

APPROVED BY NPA

ICTAD/SBD/02

**Institute for Construction
Training and Development (ICTAD)**

**STANDARD BIDDING DOCUMENT
PROCUREMENT OF WORKS
MAJOR CONTRACTS**

Second Edition – January 2007

MINISTRY OF HOUSING AND CONSTRUCTION

Published by
Institute for Construction Training and Development (ICTAD)
'Savsiripaya'
123, Wijerama Mawatha
Colombo 07.

First Edition – September 2003
First Edition (Revised) – January 2006
Second Edition – January 2007

Copyright reserved

No part of this publication
shall be reproduced or
transmitted in any form or by
any means without permission
of the publisher.

PREFACE TO THE SECOND EDITION

ICTAD Standard Bidding Documents were revised to be in line with the Procurement Guidelines (Goods & Works) – 2006 of National Procurement Agency (NPA).

Mr. Jayantha De Mel, Procurement Consultant volunteered to serve as a resource person for the revision and the ICTAD Sub Committee, comprising of Dr. E M G de Zylva (CEO/CIGF), Mr. H D Chandrasena (Snr. Quantity Surveyor), Mr. D R N Ferdinando (Snr. Engineer), Mr. J K Lankatilake (DG/ICTAD), Mr. K P W Rajasiri (D. Dev./ICTAD), Mrs. Vajira Ranasinghe (DD/ICTAD) reviewed and recommended the revision to the Steering Committee on ICTAD Publications.

The Steering Committee on ICTAD Publications which consisted of representatives from the Institution of Engineers Sri Lanka, Sri Lanka Institute of Architects, Society of Structural Engineers Sri Lanka, Association of Consulting Engineers Sri Lanka, Institute of Quantity Surveyors Sri Lanka, Institute of Town Planners Sri Lanka, Institute of Project Managers Sri Lanka, National Construction Association of Sri Lanka, Ministry of Housing and Construction, Institute for Construction Training and Development, recommended this revision for the approval of Board of Management of ICTAD.

The Board of Management of ICTAD approved the recommendations of the Steering Committee.

I wish to acknowledge the co-operation extended by Mr. Daya Liyanage, Chairman/CEO, National Procurement Agency in this endeavour. I take this opportunity to extend my grateful thanks for the services rendered by the "NPA Task Force on Standard Bidding Documents" at the previous revision. In this connection the contributions made by Mrs. Kanika Jayathilake, former Senior Manager, Legal of NPA regarding the legal aspects of the contents of the document is much appreciated.

I wish to take this opportunity to express my sincere gratitude to the resource person, the members of the sub committee and the Steering Committee on ICTAD Publications for the valuable contributions made for the successful completion of this revision.

I appreciate the assistance rendered by Mrs. Dammika Gunasekara for the secretarial work and the staff of the Development Division of ICTAD, who contributed in numerous ways in the publication of this document.

I wish to present this Second Edition to the Construction Industry with confidence considering the careful thinking and hard work put in by those involved.



**VIDYAJYOTHI PROF. LAKSHMAN ALWIS
CHAIRMAN - ICTAD**

01st January 2007

Foreword

To streamline the procurement process in Sri Lanka the Government has decided to develop a series of Standard Bidding Documents for procurement of Goods and Works. The Cabinet of Ministers has entrusted this task to NPA. The Procurement Guidelines (2006) requires that all PE shall use the appropriate SBDs approved by NPA. Accordingly, as a joint effort of NPA/ICTAD the SBDs published previously by ICTAD were revised for conformity with the Guidelines.

This Bidding Document for Procurement of Works (Major Contracts) shall be used for National/ International Competitive Bidding within the limits specified in the SBD, for the contracts that are financed by Government of Sri Lanka.

These Bidding Documents for Procurement of Works (Major Contracts), is suitable to use with or without prequalification procedures. However, ICTAD registration is a pre-requisite to eligible for contract award and for all domestic contractors, and a suitable post qualification should be carried out.

I take this opportunity to thank the following TASK force members appointed by NPA in assisting to complete this endeavor:

Mr. J K Lankathilake (DG - ICTAD)

Ms. K Jayathilake (Sm. Manager - NPA)

Ms. S M C S Samarakoon (Chief Engineer - Dept of Buildings)

Mr. Ravindra Ferdinando (GM- SEC)

Mr. Nalaka Perera (SLIA)


Daya Liyanage

Chairman/CEO

National Procurement Agency

PREFACE TO THE FIRST EDITION

The Institute for Construction Training and Development (ICTAD) developed a series of Standard Bidding documents for the Construction Industry, consequent to requests made by several sectors of the Industry. These Standard documents simplify the process, reduce time of procurement, while directing the users to comply with the Government Tender Procedures.

This Standard Bidding Document for Major Contracts is one such document and was prepared by Mr. Jayantha de Mel in association with Mr. H D Chandrasena, under the guidance of the "Steering Committee on Review of ICTAD Publications".

This document is recommended for building and civil engineering projects of large values and complex in nature. Under the usual arrangements for this type of contract, the contractor constructs the works in accordance with a design provided by the employer and the contractor is paid on measure & pay basis. Another important feature of this Standard Bidding document is that the entire document could serve as one volume when inviting bids.

In preparation of this Standard Bidding Document, the FIDIC "Conditions of Contract for Construction – (First Edition 1999)" was used as a guide. This Standard Bidding document will supersede the "ICTAD Conditions of Contract for Works of Building & Civil Engineering (SCA/1), Revised Edition – January 1989".

The Steering Committee, which consisted of representatives from the following Professional and Policy Making Organizations, recommend this edition as a suitable document to replace the previous editions.

1. The Institution of Engineers, Sri Lanka
2. Sri Lanka Institute of Architects
3. Society of Structural Engineers, Sri Lanka.
4. The Association of Consulting Engineers, Sri Lanka
5. Institute of Quantity Surveyors, Sri Lanka
6. Institute of Town Planners, Sri Lanka.
7. Institute of Project Managers, Sri Lanka
8. National Construction Association of Sri Lanka
9. Ministry of Housing and Plantation Infrastructure
10. Institute for Construction Training and Development (ICTAD)

The Board of Management of ICTAD approved the recommendations of the Steering Committee.

I wish to acknowledge with grateful thanks the services of Mr. Jayantha de Mel & Mr. H D Chandrasena, and all the members of the Steering and Sub-Committee. Meanwhile my special thanks are also due to Dr. A D C Jayanandana, Mr. S A Karunaratne, Mr. Eddie de Zylva, Dr. Gamini Kodikara, Archt. Jayantha Perera, Dr. T M Pallewattle, Eng. W M S C Piyadasa, Mr. Hemal A Pieris, Dr. Locana Gunaratne, Mr. S S T Sumanasekera, Mr. Rohan Tudawe, Mr. Ananda Ranasinghe, Mr. J K Lankatilake, Mr. K P W Rajasiri, Mrs. Vajira Ranasinghe, Mr. C Amarakoon and the staff of the Development Division of ICTAD, who contributed in numerous ways in the publication of this document. I also appreciate the secretarial assistance rendered by Mrs. Lalitha Ranjani.

I am confident that this document will be acceptable to all parties concerned and will be used in the procurement of building and civil engineering works in Sri Lanka.



S K R GOONEWARDENE
CHAIRMAN – ICTAD

1st September 2003.

CONTENTS

	Page
GUIDELINES FOR USE AS A BIDDING DOCUMENT	v
APPLICABILITY OF ICTAD STANDARD BIDDING DOCUMENTS	vi
FORMATS FOR INVITATION FOR BIDS	1-5
SECTION 1 - INSTRUCTIONS TO BIDDERS	7-24
SECTION 2 - BIDDING DATA	25-31
SECTION 3 - CONDITIONS OF CONTRACT	33-96
SECTION 4 - CONTRACT DATA	97-114
SECTION 5 - STANDARD FORMS [CONTRACT]	115-123
SECTION 6 - SPECIFICATIONS	125-127
SECTION 7 - FORM OF BID	129-131
SECTION 8 - BILLS OF QUANTITIES	133-137
SECTION 9 - SCHEDULES	139-149
SECTION 10 - DRAWINGS	151
SECTION 11 - STANDARD FORMS [BID]	153-157
CHECKLIST FOR BIDDERS	159

Guidelines for Use as a Bidding Document

This Standard Bidding Document (SBD) is intended for use in measure and pay contracts. It includes many guidance notes to the user. Hence this publication is not intended to use as a bidding document for a specific procurement. Procuring Entities (PEs) are advised to use Volume 1 and Volume 2, which are published separately as the bidding document for a specific procurement. The users are advised to follow the directions given below:

- (a) All the sections listed in the Contents page are included in this publication. Since a colour system is used the PEs shall not use photo copies of Volume 1 when inviting bids. Volume 1 is published separately for that purpose. PEs may prepare Volume 2 based on the guidance given in this document. The Volume 2 is available in a CD form.
- (b) Volume 1 consists of;
- Section 1 - Instructions to Bidders
 - Section 3 - Conditions of Contract
 - Section 5 - Standard Forms (Contract)

Volume 2 consists of;

- Invitation for Bids
- Section 2 – Bidding Data
- Section 4 – Contract Data
- Section 6 – Specifications
- Section 7 – Form of Bid
- Section 8 – Bills of Quantities
- Section 9 – Schedules
- Section 10 – Drawings
- Section 11 – Standard Forms (Bid)

The foot notes in this publication are guidance for the PE, for the purpose of preparing of bidding documents. Volume 1 and Volume 2 which are published separately will not contain foot notes except in the Standard Forms.

- (c) This SBD is suitable for all procurements of works financed under the consolidated fund or private sector. The SBD is also suitable for NCB procurements under foreign funded projects with the concurrence of the foreign funded agency. Modifications or amendments to the Volume 1 of this bidding document **should not be done unless they are really essential. Any such changes should be provided only in the Volume 2, Section 2 - Bidding Data and Section 4 - Contract Data** as amendments to Instructions to Bidders and Conditions of Contract respectively only with the prior consent of the Institute for Construction Training and Development (ICTAD).

APPLICABILITY OF ICTAD STANDARD BIDDING DOCUMENTS FOR PROCUREMENT OF WORKS

STANDARD BIDDING DOCUMENT PROCUREMENT OF WORKS FOR MINOR CONTRACTS - ICTAD/SBD/03

- (1) Recommend for use for works contracts up to Rs.10 million.

STANDARD BIDDING DOCUMENT FOR PROCUREMENT OF WORKS - ICTAD/SBD/01

- (1) Recommended for use on works contracts between Rs. 10 million and Rs. 100 million.
- (2) May be used for works of higher values, which are not of a complex nature.

STANDARD BIDDING DOCUMENT PROCUREMENT OF WORKS FOR MAJOR CONTRACTS - ICTAD/SBD/02

- (1) Recommended for use on works contracts over Rs. 100 million and for contracts of a lesser value, which are of a complex nature.

STANDARD BIDDING DOCUMENT PROCUREMENT OF WORKS FOR DESIGN AND BUILD CONTRACTS - ICTAD/SBD/04

Recommended to use for works contracts where the contractor is responsible for the design and construction of the works on specified approvals obtained from the Employer.

ඉදිකිරීම් ටෙන්ඩර් පිළිබඳ සම්මත ලේඛනය, කුඩා පරිමාණයේ කොන්ත්‍රාත් - ICTAD/SBD/05 (සකස් කරනු ලැබේ)

- (1) රුපියල් මිලියන 10 දක්වා වූ ඉදිකිරීම් කොන්ත්‍රාත් සඳහා නිර්දේශ කරනු ලැබේ.

STANDARD BIDDING DOCUMENT PROCUREMENT OF WORKS FOR SHOPPING PROCEDURE - ICTAD/SBD/06 (Under Preparation)

- (1) Recommended for use on works contracts not exceeding Rs. 5 million when shopping procedure is used.

STANDARD BIDDING DOCUMENT PROCUREMENT OF WORKS FOR CONSTRUCTION RELATED PLANT - ICTAD/SBD/07 (Under Preparation)

- (1) Recommended to use when procuring construction related plant such as central air-condition systems, elevators, large generators etc. where substantial installation is involved.

FORMATS FOR INVITATION FOR BIDS (IFB)

Note:

The relevant form shall be filled by the Procuring Entity and included in Volume 2 of the bidding documents.

Note :

Bidders are advised to consider the information printed in blue colour in the document as a checklist, when preparing their bids. However, it is the responsibility of the bidders to comply with all the requirements given in the bidding document.

Invitation for Bids¹
(WITH PRE-QUALIFICATION)

To: [name of Contractor]
[address]

..... [date]

Contract Name, and Identification No/

Dear Sirs:

1. We hereby inform you that²..... on behalf³ has pre-qualified you for bidding for the above cited Contract.
2. We now invite you and other pre-qualified bidders to submit sealed Bids for the execution and completion of the cited Contract.
3. You may obtain further information from, and inspect and acquire the bidding documents at⁴,
4. Bids should be submitted on the forms available from⁵ up to⁶ on a payment of non-refundable tender fee of Rupees⁷
5. Bidding documents may be inspected free of charge at⁸
6. Bids shall be valid up to⁹
7. All Bids must be accompanied by a bid security of¹⁰
8. Sealed Bids may be delivered to the¹¹
9. The construction period is¹² Days.
10. The deadline for submission of Bids will be¹³ on¹⁴ and will be opened soon after the closing.
11. Bidders or their authorized representatives are requested to be present at the opening of Bids.
12. Please confirm receipt of this letter immediately in writing. If you do not intend to Bid, we would appreciate being so notified also in writing at your earliest opportunity.

Yours truly,

ICTAD

Authorized signature

Name and title

¹ This sample " Invitation for Bids" shall be used when pre-qualification of bidders had been undertaken

² Write the relevant Procurement Committee (CAPC, MPC, DPC, PPC etc.)

³ Insert name of Procuring Entity

⁴ Insert name of officer, address, facsimile number and telephone

⁵ Place of issue of bidding documents

⁶ Closing date of issue of bidding document: Should be one day prior to deadline for submission of Bid

⁷ Insert the fee equivalent to cost of duplicating a set of bidding documents

⁸ Insert location to inspect bidding documents

⁹ Insert validity date of Bids, should be same as Bidding Data Sub-Clause 16.1

¹⁰ The amount shall be same as Bidding Data Sub-Clause 17.1

¹¹ Address shall be same as Bidding Data Sub-Clause 21.2 (a)

¹² Insert number of Days

¹³ Closing time of Bids

¹⁴ Date of closing of Bids

Invitation for Bids (IFB)

(GOSL FUNDED PROJECTS)

[All notes given inside the square brackets should be deleted when preparing the Volume 2 of the bidding document]

[insert: **name of Procuring Entity** (if relevant name of the **Ministry**)]

[insert: **Title of Contract & Contract (Bid) Number**]

1. The Chairman [insert MPC/DPC/PPC/RPC as appropriate] on behalf of the [insert name of Procuring Entity] now invites sealed bids from eligible and qualified bidders for construction/renovation/rehabilitation/refurbishment/repair* of [insert the title of the Works to be procured] as described below and estimated to cost [insert relevant cost of construction in the latest TCE (Total Cost Estimate)]

[Insert a brief description of the Works including major quantities, location of project, and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation. The construction period is [insert no. of Days].

