the SSHSMP.**

**In particular, the Contractor is required to provide all personnel on site including Employer's Personnel and visitors with personal protective equipment, including protection for feet (safety boots), head, eyes, ears (safety helmets) and hands, etc. , in accordance with the Contractor's SSHSMP. The Contractor should ensure that his Subcontractors comply with the SSHSMP and provide all such necessary equipment to their personnel.**

**The Contractor shall bear the costs to ensure that such measures, requirements and actions are carried out.**

**The Contractor shall submit semi-annual reports on the compliance of such measures to the Employer."**

**Add after the third paragraph the following:**

**"In the event of a significant injury involving medical treatment or hospitalization and fatal accident the Contractor shall notify the Engineer immediately by verbal communication and submit a formal report as soon as practicable after its occurrence. For all accidents, whether fatal or not, the Contractor shall also notify the appropriate local authorities in accordance with the Laws of the Country.**

#### **Sub-Clause 6.21: Child labour**

**Add the following para at the end**

**"'Child' means a child below the statutory minimum age of 14 years under applicable national, provincial or law of India."**

#### **Sub-Clause 8.1: Commencement of Works**

**Sub-Clause 8.1(d): *Delete subparagraph (d) of GCC 8.1 and replace with:***

receipt by the Contractor of the first instalment of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor. If however the Contractor does not submit the advance payment guarantee for the first instalment in accordance with Sub-Clause 14.2 [Advance Payment] within 28 days after receiving the Letter of Acceptance, the conditions precedent for the Commencement of Works as provided in this sub-paragraph (d) is deemed to have been fulfilled.

#### **Sub-Clause 8.2: Time for Completion**

**Add the following para at the end of Sub-Clause 8.2**

**The Contractor shall also meet the Progress Target fixed under Sub-sections defined in the Contract data.**

**Sub-Clause 8.3: Programme**

*Add the following new paragraph at the end of Sub-Clause 8.3:*

"The Contractor shall, at least 14 days in advance of his programmed commencement of each item of work, furnish for the Engineer's consent, the methodology he intends to adopt for executing the item, providing full details of the method of working, equipment to be deployed, process to be controlled and measures to be adopted for ensuring quality of construction and safety."

**Sub-Clause 11.2: Cost of Remedying Defects**

Add the following para at the end

"Upon the completion of construction, the Contractor shall fully reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition as recorded by the Contractor in consonance with its obligation in Clause 4.16."

**Sub-Clause 12.3: Evaluation**

Replace sub-para a (ii) as follows:

"(a) (ii) the quantity of the item provided for in the Bill of Quantities accounts for more than 2 % of the Accepted Contract Amount."

**Sub-Clause 13.8: Adjustment for changes in Cost**

Delete Sub-Clause 13.8 in its entirety and substitute the following:

**Sub Clause 13.8.1: Price Adjustment**

The amounts payable to the Contractor and valued at base rates and prices pursuant to Sub Clause 14.3 hereof shall be adjusted in respect of the rise or fall in the indexed costs for labour, Contractors Equipment and Plant, materials and other inputs to the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in this Clause.

**Sub Clause 13.8.2: Other Changes in Cost**

To the extent that full compensation for any rise or fall in the costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

**Sub-Clause 13.8.3: Adjustment For Change in Cost****A) Variation of Price Local Labour**

The Contract Price will be subjected to adjustment on account of variations in the cost of labour. The adjustment will be made according to the formula given below:

$$V_1 = \frac{0.85}{C_0} \times RI \times (C - C_0) \times L$$

Where, V1= Variation in price on account of local labour during the period under consideration.

C<sub>0</sub>= Base Cost Index related to the General Consumer Price Index for *industrial workers for the [Munger, Jamalpur) in the State of Bihar]*, published by Labour Bureau, Ministry

of Labour, Government of India, (hereinafter called "CPI") at the time specified in para (F) hereinafter.

C= Current Cost Index related to the General Consumer Price Index for industrial workers for the the[Munger, Jamalpur) in the State of Bihar], released by the above mentioned agency at the time specified in para (F) hereinafter.

L= A factor of 0.2 (zero point two) representing component of all local labour costs in the Contract Price including overheads, benefits, amenities etc.

RI= Value of the work done during the period under consideration and payable in non convertible Indian Rupee Currency at the base rates and prices as applicable under the Contract.

#### B) Variation of Price General Materials

The Contract Price will be subjected to adjustment on account of general variation of prices of all materials other than specifically provided in Sub Clause 13.10 hereinafter. The adjustment will be made according to the formula given below:

$$V2 = \frac{0.85 \text{ RI} \times (I - I_0) \times G}{I_0}$$

Where, V2= Variation in price on account of general variation of prices of all materials other than specifically provided in Sub Clause 13.10 hereinafter.

I<sub>0</sub>= Base Cost Index corresponding to the Wholesale Price in India (for all commodities) (Base latest available) released by the Economic Adviser, Ministry of Industry, Government of India, at the time specified in para (F) hereinafter.

