

**APPROVED BY NPA**

**ICTAD/SBD/03**

# **VOLUME 1**

*(for Bidding purposes)*

- Section 1 - Instructions to Bidders
- Section 2 - Standard Forms (Contract)
- Section 3 - Conditions of Contract

of

**STANDARD BIDDING DOCUMENT**

**PROCUREMENT OF WORKS**

**MINOR CONTRACTS**

**ICTAD/SBD/03**

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

# Section - 1

## INSTRUCTIONS TO BIDDERS (ITB)

*Notes:*

*Instructions to Bidders shall be read in conjunction with the Section 5 – Schedule given in Volume 2, which shall take precedence over Instruction to Bidders.*

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

*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.*

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## Instructions to Bidders

### A General

- 1. Scope of Bid**
- **Employer,<sup>1</sup>** as named in the **Schedule**, invites bids for the construction of **Works** as summarized in the **Schedule**;
  - Successful bidder will be expected to complete the **Works** within the **Intended Completion Date** stated in the **Schedule**;
  - **Intended Completion Date** shall be calculated from the **Start Date**.
- 2. Source of Funds**      **Works** will be financed by the source given in the **Schedule**.
- 3. Ethics, Fraud and Corruption**
- 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.
- The attention of the bidders is also drawn to the Sub-Clause 11.1 of the Conditions of Contract (Section 3) which shall apply to any bidder.
- 4. Eligibility and Qualification of the Bidder**
- The bidder shall not be a blacklisted contractor at the time of bidding and at the time of award of contract.
  - For domestic bidders, to qualify for the contract award the successful bidder should have been registered and hold a valid registration from the deadline for submission of bids until the expiry of the original validity of the bid, with the Institute for Construction Training and Development (ICTAD), under the grade and speciality given in the Invitation for Bids/Section 4 - Qualification Information;
  - All bidders shall provide, the information requested in the Section 4- Form of Bid and Qualification Information.
  - To qualify for award of the **Contract**, bidders shall meet the minimum qualifying criteria if given in Section 4 - Form of Bid and Qualification Information.
- All bidders shall meet (any other) requirement given in the **Schedule**.
- 5. One Bid per Bidder**
- A bidder shall submit only one bid.

<sup>1</sup> Words appearing in bold in the text of these ITB sub-clauses are defined in Clause 1.1(Definitions) of the Section 3 – Conditions of Contract.

- 6. Cost of Bidding**
- Bidder shall bear all costs associated with the preparation and submission of its bid;
  - **Employer** will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**7. Site Visit**

The bidder, at the bidder's own responsibility and risk is encouraged :

- to visit and examine the **Site**, and its surroundings where the **Works** are to be executed;
- to obtain all information that may be necessary for preparing the bid and entering into a **Contract** for construction of the **Works**;
- Costs of visiting the **Site** shall be at the bidder's own expense.

**B. Bidding Documents**

**8. Content of Bidding Documents**

Bidding documents consists of two volumes stated below and shall be read in conjunction with any addenda issued in accordance with Clause 10:

**Volume 1** -

- Section 1 - Instructions to Bidders
- Section 2 - Standard Forms (Contract)
- Section 3 - Conditions of Contract

**Volume 2**

- Invitation for Bids
- Section 4 – Form of Bid and Qualification Information
- Section 5 – Schedule
- Section 6 – Specifications
- Section 7 – Bills of Quantities
- Section 8 – Drawings
- Section 9 - Standard Forms (Bid)

**9. Clarification of Bidding Documents**

- A bidder requiring any clarification of the bidding documents shall contact the **Employer** in writing or facsimile at the **Employer's** address indicated in the Invitation for Bids;
- **Employer** will respond in writing to any such request for clarification received no later than seven (7) **Days** prior to the deadline for submission of bids;
- Copies of **Employer's** response will be forwarded to all purchasers of the bidding documents, including a description of the inquiry but without identifying its source.

### 10. Amendment of Bidding Documents

- At any time prior to the deadline for submission of bids, the **Employer** may amend the bidding documents by issuing addenda.
- Any addendum thus issued shall be part of the bidding documents;
- Any addendum shall be communicated in writing or by facsimile to all purchasers of the bidding documents.