2. Bidding will be conducted through National Competitive Bidding Procedure.
3. To be eligible for contract award, the successful bidder shall not have been blacklisted and shall meet the following requirements [list the required ICTAD registration]
4. Qualifications requirements to qualify for contract award include: [insert key technical, financial, legal and other requirements].
5. Interested bidders may obtain further information from [insert name of Procuring Entity; insert name, address and e-mail of officer in charge] and inspect the bidding documents at the address given below [state address at end of this IFB] from [insert office hours].
6. A complete set of Bidding Documents in English language may be purchased by interested bidders on the submission of a written application to the [state addressee] from [state date of commencement of issuing document] until [state date] from 0900 hrs to 1500 hrs. upon payment of a non refundable fee of [insert amount in Rupees]. The method of payment will be [insert method of payment].
7. Bids shall be delivered to the address below at [state address] on or before [insert time and date]. Late bids will be rejected. Bids will be opened soon after closing in the presence of the bidders' representatives who choose to attend.
8. All bids shall be accompanied by a [insert as appropriate, either "Bid Securing Declaration"/ "Bid-Security, of (insert amount in Rupees)"]

The address(es) referred to above is(are):

Name

Designation,

Address, fax number etc of the Procuring Entity

* Select as appropriate

Invitation for Bids (IFB)

(FOREIGN FUNDED PROJECTS)

[All notes given inside the square brackets should be deleted when preparing the Volume 2 of the bidding document]

[insert: name of Procuring Entity (if relevant name of Ministry)]

[insert: name of Project] - [insert: loan / credit number]

[insert: Title of Contract & Contract (Bid) Number]

1. The Democratic Socialist Republic of Sri Lanka [has received/has applied for/intends to apply for] a [loan/credit] from the [insert name of the foreign funding agency] towards the cost of [insert name of the Project], and intends to apply part of the proceeds of this [loan/credit] to payments under the Contract for [insert name/no. of Contract]
2. The Chairman [insert MPC/DPC/PPC/RPC as appropriate] on behalf of the [insert name of Procuring Entity] now invites sealed bids from eligible and qualified bidders for construction/renovation/rehabilitation/refurbishment/repair* of [insert the title of the Works to be procured] as described below and estimated to cost [insert relevant cost of construction in the latest TCE (Total Cost Estimate)]

[Insert a brief description of the Works, including major quantities, location of project, and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation to Bidders The construction period is (insert no. of Days)].
3. To be eligible for contract award, the successful bidder shall not have been blacklisted and shall meet the following requirements [list the required ICTAD registration]
4. Qualifications requirements to qualify for contract award include: [insert key technical, financial, legal and other requirements].
5. Interested bidders may obtain further information from [insert name of Procuring Entity; insert name, address and e-mail of officer in charge] and inspect the bidding documents at the address given below [state address at end of this IFB] from [insert office hours].
6. A complete set of Bidding Documents in English language may be purchased by interested bidders on the submission of a written application to the [state addressee] [state date of commencement of issuing document] until [state date] from 0900 hrs to 1500 hrs. upon payment of a non refundable fee of [insert amount in Rupees]. The method of payment will be [insert method of payment].
7. Bids shall be delivered to the address below at [state address] on or before [insert time and date]. Late bids will be rejected. Bids will be opened soon after closing in the presence of the bidders' representatives who choose to attend.
- 8.. All bids shall be accompanied by a [insert as appropriate, either "Bid Securing Declaration"/ "Bid-Security, of (insert amount in Rupees)"]

The address(es) referred to above is(are):

Name
Designation,
Address, fax number etc. of the Procuring Entity

* Select as appropriate

Section - 1

INSTRUCTIONS TO BIDDERS

Notes:

Instructions to Bidders shall be read in conjunction with Bidding Data under Section 2 (Volume 2). Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are included under Section 3 - Conditions of Contract (Volume 1) and Contract Data under Section 4 (Volume 2). However, a few such information is reproduced in this section to facilitate the bidders to price their bids.

Instructions to Bidders will not be a part of the Contract and will cease to have effect once the Contract is signed.

Note :

Bidders may consider the information printed in blue colour in the document as a checklist, when preparing their bids. However, it is the responsibility of the bidders to comply with all the requirements given in the bidding document.

TABLE OF CLAUSES
INSTRUCTIONS TO BIDDERS

<p>A. General, 11</p> <ol style="list-style-type: none"> 1. Scope of Bid, 11 2. Source of Funds, 11 3. Ethics, Fraud and Corruption, 11 4. Eligibility and Qualification of the Bidder, 11 5. Joint Ventures, 13 6. One Bid per Bidder, 14 7. Cost of Bidding, 14 8. Site Visit, 14 	<p>D. Submission of Bids, 19</p> <ol style="list-style-type: none"> 21. Sealing and Marking of Bids, 19 22. Deadline for Submission of Bids, 19 23. Late Bids, 19 24. Modification and Withdrawal of Bids, 19
<p>B. Bidding Documents, 14</p> <ol style="list-style-type: none"> 9. Content of Bidding Documents, 14 10. Clarification of Bidding Documents, 15 11. Amendment of Bidding Documents, 15 	<p>E. Bid Opening and Evaluation, 20</p> <ol style="list-style-type: none"> 25. Bid Opening, 20 26. Process to be Confidential, 21 27. Clarification of Bids, 21 28. Examination of Bids and Determination of Responsiveness, 21 29. Correction of Errors, 21 30. Evaluation and Comparison of Bids, 22 31. Preference for Domestic Bidders, 22
<p>C. Preparation of Bids, 15</p> <ol style="list-style-type: none"> 12. Language of Bid, 15 13. Documents Comprising the Bid, 16 14. Bid Prices, 16 15. Currencies of Bid and Payment, 17 16. Bid Validity, 17 17. Bid Security, 17 18. Alternative proposals by Bidders, 18 19. Pre-Bid Meeting, 18 20. Format and Signing of Bid, 18 	<p>F. Award of Contract, 23</p> <ol style="list-style-type: none"> 32. Award, 23 33. Employer's Right to Accept any Bid and to Reject any or all Bids, 23 34. Notification of Award and Signing of Agreement, 23 35. Performance Security, 24 36. Advance Payment & Security, 24 37. Adjudicator, 24

Instructions to Bidders

A. General

1. Scope of Bid

1.1 The Employer, as defined in the Bidding Data and Contract Data hereinafter “the Employer,” wishes to receive Bids for the construction of Works, and remedying defects as described in this document hereinafter referred to as “the Works.”

1.2 The successful bidder will be expected to complete the Works within the period stated in the Bidding Data and Contract Data from the date of commencement of the Works.

2. Source of Funds

2.1 Works will be financed by the source given in Bidding Data.

3. Ethics, Fraud and Corruption

3.1 The attention of the bidders is drawn to the following guidelines of the Procurement Guidelines published by National Procurement Agency:

- Parties associated with procurement actions, namely, suppliers/contractors and officials shall ensure that they maintain strict confidentiality throughout the process;
- Officials shall refrain from receiving any personal gain from any Procurement Action. No gifts or inducement shall be accepted. Suppliers/contractors are liable to be disqualified from the bidding process if found offering any gift or inducement which may have an effect of influencing a decision or impairing the objectivity of an official.

3.2 The attention of the bidders is also drawn to the Sub-Clause 15.2 (g) of the Conditions of Contract (Section 3) which shall apply to any bidder.

4. Eligibility and Qualification of the Bidder

4.1 All bidders shall include the following information and documents with their Bid in Section 9 - Schedules:

- 
- (a) Certified copies of original documents defining the constitution or legal status, place of registration, and principle place of business: written power of attorney authorizing the signatory of the Bid to commit the bidder; and
- (b) In the event that pre-qualification of bidder is a requirement, only Bids from those who satisfy the pre-qualification criteria will be considered for award of Contract. These qualified bidders should submit with their Bids any information updating their original pre-qualification applications or, alternatively, confirm in their Bids that the information submitted with their applications for pre-qualification has not materially changed from the date of Bid submission. The update or confirmation should be provided in Section 9.

As a minimum requirement, bidders shall update the following information:

- (i) evidence of access to lines of credit and availability of other financial resources;
 - (ii) a statement of financial predictions of the bidder for the 12 months, commencing from the closing date of Bids including the effect of known commitments;
 - iii) work commitments of the other projects under taken since pre-qualification;
 - iv) availability of equipment that may be required for the project.
- (c) In the event that pre-qualification of bidders is not a requirement, unless otherwise stated in the Bidding Data, all bidders shall include the following information and documents as a minimum with their Bids in Section 9 – Schedules:
- i) reports on the financial standing of the bidder, such as profit and loss statements and auditor's reports for the past three years;
 - ii) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
 - iii) total monetary value of construction work performed for each of the last five years;
 - iv) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed;
 - v) major items of construction equipment proposed to carry out the Contract;
 - vi) qualifications and experience of key Site Management and Technical Personnel proposed for the Contract;
 - vii) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Amount; and
 - viii) All bidders shall confirm in Section 7, Form of Bid, a statement that the bidder (including all members of a joint venture and subcontractors) is not associated directly or indirectly in the preparation of the bidding document.
 - ix) list any other



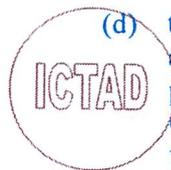
4.2 To qualify for the award of the Contract, bidder shall meet the following minimum qualifying criteria:

- (a) Domestic bidders, should have been registered and hold a valid registration with Institute for Construction Training and Development (ICTAD), under the grade and specialty given in Bidding Data, Section 2;

- (b) average annual volume of construction work performed in last five years shall be not less than the amount specified in Bidding Data;
- (c) experience as prime contractor in the construction of at least one works of a nature and complexity similar to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete).
- (d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment if any specified in Bidding Data;
- (e) a Contract Manager with qualifications and experience as given in Bidding Data;
- (f) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of not less than the amount specified in Bidding Data.
- (g) shall not be a blacklisted contractor at the time of bidding and at the time of award of contract.

5. Joint Ventures

- 5.1 Bids submitted by a joint venture of two or more firms as partners shall comply with the following requirements:
- (a) the Bid shall include all the information listed in Clause 4.1 above for each joint venture partner
 - (b) the bid security, the Bid, and in case of a successful Bid, the Agreement, shall be signed so as to be legally binding on all partners;
 - (c) one of the partners shall be nominated by others authorizing to act for an on behalf of the joint venture. This authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners;
 - (d) the partner so authorized shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract, including payment, shall be done exclusively with the partner in charge;
 - (e) all partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the contract terms, and a statement to this effect shall be included in the authorization mentioned under (c) above, as well as in the Bid and in the Agreement (in case of a successful Bid); and
 - (f) a copy of the joint venture agreement entered into by all partners shall be submitted with the Bid. Alternatively, a memorandum of understanding to execute a joint venture agreement in the event of a successful Bid shall be signed by all partners and submitted with the Bid, together with a copy of the proposed agreement.



- 5.2 The qualification for each of the partners of a joint venture shall be added together to determine the bidder's compliance with the minimum qualifying criteria of Sub-Clause 4.2(a), (b) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 4.2 (a), (b), and (e); and the partner in charge must satisfy at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Bid. Subcontractors' experience and resources will not be taken into account in determining the bidder's compliance with the qualifying criteria.
- 6. One Bid per Bidder** 6.1 Each bidder shall submit only one Bid, either by himself, or as a partner in a joint venture. A bidder who submits or participates in more than one Bid will be disqualified.
- 7. Cost of Bidding** 7.1 The bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 8. Site Visit** 8.1 The bidder is advised to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.
- 8.2 The bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 8.3 The Employer may conduct a Site visit concurrently with the pre-bid meeting referred to in Clause 19.

ICTAD

B. Bidding Documents

- 9. Content of Bidding Documents** 9.1 The bidding documents, consists of two volumes are those stated below and should be read in conjunction with any addenda with Clause 11:

Volume 1

Section 1 - Instructions to Bidders

Section 3 - Conditions of Contract

Section 5 - Standard Forms [Contract]

Volume 2

Invitation for Bids

Section 2 - Bidding Data

Section 4 - Contract Data

Section 6 - Specifications

Section 7 - Form of Bid

Section 8 - Bills of Quantities

Section 9 - Schedules

Section 10 - Drawings

Section 11 - Standard Forms [Bid]

10. Clarification of Bidding Documents

- 10.1 A prospective bidder requiring any clarification of the bidding documents or any objection to restrictive specifications, may notify the Employer in writing or facsimile at the Employer's address indicated in the Bidding Data. The Employer will respond to any such request for clarification that he receives earlier than 14 Days prior to the deadline for submission of Bids. Copies of the Employer's response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry but without identifying its source.

11. Amendment of Bidding Documents

- 11.1 At any time prior to the deadline for submission of Bids, the Employer may amend the bidding documents by issuing addenda.
- 11.2 Any addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 9.1 and shall be communicated in writing or by facsimile to all purchasers of the bidding documents. Prospective bidders shall promptly acknowledge receipt of each addendum by facsimile to the Employer.
- 11.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer shall extend as necessary the deadline for submission of Bids, in accordance with Clause 22.

C. Preparation of Bids**12. Language of Bid**

- 12.1 The Bid, and all correspondence and documents related to the Bid exchanged by the bidder and the Employer, shall be written in English Language. Supporting documents and printed literature furnished by the bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages in English language, in which case, for purposes of interpretation of the Bid, the English translation shall prevail.

13. Documents Comprising the Bid

13.1 The Bid submitted by the bidder shall comprise the following:

- (A) Enclosed in the envelope marked as “ORIGINAL” ;
 - (a) Duly filled and signed Form of Bid (in the format indicated in Section 7);
 - (b) Bid Security
 - (c) Power of Attorney for the signatory to the Bid
 - (d) Section 2 - Bidding Data;
 - (e) Section 4 - Contract Data;
 - (f) Section 6 - Specifications;
 - (g) Section 8 – Priced Bills of Quantities;
 - (h) Section 9 – Duly filled Schedules;
 - (i) Section 10 – Drawings; and
 - (j) Any other information required to be completed and submitted by bidders, as specified in the Bidding Data.

and

(B) Enclosed in the envelope marked as “COPY”

- (a) Duly filled and signed Form of Bid (in the format indicated in Section 7);
- (b) Section 8 – Priced Bills of Quantities;
- (c) Section 9 – Duly filled Schedules; and
- (d) Any other information required to be completed and submitted by bidders, as specified in the Bidding Data.

14. Bid Prices

14.1 Unless stated otherwise in the bidding documents, the Contract shall be for the whole Works as described in Sub-Clause 1.1, based on the unit rates and prices in the Bills of Quantities submitted by the bidder.

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

14.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 Days prior to the deadline for submission of Bids, shall be included in the rates and prices and the total bid price submitted by the bidder. However the VAT component shall be entered separately in the space provided in the BOQ.

14.4 Unless otherwise provided in the Bidding Data, the rates and prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of Sub-Clause 13.7 of the Conditions of Contract.

15. Currencies of Bid and Payment

15.1 The rates and prices shall be quoted by the bidder entirely in Sri Lanka Rupees unless otherwise provided in Bidding Data.

16. Bid Validity

16.1 Bids shall remain valid for the period stipulated in the Bidding Data, after the deadline for Bids submission as specified in sub clause 22.1.

16.2 In exceptional circumstances, prior to expiry of the original Bid validity period, the Employer may request that the bidders extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing. A bidder may refuse the request without forfeiting its bid security. A bidder agreeing to the request will not be required or permitted to modify its Bid, but will be required to extend the validity of its bid security for the period of the extension and in compliance with Clause 17 in all respects.

17. Bid Security

17.1 The bidder shall furnish, as part of its Bid, a bid security in the amount stipulated in the Bidding Data.

17.2 The bid security shall, at the bidder's option, be in the form of a bank draft, letter of credit or a guarantee from a reputed bank or insurance guarantee from a company located in Sri Lanka or from an acceptable bonding organization in Sri Lanka. The format of the bid security should be in accordance with the specimen form of bid security included in the bidding document or another form acceptable to the Employer. bid security shall be valid for the period given in the Bidding Data;

17.3 Any Bid not accompanied by an acceptable bid security shall be rejected by the Employer as non-responsive. The bid security of a joint venture shall be issued so as to commit fully all partners to the proposed joint venture.

