



**GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS**

*Name of Work: - Renovation and Refurbishment of
Receptorium at AFS Palam*

Tender Document

PERIOD OF COMPLETION: 4 Months

Government of India
Ministry of External Affairs
(Global Estate Management Division)
New Delhi

Tender Contents

A. Technical Bid Documents:

Document -I	: Invitation to Tender
Document - II	: Instruction to Bidders
Document - III	: Eligibility Documents and Standard formats for Bid Security/ Guarantee etc.
Document - IV	: Conditions of Contract
Document - V	: Special Conditions of Contract
Document –VI	: Design Presentation, Architectural & Interior Drawings, MEP SLD's, detailed un-priced BOQ and Technical specifications.

(To be submitted by the bidders)

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

B. Financial Bid Documents:

Document -VII	: Financial bid letter (Lump sum fixed price to be quoted in the Form of Tender & submitted in a separate sealed envelop by Bidders).
Document –VIII	: Priced Schedule of Items (BOQ) shall be submitted by the Bidders. BOQ shall be prepared by the Bidders for all items including but not limited to Civil, Interiors, MEP, AV systems, Automation, furniture and all fixtures etc. The Bidders shall prepare the BOQ themselves based on client's requirements as mentioned in this tender, their own design proposal & complete scope of work including furniture & furnishings carpets, wherever necessary. Bidders are advised to address all probabilities in their financial bids including preparing their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals.

A. Technical Bid Documents

DOCUMENT-I

Invitation to Tender

**Government of India
Ministry of External Affairs
(Global Estate Management Division)**

INVITATION TO TENDER

1. Under Secretary (GEM-III), Global Estate Management Division (GEM Division) Ministry of External Affairs, New Delhi, for and on behalf of President of India, invites Lump Sum tender for Renovation and Refurbishment of Receptorium at AFS Palam, Delhi on Turnkey (Design & Build basis):

Name of work	Approx. Built-up area	Period of Completion
Renovation and Refurbishment of Receptorium at AFS Palam	750 Sq. Mts.	4 months

2. The Applicant who fulfill the following requirements shall be eligible to apply.

Eligibility Requirements are:

- a)** In house capabilities to design and execute the project on Design & Build basis.
- b)** Should have licensed designing software.
- c)** A Team of Architect / Interior Designer & Construction Manager to execute the project.
- d)** Having executed Interior works of of Ceremonial lounges, Airport lounges or similar facilities/ Exclusive interiors of high quality of finishes & furnishings, minimum value being Rs. 5 Crores (finishes, furniture & furnishings, all inclusive). Copy of work-order / Certificate from the Client need to be submitted along with the bid documents
- e)** All the other Criteria mentioned in Document III.

3. A Pre-bid meeting and Site visit shall be arranged for the bidders before submission of their final bids so that all design & execution factors are properly addressed in the bids. On submission of the bid, the Committee will examine the bids technically on the basis of past works done by the bidders in order to ensure technical capability and quality of delivery by the bidders and shortlist bidders who will be invited for presentation before the Committee. At this stage the design proposals of the shortlisted bidders shall be evaluated and marks will be assigned on their design proposal, specifications of the finishes,

furniture and furnishings & other execution components of the project. The shortlisting and design evaluations shall be done as per the following criteria;

- **Interior design proposal along with detailed specifications and unpriced BOQ with all items (*) and PERT for execution.** **50 marks**
- **Quality of work executed (inspection of works at sites by the Committee)**
(Specifically lobbies/lounges/ exclusive interior mentioned in the eligibility criteria) **50 marks**
- Designing **20 marks**
- Finishes & Finishing quality **10 marks**
- Civil work **10 marks**
- Mechanical Electrical Plumbing (MEP) **10 marks**

Total **100 marks**

(*Interior Design Proposal: This shall include Interior Design of the Receptatorium including all the lounges duly explained through 3D visuals with drawings, presentation boards of major materials to be used. Unpriced **detailed BOQ** of all items including but not limited to Civil, Interiors, MEP, AV Systems, Automation, Furniture, Fixtures and art work etc. shall have to be submitted as part of Technical Bid so that the design proposal can be objectively assessed and marks given accordingly. The Bidders shall prepare BOQ themselves based on their own design proposal based on the client's requirements as mentioned in this tender & complete scope of work including furniture & furnishings carpets wherever necessary. Bidders are advised to address all probabilities in their financial bids including preparing their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals. The Priced BOQ shall be submitted in the Financial Bid.)

It shall be mandatory that bidders should have executed works of highest quality such as ceremonial lounges/ lobbies, Airport lounges or similar facilities / Exclusive interiors of high quality of finishes & furnishings etc., and should obtain a minimum of 75 marks on technical parameters, over and above the eligibility Criteria, for being eligible for opening of their financial bids. The bidders shall have to submit certificate of works from the work being shown and/or the work order copy. The L1 (in Financial bids) from the bidders who qualify the 75% qualifying bench marks shall be the successful bidder and be awarded the work.

Supporting Documents to be submitted:

- i. Contractor should have experience of having satisfactorily completed three similar works, each costing not less than Rs. 3.2 Crore or two works each costing not less than Rs. 4.8 Crore or one work costing not less than Rs. 6.5 Crore during the last 3 years up to the last date of submission of tenders.
- ii. Should have average annual financial turnover of not less than Rs. 8.0 Crore (excluding IGST) on construction works during the immediate last three consecutive financial years.
- iii. Bidding company should not have incurred any loss in more than two years including last year during the last five financial years.
- iv. Should have a bank solvency (Credit Facility) of Rs. 8 Crore, certified by the Banker not older than 6 months.

4. Tender Security/Bid Security /Earnest Money Deposit: The Applicant must submit with his bid, the Tender Security/Bid Security / Earnest Money Deposit (EMD)/Tender Bond in the sum of **Rs. 16 Lakhs**. Tender Security/Bid Security/ EMD/Tender Bond shall be acceptable by bank transfer/bank draft/pay order in favor of ***Pay & Accounts Officer, Ministry of External Affairs New Delhi*** or Bank Guarantee (as per **enclosed proforma** in Tender Document). The other terms and conditions related with the EMD/Tender Bond shall remain same as mentioned in the tender document. The tender security /EMD / Tender Bond shall remain valid for a period of One Hundred Eighty (180) days from last date of submission of tender.
5. Bid documents supported with prescribed annexures should be submitted in sealed envelope, duly super scribed with the name of work and the date of opening. The bids will be received up to **3.00 PM 28 August, 2018** and will be opened on the **same day at 3.30 PM**.
6. The date and time of opening of financial bid(s) will be decided after technical bid(s) have been evaluated by the Ministry and the results of which shall be displayed on <http://eprocure.gov.in/e-publishing>. Financial bid(s) of only those bidders(s) will be opened who qualify the technical evaluation on the specified date and time. The date, time & place of opening of the financial bid(s) will be intimated in due course of time. The result of Financial Bid shall also be displayed on the same Web Site.
7. If any information furnished by the applicant is found incorrect at a later stage, he/she shall be liable to be debarred from the tendering process. Ministry of External Affairs reserves its right to verify the particulars furnished by the applicant independently.
8. Ministry of External Affairs reserves the right to reject any prospective applicant without assigning any reason and to restrict the list of pre-qualified contractors to any number deemed suitable by it.
9. The Tender Notice is also published on Central Procurement Portal (CPP)of Govt. of India, the web site of Ministry of External Affairs www.mea.gov.in and <http://eprocure.gov.in/e-publishing>.

Under Secretary (GEM-III)
GEM Division,
MEA, New Delhi
usgem3@mea.gov.in

DOCUMENT-II

Instructions to Bidders

**Government of India
Ministry of External Affairs
(Global Estate Management Division)**

INSTRUCTION TO BIDDERS

Renovation and Refurbishment of Receptatorium at AFS Palam

1. The Tender Documents comprise:

A. Technical Bid Documents:

Document –I	: Invitation to Tender
Document - II	: Instruction to Bidders
Document - III	: Eligibility Documents and Standard formats for Bid Security/ Guarantee etc.
Document - IV	: Conditions of Contract
Document - V	: Special Conditions of Contract
Document –VI	: Design Presentation, Architectural & Interior Drawings, MEP SLD's, detailed unpriced BOQ and Technical specification. (To be submitted by the bidders) Documents about the bidders, resources, company brochures, construction methodology, experience, management techniques, and any other information about bidder – These documents can be supplied and attached by the Bidders.

B. Financial Bid Documents:

Document -VII	: Financial bid letter (Lump sum fixed price to be quoted on this form by Bidder).
Document –VIII	: Priced Schedule of Items (BOQ) shall be prepared & submitted by the Bidders in their Priced bid in a sealed envelop. Priced BOQ submitted in the technical bids shall amount to disqualification of their bids.

BOQ shall be prepared by the Bidders for all items including but not limited to Civil, Interiors, MEP, AV systems, Automation, furniture and all fixtures etc. The Bidders shall prepare the BOQ themselves based on client's requirements as mentioned in this tender, their own design proposal & complete scope of work including furniture & furnishings carpets, wherever necessary. Bidders are advised to address all probabilities in their financial bids including preparing their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals.

2. The Ministry will not be responsible to compensate for any expense or losses which may be incurred by the Applicant in the preparation and submittal of his Tender.
3. This is a LUMP SUM FIXED PRICE TENDER with Extent of work as calculated by the Bidders as per their drawings, and as submitted by them while quoting their Lump Sum Fixed Price. Their drawings must be based on the descriptions, broad specifications and scope of work provided in this document. The Bidder shall examine the Tender Documents and all Agenda (if any) before submitting his Bid and shall become fully, informed as to the extent, quality, type and character of operations involved in the Works and shall visit and acquaint himself with the Site of the Works. No consideration or compensation will be given for any alleged misunderstanding of the articles to be furnished.

Bidders are required to quote Lumpsum prices on "**Form of Tender**". Bidders shall satisfy themselves about the quantities in the **Schedule of Quantity (BOQ)** calculated by themselves based on scope of work defined in the tender, their site visit and making their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals.