## C. Preparation of Bids

### 11. Language of Bid

The bid as well as all correspondence and documents relating to the bid exchanged by the bidder and the **Employer**, shall be written in English language.

### 12. Documents Comprising the Bid

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 and Qualification Information (in the format indicated in Section 4);
- (b). Bid Security or Bid-Securing Declaration as specified
- (c). Section 5 - Schedule;
- (d). Section 6 - Specifications;
- (e). Section 7 - Priced Bills of Quantities;
- (f). Section 8 - Drawings;
- (g). Any other information required to be completed and submitted by bidders as specified in the **Schedule**.

#### (B) Enclosed in the envelope marked as "Copy"

- (a) Duly filled and signed Form of Bid and Qualification Information (in the format indicated in Section 4);
- (b) Section 7 - Priced Bills of Quantities.

### 13. Bid Prices

- The **Contract** shall be for the whole **Works**, summarized in the **Schedule**, and based on the priced Bills of Quantities;
- The bidder shall fill-in rates and prices for all items of the **Works** described in the Bills of Quantities;
- Items for 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 other rates and prices in the Bills of Quantities;
- All duties, taxes, and other levies payable by the **Contractor** under the **Contract**, or for any other cause, as of the date 14 **Days** prior to the deadline for submission of bids, shall be included in the rates, prices, and total Bid price submitted by the bidder;

- VAT shall not be included in the rates or prices but shall be shown separately at the space provided in the BOQ;
- Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the **Schedule**;
- If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted in accordance with Sub-Clause 10.10 of Conditions of Contract and by using either Option A or Option B stated in the **Schedule**.

#### 14. Currency of Bid and Payment

Prices shall be quoted by the bidder entirely in Sri Lanka Rupees.

#### 15. Period of Validity of Bids

- Bids shall remain valid for the period stipulated in the Invitation for Bids after the date of bid submission specified in Clause 20;
- A bid valid for a shorter period shall be rejected by the **Employer**;
- In exceptional circumstances, prior to expiry of the period of validity of bids, the **Employer** may request that the bidders extend the period of validity for a specified additional period;
- A bidder may refuse the request;
- 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 16 in all response.

#### 16. Bid Security and Bid-Securing Declaration

- The Bidder shall furnish as part of its Bid, a bid security or a bid-securing declaration as specified in the **Schedule** in the format given in the Section 9.
- The bid security shall be in the **amount specified in the Schedule and shall be valid until the date specified in the Schedule**, from an agency acceptable to the Employer.
- Any Bid not accompanied by a substantially responsive bid security or bid-securing declaration in accordance with this clause, shall be rejected by the Employer.
- The bid security or the bid-securing declaration of unsuccessful bidders shall be returned promptly upon the successful bidder furnishing the performance security
- The bid security may be forfeited or the bid-securing declaration executed:
  - (a) if a bidder withdraws its bid during the period of bid validity specified by the bidder on the Form of Bid; or

- (b) if the bidder does not accept the correction of its bid price pursuant to ITB Sub-Clause 26.
- (c) if the successful bidder fails within the specified time to:
  - (i) sign the Contract; or
  - (ii) furnish the required performance security.

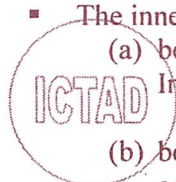
**17. Pre-Bid Meeting** The bidders designated representative is invited to attend a pre-bid meeting which, if convened and informed to the bidders, will take place at the venue and time stipulated.

- 18. Format and Signing of Bid**
- The bidder shall prepare one original of the documents comprising the bid as described in Clause 12 and clearly marked “ORIGINAL”;
  - In addition, the bidder shall submit one copy of the bid, clearly marked as “COPY”;
  - In the event of discrepancy between them, the original shall prevail;
  - The original and the copy of the 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;
  - The bid shall contain no alterations or additions, except those to comply with instructions issued by the **Employer**, or as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the bid.