17.4 The bid securities of unsuccessful bidders will be returned as promptly as possible, but not later than 28 Days after the expiration of the original period, or any subsequently extended period, of Bid validity.

17.5 The bid security of the successful bidder will be returned when the bidder has signed the Agreement and furnished the required Performance Security.

17.6 The bid security may be forfeited:

- (a) if the bidder withdraws its Bid, after Bid opening during the period of Bid validity;
- (b) bidder does not accept the correction of its bid price, pursuant to Clause 29; or
- (c) in the case of a successful bidder, if he fails within the specified time limit to:
 - (i) sign the Agreement; or
 - (ii) furnish the required Performance Security

18. Alternative Proposals by Bidders

18.1 Except as provided under Sub-Clause 18.2 below, bidders wishing to offer technical alternatives to the requirements of the bidding documents must first price the Employer's design as described in the bidding documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated bidder conforming to the basic technical requirements shall be considered by the Employer.

18.2 When bidders are permitted to submit alternative technical solutions for specified parts of the Works, such parts shall be described in Section 6 – Specifications.

19. Pre-Bid Meeting

19.1 The bidder's designated representative is invited to attend a pre-bid meeting, which, if convened, will take place at the venue and time stipulated in the Bidding Data.

19.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

19.3 The bidder is requested, as far as possible, to submit any questions in writing or by facsimile, to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following sub-clause.

19.4 Minutes of the meeting, including the text of the questions raised and the responses given, together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the bidding documents. Any modification of the bidding documents listed in Sub-Clause 10.1 that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to Clause 11 and not through the minutes of the pre-bid meeting.

19.5 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.

20. Format and Signing of Bid

20.1 The bidder shall prepare one original of the documents comprising the Bid as described in Clause 13 of these Instructions to bidders clearly marked "ORIGINAL." In addition, the bidder shall submit a copy of the Bid, clearly marked "COPY." In the event of discrepancy between them, the original shall prevail.

20.2 The original and the copy of the Form of Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the bidder, pursuant to Paragraphs 4.1 (a) or 5.1 (c), as the case may be. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

20.3 The Bid shall contain no alterations, omissions, or additions, unless such corrections are initialed by the person or persons signing the Bid.

D. Submission of Bids

21. Sealing and Marking of Bids

- 21.1 The bidder shall seal the original and the copy of the Bid in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.
- 21.2 The inner and outer envelopes shall :
- (a) be addressed to the Employer at the address provided in the Bidding Data;
 - (b) bear the name and identification number of the Contract as defined in the Bidding Data; and
 - (c) provide a warning not to open before the time and date for bid opening, as specified in the Bidding Data.
- 21.3 In addition to the identification required in Sub-Clause 21.2, the inner envelopes shall indicate the name and address of the bidder to enable the Bid to be returned unopened in case it is declared “late” pursuant to Clause 23, and for matching purposes under Clause 24.
- 21.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid. If the outer envelope discloses the bidder’s identity, the Employer will not guarantee the anonymity of the Bid submission, but this shall not constitute grounds for rejection of the Bid.

22. Deadline for Submission of Bids

- 22.1 Bids must be received by the Employer at the address specified in Sub-Clause 21.2 no later than the time and date stipulated in the Bidding Data.
- 22.2 The Employer may, in exceptional circumstances and at its discretion, extend the deadline for submission of Bids by issuing an addendum in accordance with Clause 11, in which case all rights and obligations of the Employer and the bidders previously subject to the original deadline will thereafter be subject to the deadline as extended.

23. Late Bids

- 23.1 Any Bid received by the Employer after the deadline for submission of Bids prescribed in Clause 22 will be returned unopened to the bidder.

24. Modification and Withdrawal of Bids

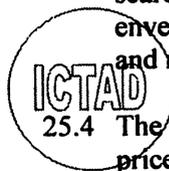
- 24.1 The bidder may modify or withdraw its Bid after Bid submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the deadline for submission of Bids.
- 24.2 The bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of Clauses 20 & 21, with the outer and inner envelopes additionally marked “Modification” or “Withdrawal,” as appropriate.

- 24.3 No Bid may be modified by the bidder after the deadline for submission of Bids, except in accordance with sub clause 29.2.
- 24.4 Withdrawal of a Bid during the interval between the deadline for submission of Bids and expiration of the period of Bid validity specified in Clause 16 may result in the forfeiture of the bid security pursuant to Sub-Clause 17.6.
- 24.5 Bidders may only offer discounts to, or otherwise modify the prices of their Bids by submitting Bid modifications in accordance with this clause, or included in the original Bid submission.

E. Bid Opening and Evaluation

25. Bid Opening

- 25.1 The Employer will open the Bids, including withdrawals and modifications made pursuant to Clause 24, in the presence of bidders' authorized representatives who choose to attend, at the time, date, and location stipulated in the Bidding Data. The bidders' representatives who are present shall sign a register evidencing their attendance.
- 25.2 Envelopes marked "WITHDRAWAL" shall be opened first, and the name of the bidder shall be read out. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 24 shall not be opened. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail.
- 25.3 The envelope marked as "Original" will be opened. If no envelope is marked as "Original" the Employer may open one of the envelopes. If the required documents are available in that envelope, Employer may mark it as the "Original" and the unopened envelope as the "Copy". If so the envelope marked as copy will remain unopened. If any of the required document is missing in the envelope opened first, the Employer may open the other envelope to search such missing information and transfer such documents to one envelope and mark it as "Original" and resealed the other envelope and mark as "Copy".
- 25.4 The bidders' names, the bid prices, including any alternative bid price or deviation, any discounts, Bid modifications and withdrawals, the presence (or absence) and amount of bid security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No Bid shall be rejected at Bid opening except for late Bids pursuant to Clause 23.
- 25.5 The Employer shall prepare minutes of the Bid opening, including the information disclosed to those present in accordance with Sub-Clause 25.3.
- 25.6 Bids not opened and read out at Bid opening shall not be considered further for evaluation, irrespective of the circumstances.



26. Process to be Confidential

26.1 Information relating to the examination, clarification, evaluation, and comparison of Bids, and recommendations for the award of a contract, shall not be disclosed to bidders or any other persons not officially concerned with such process until the award to the successful bidder has been announced. Any effort by a bidder to influence the Employer, with respect to processing of Bids or award decisions may result in the rejection of the bidder's Bid.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of Bids, the Employer may, at its discretion, ask any bidder for clarification of its Bid, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by facsimile, but no change in the price or substance of the Bid shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with Clause 29.

27.2 From the time of Bid opening to the time of Contract award, if any bidder wishes to contact the Employer on any matter related to the Bid, it should do so in writing.

28. Examination of Bids and Determination of Responsiveness

28.1 Prior to the detailed evaluation of bids, the Employer will determine whether each Bid (a) meets the eligibility criteria; (b) has been properly signed; (c) is accompanied by the required securities; (d) is substantially responsive to the requirements of the bidding documents; and (e) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 28.2. Furthermore, the bidder shall, if required, provide substantiation that the Employer may require, pursuant to Clause 27.

28.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the bidding documents without material deviation or reservation. A material deviation or reservation is one (a) that affects in any substantial way the scope, quality, or performance of the Works; (b) that limits in any substantial way, inconsistent with the bidding documents, the Employer's rights or the bidder's obligations under the contract; or (c) whose rectification would affect unfairly the competitive position of other bidders presenting substantially responsive Bids.

28.3 If a Bid is not substantially responsive, it will be rejected by the Employer and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

29. Correction of Errors

29.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:

(a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer there is an obviously gross

mis-placement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.

29.2 If the bid price changes by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding upon the bidder.

29.3 If the bidder does not accept the corrected amount of Bid, its Bid will be rejected, and the bid security may be forfeited in accordance with paragraph 17.6 (b).

30. Evaluation and Comparison of Bids

30.1 The Employer will evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 28.

30.2 In evaluating the Bids, the Employer will determine for each Bid the Evaluated bid price by adjusting the Bid price as follows:

- (a) making any correction for errors pursuant to Clause 29;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bills of Quantities, but including Dayworks, where priced competitively;
- (c) converting the amount resulting from applying (a) to (b) above, if relevant, to Sri Lanka Rupees in accordance with Bidding Data Clause 15.1; and
- (d) making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations, or alternative offers.

30.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, alternative offers, and other factors that are in excess of the requirements of the bidding documents shall not be taken into account in Bid evaluation.

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

30.5 If the Bid, which results in the lowest evaluated bid price, is seriously unbalanced or front loaded in relation to the Engineer's estimate of the items of work to be performed under the Contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the Performance Security set forth in Clause 35 be increased at the expense of the bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the Contract.

31. Preference for Domestic Bidders

31.1 Not used unless specified in Bidding Data.

F. Award of Contract

32. Award

32.1 Subject to procedures if provided under Sub-Clause 32 under Bidding Data and Subject to Clause 33, the Employer will award the Contract to the bidder whose Bid has been determined to be substantially responsive to the bidding documents and who has offered the lowest Evaluated bid price pursuant to Clauses 30 and 31 (if applicable), provided that such bidder has been determined to be (a) eligible in accordance with the provisions of Sub-Clause 3, and (b) qualified in accordance with the provisions of Clause 4 & 5.

32.2 Even though the bidders meet the eligibility and qualification criteria specified they are subjected to disqualify if they have:

- (a) made misleading or false representation in the forms, statement and attachments submitted in proof of the eligibility and qualification requirements ; or
- (b) record of poor performance in previous contracts, such as abandoning the works, inordinate delays resulted in payment of liquidated damages up to the maximum limit specified in the contract etc.

33. Employer's Right to Accept any Bid and to Reject any or all Bids

33.1 The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids, at any time prior to award of Contract, without thereby incurring any liability to the affected bidder or bidders or any obligation to inform the affected bidder or bidders of the grounds for the Employer's action.

34. Notification of Award and signing of Agreement

34.1 Prior to expiration of the period of Bid validity prescribed by the Employer, the Employer will notify the successful bidder that its Bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the remedying of any defects therein by the Contractor as prescribed by the Contract (hereinafter and in the Conditions of Contract called "the Initial Contract Price").

34.2 The notification of award will constitute the formation of the Contract.

34.3 Upon the successful bidder's furnishing of the Performance Security pursuant to ITB Clause 35, the Employer will promptly notify the name of the winning bidder to each unsuccessful bidder and will discharge the bid security of the unsuccessful bidders, pursuant to ITB Clause 17.

34.4 At the same time that the Employer notifies the successful bidder that its Bid has been accepted, the Employer will send the bidder the Agreement in the form provided in the bidding documents, incorporating all Agreements between Parties.

34.5 The Agreement will incorporate the Memorandum of Understanding (if any) between the Employer and the successful bidder, and shall be signed by the Employer and the successful bidder.

34.6 The Employer shall notify the successful bidder the date, time and venue for the signing of the Agreement. The Agreement shall be signed within 28 Days of Letter of Acceptance.

35. Performance Security

35.1 Within 14 Days of receipt of the Letter of Acceptance, the successful Bidder shall furnish to the Employer a Performance Security in the amount specified in the Bidding Data in the form given in the Bidding Data or some other form acceptable to the Employer.

35.2 Failure of the successful bidder to comply with the requirements of Clauses 34 or 35 shall constitute a breach of Contract, cause for annulment of the award, forfeiture of the bid security, and any such other remedy the Employer may take under the Contract, and the Employer may resort to awarding the Contract to the next ranked bidder.

35.3 During the bid evaluation if the Employer found that the rate/s or amount/s quoted by the bidder is/ are unreasonably low and could not furnish rational justification to the Employer, the Employer may request the bidder to furnish a Performance Security to an increased amount than that specified in the Contract Data.

36. Advance Payment & Security

36.1 The Employer will provide an advance payment as stipulated in the Conditions of Contract, subject to a maximum amount of 20% of the Initial Contract Price, within 14 Days of the Contractor submitting an acceptable guarantee and upon submission of Performance Security.

37. Adjudicator

37.1 The Employer and the Contractor shall mutually agree on the appointment of an Adjudicator within 28 Days from the Commencement Date.

If mutual consent is not reached or resorted to or the Adjudicator was not proposed then the Adjudicator shall be appointed by the Institute for Construction Training and Development (ICTAD) at the request of either Party after the expiry of 28 Days.

The Adjudicator shall be a person not associated with the project directly or indirectly and who could demonstrate impartiality and independence in his functions.



Section - 2

BIDDING DATA

Note:

This section shall be read in conjunction with Section 1 - Instructions to Bidders, and is intended to provide specific information in relation to corresponding clauses in Section 1. Whenever there is a discrepancy, the provisions in Section 2- Bidding Data shall supersede those provided in the Section 1 - Instructions to Bidders.

Note :

The Bidding Data included herein are Samples only. The Employer shall fill the necessary information and include them as Section 2 in Volume 2 before issuing the bidding documents.

Bidding Data

Instructions to Bidders
Clause Reference

Entry

1.1 Employer’s Name and Address

Name :

Address:

1.1 Scope of Works

The works consists of¹⁵

Located at

1.2 Time for Completion

The Time for Completion for the whole of works shall be¹⁶

2.1 Source of funds

The source of funds is¹⁷

~~3.1, 3.2, 4.1~~¹⁸ **Qualification Information**

The following information shall be provided in Section 9 - Schedules:

- ICTAD registration*
 - Registration number
 - Grade
 - Speciality
 - Expiry date
- VAT registration number*
- Attach construction program
- Attach legal status (Sole proprietor, Partnership, Company etc.)
- Attach authentication for signatory
- Total monetary value of construction work performed for each of the last five years*
- Experience in works of a similar nature and size for each of the last five years*
- Construction equipment*
- Staffing*
- Attach Work plan and methods;

4.1 (c) Modify the list if required

¹⁵ Insert brief summary, including name, identification number, relationship to other contracts under the Project etc.
¹⁶ If different dates are specified for completion of the Works by section ("sectional completion), these dates should be listed.
¹⁷ Insert GOSL or name of donor
¹⁸ Select appropriately from the list provided, and add any other information if necessary
 * Use appropriate schedules provided

4.2 (a) ICTAD registration required

The registration required;¹⁹

Speciality

Grade

4.2 (b) Average annual volume of construction work performed in last 5 years

average annual volume of construction work performed in last five years shall be at least Rs. ²⁰

4.2 (d) Essential equipment

Proposals for the timely acquisition (own, lease, hire, etc.) of the following essential equipment shall be ²¹;

	Type	Capacity
1.
2.
3.
4.

4.2 (e) Qualifications and experience of the Contract Manager

.....

4.2 (f) Liquid assets and/or credit facilities required

The minimum amount of liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, shall be not less than Rs. ²²

10.1 Clarification of Bidding Documents

Employer's address for clarification of bidding documents is²³:

Name of Officer:

Address:

Phone:

Facsimile:

¹⁹ Shall be same as Invitation to Bid

²⁰ Amount should not be less than 1.5 times the annual value of the proposed work. Annual value of the proposed Work is calculated by dividing the twelve times the estimated value of the contract by contract duration expressed in Months

²¹ List only the major equipment

²² Usually estimated payments flow-over a period of 3 months at the average (straight line distribution)

²³ May be different from the bid submission address

13.1(A) (j) Documents comprising the Bid
13.1(B) (d)

Additional information is;

.....

14.4 Adjustments for change in cost

The Contract is/ is not²⁴ subjected to price adjustment

15.1²⁵ Currency of Bid

Bidders are allowed to bid in foreign currencies for following items (Bidders may be required by the Employer to clarify their foreign currency component included in the rates/prices are reasonable.)

For evaluation and comparison of Bids under Sub-Clause 30.2, rates and prices quoted in foreign currencies by the bidders will be converted to Sri Lanka Rupees using middle exchange rate published by Central Bank of Sri Lanka, on the date 28 Days prior to date of closing of Bids.