4. These quantities shall not form part of the agreement however the unit rates quoted shall be used for variation purpose.
5. Under clause no. 4.4 of General Conditions of Contract, Sub-Contracting shall only be allowed for specialized works of MEP, IT, Audio Visual/Media etc. No part of interiors and civil works are allowed to be sub-contracted.
6. All Tender documents must be returned properly filled in and completed in all respects in accordance with the conditions and Provisions of the Tender Documents. No alteration shall be made by Bidders to the Tender Document unless otherwise permitted.
7. The Lumpsum Fixed Price/amount and rates for variations must be quoted both in figures and words and the currency must be in **INR** only. In case of any discrepancy between figures or words, the amount or rates quoted in words shall be taken to be correct for this tender.
8. The Lumpsum Fixed Price/amount shall be submitted in the "**Form of Tender**", with suitable entries, including appropriate signatures, made in all blank spaces. The form shall not be altered. The Bidders shall strictly comply with all the conditions stated in the

Tender Documents. The **Form of Tender** must be signed by a person or persons authorized to sign the Tender and shall be dated. Evidence of signature authority, such as a Power of Attorney, shall be provided with the Tender. The unit rates quoted in **Schedule of Quantity** of the tender document shall be used towards variation as per the tender conditions.

9. **Decision on bid will be taken based on the final price quoted on the Form of Tender.**
Lumpsum Fixed Price/Amount as quoted in the “**Form of Tender**” shall be the basis for deciding the tender quote and the L1 bidder.
10. Any mismatch in the final quoted price on **Form of Tender** and Total amount worked out on rates in **Schedule of Quantity**, the final price quoted on **Form of Tender** shall be considered for comparison of bids and decision on bid.
If amount quoted on Form of tender is more than amount worked out on schedule of quantity, the rates on Schedule of Quantity shall not be altered/adjusted. If amount quoted on Form of Tender is less than amount worked out on Schedule of quantity, the Rates on schedule of quantity shall be adjusted in the ratio to match with quoted final price on the Form of Tender.
11. The Bidders must submit with his Bid a Tender Security (Bid Security) of **Rs. 16 Lakh** to Ministry in the form of a demand draft drawn on any acceptable Bank or a Bank guarantee in favor of **Pay & Accounts Officer, Ministry of External Affairs New Delhi**. This Tender Security (Bid Security) must be valid for **90 Days** and shall be as per the **proforma annexed** with tender documents. The Bid Security of unsuccessful bidders will be returned after the award of work while Bid Security of successful bidder can be adjusted against retention money at discretion of Employer.
12. Forfeiture of bid security and Contract Security: (a) If any bidder withdraws his tender before the expiry of the validity period, or before the issue of letter of acceptance, whichever is earlier, or makes any modification in the terms and conditions of the tender which are not acceptable to the employer, then the Employer shall, without prejudice to any other right or remedy, be at liberty to forfeit the entire earnest money absolutely. (b) If Lowest Bidder fails to furnish the prescribed Performance Guarantee within the prescribed period, or sign the agreement in time or doesn't respond to request for clarification of its purpose or fails to provide required information during evaluation process or is found to be non-responsive, the bid Security is absolutely forfeited automatically without any notice. (c) In case the contractor fails to commence the work on commencement date as specified in the tender documents or such time period as mentioned in letter of award or from the date of handing over to the site, whichever is later, the Employer shall without prejudice to any right or remedy, be at liberty to forfeit whole of the bid security and Performance Guarantee.
13. The Bid shall be submitted in sealed envelopes as described below:-
Envelope “A” Tender Security (Bid Security)
Envelope “B” Technical Bid Documents (Document (I) to (V)
Envelope “C” Financial Bid Document (Document (VI) to (VII)

And addenda or other enclosures as required in the tender.

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

14. In case the tender is not decided during validity period of tender i.e. within **90** days from date of opening of tender. The employer may request to extend the validity of tender and Bid Security for a further specified period beyond **90** days. Bidder(s) shall be at liberty to extend the validity of tender and Bid Security for the specified period or withdraw from tender. Once the validity is extended in writing by bidder(s), they will not be permitted to withdraw from tender. If bidder(s) withdraws his offer after such extension, the employer shall be at liberty to forfeit the Bid Security absolutely.
15. The Performance Guarantee of **five percent (5%)** of the **Accepted Contract Amount** in the form of Bank Guarantee from a scheduled bank shall be submitted within 7 days of the Work Order and shall be valid for 60 days beyond the date of completion of all the contractual obligations of the contractor under the contract and discharged after completion of work. The Performance Guarantee shall remain valid for a period to cover the execution of the works as a Guarantee to secure the proper carrying out, the handing over and recovery of compensation of such other sums that may become due to the Employer from the contractor under the terms of the contract and shall not have been paid by him on demand.
16. Without prejudice to anything contained in the foregoing paragraphs, the contractor shall always maintain the Performance Guarantee at the full amount until the completion of work in accordance with the terms and conditions of the contract. If the contractor fails to maintain the Performance Guarantee in the full amount, the employer may be registered letter sent to the contractor, terminate his employment under the contract without necessity for any legal or other formality or reference to judicial proceedings.
17. The acceptance of the Tender shall be conditional and not finally binding upon the Employer until the Performance Guarantee has been duly provided and the actual contract signed between the Employer and the contractor. Should the contractor fail to sign the contract within the stipulated time or to provide the Performance Guarantee within the period allowed or for any other reason withdraw his participation in the Tender, the Employer may withdraw his acceptance of the Tender without any notice or other formality and may enter into a new Agreement for the execution of the Works or any part of it and thereupon the amount of Bid security shall be confiscated by the Employer without any necessity for any legal or other formality or reference to judicial proceedings of proof of damage and without prejudice to the right of the Employer. No payment shall be released to the contractor unless the Agreement is signed.

18. Any further information or clarification which the Applicant may require in order to complete his Tender may be obtained from ***Under Secretary (GEM-III), GEM Division, MEA, New Delhi.*** All information requested by and supplied to one bidder will be supplied to all bidders.

19. Queries

A pre-bid meeting for all bidders will be held **at 3:00 PM on 8 August, 2018.** Bidder's queries should be submitted in writing to aodesign@mea.gov.in and should be-received **on or before 1:00 PM on 14 August, 2018.** No queries will be accepted or answered thereafter.

20. At any time prior to the date of opening of the proposals the Ministry may issue an addendum in writing to all applicants, deleting, varying or extending any item.

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

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

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

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

22. The attention of Bidders is drawn as to compliance with laws and regulations concerning safety and health, labor regulations, social insurance, labor taxes, tax deduction, import restrictions duties and levies, company's tax, GST etc. All rates and sum inserted against items of works shall be inclusive of GST and all other taxes.

23. In addition, Bidders must obtain all relevant information from the relevant Authorities concerning all details and costs in respect of temporary services, deviation of traffic, construction of temporary footpaths and pedestrian walkways, closing part of the road and pavement, temporary electrical, water, telephone connections, etc. and shall allow for same in their Bids. The bidders are advised that the work to be executed in a high security zone. All employees and labour of the bidder need to have valid identification documents. Entry of men and material in and out of the site is regulated and under strict security supervision.

24. The bidder/s have to work out the detail design for submission of Financial Bid/s. Bidders are requested to quote the rates on Lump sum Fixed Price. Bidder shall prepare a detailed Schedule of BOQ with full item descriptions and technical specifications. . As already clarified that the quantities in **Schedule of Quantity** shall not form part of the agreement and in no way have any bearing of the completion of the work as defined in the tender documents. It shall be the responsibility of the bidder to satisfy himself of the

completion of the documents for the scope and specifications, given to him and/or finalized at the time of awarding the Contract. Nothing extra shall be payable if any additional information or detail is provided later on for carrying out the works stated in the documents.

- 25.** Variations will not be entertained in this contract being a design and build / turnkey contract. The rates quoted in BOQ shall only be used for variations if there is any change in Employer's requirement and scope of Work as defined below and/or any item finish specified in the finalized Contract is required to be changed by the Employer. Other than this there shall not be any variation entertained whatsoever. Further all variations shall be deducted/added at the rates provided in the BOQ. However any item not covered in the BOQ shall be costed at CPWD DSR plus 17.5% of Overhead & Profit plus GST. In case their item is not covered in the DSR also market rate as assessed by the client plus 17.5% of overhead & profit plus GST will be given.
- 26.** Bidder shall have deemed to have read carefully all the Tender Documents, Scope of Work and Specifications etc. The quoted Lump sum Fixed price is inclusive and complete in all respect to make buildings functional as per the highest standards of work.
- 27.** **Price escalation in rates due to any reason such as increase in prices of material, equipment & labour, fuel (petrol, diesel, gas etc.), electricity & water, levy of new taxes, hike in any tax rate, Cess or due to delay in completion etc. shall not be applicable.**

28. Payment:

- a)** All the payment shall be released as progress payments on the basis of certificate signed by the Mission/authorized representative of the Employer. The detailed work schedule and the payment schedule would be furnished by the contractor to employer who will approve it before it forms the part of the agreement. All permissible deduction shall be affected during the Progress Payment.

Terms of Payment: The Contractor shall be entitled to be paid as per the following stages of work:

- (i) 20%:** Mobilization advance (Against Bank Guarantee of equivalent amount, initially valid till the completion; initially for 4 months).
- (ii) 20%:** Upon completion of structural & façade repairs and MEP 1st stage works i.e. whatever is required to be installed before interior finishes begin.
- (iii) 20%:** Upon completion of Interiors and exteriors except painting and polishing.
- (iv) 20%:** upon completion of all fittings, fixtures including that of MEP, supply of furniture and paint & polishing i.e. virtual completion.
- (v) 10%:** On installation and commissioning subject to issuance of completion certificate to this effect by the Engineer-in-Charge
- (vi) 10%:** upon completion of Defects Liability Period i.e. 365 days from the date of completion. However this can be released against a Bank Guarantee of equal sum.

29. Scope of Work & Specification

(i) Employer's requirements / Scope of Work

The works require a good design, specifications and highest standard of execution as this is a premier facility at Delhi Airport. The building is about 750 sq.mtrs. (refer indicative plan of existing space, below). The Internal spaces can be re-designed within the overall outer walls subject to structure being strengthened where required to create following areas.

- (1) VVIP Lounge with its Toilet fully furnished with media and Art Work.
- (2) Second Lounge to seat 20 persons furnished with media and Art Work.
- (3) Third Lounge to seat 35-40 persons furnished with media and Art Work.
- (4) Pantry with Provision to enable heating and serving food. It should have facility of heating in terms of microwave, grills and induction. There should be a dishwasher and a double door Refrigerator etc. too.
- (5) Foyer cum Reception from Drive-way side as well as from run-way side needs to be created. These foyers to be aesthetically designed. Foyers should further lead to respective Lounges, conferences and other facilities.
- (6) Male and Female Toilets as per standard. These need to be fully functional, with State of the Art with pressurized water, properly ventilated with hand dryers and shoe shiner.
- (7) Conference Room with an area of 20 persons on table and 10 additional seating and to be equipped with State of the art AV facilities and PA & IT infrastructure to display presentation on 55" inch full HD flat smart TVs.
- (8) Central music system with Bose speakers.
- (9) Access Control for the main Receptorium, VVIP Lounge, and Conference room.
- (10) Providing internal and external signages.