I= Current Cost Index corresponding to the Wholesale Price in India (for all commodities) for the period under consideration (Base latest available) released by the same agency at the time specified in para (F) hereinafter.

G= Factor 0.36 (zero point three six) representing component of all materials other than specifically provided elsewhere in the Contract Price.

RI= Value of the Work done during the period under consideration and payable in non convertible Indian Rupee Currency, at the base rates and prices as applicable under the Contract.

#### C) Variation of Price POL

The Contract Price will be subjected to adjustment on account of variation of prices of POL (Petroleum, Oil and Lubricants). The adjustment will be made according to the formula given below:

$$V3 = \frac{0.85 \text{ RI} \times (P - P_0) \times Q}{P_0}$$

Where, V3= Variation in price on account of POL during the period under consideration.

P<sub>0</sub>= Base Price of HSD (High Speed Diesel) is ex-refinery price excluding all taxes from the nearest refinery of the Works site, at the time specified in para (F) hereinafter.

P= Current Price of HSD is ex-refinery price excluding all taxes from the nearest refinery of the Works site, at the time specified in para (F) hereinafter.

Q= Factor of 0.07 (zero point zero seven) representing the component of POL in the Contract Price.

RI= Value of the Work done during the period under consideration and payable in non convertible Indian Rupee Currency, at the base rates and prices as applicable under the Contract.

**D) Price Adjustment for Plant and Equipment:**

Price adjustment for increase or decrease in the cost of constructional plant shall be paid in accordance with the following formula:

$$V4 = \frac{0.85 \text{ RI} \times (M - M_0) \times E}{M_0}$$

Where, V4= Increase or decrease in the cost of work price of usage or due to changes in rates of constructional plant, during the quarter under consideration.

M<sub>0</sub>= Base Cost Index for *Manufacture of machinery for mining, quarrying and construction* in wholesale price in India (Base latest available) released by the Economic Adviser, Ministry of Industry, Government of India, at the time specified in para (F) hereinafter.

M= Current Cost Index numbers of wholesale prices in India for *Manufacture of machinery for mining, quarrying and construction* in wholesale price in India (Base latest available) released by the Economic Adviser, Ministry of Industry, Government of India, at the time specified in para (F) hereinafter.

RI= Value of Work done during the period under consideration and payable in non convertible India Rupee Currency at the base rates and price as applicable under the Contract.

E= Factor of 0.05 (zero point zero five) representing the aspect of equipment usage in the contract price.

**E) Variation of Price - Foreign Inputs, NIL**

**F) Base, Current and Provisional Indices**

The base cost indices or prices shall be those ruling on the date 28 days prior to the closing date for the submission of bids. Current indices or prices shall be those ruling on the date 28 (twenty-eight) days prior to the last day of the period to which a particular Interim Payment Certificate is related. If, at any time the current officially published or relevant proxy indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

**G) Price Adjustment**

The Price Adjustment shall be evaluated for the relevant date of each Interim Payment Certificate submitted by the Contractor pursuant to Sub Clause 14.3 using the weighting prescribed in this Sub Clause and the related current and base cost indices, subject to any changes or corrections made in accordance with para (F) of this Sub Clause.

**H) The Adjustable Amount**

The adjustable amount of each Interim Payment Certificate shall be the difference between (i) the amount which, in the opinion of the Engineer, shall be due to the Contractor pursuant to

**Sub Clause 14.3 (before deducting retentions) including the amount at base rates and prices of the scheduled work carried out and Day works (unless otherwise adjusted) but excluding the value of materials on site, and (ii) the amounts calculated in (i) above and included in the last preceding Interim Payment Certificate issued by the Engineer. The adjustable amount shall exclude payments to nominated sub contractors and any other amounts based upon actual cost or current prices.**

**I) The Adjusted Amount**

The adjusted amount of each Payment Certificate shall be determined by applying the Price Adjustment to the adjustable amount, and shall become payable to the Contractor in accordance with the provisions of Clause 14 subject to any deductions there from for retention money, liquidated damages and any other monies due to the Employer from the Contractor including the recovery of mobilization advances, if any.

**J) Adjustment after Completion**

If the Contractor shall fail to complete the Works within the time for completion under Sub Clause 8.2, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of time is granted pursuant to Clause 8.4 the above provision shall apply only to adjustments made after the expiry of such extension of time.

**K) Price Adjustment for Bitumen Component**

Price adjustment for increase or decrease in the cost of bitumen shall be paid in accordance with the following formula:

$$V5 = \frac{0.85 \text{ RI x (B - B}_0\text{) x C}}{B_0}$$

Where, V5= Increase or decrease in the cost of work during the month under consideration due to changes in rates for bitumen.

B<sub>0</sub>= Base cost indices is ex-refinery price excluding all taxes for bitumen at the nearest refinery, prevailing on the relevant date applicable for adjustment to the Contract Price, as specified in para (F) hereinabove.