Price Schedule No.	Item No	Currency

16.1 Period of Bid validity :

The Bid shall be valid up to²⁶ (date).

17.1 Amount of Bid security:

The amount of Bid Security is Sri Lanka Rupees²⁷:
 (LKR)

17.2 Validity of Bid Security

The Bid Security shall be valid up to(date²⁸)

²⁴ Select "is" or "is not"

²⁵ Insert only if bidders are allowed to bid in foreign currency for selected items.

²⁶ Shall be same as Invitation to Bid; Insert number of Days after the deadline for bid submission. This period should be realistic, allowing sufficient time to evaluate the bids, bearing in mind the complexity of the Works and the time required for obtaining references, clarifications, clearances, and approvals and for notification of the award. Normally the validity period should be between 119 -182 Days.]

²⁷ This amount should be the same as in the Invitation for Bids. A fixed sum should be encouraged, in preference to a percentage of the Bid Price. The sum should be the equivalent of 1 – 2 percent of the estimated cost of the Works.

²⁸ Shall be minimum of 28 Days beyond the validity of Bid

19.1 Pre-Bid meeting

Pre-Bid meeting will be held/ will not be held
Venue, time, and date of the pre-bid meeting²⁹.

Date³⁰:

Time:

Venue:

21.2 (a) Employer’s Address for Bid submission

Employer’s address for the purpose of bid submission is³¹:

.....

21.2 (b) Identification number of Contract

Identification Number of the Contract is:

22.1 Deadline for submission of Bids

Deadline for submission of Bids³²

25.1 Bid opening

Venue, time, and date of bid opening³³

31.1³⁴ Preference for Domestic Bidders

Domestic Contractors are eligible for a 10% margin of preference in the comparison of their Bids with those of bidders who do not qualify for the preference.

32 If the Procurement is within the authority limit of a CAPC:

After evaluation of Bids in accordance with the procedures described under Clauses 28, 29, 30 and 31, the Employer will inform to all the bidders in writing the selection of the successful bidder and the intention of contract award to such bidder. The unsuccessful bidders if they so wish, within one week of such notice may make representation to the Procurement Appeal Board at the address given below. Such representation shall be self-contained to enable the Appeal Board to arrive at a conclusion and a cash deposit to amount given below shall be made. The Appeal Board may request the bidder who had made representation to submit further evidence during the investigations. The cash deposit will be forfeited unless the Employer has changed the original contract award decision in favour of the bidder who has made such representation.

²⁹ Insert address of venue, or indicate that the meeting will not take place. The meeting should take place not later than two weeks before the deadline for bid submission. Preferably, it should take place concurrently with the Site visit, if any (see Sub-Clause 8.3).]

³⁰ Fill only if pre-bidding is planned

³¹ Should match the receiving address provided in the Invitation for Bids.

³² The time and date should be the same as that given in the Invitation for Bids.

³³ Time and date should be the same as those given for the deadline for submission of bids (Clause 22)].

³⁴ Use only if foreign bidders are allowed to bid, and the domestic bidders are given the preference.

Address: The Secretary
Appeal Board
Presidential Secretariat
Colombo

Cash Deposit: Rupees 50,000/=

If the Procurement is within the authority limit of a MPC:

After evaluation of Bids in accordance with the procedures described under Clauses 28, 29, 30 and 31, the Employer will inform to all the bidders in writing the the selection of the successful bidder and the intention of contract award to such bidder. The unsuccessful bidders if they so wish, within one week of such notice may make representation to the Secretary to the Line Ministry at the address given below. Such representation shall be self-contained to enable the Secretary to arrive at a conclusion and a cash deposit to amount given below shall be made. The Employer may request the bidder who had made representation to submit further evidence during the investigation of such representation. The cash deposit will be forfeited unless the the Employer has changed the original contract award decision in favour of the bidder who has made such representation.

Address :

Cash Deposit : Rupees 25,000/=

35.1 Amount of Performance Security

The Standard Form of Performance Security acceptable to the Employer shall be a Guarantee from an Agency accepted and stated in the Procurement Guidelines.

The amount of Performance Security is³⁵ of the Initial Contract Price.
The Performance Security Shall be valid until(date³⁶).....

37 Fees and types of reimbursable expenses to be paid to the Adjudicator shall be on a case to case basis and shall be shared equally by the Contractor and the Employer.

For contracts with estimated cost equal or exceeding Rs. 500mn delete Clause 37. Adjudicator and insert following;

37 Dispute Adjudication Board (DAB)

37.1 Within 28 Days from the Commencement Date each of the Parties shall appoint one member to serve on the Dispute Adjudication Board (DAB). The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as the chairman.

If either Party fails to nominate a member to the DAB or the Parties fail to agree upon the third member or the Parties fail to agree on the appointment of a replacement person to the DAB, then upon the request of either or both Parties the Institute for Construction Training and Development (ICTAD) shall appoint the relevant member to the DAB.

³⁵ Generally 5%

³⁶ Insert the date 28 Days beyond the expected completion date of Defects Liability Period.

Section - 3

CONDITIONS OF CONTRACT

Conditions of Contract shall be read in conjunction with the Section 4 - Contract Data in Volume 2, which shall take precedence over the Conditions of Contract

Table of Contents
CONDITIONS OF CONTRACT

<p>1.0 General Provisions, 39</p> <p>1.1 Definitions, 39</p> <p>1.2 Interpretation, 43</p> <p>1.3 Communications, 43</p> <p>1.4 Law and Language, 43</p> <p>1.5 Priority of Documents, 44</p> <p>1.6 Contract Agreement, 44</p> <p>1.7 Assignment, 44</p> <p>1.8 Care and Supply of Documents, 44</p> <p>1.9 Delayed Drawings or Instructions, 45</p> <p>1.10 Employer's use of Contractor's Documents, 45</p> <p>1.11 Contractor's use of Employer's Documents, 46</p> <p>1.12 Confidential Details, 46</p> <p>1.13 Compliance with Laws, 46</p> <p>1.14 Joint and Several Liability, 46</p>	<p>4.12 Contractor's Equipment, 54</p> <p>4.13 Protection of the Environment, 55</p> <p>4.14 Progress Reports, 55</p> <p>4.15 Contractor's Operations on Site, 56</p> <p>4.16 Fossils, 56</p> <p>4.17 Quality Assurance, 57</p> <p>4.18 Rights of Way and Facilities, 57</p> <p>4.19 Avoidance of Interference, 57</p> <p>4.20 Access Route, 57</p> <p>4.21 Transport of Goods, 58</p> <p>4.22 Security of the Site, 58</p>
<p>2.0 The Employer, 46</p> <p>2.1 Right of Access to the Site, 46</p> <p>2.2 Permits, Licenses or Approvals, 47</p> <p>2.3 Employer's Personnel, 47</p> <p>2.4 Employer's Claims, 47</p>	<p>5.0 Nominated Subcontractors, 58</p> <p>5.1 Definition of "Nominated Sub-contractor", 58</p> <p>5.2 Objection to Nomination, 58</p> <p>5.3 Payments to Nominated Subcontractors, 59</p> <p>5.4 Evidence of Payments, 59</p>
<p>3.0 The Engineer, 48</p> <p>3.1 Engineer's Duties and Authority, 48</p> <p>3.2 Delegation by the Engineer, 48</p> <p>3.3 Instructions of the Engineer, 49</p> <p>3.4 Determinations, 49</p> <p>3.5 Engineer's Impartiality, 49</p>	<p>6.0 Staff and Labour, 59</p> <p>6.1 Rates of Wages and Conditions of Labour, 59</p> <p>6.2 Persons in the Services of Employer, 59</p> <p>6.3 Labour Laws, 59</p> <p>6.4 Working Hours, 60</p> <p>6.5 Facilities for Staff and Labour, 60</p> <p>6.6 Health and Safety, 60</p> <p>6.7 Contractor's Superintendence, 60</p> <p>6.8 Contractor's Personnel, 60</p> <p>6.9 Records of Contractor's Personnel and Equipment, 61</p> <p>6.10 Disorderly Conduct, 61</p>
<p>4.0 The Contractor, 49</p> <p>4.1 Contractor's General Obligations, 49</p> <p>4.2 Performance Security, 50</p> <p>4.3 Contractor's Representative, 51</p> <p>4.4 Subcontractors, 51</p> <p>4.5 Assignment of Benefit of Subcontract, 51</p> <p>4.6 Co-operation, 52</p> <p>4.7 Setting Out, 52</p> <p>4.8 Safety Procedures, 53</p> <p>4.9 Site Data, 53</p> <p>4.10 Sufficiency of the Initial Contract Price, 53</p> <p>4.11 Unforeseeable Physical Conditions, 54</p>	<p>7.0 Plant, Materials and Workmanship, 61</p> <p>7.1 Samples, 61</p> <p>7.2 Inspection, 61</p> <p>7.3 Testing, 62</p> <p>7.4 Rejection, 62</p> <p>7.5 Remedial Work, 63</p> <p>7.6 Ownership of Plant and Materials, 63</p> <p>7.7 Royalties, 63</p>

<p>8.0 Commencement, Delays and Suspension, 63</p> <p>8.1 Commencement of Works, 63 8.2 Time for Completion, 64 8.3 Programme, 64 8.4 Extension of Time for Completion, 65 8.5 Delays Caused by Authorities, 65 8.6 Rate of Progress, 65 8.7 Liquidated Damages, 66 8.8 Suspension of Work, 66 8.9 Consequences of Suspension, 66 8.10 Payment for Plant and Materials in Event of Suspension, 67 8.11 Prolonged Suspension, 67 8.12 Resumption of Work, 67 8.13 Management Meetings, 67</p>	<p>13.0 Variations and Adjustments, 74</p> <p>13.1 Right to Vary, 74 13.2 Value Engineering, 75 13.3 Variation Procedure, 76 13.4 Provisional Sums, 76 13.5 Dayworks, 76 13.6 Adjustments for Changes in Legislation, 77 13.7 Adjustments for Changes in Cost, 78</p>
<p>9.0 Tests on Completion, 67</p> <p>9.1 Contractor's Obligation, 67 9.2 Delayed Tests, 67 9.3 Retesting, 68 9.4 Failure to Pass Tests on Completion, 68</p>	<p>14.0 Contract Price and Payment, 79</p> <p>14.1 The Contract Price, 79 14.2 Advance Payment, 79 14.3 Application for Interim Payment Certificates, 80 14.4 Plant and Materials intended for the Works, 81 14.5 Issue of Interim Payment Certificates, 81 14.6 Payment, 81 14.7 Delayed Payment, 82 14.8 Payment of Retention, 82 14.9 Statement at Completion, 82 14.10 Application for Final Payment Certificate, 82 14.11 Discharge, 83 14.12 Issue of Final Payment Certificate, 83 14.13 Cessation of Employer's Liability, 83</p>
<p>10.0 Employer's Taking Over, 68</p> <p>10.1 Taking Over of the Works and Sections, 68 10.2 Taking Over of Parts of the Works, 69 10.3 Interference with Tests on Completion, 70</p>	<p>15.0 Termination by Employer, 84</p> <p>15.1 Notice to Correct, 84 15.2 Termination by Employer, 84 15.3 Valuation at Date of Termination, 85 15.4 Payment after Termination, 85 15.5 Employer's Entitlement to Termination, 86</p>
<p>11.0 Defects Liability, 70</p> <p>11.1 Completion of Outstanding Work and Remedying Defects, 70 11.2 Cost of Remedying Defects, 71 11.3 Extension of Defects Notification Period, 71 11.4 Failure to Remedy Defects, 71 11.5 Removal of Defective Works, 72 11.6 Further Tests, 72 11.7 Contractor to Search, 72 11.8 Performance Certificate, 72 11.9 Unfulfilled Obligations, 72 11.10 Clearance of Site, 72</p>	<p>16.0 Suspension and Termination by Contractor, 86</p> <p>16.1 Contractor's Entitlement to Suspend Work, 86 16.2 Termination by Contractor, 87 16.3 Cessation of Work and Removal of Contractor's Equipment, 87 16.4 Payment on Termination, 87</p>
<p>12.0 Measurement and Evaluation, 73</p> <p>12.1 Works to be Measured, 73 12.2 Method of Measurement, 73 12.3 Evaluation, 73 12.4 Omissions, 74</p>	

<p>17.0 Risk and Responsibility, 88</p> <p>17.1 Indemnities, 88</p> <p>17.2 Contractor's Care of the Works, 88</p> <p>17.3 Employer's Risks, 89</p> <p>17.4 Consequences of Employer's Risks, 89</p>	<p>19.0 Claims, Disputes and Arbitration, 91</p> <p>19.1 Contractor's Claims, 91</p> <p>19.2 Dispute Resolution, 92</p> <p>19.3 Procedure for Adjudication, 92</p> <p>19.4 Replacement of Adjudicator, 93</p> <p>19.5 Arbitration, 93</p>
<p>18.0 Insurance, 90</p> <p>18.1 Insurance for Works and Contractor's Equipment, 90</p> <p>18.2 Third Party Insurance (including Employer's Property), 90</p> <p>18.3 Insurance for Contractor's Personnel, 90</p> <p>18.4 Remedy on Contractor's Failure to Insure, 91</p>	<p>20.0 Force Majeure, 94</p> <p>20.1 Definition of Force Majeure, 94</p> <p>20.2 Notice of Force Majeure, 94</p> <p>20.3 Duty to Minimise Delay, 95</p> <p>20.4 Consequence of Force Majeure, 95</p> <p>20.5 Force Majeure Affecting Sub-Contractor, 95</p> <p>20.6 Optional Termination, Payment and Release, 95</p> <p>20.7 Release from Performance under the Law, 96</p>

Conditions of Contract

1.0 General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), and Contract Data, the following words and expressions shall have the meanings stated.

1.1.1 The Contract

1.1.1.1 **“Contract”** means the Contract Agreement, the Letter of Acceptance, Memorandum of Understanding (if any), the Form of Bid, these Conditions, the Contract Data, the Specifications, the Drawings, the Bills of Quantities, the Schedules and further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 **“Contract Agreement”** means the contract agreement (if any) referred to Sub-Clause 1.6 (*Contract Agreement*)

1.1.1.3 **“Letter of Acceptance”** means the letter issued by the Employer indicating the acceptance of the Bid.

1.1.1.4 **“Contract Data”** means the completed pages entitled contract data and given in Section 4 which forms part of the conditions of contract.

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 **“Schedules”** means the document(s) entitled schedules and given in Section 9 completed by the Contractor and submitted with the Bid, as included in the Contract.

1.1.1.7 **“Form of Bid”** means the document entitled form of bid, which is completed by the Contractor and includes the signed offer to the Employer for the Works.



“Bid” means the Form of Bid and all other documents, which the Contractor submitted with the Bid, as included in the Contract.

1.1.1.9 **“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.

1.1.1.10 **“Bills of Quantities”** and **“Dayworks Schedule”** means the documents so named (if any) which are comprised in the Contract.

1.1.2 Parties and Persons

1.1.2.1 **“Party”** means either or both the Employer or the Contractor, as the context requires.

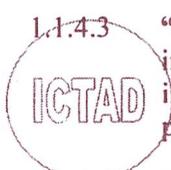
- 1.1.2.2 **“Employer”** means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 **“Contractor”** means the person(s) named as contractor in the Bid accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 **“Engineer”** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor) who is responsible for administering and supervising the execution of the work. Such person may be an engineer, architect or any other technical person. In the absence of such appointment the Employer himself.
- 1.1.2.5 **“Contractor’s Representative”** means the person appointed from time to time by the Contractor and notified to the Engineer, under Sub-Clause 4.3 (*Contractor’s Representative*), who acts on behalf of the Contractor.
- 1.1.2.6 **“Employer’s Personnel”** means staff, labour and other employees of the Employer; and any other personnel notified to the Contractor, by the Employer, 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 **“The Adjudicator”** is the person appointed jointly by the Employer and the Contractor or by the Institute for Construction Training and Development (ICTAD) as the case may be, in accordance with Sub-Clause 19.3 (*Procedure for Adjudication*) or Sub-Clause 19.4 (*Replacement of Adjudicator*) for determination of the disputes in the first instance, as provided for in Clause 19.0 (*Claims, Disputes and Arbitration*) hereunder.