The building also requires Façade Restoration including Indian emblem on the main facade and Terrace Waterproofing & finishing.

Landscaping will cover 4 areas of sizes as below:

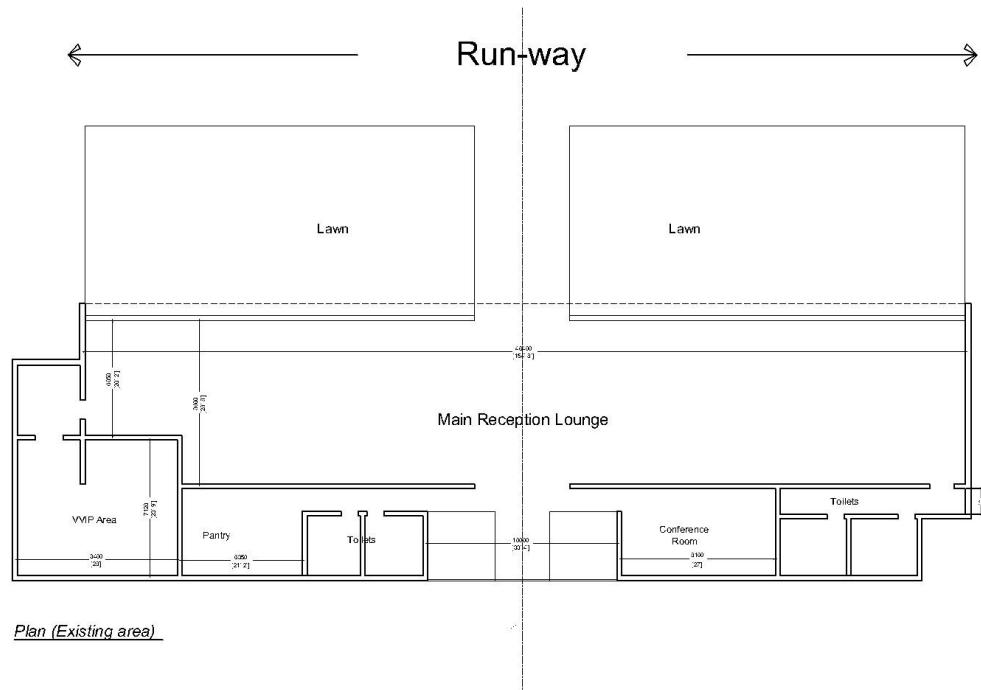
- 5.6 x 11.3 mtr.
- 18.8 x 9.6 mtr.
- 19.8 x 9.6 mtr.
- 5.6 x 11.3 mtr.

Landscaping shall also include relaying of lawns with good quality grass to proper slope, flower-beds and other plant materials, mechanical hoisting arrangement for the National Flags on an existing poles.

The scope of work shall include Dismantling of entire interiors & services, Façade Restoration, waterproofing, complete interiors with HVAC, Plumbing & sanitary fittings and fixtures, Electrical fittings & fixtures, False Ceiling, Complete Furniture furnishings & Audio-visual facilities in conference room. The Dismantled material shall be disposed out of site to any public dump yard except the Air-Conditioning equipment and all its components that shall be handed over to the Employer at Site.

Further the Scope shall include a Provisional Sum for Art Work at the Cost of Rs. 50 Lakh to the Employer. **The Bidders shall include the cost of transportation & installation of the Art work that may be selected by the Employer.**

The Bidders are expected to inspect the building, structure and make their own measured drawings before designing. **Below are the indicative line diagram and photographs of the building as it exists now.**





Exterior facade from Run-way side



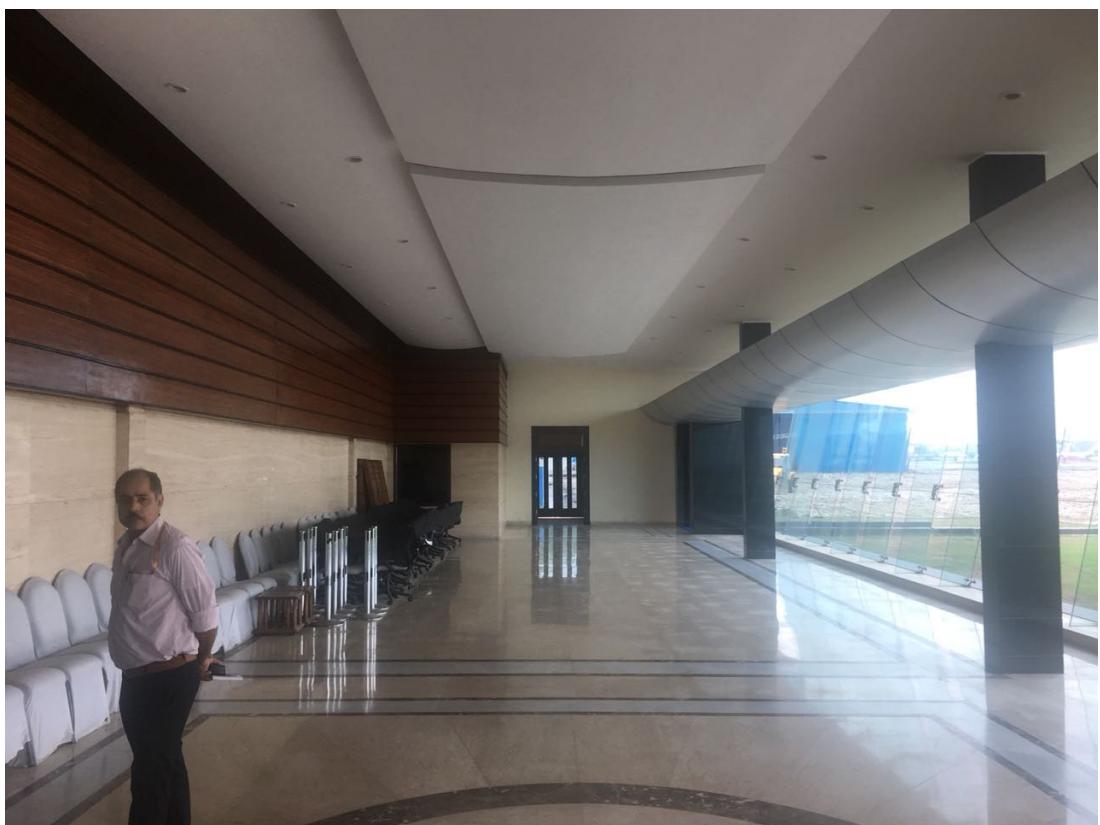
Exterior approach from Run-way side



Exterior approach from Drive-way side



Exterior glass from Run-way side



Main Lounge space



Main entrance from Drive-way side



Existing water fountain



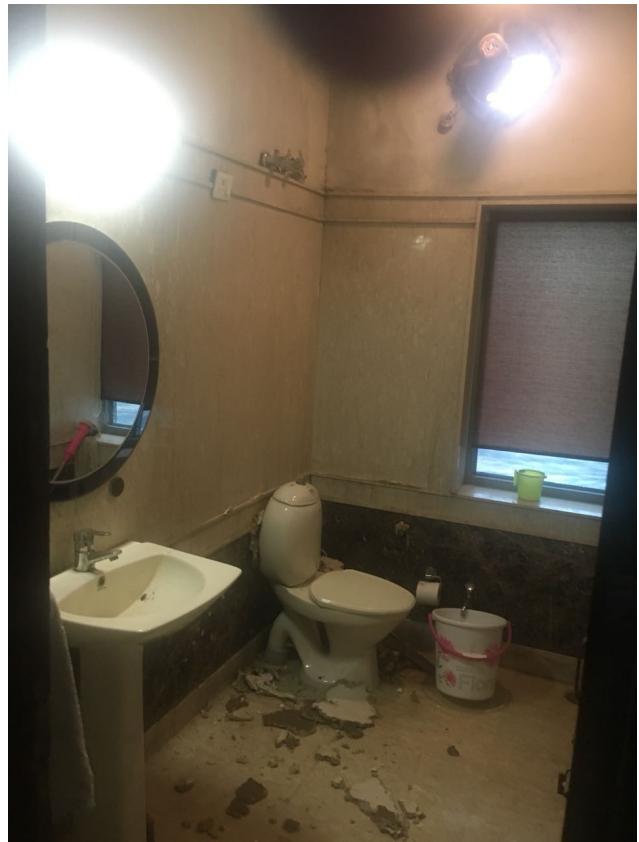
Existing Conference Room area



Existing VVIP Room



Pantry space



Existing toilets

(ii) Specifications of the Work

The following is the list of Specification, Brands and makes selected for major works:

S. No.	Description	Specifications	Remarks
1)	Flooring Conference, and V.V.I.P. Room	Wooden flooring of Boen, Lamett, Kahrs, Junker	
2)	Flooring in lounges and other area	1 st Class Satvario Marble along with other suitable Italian marble in design	
3)	Steps & Ramps	Granite (gang-saw cut size) in leather finish of approved samples (Shade & Texture) in lobby and single size on treads and risers of steps of staircase.	
4)	Wall Finishes	Wooden paneling, Stone and paint as per Design	
5)	Toilets walls & floors	Beige or Grey verified tiles of import quality, Italian Marble as per design	
6)	False Ceiling	Part POP and Part wood as per design	
7)	Doors & Windows	External – Aluminum in wood finish by Porta Fenesta; Internal – Burma Teak paneled doors	
8)	Door and Window fittings	Hettich, Hafele	
9)	Wall & Ceiling paints	Internal – Velvet Touch by IIC or Asian, Wood work- PU Polish External- ACP panels and glass facade matching existing design wherever necessary	
10)	Pantry	Ernstomeda, Bossi with Grills, Induction, microwave, dishwasher and refrigerator etc.	
11)	Toilet Fittings & fixture brand's to be used	Gessi, Laufen, Valdama, Kohler, Grohe	
12)	Light Fixtures	Flos, Regent, Xal	
13)	Electrical	Wires – Finolex, Polycab, Havelles; Conduit – BEC, AKG; DB – Legrand, L&T, ABB; Panels – Advance, Tricolite, Anbit; Switches- Schneider	
14)	HVAC	VRV system to maintain 22 degrees +/- 1; Makes- O'General, Mitsubishi, Daikin, Toshiba	
15)	Conference Audio Visual	55 inch full HD, flat smart TV, Bose speakers and associated equipment for presentations.	
16)	Automation	Lutron, Schneider	
17)	Sofas and tables	Minotti, Molteni & C, B & B Italia, Flexform, Roche Bobois in Chesterfield design	
18)	Office Furniture	Steelcase, Vitra, Hermann Miller	
19)	Blinds	Vista, Mac, & Hunter Douglas	

20	Art Work	As selected along with the Employer within a provisional sum of Rs. 50 lakh.	
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All other that are not mentioned above shall be specified by the Bidder as per his design for a fully functional Receptorium.