B= Current indices is ex. refinery price excluding all taxes at the nearest refinery, prevailing on the relevant date applicable for adjustment to the Contract Price, as specified in para (F) hereinabove.

RI= Value of Work done during the period under consideration and payable in nonconvertible India Rupee Currency at the base rates and price as applicable under the Contract.

C= Factor of 0.16 (zero point one six) representing the aspect of bitumen usage in the contract price.

**L) Price Adjustment for Steel Component**

Price adjustment for increase or decrease in the cost of Steel shall be paid in accordance with the following formula:

$$V6 = \frac{0.85 \text{ RI x (S - S}_0\text{) x C}}{S_0}$$

Where, V6= Increase or decrease in the cost of work during the month under consideration due to changes in rates for steel.

S<sub>0</sub>= Base cost index for *MS Bright Bars* correspond to wholesale price in India (Base latest available) released by Ministry of Industrial Development, Govt. of India at the time specified in para (F) hereinabove

S= Current cost index for *MS Bright Bars* correspond to wholesale price in India (Base latest available) released by Ministry of Industrial Development, Govt. of India at the time specified in para (F) hereinabove

RI= Value of Work done during the period under consideration and payable in nonconvertible India Rupee Currency at the base rates and price as applicable under the Contract.

C= Factor of 0.09 (zero point zero nine) representing the aspect of steel usage in the contract price.

#### M) Price Adjustment of Cement Component

Price adjustment for increase or decrease in the cost of Cement shall be paid in accordance with the following formula:

$$V7 = \frac{0.85 \text{ RI} \times (C - C_0) \times Q}{C_0}$$

Where, V7= Increase or decrease in the cost of work during the month under consideration due to changes in rates for Cement.

C<sub>0</sub>= Base cost index for *Ordinary Portland Cement* correspond to wholesale price in India (Base latest available) released by Ministry of Industrial Development, Govt. of India at the time specified in para (F) hereinabove

C= Current cost index for *Ordinary Portland Cement* correspond to wholesale price in India (Base latest available) released by Ministry of Industrial Development, Govt. of India at the time specified in para (F) hereinabove

RI= Value of Work done during the period under consideration and payable in nonconvertible India Rupee Currency at the base rates and price as applicable under the Contract.

Q= Factor of 0.07 (zero point zero seven) representing the aspect of cement usage in the contract price.

Add the following new Sub-Clauses 13.9, 13.10, 13.11 and 13.12 after Sub-Clause 13.8

#### Sub-Clause 13.9: Sources of Indices

The sources of those indices not stated in Sub-Clause 13.8 shall be as listed in the Contract Data, as approved by the Engineer.

#### Sub Clause 13.12: Exemption from Price Adjustment

The following items shall not be included in the price adjustment calculation:

- (a) Liquidated damages;

- (b) Retention withheld and released;
- (c) Advance payments in the form of loans and their repayments;

#### **Sub-Clause 14.3 (c): Application for Interim Payment Certificates**

**Add the following text in the last**

"Once the limit of retention money is reached, the retention money so deducted from the IPC can be replaced by a Bank Guarantee of an equivalent amount valid for the required period. In case of taking over certificate is issued then it shall be dealt as per clause 14.9 of GCC.

#### **Sub-Clause 15.4: Payment after Termination**

The words in the first sentence "After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:" may read as "After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Performance Security of the Contractor shall be forfeited and the Employer may:"

#### **Sub Clause 20.2 Appointment of the Dispute Board**

The following text in para one is substituted by

*Disputes shall be referred to a DB (Constituted for this purpose by following the Standard stipulated rules including conflict of interest) for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.*

**Add the following new Clauses 21, 22 and 23:**

#### **Clause 21: Taxation**

##### **Sub-Clause 21.1: Foreign Taxation**

The prices bid by the Contractor shall include all taxes, duties and other charges imposed outside the Employer's country on the production, manufacture, sale and transport of the contractor's equipment, plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

##### **Sub-Clause 21.2: Local Taxation**

The Price bid by the Contractor shall be exclusive of Goods & Services Tax (GST) but including all other taxes if any that may be levied in accordance to the laws and regulations in being as of the date 28 days prior to the closing date for submission of bids in India on the Contractor's equipment, plant, materials and supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. No excise duties exemption shall be payable. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract.

##### **Sub-Clause 21.3: Advance Deduction of Taxes**

Advance deduction of taxes shall be made from each Interim Payment Certificate in accordance with the relevant provisions of all prevailing Acts and Regulations.

##### **Sub-Clause 22: Maintenance of Right of Way**

Throughout the period of the Contract, the Contractor shall at all times maintain public vehicular access along the right-of-way and from the right-of-way to all public and private access and land, as exists immediately prior to his commencement of the works, on the entire stretch of the Project Road. Maintenance shall be all weather proofed quality.