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

- 1.1.3.1 **“Base Date”** means the date 28 Days prior to the latest date for submission of the Bid.
- 1.1.3.2 **“Commencement Date”** means the date notified under Sub-Clause 8.1 (*Commencement of Works*)
- 1.1.3.3 **“Time for Completion”** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 (*Time for Completion*) as stated in the Contract Data with any extension under Sub-Clause 8.4 (*Extension of Time for Completion*), calculated from the Commencement Date.

- 1.1.3.4 **“Tests on Completion”** means the tests which are specified in the Contract or agreed by both Parties or instructed as a variation, and which are carried out under Clause 9.0 (*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) that are specified in the Contract and which are carried out in accordance with the provisions of the Contract after the Works or a Section (as the case may be) is taken over by the Employer.
- 1.1.3.7 **“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*) as stated in the Contract Data with any extension under Sub-Clause 11.3 (*Extension of Defects Notification Period*), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 (*Taking Over of the Works and Sections*).
- 1.1.3.8 **“Performance Certificate”** means the certificate issued under Sub-Clause 11.8 (*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 **“Initial Contract Price”** means the amount stated in the Letter of Acceptance for the execution and completion of the Works and remedying of any defects.
- 1.1.4.2 **“Contract Price”** means the amount stated in the Letter of Acceptance, subjected to 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 14.12 (*Issue of Final Payment Certificate*).
- 1.1.4.5 **“Final Statement”** means the statement defined in Sub-Clause 14.10 (*Application for Final Payment Certificate*).
- 1.1.4.6 **“Interim Payment Certificate”** means a payment certificate issued under Clause 14.0 (Contract Price and Payment) other than the Final Payment Certificate.
- 1.1.4.7 **“Payment Certificate”** means a payment certificate issued under Clause 14.0 (Contract Price and Payment)
- 1.1.4.8 **“Provisional Sum”** means a sum (if any), which is specified in the Contract as a provisional sum, for the execution of any part



of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.4 (*Provisional Sums*)

1.1.4.9 **“Retention Money”** means the accumulated retention moneys, which the Employer retains under Sub-Clause 14.3 (*Application for Interim Payment Certificates*) and pays under Sub-Clause 14.8 (*Payment of Retention*).

1.1.4.10 **“Statement”** means a statement submitted by the Contractor as part of an application, under Clause 14.0 (*Contract Price and Payment*) for a payment certificate.

1.1.5 Works and Goods

1.1.5.1 **“Contractor’s Equipment”** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects.

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 Contract Data as a Section (if any).

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

1.1.5.8 **“Works”** mean the Permanent Works, Contractor’s Documents 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 **“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.

1.1.6.3 **“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.

- 1.1.6.4 “**Laws**” means all legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.5 “**Performance Security**” means the security (or securities, if any) under Sub-Clause 4.2 (*Performance Security*).
- 1.1.6.6 “**Variation**” means any change to the Works, which is instructed or approved as a variation under Clause 13.0 (*Variations and Adjustments*).
- 1.1.6.7 “**Unforeseeable**” means not reasonably foreseen by an experienced Contractor.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

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

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

1.3 Communications

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

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

1.4 Law and Language

The Contract shall be governed by the laws of Democratic Socialist Republic of Sri Lanka and the language for all purposes for the Contract shall be English.

**1.5
Priority of Documents**

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

- (a) the Contract Agreement (if any);
- (b) the Letter of Acceptance;
- (c) Memorandum of Understanding (if any);
- (d) the Form of Bid;
- (e) the Contract Data;
- (f) these Conditions of Contract;
- (g) the Specifications;
- (h) the Drawings; and
- (i) the Bills of Quantities, and any other schedules or 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, unless they otherwise agreed, after the date on which the Contractor receives the Letter of Acceptance. The Contract Agreement shall be prepared and completed by the Employer. The Contractor shall pay the cost of stamp duties and similar charges (if any) imposed by law in connection with the execution of the Contract Agreement.

**1.7
Assignment**

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

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

**1.8
Care and Supply of Documents**

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

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

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

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

**1.9
Delayed
Drawings or
Instructions**

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

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*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 3.4 (*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's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

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

As between the Parties, the Employer shall retain the copyright and other intellectual property rights of the 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 verifying the Contractor's compliance with the Contract.

**1.13
Compliance with
Laws**

The Contractor shall in performing the Contract, comply with applicable Laws. 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
Joint and
Several Liability**

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

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

2.0 The Employer

**2.1
Right of Access
to the Site**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within 14 Days from Letter of Acceptance unless otherwise specified in Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Contract. However, the Employer may withhold any such right or possession until the Performance Security has been received.

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 19.1 (*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 3.4 (*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, in obtaining permits, licenses and approvals referred to in section 1.13.

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 4.13 (*Protection of the Environment*).

2.4 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.

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 him to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.4 (*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.

3.0 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 Contract Data. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.

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

Except as otherwise stated in these Conditions:

- (a) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract: and
- (b) 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.

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 3.4 (*Determinations*).

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

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

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

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions, which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13.0 (*Variations and Adjustments*) shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. These instructions shall be given in writing.

3.4 Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.4 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 19.0 (*Claims, Disputes and Arbitration*).

3.5 Engineer's Impartiality

Wherever, under the Contract, the Engineer is required to exercise his discretion by:

- (a) giving his decision, opinion or consent,
- (b) expressing his satisfaction or approval,
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor

He shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 19.0 (*Claims, Disputes and Arbitration*).

4.0 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, all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for execution, completion and remedying of defects.

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

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

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

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 (*Law and Language*), and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered as 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 his proper performance of the Contract, in the amount stated in the Contract Data. The Contractor shall deliver the Performance Security to the Employer within 14 Days after the receipt of the Letter of Acceptance. The Performance Security shall be in the form acceptable to the Employer as stipulated in Contract Data.

Without limitation to the provision of the preceding paragraph and subject to Section 13.0 whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or Change in Law and/or as a result of a variation amounting to more than 25 (twenty five) percent of the Initial Contract Price, the Contractor, at the Engineer's written request, shall promptly increase the value of the Performance Security by an equal percentage and thereafter in thresholds of fifteen percent of the

Initial Contract Price. The Performance Security of a joint venture shall be in the name of the joint venture.

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 return the Performance Security to the Contractor within 21 Days after receiving a copy of the Performance Certificate.

4.3 Contractor's Representative

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

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

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

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 (*Instructions of 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 Contract Data:

- (a) the Contractor shall not be required to obtain consent to suppliers of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors; and
- (c) the Contractor shall give the Engineer not less than 28 Days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site.

4.5 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 by the date of submission of Bid. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements, which are the responsibility of the Contractor.

The Contractor shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of other contractors to the extent (if any) specified in the Contract.

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 19.1 (*Contractor's*

Claims) to:
ICTAD

- (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 3.4 (*Determinations*) to agree or determine: (i) whether and (if so) to what extent the error could not reasonably have been discovered; and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8 Safety Procedures

The Contractor shall:

- (a) comply with all applicable safety regulations;
- (b) take care for the safety of all persons entitled to be on the Site;
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10.0 (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 Site data

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

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

4.10 Sufficiency of the Initial Contract Price

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the bid price; and
- (b) have based the bid price on the data, interpretations necessary Information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.9 (*Site Data*).

Unless otherwise stated in the Contract, the bid price covers entire 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.

4.11 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 13.0 (Variations and Adjustments) shall apply.

If and to the extent that the Contractor encounters physical conditions, which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine (i) whether and (if so) to what extent these 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 Bid. If and to the extent that these more favorable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.4 (*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.

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

4.12 Contractor's Equipment

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

Contractor's Equipment which is owned by the Contractor (either directly or indirectly) shall be deemed to be the property of the Employer with effect from its arrival on the Site. This vesting of property shall not:

- (a) affect the responsibility or liability of the Employer;
- (b) prejudice the right of the Contractor to the sole use of the vested Contractor's Equipment for the purpose of the Works; or
- (c) affect the Contractor's responsibility to operate and maintain Contractor's Equipment.

The property in each item shall be deemed to revert in the Contractor when he is entitled either to remove it from the Site or to receive the Taking-Over Certificate for the Works, whichever occurs first.

4.13 Protection of the Environment

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

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

4.14 Progress Reports

Unless otherwise stated in the Contract Data monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in two 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 5.0 (*Nominated Subcontractors*));
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) where applicable, 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 6.9 (*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 jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.15 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 any 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.

4.16 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 19.1 (*Contractor's Claims*) to:

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

- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this further notice, the Engineer shall proceed in accordance with Sub Clause 3.4(*Determinations*) to agree or determine these matters.

**4.17
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.

**4.18
Rights of Way and
Facilities**

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

**4.19
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.

**4.20
Access Route**

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

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes:
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions:

- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route.
- (d) the Employer does not guarantee the suitability or availability of particular access routes, and
- (e) costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.21 Transport of Goods

- (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 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.

4.22 Security of the Site

- (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.

5.0 Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

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

- (a) who is stated in the Contract as being a nominated Subcontractor; or
- (b) whom the Engineer, under Clause 13.0 (*Variations and Adjustments*), instructs the Contractor to employ as a Subcontractor.

5.2 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer 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 subparagraph (b) of Sub-Clause 13.4 (*Provisional Sums*), except as stated in Sub-Clause 5.4 (*Evidence of Payments*).

5.4 Evidence of Payments

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

- (a) submits this reasonable evidence to the Engineer; or
- (b) (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and
 - (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement, then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6.0 Staff and Labour

6.1 Rates of Wages and Conditions of Labour

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

6.2 Persons in the Service of Employer

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

6.3 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.

**6.4
Working Hours**

No work shall be carried out on the Site on locally recognized Days of rest, or outside the normal working hours, 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.

**6.5
Facilities for Staff
and Labour**

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.

**6.6
Health and Safety**

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

The Contractor shall designate a separate person to deal with safety and protection against accidents. The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

**6.7
Contractor's
Superintendence**

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

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language or communications {defined in Sub-Clause 1.4 (*Law and Language*)} and of the operations to be carried out (including the methods techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

**6.8
Contractor's Personnel**

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

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

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

**6.9
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.

**6.10
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.

7.0 Plant, Materials and Workmanship

**7.1
Samples**

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

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

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

**7.2
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.

7.3 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 13.0 (*Variations and Adjustments*) vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

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

If the Contractor suffers delay and or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*)

- (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 3.4 (*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.

7.4 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 2.4 (*Employer's Claims*) pay these costs to the Employer.

7.5 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.

7.6 Ownership of Plant and Materials

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

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

7.7 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.

8.0 Commencement, Delays and Suspension

8.1 Commencement of Works

The Engineer shall give the Contractor not less than 7 Days' notice of the Commencement Date. Unless otherwise stated in the Contract Data, the Commencement Date shall be within 14 Days after the Contractor receives the Letter of Acceptance.

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

8.2 Time for Completion

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

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

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 14 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 5.0 (*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 14 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 19.1 (*Contractor's Claims*) to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 (*Taking Over of the Works and Sections*) is or will be delayed by any of the following causes:

- (a) a Variation {(unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 (*Variation Procedure*)} or other substantial change in the quantity of an item of work included in the Contract;
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions;
- (c) exceptionally adverse climatic conditions;
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions; or
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub Clause 19.1 (*Contractor's Claims*) When determining each extension of time under Sub-Clause 19.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country;
- (b) these authorities delay or disrupt the Contractors 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 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 2.4 (*Employer's Claims*) pay these costs to the Employer, in addition to liquidated damages (if any) under Sub-Clause 8.7 below.

8.7 Liquidated Damages

If the Contractor fails to comply with Sub-Clause 8.2 (*Time for Completion*) the Contractor shall subject to Sub-Clause 2.4 (*Employer's Claims*) pay liquidated damages to the Employer for this default. These liquidated damages shall be the sum stated in the Contract Data, which shall be paid for every day, which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of liquidated damages (if any) stated in the Contract Data.

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

8.8 Suspension of Work

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

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

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineers instructions under Sub-Clause 8.8 (*Suspension of Work*) and/or from resuming the Suspension work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*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 3.4 (*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 Employers 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 13.0 (*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.

8.13**Management Meetings**

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of such meetings and supply copies of the record to those attending the meeting and to the Employer.

9.0 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 7.3 (*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 7.3 (*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 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 7.4 (*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 (*Retesting*);
- (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 subparagraph (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 2.4 (*Employer's Claims*) and Sub-Clause 3.4 (*Determinations*)

10.0 Employer's Taking Over

10.1 Taking Over of the Works and Sections

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

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 Days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works

are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

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

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

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

10.2 Taking Over of Parts of the Works

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

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

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

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

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*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 liquidated damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the liquidated 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 liquidated 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 3.4 (*Determinations*) to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of liquidated damages under Sub-Clause 8.7 (*Liquidated 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 19 (*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 3.4 (*Determinations*) to agree or determine these matters.

11.0 Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

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

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

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

**11.2
Cost of Remedying
Defects**

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

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

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

**11.3
Extension of Defects
Notification Period**

The Employer shall be entitled subject to Sub-Clause 2.4 (*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 one year.

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

**11.4
Failure to Remedy
Defects**

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

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

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.4 (*Employer's Claims*) pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.4 (*Determinations*); or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works,

terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**11.5
Removal of Defective
Works**

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

**11.6
Further Tests**

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

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

**11.7
Contractor to Search**

The Contractor shall, if required by the Engineer search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 (*Cost of Remedying Defects*) the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.4 (*Determinations*) and shall be included in the Contract Price.

**11.8
Performance
Certificate**

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

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

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

**11.9
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.

**11.10
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 Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

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

12.0 Measurement and Evaluation

12.1 Works to be Measured

The Works shall be measured, and valued for payment in accordance with this Clause Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative who shall:

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

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

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

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

12.2 Method of Measurement

Except as otherwise stated in the Contract:

- (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 the Standard Method of Measurement stated in the Contract Data according to which the Bills of Quantities and other applicable schedules have been prepared.

12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

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

such item, the rate or price specified for similar work. However, a new rate or price shall be appropriate for an item of work if:

- (a) (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bills of Quantities or other Schedule; and
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 1 % of the Initial Contract Price; or
- (b) (i) the work is instructed under Clause 13.0 (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 reasonable profit, taking account of any other relevant matters.

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

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 Initial Contract Price;
- (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 3.4 (*Determinations*) to agree or determine this cost, which shall be included in the Contract Price.

13.0 Variations and Adjustments

13.1 Right to Vary

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

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required

for the Variation. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each 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 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 3.4 (*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 13.6 (*Adjustments for Changes in Legislation*) and Sub-Clause 13.7 (*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 12.0 (Measurement and Evaluation), unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 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 5.0 (Nominated Subcontractors)} or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor; and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

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

13.5 Dayworks

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a Dayworks Schedule included in the Contract, and the following procedure shall apply. If a Dayworks 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 Dayworks 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*).

13.6 Adjustments for Changes in Legislation

The Contract Price shall be adjusted taking into account any increase or decrease in Cost resulting from Change in Law in Sri Lanka, during the period commencing 28 Days prior to the closing date of Bids and ending on the date of issuance of the Certification of Completion or termination pursuant to clause 15 and 16 and which affect the Contractor's performance of contractual obligations.