30. Commencement date of the works shall be effected after **seven (7) days** from the date of issuing the Acceptance letter or handing over the site, whichever is earlier. This 7 days period will be defined as the mobilization period.
31. The Period of Completion for the whole of the Works is 4 months calculated from the Commencement date.
32. The retention money will be **Five Percent (5%)** of the value of the executed works. Retention money release shall be regulated as per terms and condition of the contract.
33. The amount of Liquidated Damages payable by the Contractor to the Employer will be calculated **@ 0.5% of accepted tender cost per week** to be computed on per day basis. The total amount of liquidated damage shall be limited to 10% of accepted tender cost.
34. The Defects Liability period shall be **Three Hundred Sixty Five (365) days**.
35. The Employer will not be bound to accept the lowest or any tender or to give a reason for the rejection of any Tender.
36. The Applicant must submit with his offer a list of Sub Contractors and Specialist names whom he proposes to use on the Works in the Tender. The Employer however, will always have the right to accept or reject any pre-approved subcontractor even after formal award of Contract and/or commencement of work with or without cause.
37. The successful Bidders shall be responsible for co-coordinating his work with various Sub-contractors and other bid-pack Contractors employed on the Works and coordinating his work between various trades, obtaining all the necessary information from subcontractors for the purpose of the overall programming of his works; supplying all the normal attendance to all subcontractors and assuming the overall responsibility for the aforesaid.

DOCUMENT – III

Eligibility Documents and Bank Guarantee Formats

**Government of India
Ministry of External Affairs
(Global Estate Management Division)**

1. ELIGIBILITY DOCUMENTS AND STANDARD FORMATS FOR BID SECURITY/GUARANTEE ETC.

- (i) Letter of Transmittal.
- (ii) General Information
- (iii) Form 'A'
- (iv) Form 'B'
- (v) Form 'C'
- (vi) Form 'D'
- (vii) Form 'E'
- (viii) Form 'E –I'
- (ix) Form 'F'
- (x) Form 'G'
- (xiii) Form 'H'
- (xiv) Form 'I'
- (xv) Form 'J'

2. CRITERIA FOR ELIGIBILITY

The Applicant who fulfill the following requirement shall be eligible to apply.

Eligibility Requirements are:

- a) In house capabilities to design and execute the project on Design & Build basis.
- b) Should have licensed designing soft wares.
- c) Team of Architects, Interior Designers & Construction Managers.

- d) Having executed Interior works of Ceremonial Lounges, Airport lounges or similar facilities, minimum value being Rs. 5 Crores. A work order copy and a certificate from the Client would need to be submitted.
- e) All the other Criteria mentioned in this Document III.

Supporting Documents to be submitted:

- i. Contractor should have experience of having satisfactorily completed three similar works, each costing not less than Rs. 3.2 Crore or two works each costing not less than Rs. 4.8 Crore or one work costing not less than Rs. 6.5 Crore during the last 3 years up to the last date of submission of tenders.
- ii. Should have average annual financial turnover of not less than Rs. 8.0 Crore (excluding IGST) on construction works during the immediate last three consecutive financial years.
- iii. Bidding company should not have incurred any loss in more than two years including last year during the last five financial years.
- iv. Should have a bank solvency (Credit Facility) of Rs. 8.0 Crore, certified by the Banker not older than 6 months.
- v. The applicant should submit list of all completed works in the last 5 years and list of all works in hand.
- vi. Joint Venture (JV) firms formed specifically for this tender shall not be permitted.

3. EVALUATION CRITERIA FOR ELIGIBILITY

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

The documents submitted by the applicant will be scrutinized for the criteria prescribed above and the applicant's eligibility for the work will be determined. Even though applicants may satisfy the above requirements, he would be liable to disqualification if he has:

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

4. FINANCIAL INFORMATION

Applicant should furnish the following financial information:

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

5. EXPERIENCE IN CIVIL WORKS HIGHLIGHTING EXPERIENCE IN SIMILAR WORKS.

6. Applicant should furnish the following:
 - i. A list of all works of similar nature successfully completed during the last five years as per the press notice condition (**Form 'B'**).
 - ii. List of the projects under execution or awarded (**Form 'C'**).
7. Particulars of completed works and performance of applicant duly authenticated/ certified by an officer not below the rank of Project Manager or equivalent should be furnished separately for each work completed (**Form 'D'**).

8. ORGANISATION INFORMATION

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

- i. Name and postal address including telephone, fax number, e-mail etc.
- ii. Copies of original documents defining the legal status place of registration and principal place of business including the registration and permission from the Country Names Government/ local authorities for taking up construction works in Country Name.
- iii. Name and title of Directors and officers to be concerned with the work, with designation of individuals authorized to act for the organization.
- iv. Information on any litigation in which the applicant was involved during the last five years, including any current litigation.
- v. Authorization for Employer to seek detailed references.
- vi. Number of Technical and Administrative employees in parent company, subsidiary company (**in Form 'E-I'**)

9. CONSTRUCTION PLANT AND MACHINERY

Applicant should furnish the list of construction plant and equipment available with the contractor likely to be used in carrying out the work (**in Form 'F'**).

10. LETTER OF TRANSMITTAL

The applicant should submit the letter of transmittal attached with eligibility document as given in section III.

11. TENDER

Envelopes for Bid Security shall be opened first. Bidders who have submitted required Bid Security as mentioned shall be considered successful for opening of Technical Bids. Technical bids of successful bidders shall be opened immediately. Bid Security envelope and Technical bids envelope shall be opened in presence of bidders or their representatives. After evaluation of Technical Bids, a list of qualified bidders will be prepared by the Employer. Qualified bidders will be informed and financial bid of

qualified bidders only shall then be opened at notified time, date and place in presence of bidders or their representatives.

12. AWARD CRITERIA

- 13.** The employer reserves the right without being liable for any damages or obligation to inform the applicant to: -
 - i.** Amend the scope and value of contract.
 - ii.** Reject any or all the applications without assigning any reason.
- 14.** For any of the above actions, the Employer shall neither be liable for any damages nor be under any obligation to inform the Applicants of the grounds for the same.
- 15.** Any effort on the part of the applicant or his agent to exercise influence or to pressurize the Employer would result in rejection of his application. Canvassing of any kind is prohibited

PRE- QUALIFICATION INFORMATION

LETTER OF TRANSMITTAL

From

To

Under Secretary (GEM-III)
Ministry of External Affairs
Government of India
Jawaharlal Nehru Bhawan,
23- D Jan Path, New Delhi-110011

Sub: *Renovation and Refurbishment of Receptorium at AFS Palam*
Sir,

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

2. I / We hereby certify that all the statements made and information supplied in the enclosed forms 'A to H' and accompanying statements are true and correct.
3. I / We have furnished all information and details necessary for eligibility and have no further pertinent information to supply.
4. I / We submit the requisite certified solvency certificate and authorize Under Secretary, GEM Division, MEA, New Delhi, Location, Country to approach the bank issuing the solvency certificate to confirm the correctness thereof. We also authorize The Head of the Ministry, to approach my / our bankers, individuals, employers, firms and corporations to verify my / our statements, competency and general reputation.
5. I / We submit the following certificates in support of our suitability, technical know-how and capability for having successfully completed the following similar works. (Certificate from Project Manager in Proforma D in respect of each work mentioned below should be enclosed.)

Name of work	Certificate from/Nature of work	Contract amount

Date of submission:

Signature(s) of Bidder(s)

Enclosures:

Date of Submission:

Signature of Applicant(s)

GENERAL

1. a) Name of Contractor _____
- b) Registered Address _____
- c) Telephone No. _____
- d) Fax No.

- e) E-mail: _____
- f) Contact Names of senior representative of Main Contractors / Partners

2. Type of Works carried out:

3. What is the nature of the Company / Firm? (Give details on separate sheets, if necessary)
 - a) Independent _____
 - b) Supported by technical resources from some other source.

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

Form “A”

1. Financial Statement:

a) Authorized Capital (Give break up) _____

b) Issued and paid up Capital _____

Annual turnover for construction work excluding VAT for the last immediate five financial years	Turnover in INR

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

2. Details of loans and other financial commitments

3. Current Financial Position Currency Amount

as on date

a) Cash & Bank Balance

b) Current Assets

c) Current Liabilities

d) Working Capital

e) Net Worth

4. a) Name and Address of Auditors

b) Can the Employer make a reference to the Auditors directly? No/Yes

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

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

6. Certificate of financial soundness from the Banker/s of applicant. **Enclosed at page**

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

8. a) Name and address of the Bankers (from whom references can also be obtained).
b) Can such reference be obtained directly by the Employer? **No/Yes**

9. Business Association to which the Company belongs;

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

Enclosed at page

a) In country of origin _____

b) Internationally - Countries Experience No of years.

Signature of Applicant (s)

Form “B”

(a) Similar Works completed during the last 3 years as per press notice condition

Title, Location and Brief Description of work	Value Of Work (INR)	Client	Consultant	Contract Period for Completion	Actual period for Completion	Litigation / Arbitration pending, with details	Client certificate at page

Signature of Applicant (s)

Form “C”

(a) Similar Works under progress

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

Signature of Applicant (s)

FORM 'D'

PERFORMANCE REPORT OF SIMILAR WORKS AS DEFINED IN ELIGIBILITY CRITERIA

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

Dated:

Project Manager or equivalent

FORM 'E'

STRUCTURE AND ORGANISATION

1. Name and address of applicant :

2. Telephone No. :

Fax No. :

Email address :

3. Legal status of the applicant (attach

Copies of original document defining

The legal status)

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

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

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

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

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

7. Was the applicant ever required to suspend
construction for period of more than six months
continuously after commencing construction?