For purposes of this sub clause, Change in Law means the enactment of any new Law or a change to existing legislation and the repeal of , or modification of existing laws of the country, including any regulations made, and/or directives issued thereunder, or a change in the judicial interpretation and the application of any Law by a competent Court as compared to such interpretation or application by a Court prior to the date of this Agreement, and which relates to taxation or imposes rationing proscribing any activity or relates to duties and other import/export levies which in each case is beyond the control of the Contractor and materially affects the performance of the Contractor's responsibilities under the Contract.

If the Contractor suffers delay and or incurs additional cost attributable to a Change in Law during the period commencing 28 Days prior to the Closing date of Bids and ending on the date of issuance of the Certificate of Completion or termination pursuant to Section 15 and 16, the Contractor shall give notice to the Engineer and shall be entitled subject to sub clause 19.1: (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. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance with the provisions of Clause 13.7.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 4.3 (*Determinations*) to agree or determine these matters.

13.7 Adjustments for changes in Cost

The amounts computed from the formula given under this sub-clause in respect of the rise or fall in the cost of labour, Materials, Plant and other inputs to the Works, shall be added to or deducted from the payment to the Contractor if the Contract Price is subjected to adjustments due to fluctuation of prices and stated in Contract Data.

- (a) The adjustment to the Contract Price in respect of Changes in Cost and Legislation shall be determined from following formula :

$$F = \frac{0.966 (V - V_{na})}{100} \sum_{\text{All inputs}} P_x \frac{(1_{xc} - 1_{xb})}{1_{xb}}$$

Where:

- F = Price adjustment for the period concerned
 V = Current valuation of work done for the period.
 V_{na} = Value of non adjustable element. or value of work not considered for price variation.
 P_x = Input percentage of input named X.
 1_{xc} = Current indices of input X.
 1_{xb} = Base indices of input X.

No other adjustment of the Contract Price on account of fluctuations of inputs shall be made, notwithstanding the fact that the Contractor has to pay additional amount under special circumstances.

- (b) The "Input Percentage" means the percentage proportionate contribution of any input in terms of cost of the construction based on the prices prevailing on one month prior to submission of the Bid and listed under Clause numbered 13.7 in Contract Data.
- (c) The "Non adjustable elements" means,
- (i) The work done under the BOQ items that shall not be considered for valuation of price adjustment which are listed under Clause 13.7 in Contract Data.
 - (ii) Extra works or additional works carried out by the Contractor on orders of the Engineer and are valued under Clause 40 based on the prices prevailing at the time of execution.
 - (iii) Works done under Dayworks rates.
 - (iv) The "Current Valuation" means the gross value of work executed during the current valuation period and will include the 80% of the cost of materials the Contractor has delivered to site but were not consumed for the physical work done.
 - (v) The "Indices" means the monthly indices published by Institute for Construction Training and Development for different Inputs.
 - (vi) "Base Indices" means the indices for the input, prevailing one month prior to the latest date for submission of Bids.

- (vii) In the case of first interim bill, the current indices for the purpose of calculation of price adjustment shall be taken as the indices prevailing on first month after the commencement of the Contract. For any other interim claim or for the final claim the current indices shall be taken as the indices prevailing for the calendar month, one month after the previous valuation was done.

If the Contractor fails to complete the Works within the time for completion prescribed under Sub-Clause 8.2 (*Time for Completion*) or 8.4 (*Extension of Time for Completion*) the price adjustment for the work performed after the due date of completion as described above shall be made using the current indices prevailed at the due date for completion.

The weightings for each of the Inputs of cost given in this Clause shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or instructed under Sub-Clause 3.3 (*Instructions of the Engineer*) or for any other reason.

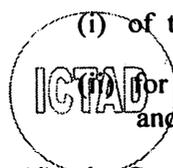
14.0 Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Contract Data:

- (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 13.6 (*Adjustments for Changes in Legislation*);
- (c) any quantities which may be set out in the Bills 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 12.0 (*Measurement and Evaluation*); and

- (d) the Contractor shall submit to the Engineer, within 28 Days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

14.2 Advance Payment

The Employer shall make an advance payment excluding provisional sums and contingencies, as an interest-free loan for mobilization, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment and the number and timing of installments (if more than one), shall be as stated in the Contract Data.

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 equal to the advance payment. This guarantee shall be issued by an entity approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 Days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

The advance payment shall be repaid through percentage deductions in Payment Certificates as follows:

- (a) deductions shall commence from the Interim Payment Certificate issued after the payment of the advance payment;
- (b) advance payment shall be repaid by deducting proportionate amounts from the Interim Certificates. Advance payment shall be repaid in full when the total certified value of Works reaches 90% of the Initial Contract Price less provisional sums.

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 15.0 (*Termination by Employer*), Clause 16.0 (*Suspension and Termination by Contractor*) or Clause 20.0 (*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 three 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 4.14 (*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 13.6 (*Adjustments for Changes in Legislation*) and Sub-Clause 13.7 (*Adjustments for Changes in Cost*);
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract data;

- (d) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 (*Advance Payment*);
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.4 (*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 19.0 (*Claims, Disputes and Arbitration*); and
- (g) the deduction of amounts certified in all previous Payment Certificates.

**14.4
Plant and Materials
intended for the
Works**

Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3 (*Application for Interim Payment Certificate*), an amount equivalent to 80% of the invoiced value of Plant and Materials which have been delivered to the Site for incorporation in the Permanent Works.

**14.5
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 21 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 Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

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

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

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate.

A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

**14.6
Payment**

The Employer shall pay to the Contractor:

- (a) the first installment of the advance payment within 14 Days after issuing the Letter of Acceptance and after receiving the documents

in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*).

- (b) the amount certified in each Interim Payment Certificate within 14 Days after the Employer receives the Interim Certificate from the Engineer; and
- (c) the amount certified in the Final Payment Certificate within 56 Days after the Employer receives this Payment Certificate.

14.7 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.6 (*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 14.6 (*Payment*) irrespective (in the case of its subparagraph (b)) of the date on which any Interim Payment Certificate is issued.

Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest of 1% over the lending rate of the Central Bank to Commercial Banks.

14.8 Payment of Retention

When the Taking-Over Certificate has been issued for the Works, one half of the total amount retained shall be repaid to the Contractor and the second half when the Defects Notification Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

However, if any work remains to be executed under Clause 11.0 (*Defects Liability*) the Engineer shall be entitled to withhold certificate 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 13.6 (*Adjustments for Changes in Legislation*) and Sub-Clause 13.7 (*Adjustments for Changes in Cost*).

14.9 Statement at Completion

Within 84 Days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer three 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 date stated in the Taking Over Certificate for the Works;
- (b) any further sums which the Contractor considers to be due; and
- (c) any 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 14.5 (*Issue of Interim Payment Certificates*).

14.10 Application for Final Payment Certificate

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

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

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

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate or the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 19.3 (*Procedure for Disputes*), or Sub-Clause 19.6 (*Arbitration*) the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.11 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.

14.12 Issue of Final Payment Certificate

Within 28 Days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.10 (*Application for Final Payment Certificate*) and Sub-Clause 14.11 (*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 to 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 14.10 (*Application for Final Payment Certificate*) and Sub-Clause 14.11 (*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 determines to be due.

14.13 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 14.9 (*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.

15.0 Termination by Employer

15.1 Notice to Correct

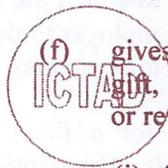
If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

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 8.0 (*Commencement, Delays and Suspension*); or
 - (ii) to comply with a notice issued under Sub-Clause 7.4 (*Rejection*) or Sub-Clause 7.5 (*Remedial Work*), within 28 Days after receiving it;
- (d) subcontracts the whole of the Works or part of the works without prior consent of the Engineer or assigns the Contract without the required agreement;
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph. However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.
- (g) The Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract,



For the purpose of this Sub-Clause:

“corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution;

“fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, 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 Employer of the benefits of free and open competition.

In any of these events or circumstances, the Employer may, upon giving 14 Days’ notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

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

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

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor’s Documents and other design documents made by or on behalf of the Contractor.

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

**15.3
Valuation at
Date of
Termination**

As soon as practicable after a notice of termination under Sub-Clause of Termination by Employer has taken effect the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine the value of the Works, Goods and Contractor’s Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

**15.4
Payment after
Termination**

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

- (a) proceed in accordance with Sub-Clause 2.4 (*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, as determined by the Engineer after allowing for any sum due to the Contractor under Sub-Clause 15.3 (*Valuation at Date of Termination*) After recovering any such losses, damages and extra costs, the Employer shall pay, any balance to the Contractor.

**15.5
Employer's
Entitlement to
Termination**

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

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*) and shall be paid in accordance with Sub-Clause 20.6 (*Optional Termination, Payment and Release*).

Provided however, the Employer shall not be precluded from executing the Contract himself or by another Contractor, after a period of one year has lapsed from the date on which the termination has taken effect pursuant to this Section and subject to the satisfaction of the Employer's payment obligations to the Contractor under the Contract.

16.0 Suspension and Termination by Contractor

**16.1
Contractor's
Entitlement to
Suspend Work**

If the Engineer fails to certify in accordance with Sub-Clause 14.5 (*Issue of Interim Payment Certificates*) or the Employer fails to comply with Sub-Clause 14.6 (*Payment*) the Contractor may, after giving not less than 56 Days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.7 (*Delayed Payment*) and to termination under Sub-Clause 16.2 (*Termination by Contractor*).

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

If the Contractor suffers delay and or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*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 3.4 (*Determinations*) to agree or determine these matters.

**16.2
Termination by
Contractor**

The Contractor shall be entitled to terminate the Contract if:

- (a) the Engineer fails, within 56 Days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (b) the Contractor does not receive the amount due under an Interim Payment Certificate within 56 Days after the expiry of the time stated in Sub-Clause 14.6 (*Payment*) within which payment is to be made (except for deductions in accordance with Sub-Clause 2.4 (*Employer's Claims*));
- (c) the Employer substantially fails to perform his obligations under the Contract;
- (d) the Employer fails to comply with Sub-Clause 1.6 (*Contract Agreement*) or Sub-Clause 1.7 (*Assignment*);
- (e) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 (*Prolonged Suspension*); or
- (f) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Contractor may, upon giving 14 Days notice to the Employer, terminate the Contract. However, in the case of subparagraph (e) or (f), the Contractor may by notice terminate the Contract immediately.

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

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

After a notice of termination under Sub-Clause 15.5 (*Employer's Commitment to Termination*) Sub-Clause 16.2 (*Termination by Contractor*) or Sub-Clause 20.6 (*Optional Termination, Payment and Release*) has taken effect, the Contractor shall promptly:

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

**16.4
Payment on
Termination**

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

- (a) return the Performance Security to the Contractor;

- (b) pay the Contractor in accordance with Sub-Clause 20.6 (Optional Termination, Payment and Release); and
- (c) pay to the Contractor the amount of any, loss of profit or other loss or damage sustained by the Contractor as a result of this termination.

17.0 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 the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects; and
 - (ii) is attributable to any negligence, willful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

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 are:

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

17.4 Consequences of Employer's Risks

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

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

- (a) an extension of time for any such data, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- (b) payment of any such Cost, which shall be included in the Contract Price in the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 (*Employer's Risks*) reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with Sub Clause 3.4 (*Determinations*) agree or determine these matters.

18.0 Insurance

18.1 Insurance for Works and Contractor's Equipment

Without limiting his obligations and responsibilities under the Contract, the Contractor within 14 Days from the Letter of Acceptance, shall insure up to the amounts given below, in the joint names of the Employer and the Contractor against all loss or damage from whatever cause arising, other than employer's risks, for which he is responsible under the terms of the Contract and in such manner that the Employer and Contractor are covered for the period stipulated in Sub-Clause 17.2 and are also covered during the period of Defects Notification for loss or damage arising from a cause, occurring prior to the commencement of the Defects Notification Period, and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 11.0:

- (a) Works for an amount not less than 115% of Initial Contract Price; and
- (b) The Contractor's Equipment for the replacement value.

18.2 Third Party Insurance (including Employer's Property)

The Contractor within 14 Days from the Letter of Acceptance, 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 18.1 (*Insurance for Works and Contractor's Equipment*)} or to any person, 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 Contract Data, with no limit on the number of occurrences.

The insurances specified in this Sub-Clause:

- (a) shall be in the joint names of the Parties; and
- (b) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.1 arising out of the Contractor's performance of the Contract);

18.3 Insurance for Contractor's Personnel

The Contractor within 14 Days from the Letter of Acceptance, shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

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

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, whether the insurance has been effected by the Subcontractor or not, the Contractor shall be responsible for compliance with this Clause.

**18.4
Remedy on
Contractor's
Failure to Insure**

If the Contractor shall fail to effect and keep in force the insurances referred to in Clause 18.1, 18.2 and 18.3 hereof, or any other insurance which he may be required to effect under the terms of the Contract, then and in any such case the Employer may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount together with the service charge of 5% of the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

19.0 Claims, Disputes and Arbitration

**19.1
Contractor's
Claims**

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

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 Employers 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 84 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 may be considered as interim;
- (b) the Contractor may 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 3.4 (*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.

19.2 Dispute Resolution

Any dispute of whatever nature arising out of or in relation to this agreement shall in the first instance be attempted to be resolved by way of adjudication in accordance with the adjudication procedure set forth in Clause 19.3.

19.3 Procedure for Adjudication

Either Party may initiate the reference of a dispute to the Adjudicator by giving 07 Days notice to the other Party.

The Adjudicator shall be appointed by agreement between the Parties. In the event the Parties are unable to reach agreement on the appointment of the Adjudicator within fourteen (14) Days from the date of such request, either Party may make an application to the Institute for Construction Training and Development (ICTAD) to appoint an Adjudicator.

The Adjudicator shall be a professional with experience relevant to the Works and in the interpretation of contractual documents. Such Adjudicator shall have no interest financial or otherwise in the Employer, the Contractor or the Engineer nor any financial interest in the Contract, except in respect of his professional fees.

The Adjudicator's fee shall be agreed by both Parties and shall be borne by both Parties in equal amounts.

The Adjudicator shall give the determination in writing within 28 Days or such other period of receipt of a notification of a dispute. The Adjudicator shall determine procedures as he sees fit ensuring that each Party is given a reasonable opportunity to make representations including written submissions and/or hearing of witnesses in person.

With the prior concurrence of both Parties the Adjudicator may take advice and assistance from independent professional advisor/s or other person/s to enable him to reach a determination on the dispute. Such costs shall be borne by both Parties in equal amounts.

Each of the Parties shall upon and in accordance with a request by the Adjudicator supply him free of charge such information and documents as he shall require for the purposes of the reference to him. That information and those documents shall be kept confidential by him and by the Parties.

The Adjudicator shall not act as an Arbitrator. The decision of the Adjudicator shall be deemed final and binding on the Parties if neither Party refers the dispute to arbitration in accordance with Sub-Clause 19.5 within twenty eight (28) Days of the Adjudicator's determination.

19.4 Replacement of Adjudicator

Should the Adjudicator resign or die or is removed by agreement of the Parties on the basis of his unsatisfactory performance, the Parties may jointly appoint another Adjudicator and such an appointment shall be made within fourteen (14) Days after the resignation or death or removal of the Adjudicator. If the Parties are unable to reach agreement on the appointment of a new Adjudicator then the Adjudicator shall be appointed by the Institute for Construction Training and Development (ICTAD) at the request of either Party within fourteen (14) Days of receipt of such request.