If so, give the name of the project
and reason for not completing the work.

8. Has the applicant, or any constituent partner in
case of partnership firm, ever abandoned the
awarded work before its completion? If so, give
name of the project and reasons for abandonment.

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

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

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

Signature of Applicant(s)

FORM 'E-I'

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

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

Signature of Applicant(s)

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

FORM 'F'

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

S.No.	Name of equipment	Model	Capacity	Age	Condition	Ownership Status	Current location	Remarks

Signature of Applicant(s)

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

FORM 'G'

PROFORMA FOR SOLVENCY CERTIFICATE FROM A SCHEDULED/ REPUTED BANK

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

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

(Signatures)
For the Bank

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

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

FORM 'H'

PROFORMA OF BANK GUARANTEE FOR BID SECURITY

Bank Guarantee No. -----

Ref:

To
Pay and Accounts Officer,
The Ministry of External Affairs
Jawaharlal Nehru Bhawan
23-D, Janpath, New Delhi,
PIN-110011

Dear Sirs,

Whereas the Ministry of External Affairs having its office at Jawaharlal Nehru Bhawan, 23-D, Janpath, New Delhi-110011 (hereinafter called the MEA) which expression shall, unless repugnant to the context or the meaning thereof, include all its successors, administrators, executors and assignees has on behalf of the President of India invited

Tender No.-----and M/s -----

----- having Registered/head office at -----
(Hereinafter called the "Bidder" which expression shall, unless repugnant to the context or the meaning thereof, mean and include all its successors, administrators executors and assignees) have submitted a Bid Reference

No. ----- and Bidder having agreed to furnish as a conditions precedent for participation in tender as unconditional and irrevocable bank guarantee of Rs-----

----- (Rupees ----- Only) for the due performance of Bidder's obligations as contained in the tender Document supplied by the MEA specially the conditions that (a) Bidder shall keep his Bid open for a period of day i.e. from -----

----- to ----- or any extension thereof, and shall not withdraw or modify it in a manner not acceptable to the MEA (b) the Bidder will execute the contract, if awarded, and shall furnish performance guarantee in the format prescribed by the MEA within the required time. The Bidder has absolutely and unconditionally accepted these conditions. The MEA and the Bidder have agreed that Bid submitted by the Bidder is an offer made on the condition that the Bid, if submitted would be kept open in its original form without variation or modification in a manner not acceptable to the MEA for a period of -----days i.e. from ----- to ----- or any, extension thereof and that submission of the Bid itself shall be regarded as an unconditional and absolute acceptance of the conditions, contained in the Tender document. They have further agreed that the contract consisting of Tender document and submission of the Bid as the acceptance shall be a separate contract distinct from the contract which will come into existence when the Bid is finally accepted by the MEA. The consideration for this separate initial contract preceding the main contract is that the MEA is not agreeable to sell the Tender documents to the Bidder and to consider the Bid to be made except on the condition that the Bid shall be kept open for the period indicated above and the Bidder desires to submit a Bid on this condition after entering into this separate initial contract with the MEA promises to consider the Bid on this condition and Bidder agrees to keep this Bid open for the required period. These reciprocal promises form the consideration for this separate initial contract between the parties.

1. Therefore, we ----- registered (indicate the name of Bank) under the laws of ----- having head/registered office at (hereinafter referred to as the "Bank") which expression shall, unless repugnant to the context or meaning thereof, include all its successors, administrators and executors hereby issue irrevocable and unconditional bank guarantee and undertake to pay immediately on first demand in writing Rupees all money

to the extent of Rs----- (Rupees----- only) at any time immediately on such demand without any demur, reservations, recourse, contest or protest and/ or without any reference to the Bidder and any such demand made by the MEA on the bank shall be conclusive and binding notwithstanding any difference between the MEA and the Bidder or any dispute pending before any court/arbitrator or any other matter whatsoever. We also agree to give that Guarantee herein the MEA in writing. This guarantee shall not be determined/discharged/affected by the liquidation, winding up, dissolution or insolvency of the Bidder and will remain valid, binding and operative against the bank.

2. The bank also undertakes that the MEA at the option shall be entitled to enforce this guarantee, against the Bank as a principal debtor, in the first instance, without proceeding against the Bidder

3. The bank further agree that as between the bank and the MEA, purpose of the guarantee, any notice of the breach of the terms and conditions contained in the tender Documents as referred above given to the bank by the MEA shall be conclusive and binding on Bank, without any proof, notwithstanding any other matter or difference or dispute whatsoever. We further agree that this guarantee shall not be *affected* by any change in our constitution, in the constitution of the MEA or that of the Bidder. We also undertake not to revoke, in any case, this Guarantee during its currency.

4. The bank agree with the MEA that the MEA shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms of the tender or get extension of the validity period from time to time. We shall not be relieved from our liability by reason of any such variation or extension of the validity period or for any forbearance, act of omission and commission on the part of the MEA or any indulgence shown by the MEA to the said Bidder or by any such matter or thing whatsoever which under the law relating to sureties, would, but for this provision, have the effect of so relieving us.

5. Notwithstanding anything contained here in above our liability under his Guarantee is limited to Rs. ----- (Rupees ----- only) in aggregate and it shall remain in full force upto ----- (225 days from the date of bid opening) unless extended further from time to time, for such period as may be instructed in writing by M/s ----- on whose behalf this guarantee has been given, in which case, it shall remain in full force upto the expiry of extended period. Any claim under this guarantee must be received by us before ----- (date of expiry of validity period) or before the expiry of extended period, if any. If no such claim is received by us within the said date/extended date, the rights of the MEA under this guarantee will cease. However, if such a claim has been received by us within and upto the said date/extended date, all right of the MEA under this guarantee shall be valid and shall not cease until we have satisfied that claim.

6. In case contract is awarded to the Bidder here in after referred to as "Contractor" the validity of this Bank Guarantee will stand automatically extended until the Bidder furnished to the MEA a bank guarantee for requisite amount towards performance guarantee for satisfactory performance of the contract. In case of failure to furnish performance bank Guarantee in the format prescribed by the MEA by the required date the claim must be submitted to us within validity period or extended period, if any. If no such claim has been received by us within the said date /extended date, rights, of the Ministry under this guarantee will cease. However if such a claim has been received by us within the said date/extended date all rights of the MEA under this guarantee shall be valid and shall not cease until we have satisfied that claim,

In witness where of the Bank, through its authorised officer, has sent its hand & stamp on this -----day of at ----- of ----- at ----- of ----- (month & year).

Signature
(Full name in capital Letters)

Designation with bank stamp
Witness No.1
Signature
(Full name and address in capital letters)
Witness No.2
Attorney as per power of attorney
No -----
Date -----

Signature (Full name and address in capital letters)

FORM 'I'

FORM OF PERFORMANCE SECURITY DEMAND GUARANTEE

Brief Description of the Contract:

Contract dated _____ ("Contract")

Name and address of Beneficiary:

(Whom the Contract defines as the "Employer").

We have been informed that M/s. [Name and address of the contractor] _____ (hereinafter called the "Principal") is your Contractor under the Contract, which requires them to furnish a performance security demand guarantee ("Guarantee").

At the request of the Principal, we _____ (Name of the bank) hereby irrevocably undertake to pay to you, the Beneficiary/Employer, any sum or sums not exceeding in total the amount of Rs. _____ ('the guaranteed amount' of Rupees _____ Only) upon receipt by us of your demand in writing and your written statement stating:

- (a) That the Principal is in breach of his obligation(s) under the Contract, and
- (b) The respect in which the Principal is in breach.

Any demand for payment must contain your signature(s) which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before _____ when this Guarantee shall expire (the 'Guarantee expiry date'), and shall be returned to us.

We have been informed that the Beneficiary/Employer may require the Principal to extend this Guarantee if the performance certificate under the Contract has not been issued by a date 28 days prior to the Guarantee expiry date. We undertake to pay you the guaranteed amount within 28 days of our receipt of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this Guarantee has not been extended.

This Guarantee shall be governed by the laws of India and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the international Chamber of Commerce, except as stated above.

Date

Signature(s)

Seal

FORM 'J'

FORM OF RETENTION MONEY GUARANTEE

Brief description of Contract :

Name and address of Beneficiary :

(Whom the Contract defines as the Employer).

We have been informed that (hereinafter called the '**Principal**') is your contractor under such Contract and Wishes to receive early payment of (part of) the retention money, for which the Contract requires him to obtain a guarantee.

At the request of the Principal, we..... (Name of Bank) hereby irrevocably undertake to pay you, The Beneficiary/Employer, any sum or sums not exceeding in total the amount of ('the guaranteed amount', say:) upon receipt by us of your demand in writing and your written Statement stating:

- (a) That the Principal has failed to carry out his obligation (s) to rectify certain defects(s) for which he is responsible under the Contract, and
- (b) The nature of such defect(s).

At any time, our liability under this guarantee shall not exceed the total amount of retention money released to the Principal by you, as evidenced by your notices issued under sub-clause 14.6 of the conditions of the Contract with a copy being passed to us.

Any demand for payment must contain your signature(s), which must be authenticated by your bankers or by a notary public. The authenticated demand and statement must be received by us at this office on or before (the date 70 days after the expected expiry of the Defects Notification Period for the Works) (the 'expiry date'), when this guarantee shall expire and shall be returned to us.

We have been informed that the Beneficiary may require the Principal to extend this guarantee if the performance certificate under the contract has not been issued by the date 28 days prior to such expiry date. We undertake to pay such guaranteed amount upon receipt by us, within such period of 28 days, of your demand in writing and your written statement that the performance certificate has not been issued, for reasons attributable to the Principal, and that this guarantee has not been extended.

This guarantee shall be governed by the laws of India and shall be subject to the Uniform Rules for Demand Guarantees, published as number 458 by the international Chamber of Commerce, except as stated above.

Date

Signature(s)

Seal

DOCUMENT – IV

Conditions of Contract

**Government of India
Ministry of External Affairs
(Global Estate Management Division)**

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

- 1.1.1.1 **“Contract”** means the Contract Agreement, the Letter of Award, The Work Order, 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 Work Order
- 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 Award”** means the letter of formal award, 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 award, the expression “Letter of Award” means the Contract Agreement and the date of issuing or receiving the Letter of Award means the date of signing the Contract Agreement
- 1.1.1.4 **“Letter of Tender”** means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- 1.1.1.5 **“Specification”** means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works
- 1.1.1.6 **“Drawings”** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.
- 1.1.1.7 **“Schedules”** means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
- 1.1.1.8 **“Tender”** means the Letter of Tender and all other documents, which the Contractor submitted with the Letter of Tender, as included in the Contract.

	1.1.1.9	“ Appendix to Tender ” means the completed pages entailed appendix to tender which are appended to and form part of the Letter of Tender.
	1.1.1.10	“ Bill of Quantities ” and “ Day works Schedule ” and “ Schedule of Payment Currencies ” mean the documents so named (if any) which are comprised in the Schedules
	1.1.1.11	“ Contract Data ” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions
	1.1.1.12	“ Day Work Schedule ” Contractor will provide day work schedule of next day with DPR.
1.1.2 Parties and Persons	1.1.2.1	“ Party ” means the Employer or the Contractor, as the context requires.
	1.1.2.2	“ Employer ” means the person named as employer in the Appendix to Tender and the legal successors in title to this person.
	1.1.2.3	“ Contractor ” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
	1.1.2.4	“ Engineer ” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Appendix to Tender, or other person appointed from time to time by the Employer and notified to the Contractor under <i>Sub-Clause 3.4 [Replacement of the Engineer]</i> .
	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 <i>Sub-Clause 4.3 [Contractor’s Representative]</i> , who acts on behalf of the Contractor.
	1.1.2.6	“ Employer’s Personnel ” means the Engineer, the assistants referred to in <i>Sub-Clause 3.2 [Delegation by the Engineer]</i> and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
	1.1.2.7	“ Contractor’s Personnel ” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
	1.1.2.8	“ Subcontractor ” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
	1.1.2.9	“ DAB ” means the person or three persons so named in the Contract, or other person(s) appointed under <i>Sub-Clause 19.2 [Appointment of the Dispute Adjudication Board]</i> .
	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,	1.1.3.1	“ Base Date ” means the date 28 days prior to the latest date for submission of the Tender.

Periods and Completion

1.1.3.2 **“Commencement Date”** means the date notified under *Sub-Clause 8.1 [Commencement of Works]*.

1.1.3.3 **“Time for Completion”** means the time for completing the Works or a Section (as the case may be) under *Sub-Clause 8.2 [Time for Completion]*, as stated in the Appendix to Tender (with any extension under *Sub-Clause 8.4 [Extension of Time for Completion]*), calculated from the Commencement Date.

1.1.3.4 **“Tests on Completion”** means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under *Clause 9 [Tests on Completion]* before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 **“Taking-Over Certificate”** means a certificate issued under *Clause 10.0 [Employer’s Taking Over]*.

1.1.3.6 **“Tests after Completion”** means the tests (if any), which are specified in the Contract, and which are carried out in accordance with the provisions of the Particular Conditions after the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.7 **“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case may be) under *Sub-Clause 11.1 [Completion of Outstanding Work and Remedy Defects]*, as stated in the Appendix to Tender (with any extension under *Sub-Clause 11.3 [Extension of Defects Notification Period]*), calculated from the date on which the Works or Section is completed as certified under *Sub-Clause 10.1 [Taking Over of the Works and Sections]*.

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

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

1.1.4 Money and Payments

1.1.4.1 **“Accepted Contract Amount”** means the amount accepted in the Work Order 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 <i>Sub-Clause 13.5 [Provisional Sums]</i> .
1.1.4.11		“ Retention Money ” means the accumulated retention moneys which the Employer retains under <i>Sub-Clause 14.3 [Application for Interim Payment Certificates]</i> and pays under <i>Sub-Clause 14.8 [Payment of Retention Money]</i> .
1.1.4.12		“ Statement ” means a statement submitted by the Contractor as part of an application, under <i>Clause 14 [Contract Price and Payment]</i> , for a payment certificate.
1.1.5 Works and Goods	1.1.5.1	“ Contractor’s Equipment ” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
	1.1.5.2	“ Goods ” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
	1.1.5.3	“ Materials ” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract
	1.1.5.4	“ Permanent Works ” means the permanent works to be executed by the Contractor under the Contract.
	1.1.5.5	“ Plant ” means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.
	1.1.5.6	“ Section ” means a part of the Works specified in the Appendix to Tender as a Section (if any).
	1.1.5.7	“ Temporary Works ” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects
	1.1.5.8	“ Works ” mean the Permanent Works and the Temporary Works, or either of them as appropriate
1.1.6 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 <i>Clause 18 (Force Majeure)</i>
	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 <i>Sub-Clause 4.2 [Performance Security]</i> .
	1.1.6.7	“ Site ” means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and

any other places as may be specified in the Contract as forming part of the Site.

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

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

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record and
- (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 and requests, these communications shall be:

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

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

1.4 Law and Language

The Contract shall be governed by the law of the country (or other jurisdiction) stated in the 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 language in which of the Contract (or most of it) is written.

**1.5
Priority of
Documents**

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

- (a) the Contract Agreement (if any)
- (b) the Letter of Acceptance,(c)the Letter of Tender,
- (d) the Specifications,
- (f) the Drawings,
- (g) The Schedules and any other documents forming part of the Contract.

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

**1.6
Contract
Agreement**

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

**1.7
Assignment**

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

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) May, as security in favor 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 6 (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 technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect

**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 reasonable profit, which shall be included in the Contract Price.

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

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

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

As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license 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 documents which are in the form of computer programmes and other software's, permit their use on any computer on the site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

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

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

copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract

**1.12
Confidential
Details**

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

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out the Contractor's obligations under the Contract or to comply with applicable laws. The Contractor shall not publish or disclose any particulars of the works without the previous agreement of the Employer. However, the Contractor shall be permitted to disclose any publicly available information otherwise required to establish this qualifications to compete for other projects.

**1.13
Compliance with
Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws.

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

**1.14
Details to be
Confidential**

The Contractor shall treat the details of the contract as private and confidential except to the extent necessary to carry out obligations under it or to comply with the applicable laws. The contractor shall not publish, permit to be published or disclose any particulars of the works in any trade or technical paper or elsewhere without the previous agreement with the Employer.

**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 the auditors appointed by the Bank is 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 in a manner required by Law of India within the time (or times)

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

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

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

- (a) an extension of time for any such delay, if completion is or will be delayed, under *Sub-Clause 8.4 [Extension of Time for Completion]*, and
- (b) Payment of any such Cost plus 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, Licenses or Approvals The Employer shall (where he is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor:

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

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

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

2.4 Employer's Financial Arrangements

The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence with that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. 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 then Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notifications, 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 payment to the Contractor beyond a date of 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in such 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 after the Employer became aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

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

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

3. The Engineer

3.1 Engineer's Duties and Authority

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

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer 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; and
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

The 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.
- (e) 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 responsibilities 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 to the Engineer. The Engineer shall de-

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

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

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take 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

Notwithstanding Sub-Clause 3.1, if the Employer intends to replace the

Replacement of the Engineer 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 reasonable 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 [Determinations]* to agree or determine any matter, the Engineer shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

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

4. The Contractor

4.1 Contractor's General Obligations

The Contractor shall design (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 with the Employer.

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:

- (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) the 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 and currencies stated in the Appendix to Tender. If an amount is not stated in the Appendix to tender, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be in the form of a Bank Guarantee issued from a recognized local commercial bank in India and shall be in the form as annexed in the Bidding documents. The Performance Security shall be in the nature of a Bank Guarantee in approved form as per Annex B for a sum equivalent to 5% of the Accepted Contract Amount, indicated in the Letter of Acceptance. The Bank Guarantee shall be from a reputed local commercial bank in **India**.

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 from the Employer's Engineer.

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 maybe, then 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, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

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

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

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

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

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

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities, who may be employed in the execution on or near the Site of any work not included in the Contract.

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

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-paragraph (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. The contractor shall be responsible for obtaining any additional data that he may consider relevant or necessary for the purposes of this Contract, and 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.

After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Claus 3.5

[Determinations] to agree to 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 favorable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Engineer may proceed in accordance with *Sub-Clause 3.5 [Determinations]* to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the works, shall not result in a net reduction in the Contract Price.

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

**4.13
Rights of Way
and Facilities**

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

**4.14
Avoidance of
Interference**

The Contractor shall not interfere unnecessarily or improperly with:

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

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

**4.15
Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge for 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

Unless otherwise stated in the Particular Conditions:

Transport of Goods	<ul style="list-style-type: none"> (a) The Contractor shall give the Engineer not less than 7 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 be responsible for all custom clearances, rules & regulations and 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	<p>The Contractor shall be responsible for all Contractors' Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.</p>
4.18 Protection of the Environment	<p>The Contractor shall take all statutorily required 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.</p>
	<p>The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification, and shall not exceed the values prescribed by applicable Laws.</p>
4.19 Electricity, Water and Gas	<p>The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require.</p>
	<p>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.</p>
	<p>The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with <i>Sub-Clause 2.4</i> <i>[Employer's Claims]</i> and <i>Sub-Clause 3.5 [Determinations]</i>. The Contractor shall pay these amounts to the Employer.</p>
4.20 Employer's Equipment and Free-Issue Materials	<p>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:</p>
	<ul style="list-style-type: none"> (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 2.4 [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 Report

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

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

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in *Clause 5 [Nominated Subcontractors]*),
- (b) photographs showing the status of 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 2.4 [Employer's Claims]* and notices given under *Sub-Clause 19.1 [Contractor's Claims]*;
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the

Contract, and the measures being (or to be) adopted to overcome delays.