19.5 Arbitration

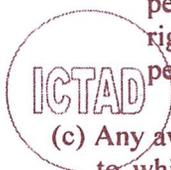
- (a) Any dispute of whatever nature arising from, out of or in connection with this agreement, on the interpretation thereof, or the rights, duties, obligations or liabilities of any Party, or the operation, breach, termination, abandonment, foreclosure or invalidity thereof, shall be referred to by either Party to arbitration for final settlement, in accordance with the Arbitration Act No. 11 of 1995, or any amendment thereof,
- (b) Pending the award in any arbitration proceedings hereunder,
- (i) this Contract and the rights and obligations of the Parties shall remain in full force and effect and
- (ii) each of the Parties shall continue to perform their respective obligations under this Contract. The termination of this Contract shall not result in the termination of any arbitration proceedings pending at the time of such termination nor otherwise affect the rights and obligations of the Parties under or with respect to such pending arbitration.
- (c) Any award rendered by the arbitral tribunal shall determine the extent to which the cost of arbitration is to be borne by each Party. The arbitration centre charges (if any) and the compensation to the arbitrator shall be equally shared by the Parties initially.

Composition of the Arbitral Tribunal :

The arbitral tribunal shall consist of a sole arbitrator who shall be appointed in the manner provided in the Selection Procedure as given below.

Selection Procedure :

The Party desiring arbitration shall nominate three arbitrators out of which one to be selected by the other Party within 21 Days of the receipt of such nomination. If the other Party does not select one to serve as Arbitrator



within the stipulated period then the Arbitrator shall be appointed in accordance with the Arbitration Act No. 11 of 1995, or any amendments thereof.

Venue & Language :

The venue of arbitration shall be in Sri Lanka.

Unless otherwise agreed to by the Parties the proceedings shall be conducted and the award shall be rendered in the English language.

20.0 Force Majeure

**20.1
Definition of Force
Majeure**

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

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

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

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

**20.2
Notice of Force
Majeure**

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

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

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

**20.3
Duty to Minimise
Delay**

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

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

**20.4
Consequence 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 20.2 (*Notice of Force Majeure*) and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to such Costs subject to Sub-Clause 19.1 (*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 subparagraphs (i) to (iv) of Sub-Clause 20.1 (*Definition of Force Majeure*) and, in the case of subparagraphs (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 3.4 (*Determinations*) to agree or determine these matters.

**20.5
Force Majeure
Affecting Sub-
Contractor**

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.

**20.6
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 20.2 (*Notice of Force Majeure*) or for multiple periods which total more than 140 Days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 Days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*).

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

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

**20.7
Release from
Performance
under the Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or 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 20.6 (*Optional Termination. Payment and Release*) if the Contract had been terminated under Sub-Clause 20.6.



Section – 4

CONTRACT DATA

Note :

This section shall be read in conjunction with Section 3 - Conditions of Contract, and is intended to provide specific information in relation to corresponding Clauses in Section 3. Whenever there is a discrepancy, the provisions in Section 4 - Contract Data shall supersede those provided in the Section 3 - Conditions of Contract.

Note :

The Contract Data included herein are Samples only. The Employer shall fill the necessary information and include them as Section 4 in Volume 2 before issuing the bidding documents.

Note: *The clause numbers referred are the clause numbers of Conditions of Contract. The Employer should insert relevant data for all the items marked with an asterisk (*) prior to the issue of the bidding documents. Where a number of Days are to be inserted, it is desirable for the number to be a multiple of seven, for consistency with the Conditions of Contract.*

Conditions of Contract Clause Number/s

(*) 1.1.2.2 & 1.3	Employer's name and address	Name: Address:
1.3	Contractor's name and address	Name: Address:
(*) 1.1.2.4 & 1.3	Engineer's name and address	Name: Address:

1.1.2.9³⁷

Replace existing Clause 1.1.2.9 with following:

“Dispute Adjudication Board” (DAB) means three persons appointed under Sub-Clause 19.2 [Appointment of the Dispute Adjudication Board] or Sub-Clause 19.3 [Failure to Agree on the Composition of the Dispute Adjudication Board] of the Conditions of Contract.

(*) 1.1. 3.3	Time for Completion of the Works	Time for Completion is Days
(*) 1.1.3.7	Defects Notification Period	Defects Notification Period is Days
(*) 2. 1	Right to access to the Site Days after Letter of Acceptance ³⁸
(*) 3.1	Engineer's Duties and Authority	The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions ³⁹ :

- (a) Clause 13, where the final effect of the variations increase the Contract Price
- (b) Clause

³⁷ Insert only for contracts estimated cost more than LKR 500 mn
³⁸ Insert number of Days, if different from 14 Days from Commencement Date
³⁹ Insert number;

(*) 14.3(c)	Limit of Retention Money % of the Initial Contract Price ⁴⁵
(*) 14.5	Minimum amount of Interim Payment Certificates Rupees ⁴⁶
(*) 14.8 ⁴⁷	Alternative method for Payment of Retention	On reaching the limit of retention, stated in the Contract Data under Sub-Clause 14.3, the Contractor may substitute full retention money with an unconditional guarantee acceptable to the Employer to a value equal to the full retention money, and valid up to 28 Days beyond the end of Defect Notification Period. On receipt of such guarantee the Employer shall repay the full retention money. The guarantee will be released to the Contractor upon the certification of the Engineer that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.
(*) 18.2	Third Party Insurance	This Amount of insurance per occurrence is: Rupees

SPECIMEN



⁴⁵ Usually 5 %
⁴⁶ Usually 50% of the average monthly value of the contract
⁴⁷ Insert if required only

Clause 19.0 Claims, Disputes and Arbitration⁴⁸

*Delete existing sub-clause 19.2 (Dispute Resolution),
Delete existing sub-clause 19.3 (Procedure for Adjudication),
Delete existing sub-clause 19.4 (Replacement of Adjudicator),
Delete existing sub-clause 19.5 (Arbitration), and
insert the following new sub-clauses;*

- 19.2 Appointment of the Dispute Adjudication Board
19.3 Failure to Agree on the Composition of the Dispute Adjudication Board
19.4 Obtaining Dispute Adjudication Board's Decision
19.5 Failure to Comply with Dispute Adjudication Board's Decision
19.6 Expiry of Dispute Adjudication Board's Appointment
19.7 Arbitration*

19.2⁴⁸

Appointment of the Dispute Adjudication Board

Any dispute of whatever nature arising out of or in relation to this agreement shall in the first instance be referred to a Dispute Adjudication Board (DAB) for decision in accordance with Sub-Clause 19.4 [Obtaining Dispute Adjudication Board's Decision]. The Parties shall appoint a DAB within 28 Days from the Commencement Date.

The DAB shall comprise, three suitably qualified persons ("the members"), who shall be professionals experienced in the type of construction involved in the Works and with the interpretation of contractual documents, one of whom shall serve as chairman.

Within 28 Days from the Commencement Date each of the Parties shall appoint one member to serve on the Dispute Adjudication Board (DAB). The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as the chairman.

The agreement between the Parties and each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these Contract Data, with such amendments as are agreed between them.

The terms of the remuneration of the three members, including the remuneration of any expert whom the DAB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.



⁴⁸ Insert only for contracts with estimated cost equal or exceeding LKR 500 m

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 DAB (including each member) shall expire when the discharge referred to in Sub-Clause 14.11 [Discharge] shall have become effective.

19.3⁴⁸

Failure to Agree on the Composition of the Dispute Adjudication Board

If any of the following conditions apply, namely:

- (a) either Party fails to nominate a member of a DAB by such date,
- (b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or
- (c) the Parties fail to agree upon the appointment of a replacement person within 42 Days after the date on which the 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 Institute for Construction Training and Development (ICTAD) shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the expenses / disbursements incurred by ICTAD.

19.4⁴⁸

Obtaining Dispute Adjudication 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 DAB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

⁴⁸ Insert only for contracts with estimated cost equal or exceeding LKR 500 m

The DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

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

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

If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 Days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DAB fails to give its decision within the period of 84 Days (or as otherwise approved) after receiving such reference, then either Party may, within 28 Days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

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 19.5 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 19.6 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.

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



- | | | |
|--------------------|--|--|
| 19.5 ⁴⁸ | Failure to Comply with Dispute Adjudication Board's Decision | In the event that a Party fails to comply with a DAB 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 19.7 [Arbitration]. Sub-Clause 19.4 [Obtaining Dispute Adjudication Board's Decision] shall not apply to this reference. |
| 19.6 ⁴⁸ | Expiry of Dispute Adjudication Board's Appointment | <p>If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB's appointment or otherwise:</p> <p>(a) Sub-Clause 19.4 [Obtaining Dispute Adjudication Board's Decision] shall not apply, and</p> <p>(b) the dispute may be referred directly to arbitration under Sub-Clause 19.7 [Arbitration].</p> |
| 19.7 ⁴⁸ | Arbitration | <p>(a) Any dispute of whatever nature arising from, out of or in connection with this agreement, on the interpretation thereof, or the rights, duties, obligations or liabilities of any Party, or the operation, breach, termination, abandonment, foreclosure or invalidity thereof, shall be referred to by either Party to arbitration for final settlement, in accordance with the Arbitration Act No. 11 of 1995, or any amendment thereof,</p> <p>(b) Pending the award in any arbitration proceedings hereunder,</p> <p style="margin-left: 20px;">(i) this Contract and the rights and obligations of the Parties shall remain in full force and effect and</p> <p style="margin-left: 20px;">(ii) each of the Parties shall continue to perform their respective obligations under this Contract. The termination of this Contract shall not result in the termination of any arbitration proceedings pending at the time of such termination nor otherwise affect the rights and obligations of the Parties under or with respect to such pending arbitration.</p> <p>(c) Any award rendered by the arbitral tribunal shall determine the extent to which the cost of arbitration is to be borne by each Party. The arbitration centre charges and the compensation to the arbitrator shall be equally shared by the Parties initially.</p> |



⁴⁸ Insert only for contracts estimated cost equal or exceeding LKR 500 mn

Composition of the Arbitral Tribunal :

The arbitral tribunal shall consist of a sole arbitrator who shall be appointed in the manner provided in the Selection Procedure as given below.

Selection Procedure :

The Party desiring arbitration shall nominate three arbitrators out of which one to be selected by the other Party within 21 Days of the receipt of such nomination. If the other Party does not select one to serve as Arbitrator within the stipulated period then the Arbitrator shall be appointed in accordance with the Arbitration Act No. 11 of 1995, or any amendments thereof.

Venue & Language :

The venue of arbitration shall be in Sri Lanka.

Unless otherwise agreed to by the Parties the proceedings shall be conducted and the award shall be rendered in the English language.



APPENDIX TO CONTRACT DATA

A General Conditions of Dispute Adjudication Agreement

1. Definitions

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

- (a) the “Employer”;
- (b) the “Contractor”; and
- (c) the “Member” who is defined in the Dispute Adjudication Agreement as being one of the three persons who are jointly called the “DAB” (or “Dispute Adjudication Board”) and, where this is the case, the other two persons are called the “Other Members.”

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

2. General Provisions

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

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

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

3. Warranties

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

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

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

**4. General
Obligations of the
Member**

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members, before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members;
- (e) comply with the annexed procedural rules and with Sub-Clause 19.4 (Obtaining Dispute Adjudication Board's Decision) of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DAB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members; and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members.

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

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DAB's activities under the Contract and the Dispute Adjudication Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

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

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

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

Whenever the Employer or the Contractor refers a dispute to the DAB under Sub-Clause 19.4 (Obtaining Dispute Adjudication Board's Decision) of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows:

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

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

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by 50%. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Adjudication Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
- (i) each day or part of a day up to a maximum of two Days travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members;
 - (ii) each working day on Site visits, hearings or preparing decisions; and
 - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, and faxes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause.

The retainer and daily fees shall be as specified in the Dispute Adjudication Agreement. Unless it specifies otherwise, these fees shall remain fixed for the entire duration of the Contract.

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

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DAB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.7 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

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

If the Member fails to comply with the Dispute Adjudication Agreement, the Employer and the Contractor may, without prejudice to their other

rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

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

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

8. Default of the Member

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

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

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled in accordance with Arbitration Act No 11, 1995 of Sri Lanka with a sole Arbitrator..



PROCEDURAL RULES

1. Unless otherwise agreed by the Employer and the Contractor, the DAB shall visit the site at intervals of not more than 70 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DAB, the period between consecutive visits shall not be less than 35 days, except as required to convene a hearing as described below.
2. The timing of and agenda for each site visit shall be as agreed jointly by the DAB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DAB. The purpose of site visits is to enable the DAB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.
3. Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DAB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.
4. The Employer and the Contractor shall furnish copy each to the members of the DAB all documents which the DAB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DAB and the Employer or the Contractor shall be copied to the other Party.
5. If any dispute is referred to the DAB in accordance with Sub-Clause 19.4 (Obtaining Dispute Adjudication Board's Decision) of the Conditions of Contract, the DAB shall proceed in accordance with Sub-Clause 19.4 (Obtaining Dispute Adjudication Board's Decision) and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DAB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
6. The DAB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
7. Except as otherwise agreed in writing by the Employer and the Contractor, the DAB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DAB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
8. The Employer and the Contractor empower the DAB, among other things, to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DAB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Guidelines,

- (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.
9. The DAB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DAB shall make and give its decision in accordance with Sub-Clause 19.4 (Obtaining Dispute Adjudication Board's Decision), or as otherwise agreed by the Employer and the Contractor in writing. The DAB:
- (a) shall convene in private after a hearing, in order to have discussions and prepare its decision;
 - (b) shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
 - (c) Member fails to attend a meeting or hearing, or to fulfill any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.



DISPUTE ADJUDICATION AGREEMENT

[for each member of a three - person DAB]

Name and details of Contract
 Name and address of Employer
 Name and address of Contractor
 Name and address of Member

Whereas the Employer and the Contractor have entered into the Contract and desire jointly to appoint the Member to act as one of the three persons who are jointly called the Dispute Adjudication Board (DAB) [and desire the Member to act as chairman of the DAB]

The Employer, Contractor and Member jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the “General Conditions of Dispute Adjudication Agreement” which is appended to the General Conditions of the “Standard Bidding Document, Procurement of Works, Major Contracts - Second Edition, January 2007” and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.

2. [Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any]

For example:

In the procedural rules annexed to the General Conditions of Dispute Adjudication Agreement, Rule _____ is deleted and replaced by: “.....”]

3. In accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement the Member shall be paid as follows:

A retainer fee of _____ per calendar month,
 plus a daily fee of _____ per day.

4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement, the Member undertakes to serve, as described in this Dispute Adjudication Agreement, as one of the three persons who are jointly to act as the DAB.

5. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Adjudication Agreement.

6. This Dispute Adjudication Agreement shall be governed by the law of _____

SIGNED by: _____ SIGNED by: _____ SIGNED by: _____

for and on behalf of the employer for and on behalf of the Contractor the Member
 in the presence of in the presence of in the presence of

Witness: _____ Witness: _____ Witness : _____

Name: _____ Name: _____ Name : _____

Address: _____ Address: _____ Address : _____

Date: _____ Date: _____ Date: _____

Section - 5

STANDARD FORMS (CONTRACT)

- Letter of Acceptance
- Agreement
- Performance Security
- Advance Payment Security
- Retention Money Guarantee

Notes on Standard Forms:

Bidders shall submit the completed Form of Bid Security in compliance with the requirements of the bidding documents.

Bidders should not complete the Form of Agreement at the time of preparation of bids. The successful Bidder will be required to sign the Form of Agreement, after the award of contract. Any corrections or modifications to the accepted bid resulting from arithmetic corrections, acceptable deviations, or quantity variations in accordance with the requirements of the bidding documents should be incorporated into the Agreement.

The Form of Performance Security, Form of Advance Payment Security and Form of Retention Money Guarantee should not be completed by the bidders at the time of preparation of bids. The successful Bidder will be required to provide these securities in compliance with the requirements herein or as acceptable to the Employer.

Notes on Form of Letter of Acceptance

The Letter of Acceptance will be the basis for formation of the Contract as described in Clause 34 of the Instructions to Bidders. This Form of Letter of Acceptance should be filled in and sent to the successful bidder only after evaluation of Bids and after obtaining approval from the relevant authority.