**4.22
Security of the
site**

Unless otherwise stated in the Particular Conditions:

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

**4.23
Contractor's
Operations on
Site**

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

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

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

**4.24
Fossils**

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

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

[Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under *Sub-Clause 8.4 [Extension of Time for Completion]*, and
- (b) payment of any such Cost that in aggregate along with other unforeseeable costs, exceed the Contract Price by at least 10%, 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 Sub-Contractors

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 <i>Clause 13 [Variations and Adjustments]</i> , instructs the Contractor to employ as a Subcontractor.
5.2 Objection to Nomination	The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer 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 to indemnify the Contractor against and from the consequences of the matter: (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength; (b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or (c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall: (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract, and (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfill these liabilities.
5.3 Payments to nominated Subcontractors	The Contractor shall pay to the nominated Subcontractor the amounts which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub- paragraph (b) of <i>Sub-Clause 13.5 [Provisional Sums]</i> , except as stated in <i>Sub-Clause 5.4 [Evidence of Payments]</i> .
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 Sub-contractor 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 statutorily required arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

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 statutorily required or 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 personnel income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable 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 recognized days of rest, or outside the normal working hours stated in the Appendix to Tender, unless:

- (a) otherwise stated in the Contract,
- (b) the 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 statutorily required 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 the 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 take all statutorily required measures and 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 HJIV 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 Consultation Communication (IEC) CAMPAIGNS, at least every other month, addressed to all the Site staff and labour (including all the Contractors employees, all Subcontractors and Consultants' 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 of, and appropriate avoidance behavior with respect to 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 dedicate 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 8.3 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 utilized and any related sub-contracting proposed. The programme shall also include provision of a detailed 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
Super-intendance**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfill the Contractor's obligations, the Contractor shall provide all necessary super-intendance 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 at his sole discretion 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 into 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 endeavors 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 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 Contractor's Personnel.
6.15 Measures against Insect and Pest Nuisance	The Contractor shall at all the times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all 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 thereto 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 Festival 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 Prohibition of Forced or Compulsory Labour	The Contractor shall not employ "forced or compulsory labour" in any form. "Forced or compulsory labour" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.
6.21 Prohibition of Harmful Child Labour	The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, 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.
6.22 Employment Record 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 the workers. These records shall be summarized on a monthly basis and shall be available for inspection by the Engineer during normal working hours. These records shall be included in the details submitted by the Contractor under Sub-Clause 6.10[Records of Contractor's Personnel and Equipment].

7. Plant, Materials and Workmanship

7.1 Manner of Execution

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

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

7.2 Samples

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

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

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

7.3 Inspection

The Employer's Personnel shall at all reasonable times:

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

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

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

7.4 Testing

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

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

and other parts of the Works.

The Engineer may, under *Clause 13 [Variations and Adjustments]*, vary the location 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 incur 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 that in aggregate along with other unforeseeable costs, exceed the Contract Price by at least 10%, plus reasonable profit, which shall be included in the Contract Price.

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

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

7.5 Rejection

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

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

7.6 Remedial Work

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

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and

(c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

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

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to *Sub-Clause 2.4 [Employer's Claims]* pay to the Employer all costs arising from this failure.

**7.7
Ownership of Plant
and Materials**

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

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

**7.8
Royalties**

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

**8.1
Commencement of
Works**

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

The Contractor shall commence the execution of the works within 28 days of receiving the acceptance letter from the Employer to commence 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 15 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]* 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 Procedures]*) 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 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 *Sub-Clause 2.5 [Employer's Claims]* pay these costs to the Employer, in addition to delay damages (if any) under *Sub-Clause 8.7* below.

**8.7
Delay Damages**

If the Contractor fails to comply with *Sub-Clause 8.2 [Time for Completion]*, the Contractor shall subject to *Sub-Clause 2.5 [Employer's Claims]* pay delay damages to the Employer for this

default. These delay damages shall be the sum stated in the Appendix to tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to Tender.

These delay damages shall be the only damages due from the Contractor 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

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

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

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

8.10 Payment for Plant and Materials in Event of Suspension

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

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

8.11 Prolonged Suspension

If the suspension under *Sub-Clause 8.8 [Suspension of Work]* has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give

permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under *Clause 13 [Variations and Adjustments]* of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2[Termination by Contractor]

8.12 Resumption of Work

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

9. Tests on Completion

9.1 Contractor's Obligations The Contractor shall carry out the Tests on Completion in accordance with this Clause and *Sub-Clause 7.4 [Testing]*, after providing the documents in accordance with sub-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 Work 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 take statutory measures and make relevant arrangements 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 statutory required measures and making relevant arrangements, and in full compliance with Laws (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) 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 reasonable profit, which shall be included in the Contract Price.

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

10.4 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 Remedyng 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 Remedyng Defects

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

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the

Contractor shall be notified promptly by (Or on behalf of) the Employer, and *Sub-Clause 13.3 [Variation Procedure]* shall apply.

**11.3
Extension of
Defects Notification
Period**

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

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

**11.4
Failure to Remedy
Defects**

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

If the Contractor fails to remedy the defects 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 Remediying Defects]*, the Employer may (at his option):

- (a) carry out 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 and the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works of 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 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 Remediying 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 Remediying Defects]*, the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with *Sub-Clause 3.5 [Determinations]* and shall be included in the Contract Price.

**11.9
Performance
Certificate**

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

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

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

**11.10
Unfulfilled
Obligations**

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

**11.11
Clearance of Site**

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

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

Otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site. Any balance of the moneys from 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 & Evaluation

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

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

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

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

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

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

12.2 Method of Measurement

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

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

12.3 Evaluation

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

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 to determine this cost, which shall be included in the Contract Price.

13. Variation and Adjustments

13.1 Right to Vary

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

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

Each 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 3.5 [Determinations]* to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) Such reduction in contract value, resulting from the change, excluding adjustments under *Sub-Clause 13.7 [Adjustments for Changes in Legislation]* and *Sub-Clause 13.8 [Adjustments for Changes in Cost]*, and
 - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

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

Upon instructing or approving a Variation the Engineer shall proceed in accordance with *Sub-Clause 3.5 [Determinations]* to agree or determine adjustments to the contract price and to the schedule of payments under *Sub-Clause 14.4 [Schedule of Payments]*. These adjustments shall include (10%) and shall take account of the contractor's submissions.

13.4 Payment-in Applicable Currencies

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

13.5 Provisional Sums

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

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under *Sub-Clause 13.3 [Variation Procedure]*; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in *Clause 5 [Nominated Subcontractors]*) or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and

(ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Appendix to Tender shall be applied.

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

13.6 Day Work

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a day work basis. The work shall then be valued in accordance with the Day work Schedule included in the Contract, and the following procedure shall apply. If a Day work 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 modifications of existing Laws) or in the judicial or official government interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligation 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 [Determination] to agree or determine these matters.

Notwithstanding the foregoing, the Contractor shall not be entitled to such an extension of time if the same shall already have been taken into account in determining an extension 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-Clasue 13.8

13.8 Adjustments for Changes in Costs

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 formula 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 determine from 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:

$$Pn = a + b \text{ Ln} + c \text{ En} + d \text{ Mn} + \dots \dots \dots \\ \text{Lo} \quad \text{Eo} \quad \text{Mo}$$

Where:

“Pn” 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;

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

“LO”, “Eo”, “Mo”, ... are the base cost indices or refrence prices,

expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

Then 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 purpose of clarification of the source; although these dates (and thus these values) may not correspond to the base date 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 each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificate. 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 of price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index of price; whichever is more favorable 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.

(e) Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts thereof, 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 Total Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be 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 issue an Interim Payment Certificate for the first installment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the 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]

- 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 deduction and repayments of retention) exceeds 30 percent of the Accepted Contract Amount less Provisional Sums; and
- b. Deductions shall be made at the amortization rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 80 percent 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 payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in 6 (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 cost, in accordance with *Sub-Clause 13.7 [Adjustments for Changes in Legislation]* and *Sub-Clause 13.8 [Adjustments for Changes in Cost]*;
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (d) any amounts to be added and deducted for the advance payment and repayments in accordance with *Sub-Clause 14.2 [Total 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 installments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

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

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

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

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

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

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

(a) the Contractor has:

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

and either:

(b) the relevant Plant and Materials:

- (i) are those listed in the 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 or 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.

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

14.6 Issue of Interim Payment Certificates

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

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

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

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

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

14.7 Payment

The Employer shall pay to the Contractor:

- (a) the first installment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with *Sub-Clause 4.2 [Performance Security]* and *Sub-Clause 14.2 [Total 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 payment to the Contractor is being made) is suspended, the amount shown on any statement is submitted. Any discrepancy shall be 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

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 sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

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

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

14.9 Payment of retention Money

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

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be two-fifths (40%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

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

When calculating these 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 provided by an

entity approved by the Employer, 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 pay the second half of the Retention Money against a guarantee shall 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 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with *Sub-Clause 14.3 [Application for Interim Payment Certificates]*, showing:

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

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

14.11 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, 6 (six) copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

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

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

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer

(with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under *Sub-Clause 20.4 [Obtaining Dispute Board's Decision]* or *Sub-Clause 20.5 [Amicable Settlement]*, the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 Discharge

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

14.13 Issue of Final Payment Certificate

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

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

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

14.14 Cessation of Employer's Liability

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

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in *Sub-Clause 14.10 (Statement at Completion)*

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

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

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments,

shall be as stated in the Appendix to Tender, except as otherwise agreed by both Parties;

- (ii) payments and deductions under *Sub-Clause 13.5 [Provisional Sums]* and *Sub-Clause 13.7 [Adjustments for Changes in Legislation]* shall be made in the applicable currencies and proportions; and
- (iii) other payments and deductions under sub-paragraphs (a) to (d) of *Sub-Clause 14.3 [Application for Interim Payment Certificates]* shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;

- (b) payment of the damages specified in the Appendix to Tender shall be made in the currencies and proportions specified in the 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 Appendix to Tender, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

15.1 Notice to Correct

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

15.2 Termination by Employer

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

- (a) fails to comply with *Sub-Clause 4.2 [Performance Security]* or with a notice under *Sub-Clause 15.1 [Notice to Correct]*,
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with *Clause 8 [Commencement, Delays and Suspension]*, or
 - (ii) to comply with a notice issued under *Sub-Clause 7.5 [Rejection]* or *Sub-Clause 7.6 [Remedial Work]*, within 28 days after receiving it,
- (d) sub-contracts 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 re-

ward:

- (i) for doing or forbearing to do any action in relation to the Contract, or
- (ii) for showing or forbearing to show favor or dis-favor 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 (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 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 the 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**

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

Termination

- (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 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 19.6 [Optional Termination, Payment and Release].

15.6 Corrupt Fraudulent Practices

or

If the Employer determines 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 Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 15.2

World Bank

For the purposes of this Sub-Clause:

- a) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in the Contract execution.
- 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.
- 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.

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 its loan, which finances in whole or in part 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 Certificates, 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 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 Contractor

by 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 ability of the Contractor to perform the Contract,
- e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Pro-

longed Suspension], or

- g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- h) In the event the Bank suspends the loan or credit from which part 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 for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8, immediately take one or both of the following actions, namely
 - (i) suspend work or reduce the rate of work, and
 - (ii) terminate his employment under 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.

In case 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.

**16.3
Cessation of Work
and Removal of
Contractor's
Equipment**

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

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

Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Claus 15.2

EBRD

For the purposes of this Sub-Clause:

- a) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in the Contract execution.
- 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.
- 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.

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 its loan, which finances in whole or in part 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 terminate 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.

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 ability of the Contractor to perform the Contract,
- e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a 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) In the event the Bank suspends the loan or credit from which part 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 for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8, immediately take one or both of the following actions, namely (i) suspend work or reduce the rate of work, and (ii) terminate his employment under 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.

16.4 Payment Termination on

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

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

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

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

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 of this termination.

17. Risk and Responsibility

17.1 Indemnities

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

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

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of *Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property]*

17.2 Contractor's Care Of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under *Sub-Clause 10.1 [Taking Over of 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* 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 and other employees of the Contractor and Subcontractors,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,

- (g) design of any part of the Works by the Employer's Personnel or by others whom the Employer is responsible, and
- (h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions.

**17.4
Consequences of
Employer's Risks**

If and to the extent that any of the risks listed in *Sub-Clause 16.3* 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 that aggregate along with other unforeseeable costs, exceed the Contract Cost by at least 10%, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of *Sub-Clause 17.3 [Employer's Risks]*, 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) or a purpose other than that indicated by, or reasonably to be inferred from, the Contract,

or

 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

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

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

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, provided that this exclusion shall not apply to any obligation of the Contractor to pay Delay Damages to the Employer under Sub-Clause 8.7 [Delay Damages].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under *Sub-Clause 4.19 [Electricity Water and Gas]*, *Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material]*, *Sub-Clause 17.1 [Indemnities]* and *Sub-Clause 17.5 [Intellectual and Industrial Property Rights]*, shall not exceed the 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 Insurance for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be affected 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 affected with insurers and in terms consistent with the details annexed to the Particular Conditions.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (i) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

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

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

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

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

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

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

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

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or

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

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

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 sub-paragraph (a) of *Sub-Clause 18.1 [General Requirements for Insurances]*, until the date of issue of the Taking-Over Certificate for the Works.

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

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

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

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated between the Parties for the sole purpose of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause including causes listed in *Sub-Clause 17.3 [Employer's Risks]*,
- (d) shall also cover loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of *Sub-Clause 17.3 [Employer's Risks]*, excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the

Appendix to Tender (if an amount is not so stated, this sub-paragraph (d) shall not apply), and

- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below)
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, material 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 17.4 [Insurance for Contractor's Personnel]*), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

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

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

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

(iii) a cause listed in *Sub-Clause 17.3 [Employer's Risks]*, except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

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

The Employer, Engineer & their staff shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel. The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause..

19. Force Majeure

19.1 Definition of Force Majeure

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

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

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

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

19.2 Notice of Force Majeure

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

become aware, of the relevant event or circumstance constituting Force Majeure.

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

**19.3
Duty to Minimize
Delay**

Not with standing 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. Each Party shall at all times use all reasonable endeavors to minimise any delay in the performance of the Contract as a result of Force Majeure.

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

**19.4
Consequences of
Force Majeure**

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

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

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

**19.5
Force Majeure
Affecting
Subcontractor**

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

**19.6
Optional
Termination,
Payment and
Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under *Sub-Clause 19.2 [Notice of Force Majeure]*, or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with *Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment]*.

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under *Sub-Clause 19.6 [Optional Termination, Payment and Release]* if the Contract had been terminated under *Sub-Clause 19.6*.

20. Claim, Disputes and Arbitration

20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable but 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 such time.

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

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

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

investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

**20.2
Appointment of the
Dispute Board** Disputes shall be referred to as DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The parties shall appoint DB by the date stated in the Contract data.

The DB shall compromise, 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, one of whom shall serve as chairman.

If the Parties have not jointly appointed 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.

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 of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

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:

- 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 to 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 notice to the other Party of its dissatisfaction. 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 notice to the other Party of its dissatisfaction.

In either event, this notice of dissatisfaction shall state that it is given under this Sub- Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in *Sub-Clause 20.7 [Failure to Comply with Dispute 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 notice of dissatisfaction has been given under *Sub-Clause 20.4* above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 Arbitration

Unless settled amicably, any dispute in respect of which the DB's decision (if any) has not become final and binding shall be finally settled through arbitration as per Indian Arbitration Act, 1996 and amendments, if any. Place of Arbitration shall be Delhi.

20.7 Failure to Comply with Dispute Adjudication Board's Decision

In the event that a Party fails to comply with a DB decision which has become final and binding, 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 Adjudication 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 DAB's appointment or otherwise:

- (a) *Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision]* and *Sub-Clause 20.5 [Amicable Settlement]* shall not apply, and
- (b) the dispute may be referred directly to arbitration under *Sub-Clause 20.6 [Arbitration]*.

DOCUMENT – V

Special Conditions of Contract

Government of India
Ministry of External Affairs
(Global Estate Management Division)

- 1. Deviations:** The Contractor shall not make any addition, alteration or omission from the works as described in the documents which have been offered, finalised and accepted by the Employer. If in case any given details are found to be in contrast to the sound engineering practice, it is the Contractor's responsibility to bring out the same to the notice of the Employer and obtain written instructions on such amendments/ clarification so as to produce structurally sound works.
- 2. Penalty Clause:** In case the supplier fails to complete the supply within the stipulated time, penalty for delay @ 0.5% percent (Half percent) of the value of the supply order will be charged for any delay per week or part thereof subject to max 10% of the total amount of supply order.
- 3. Rejection of Bids:** Canvassing by the bidder in any form, unsolicited letters, conditions given by supplier in quotation documents will render his candidature invalid.
- 4. Miscellaneous:** Details not mentioned in the specifications, but required, as per good and sound engineering practice shall be provided by the Contractor after prior written clearance from the Employer. Necessary modifications with the items may be carried out to suit the same once approved in written by the Employer.
- 5. GST AND ALL OTHER TAXES:** The Contractor will ensure that all taxes including but not limited to GST and any other taxes as applicable are included in the Contract Price and are duly & timely paid. This department has no responsibility for any dispute on this account. No additional liability will be accepted on these accounts. Amount quoted by the bidder will be inclusive of all forms of taxes.
- 6. Payment:** Payment will be made in the following stages:
 - (i) **20%:** Mobilization advance (Against Bank Guarantee of equivalent amount, initially valid till the completion; initially for 4 months).
 - (ii) **20%:** Upon completion of structural & façade repairs and MEP 1st stage works ie whatever is required to be installed before interior finishes begin. **20%:** Upon completion of Interiors and exteriors except painting and polishing.
 - (iii) **20 %:** Upon completion of all fittings, fixtures including that of MEP, supply of furniture and paint & polishing ie virtual completion.

- (iv) **10%:** On installation and commissioning subject to issuance of certificate to this effect by the Engineer-in-Charge
- (v) **10% upon completion of Defects Liability Period i.e. 365 days from the date of completion.** However this can be released against a Bank Guarantee of equal sum.

7. **Risk and Cost:** In the event of failure on the part of Contractor to complete the Project within the time stipulated or within any extended period granted by the accepting officer, the Engineer-in-Charge of the Employer shall have the right to cancel this Contract and get the works completed from other sources at risk and expense of the Contractor. The Contractor is liable to pay the additional amount spent by the Government in procuring the said works through a fresh order i.e. the defaulting Contractor has to bear the excess cost incurred as compared with the amount contracted with the Contractor.
8. **Warranty and Defects liability:** All works, fittings & fixtures and equipment shall bear a warranty against defective materials and workmanship for a period of 365 days from the date of handing over the completed assets to the user. In case of structural and manufacturing failure or defect, malfunctioning, damage or defect of any work and/or component within the warranty/Defects Liability period, the Employer shall inform the Contractor for joint inspection. Within a period of one week of the receipt of such information, the rejected material/work shall be removed/replaced/rectified by the Contractor at his own expense and no extra payment shall be made on this account.
9. **Rates and Price:** The Lump Sum Price and Unit rates quoted will remain valid for six months from the date of opening of bids.
10. **Specifications:** The Contractor guarantees to meet the technical specifications of the the Contract.
11. Under clause no. 4.4 of General Conditions of Contract, Sub-Contracting shall only be allowed for specialized works of MEP, IT, Audio Visual/Media etc. No part of interiors and civil works are allowed to be sub-contracted.

Document –VI

Design Presentation, Architectural & Interior Drawings, MEP SLD's, Detailed Unpriced BOQ & Technical Specifications

All to be prepared by the Bidder including the BOQ for all items including but not limited to Civil, Interiors, MEP, AV systems, Automation, furniture and all fixtures etc. The Bidders shall prepare this BOQ based on their own design proposal fulfilling client's requirements as mentioned in this tender & complete scope of work including furniture, furnishings & carpets wherever necessary. Bidders are advised to address all probabilities in their financial bids including site conditions, preparing their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals.

B. Financial Bid Documents

Document –VII

Financial Bid letter (Lump sum fixed price to be quoted on this form by Bidder)

FORM OF TENDER

Name of Contract: [Name of the works] _____

To: _____

[Name of _____ the Employer] _____

We have examined the General Conditions of contract, specifications, drawings, other schedules, the attached Appendices and Addenda for the above-named works and have inspected the site and the general and economic conditions under which the works are to be carried out. We offer to execute and complete the works and remedy any defects therein, in conformity with this Tender.

INR _____ (in figure)

(INR _____) Only) inclusive of GST and all other all taxes & levies.

We agree to abide by this tender until 30 days after date for receipt of tenders and it shall remain binding upon us and may be accepted at any time before that date. We acknowledge that the appendix forms part of this Letter of Tender.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is practicable after commencement date, and complete the works in accordance with the above-named documents within the Time of Completion.

Unless and until a formal Agreement is prepared and executed, this Letter of tender together with your written acceptance thereof, shall constitute a binding contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive.

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of [Name of the contractor] _____

Date: _____

Document –VIII

Priced Schedule of Items (BOQ) shall be submitted by the Bidders.

BOQ shall be prepared by the Bidders for all items including but not limited to Civil, Interiors, MEP, AV systems, Automation, furniture and all fixtures etc. The Bidders shall calculate the BOQ themselves based on scope of work defined in the tender, their site visit and making their own measured drawings, detailed item descriptions and technical specifications as per their own detailed design proposals.

Bidder is to include a Provisional Sum of Rupees 50 Lakh in the Priced BOQ for Art Work, that shall be selected by the Employer. The Bidders shall include the cost of transportation & installation of the Art work that may be selected by the Employer.