FORM OF LETTER OF ACCEPTANCE

[letter head paper of the Employer]

..... *[date]*

[LETTER HEADING PAPER OF THE PROCURING ENTITY]

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

This is to notify you that your bid dated ----- *[insert date]* for the construction and remedying defects of the ----- *[name of the Contract and identification number]* for the Contract price of ----- *[name of currency⁴⁹]* ----- *[amount in figures and words]* as corrected in accordance with Instructions to Bidders and/ or modified by a Memorandum of Understanding⁵⁰, is hereby accepted.

You are hereby instructed to proceed with the execution of the said Works in accordance with the Contract documents.

The Commencement Date shall be: *(fill the date as per Clause 8.1 of Conditions of Contract).*

The amount of Performance Security is : *(fill the amount as per Clause 4.2 of Conditions of Contract).*

The Performance Security shall be submitted on or before *(fill the date as per Clause 4.2 of Conditions of Contract).*

Authorized Signature : 

Name and title of Signatory :

⁴⁹ If multiple currencies are involved indicate amounts under each currency separated with the word 'and' between them
⁵⁰ Delete "corrected in accordance with ITB and/or " or "and/or modified by a Memorandum of Understanding", if not applicable

FORM OF AGREEMENT

This Agreement made the [day] of [month] 200..... [year], between [name and address of Employer] (hereinafter called and referred to as “the Employer”), of the one part, and [name and address of Contractor] (hereinafter called and referred to as “the Contractor”), of the other part:

Whereas the Employer desires that the Contractor execute [name and identification no of Contract] (hereinafter called and referred to as “the Works”) and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and remedying of any defects therein.

The Employer and the Contractor agree as follows::

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract.
2. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execute and complete the Works and remedy any defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties hereto have caused this Agreement to be executed the day and year aforementioned in accordance with laws of Sri Lanka.

.....
Authorised signature of Contractor

.....
Authorised signature of Employer

COMMON SEAL



COMMON SEAL

In the presence of
 Witnesses :

1. Name and NIC No.
 Signature
 Address
2. Name and NIC No.
 Signature
 Address

FORM OF PERFORMANCE SECURITY (Unconditional)

----- *[Issuing Agency's Name, and Address of Issuing Branch or Office]* -----

Beneficiary: ----- *[Name and Address of Employer]*

Date: -----

PERFORMANCE GUARANTEE No.: -----

We have been informed that ----- *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. ----- *[reference number of the Contract]* dated ----- with you, for the ----- *[insert "construction"]* of ----- *[name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we ----- *[name of Agency]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ----- *[amount in figures]* (----- *[amount in words]*), upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the day of, 20.. *[insert date, 28 days beyond the Time for Completion]* and any demand for payment under it must be received by us at this office on or before that date.

[signature(s)]



FORM OF ADVANCE PAYMENT SECURITY

----- [Name and address of Agency, and Address of Issuing Branch or Office] -----

Beneficiary: ----- [Name and Address of Employer]

Date: -----

ADVANCE PAYMENT GUARANTEE No.: -----

We have been informed that ----- [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. ----- [reference number of the contract] dated ----- with you, for the ----- construction of ----- [name of contract and brief description] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum ----- [amount in figures] (-----) [amount in words] is to be made against an advance payment guarantee.

At the request of the Contractor, we ----- [name of issuing agency] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ----- [amount in figures] (-----) [amount in words]⁵¹ upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation in repayment of the Advance Payment under the Contract.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor.

This guarantee shall expire on [Insert the date, 28 days beyond the Time of Completion]

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

[signature(s)]

ICTAD

⁵¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract.

FORM OF RETENTION MONEY GUARANTEE

----- *[Issuing Agency's Name, and Address of Issuing Branch or Office]* -----

Beneficiary: ----- *[Name and Address of Employer]* -----

Date: -----

RETENTION MONEY GUARANTEE No.: -----

We have been informed that ----- *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. ----- *[reference number of the contract]* dated ----- with you, for the execution of ----- *[name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, when the works have been taken over and the first half of the Retention Money has been certified for payment, payment of the second half of the Retention Money may be made against a Retention Money guarantee.

At the request of the Contractor, we ----- *[name of agency]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ----- *[amount in figures]* (----- *[amount in words]*⁵²) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor has not attended to the defects in accordance with the Contract..

This guarantee shall expire, at the latest, ----- *[insert 28 Days after the end of the Defects Liability Period]*. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s)]

S P E C I M E N

ICTAD

⁵² The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.

Section – 6
SPECIFICATIONS

Notes for Preparing Technical Specifications

Precise and clear Specifications are a prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their bids. In the context of competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the Permanent Works, the extent of his obligations must be stated. (See Sub-Clause 4.1 of the Conditions of Contract.)

Samples of Specifications from previous similar projects are useful in this respect. Most Specifications are normally written specially by the Employer or Engineer to suit the contracts for Works in hand. ICTAD specifications shall be specified wherever applicable.

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, Sri Lanka Standards should be used as much as possible.

Wherever reference is made in the Contract to specific standards and codes to be met by the materials, Plant, and other supplies to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract.

These Notes for Preparing Technical Specifications are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

Section – 7

FORM OF BID

FORM OF BID

Note: Prior to the issue of the bidding documents, the Employer should insert relevant data for all items marked with an asterisk (*).

Name of Contract:*

To:* [insert name of Employer]

Gentlemen:

1. Having examined the Standard Bidding Document - Procurement of Works – Major Contracts [ICTAD/SBD/02 - Second Edition, January 2007], Specifications, Drawings and Bills of Quantities and Addenda for the execution of the above-named Works, we the undersigned, offer to execute and complete such Works and remedy any defect therein in conformity with the aforesaid Conditions of Contract, Specifications, Drawings, Bills of Quantities and addenda for the sum of Sri Lankan Rupees (LKR.....) or such other sums as may be ascertained in accordance with the said Conditions.
2. We acknowledge that the Contract Data forms part of our Bid.
3. We undertake, if our Bid is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Contract Data.
4. We agree to abide by this Bid until the date specified in ITB Clause 16 [insert date], and it shall remain binding upon us and may be accepted at any time before that date.
5. Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us⁵⁴.
6. We understand that you are not bound to accept the lowest or any bid you may receive.
7. We certify/confirm that we comply with the eligibility requirements as per ITB Clause 3 of the bidding documents.

Dated this day of.....20.....

Signature in the capacity of
 duly authorized to sign bids for and on behalf of
 [in block capitals or typed]

Address:

Witness:

⁵⁴ For a joint venture bid, add following to item 5.0:

If this bid is a joint venture bid we undertake the responsibility to enter into a joint venture agreement among the joint venture partners. We are also well aware that in the event we fail to enter into a joint venture agreement the contract formed between us is null and void and our bid bond will be forfeited by you.

Section – 8

BILLS OF QUANTITIES

Notes : In preparation of the bidding document the users are advised to;

- (1) Include appropriate Preliminary Bill items as Bill No. 01 in accordance with ICTAD Publication No. ICTAD/ID/04.*
- (2) Allow provision for the bidders to include the VAT Component separately and instruct them not to carry the VAT component to the Form of Bid.*
- (3) Advise the bidders that any discount offered will not be considered for Provisional Sum Items.*

Notes for Preparing a Bills of Quantities

Objectives

The Bills of Quantities of building work shall be prepared in accordance with the principles laid down in the Standard Method of Measurement of Building Works S.L.S. 573 (1st Revision 1999) or latest edition or in the case of Civil Engineering Works the Civil Engineering Method of Measurements (3rd Edition) or latest.

The objectives of the Bill of Quantities are

- (a) to provide sufficient information on the quantities of Works to be performed to enable bids to be prepared efficiently and accurately; and*
- (b) when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed.*

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and brief as possible.

Content

The Bill of Quantities should be divided generally into the following sections:

- (a) Preamble;*
- (b) Preliminaries*
- (c) Work Items (grouped into sections);*
- (d) Provisional sums*
- (e) Day work Schedule and*
- (f) Summary.*

Preamble

The Preamble should indicate the inclusiveness of the unit prices, and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities and that are to be used for the measurement of any part of the Works.

Preliminaries

Under the heading items which affect the contract as a whole should be listed.

Work Items

The items in the Bill of Quantities should be grouped into sections to distinguish between those parts of the Works that by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, phasing of the Works, or considerations of cost. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

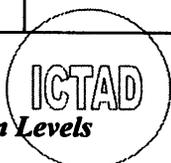
Quantities

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste.

Units of Measurement

The following units of measurement and abbreviations are recommended for use

Unit	Abbreviation	Unit	Abbreviation
cubic metre	m ³	millimetre	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square metre	m ²
lump sum	sum	square millimetre	mm ²
metre	m	week	wk
metric ton (1,000 kg)	t		

**Ground and Excavation Levels**

The commencing surface should be identified in the description of each item for work involving excavation, boring, or driving, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for work involving excavation for which the excavated surface is not also the final surface. The depths of work should be measured from the commencing surface to the excavated surface, as defined.

Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise, a list of the various classes of labor, materials, and Contractor's Equipment for which basic Daywork rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Day work basis; and

Provisional Sums

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by a Nominated Subcontractor (reference Clause 5.0 or Part I) should be indicated in the relevant part of the Bill of Quantities as a particular Provisional Sum with an appropriate brief description. A separate bidding procedure is normally carried out by the Employer to select the specialists, who are then nominated as subcontractors to the main or prime contractor. To provide an element of competition among the main bidders (or prime contractors) in respect of any facilities, amenities, attendance, etc., to be provided by the successful bidder as prime contractor for the use and convenience of the specialist or nominated subcontractor, each related Provisional Sum should be following by an item in the Bill of Quantities inviting a percentage (to be quoted by the main bidder) payable on the actual expenditure from the Provisional Sum.

Summary

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with a contingency sum for unforeseen work.

These Notes for Preparing a Bill of Quantities are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

Section – 9

SCHEDULES

Schedule 1 – General Information

- (i) *If pre-qualification is done the bidders are required to include information subsequent to that submitted with the pre-qualification application.*
- (ii) *For joint ventures, each joint venture partner shall furnish information separately.*

ITB Clause reference	Description	Information (to be filled by the Bidder)	Remarks
4.1 (a)	Legal Status		<i>Provide certified copies of Registration</i>
	Written power of attorney of the signatory to the Bid	<i>Provide original or certified copy of the power of attorney attested by a Notary and label as attachment to Clause 4.1(a)</i>	
	If a Joint Venture, names and addresses of Joint Venture Partners	1. 2. 3.	<i>Provide a draft copy of the Joint Venture Agreement or alternatively the memorandum of understanding</i>
	If a Joint Venture, name of Lead Partner		
<i>For joint ventures, each joint venture partner shall furnish Legal Status separately</i>			
	Name (Lead partner)		<i>Provide certified copies and label as attachment to Clause 4.1(a)</i>
	Legal status		
	Place of registration		
	Principle place of business		
	Written power of attorney of the signatory to the Bid	<i>Provide original or certified copy of the power of attorney attested by a Notary and label as attachment to Clause 5.1</i>	
	VAT Registration Number		
	Name (Partner 2)		<i>Provide certified copies and label as attachment to Clause 4.1 (a)</i>
	Legal status		
	Place of registration		
	Principle place of business		

	Written power of attorney of the signatory to the Bid	<i>Provide original or certified copy of the power of attorney attested by a Notary and label as attachment to Clause 4.1 (a)</i>	
	VAT Registration Number		
	Name (Partner 3)		<i>Provide certified copies and label as attachment to Clause 4.1 (a)</i>
	Legal status		
	Place of registration		
	Principle place of business		
	Written power of attorney of the signatory to the Bid	<i>Provide original or certified copy of the power of attorney attested by a Notary and label as attachment to Clause 4.1 (a)</i>	
	VAT Registration Number		
4.2 (a)	ICTAD Registration		<i>Provide certified copies and label as attachment to Clause 4.2(a)</i>
	Registration number		
	Grade		
	Specialty		
	Expiry Date		



**Schedule 2 – Annual Turn-over Information
(Construction only – Last five years)**

- (i) *If pre-qualification is done the bidders are required to include information subsequent to that submitted with the pre-qualification application.*
- (ii) *For joint ventures, each joint venture partner shall furnish information separately.*

Year	Turn-over	Remarks
1		<i>Attach audited reports and label as attachment to Clause 4.2</i>
2		
3		
4		
5		

Schedule 3 – Adequacy of Working Capital

If pre-qualification is done the bidders are required to include information subsequent to that submitted with the pre-qualification application

Source of credit line	Amount	Remarks
		<i>Provide documentary evidence and label as attachment to Clause 4.2</i>
Total		

Schedule 6 – Construction Management Staff

A. Key Professionals

Name	Position	Task

B. Support Staff

Name	Position	Task

ICTAD
SPECIMEN

Section – 10

DRAWINGS

Note:

Insert here a list of Drawings

Section – 11

STANDARD FORMS (BID)

- Bid Security

Notes on Standard Forms:

Bidders shall submit the completed Form of Bid Security in compliance with the requirements of the bidding documents.

Bidders should not complete the Form of Agreement at the time of preparation of bids. The successful Bidder will be required to sign the Form of Agreement, after the award of contract. Any corrections or modifications to the accepted bid resulting from arithmetic corrections, acceptable deviations, or quantity variations in accordance with the requirements of the bidding documents should be incorporated into the Agreement.

The Form of Performance Security, Form of Advance Payment Security and Form of Retention Money Guarantee should not be completed by the bidders at the time of preparation of bids. The successful Bidder will be required to provide these securities in compliance with the requirements herein or as acceptable to the Employer.

FORM OF BID SECURITY

[this Guarantee form shall be filled in accordance with the instructions indicated in brackets]

----- [insert issuing agency's name, and address of issuing branch or office]

Beneficiary: -----
[insert (by PE) name⁵⁵ and address of Employer]

Date: ----- [insert (by issuing agency) date]

BID GUARANTEE No.: ----- [insert (by issuing agency) number]
We have been informed that ----- [insert (by issuing agency) name of the Bidder] (hereinafter called "the Bidder") has submitted to you its bid dated ----- [insert (by issuing agency) date] (hereinafter called "the Bid") for the execution of [insert name of Contract] under Invitation for Bids No. ----- [insert IFB number] ("the IFB").

Further more, we understand that, according to your conditions, Bids must be supported by a Bid Guarantee.

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

- (a) has withdrawn its Bid during the period of bid validity specified; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter "the ITB") of the IFB; or
- (c) having been notified of the acceptance of its Bid by the Employer/Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This Guarantee shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the Contract signed by the Bidder and of the Performance Security issued to you by the Bidder; or (b) if the Bidder is not the successful bidder, upon the earlier of (i) the successful bidder furnishing the performance security, otherwise it will remain in force up to ----- (insert date⁵⁶)

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

⁵⁵ Name of the Employer as given in Sub-Clause 1.1 of the Instructions to Bidders

⁵⁶ Insert date in accordance with Sub-Clause 16 of Instruction to Bidders

Check List for Bidders

Bidders are advised to fill the following table:

ITEM	ITB Clause	YES (tick)	REFERENCE
Form of Bid			
Addressed to the Employer ?	18		
Completed ?	18		
Signed ?	18		
Bid Securing Declaration Form (if required)			
Properly filled and signed	16		
Bid Security (if required)			
Addressed to the Employer ?	16		
Format as required?	16		
Issuing Agency as specified?	16		
Amount as requested?	16		
Validity 28 days beyond the validity of Bid?	16		
Qualification Information			
All relevant information completed ?	4		
Signed?	4		
Addendum			
Contents of the addendum (if any) taken in to account ?	10		
BID package			
All the documents given in ITB Clause 12 enclosed in the original and copy ?	12		
ITB Clause 19 followed before Sealing the Bid Package ?	19		