#### D. Submission of Bids

- 19. Sealing and Marking of Bids**
- The bidder shall seal the original and the copy of the bid in two inner separate envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPY”;
  - The inner and outer envelopes shall:
    - (a) be addressed to the **Employer** at the address provided in the Invitation for Bids;
    - (b) bear the name and identification number of the **Contract** in accordance with Clause 1; and
    - (c) provide a warning not to open before the specified time and date for bid opening as defined in the Clause 22.
  - In addition to the identification required above, 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.

**20. Deadline for Submission of Bids** Bids shall be delivered to the **Employer** at the address specified above no later than the time and date specified in the Invitation for Bids.





- 21. Late Bids** Any bid received by the **Employer** after the deadline for submission of bids will be returned unopened to the bidder.

### E. Bid Opening and Evaluation

- 22. Bid Opening**
- The **Employer** will open the bids, in the presence of the bidders' representatives who choose to attend at the time and in the place specified in the Invitation for Bids;
  - The envelope marked as "Original" will be opened. If no envelope is marked as "Original" the Employer may open one or more envelopes;
  - The bidders' names, the bid prices, the total amount of each bid, any discounts, and such other details as the **Employer** may consider appropriate, will be announced by the **Employer** at the opening;
  - The Employer shall reseal all the opened envelopes in the presence of the bidders representatives.
  - No bid shall be rejected at bid opening except for late bids.

- 23. Process to be Confidential** 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.

- 24. Clarification of Bids**
- To assist in the examination, evaluation, and comparison of bids, the **Employer** may, at the **Employer's** discretion, ask any bidder for clarification of the bidder's bid, including breakdowns of prices;
  - The request for clarification and the response shall be in writing.

- 25. Examination of Bids and Determination of Responsiveness**
- Prior to the detailed evaluation of bids, the **Employer** will determine whether each bid:
    - (a) meets the eligibility criteria;
    - (b) has been properly signed; and
    - (c) is substantially responsive to the requirements of the bidding documents.
  - A substantially responsive bid is one which 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) which affects in any substantial way the scope, quality, or performance of the **Works**;

- (b). which 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.
- If a bid is not substantially responsive:
    - (a). it will be rejected by the **Employer**;
    - (b). and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

## 26. Correction of Errors

- 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;
  - (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 misplacement 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;
  - (c) 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;
  - (d) if the bidder does not accept the corrected amount of bid, its bid shall be rejected and the bid security may be forfeited or bid-securing declaration executed in accordance with Clause 16.

## 27. Evaluation and Comparison of Bids



- **Employer** will evaluate and compare only the bids determined to be substantially responsive;
- In evaluating the bids, **Employer** will determine for each bid the Evaluated Bid Price by adjusting the Bid Price as follows:
  - (a) making any correction for errors;
  - (b) excluding the provision, if any, for contingencies;
  - (c) making an appropriate adjustment for any other acceptable variations or deviations; and

(d) making appropriate adjustments to reflect discounts offered

- The **Employer** reserves the right to accept or reject any variation or deviation.
- Examination for unbalanced bids; If the Employer determines that the bid is unbalanced and hence the bidder may fail in the performance of his obligations in some items within the quoted rates, a higher performance security as determined by the Employer may be requested to mitigate such risks

## F. Award of Contract

### 28. Award Criteria

Subject to Clause 29, **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, provided that such bidder has been determined to be:

- (a) eligible in accordance with the provisions of Clause 3; and
- (b) qualified in accordance with the provisions of Clause 4.

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

**Employer** reserves the right to:

- (a) accept or reject any bid;
- (b) cancel the bidding process;
- (c) reject all bids, at any time prior to the award of **Contract**,

Without thereby incurring any liability to the affected bidder (s).

### 30. Award and Signing of Agreement

- Prior to expiration of the bid validity period, the **Employer** will notify the successful bidder that his bid has been accepted.
- This letter (hereinafter and in the Conditions of Contract called the "**Letter of Acceptance**") will state the sum that the **Employer** will pay the **Contractor** in consideration of the execution, completion, and maintenance of the **Works** by the **Contractor** as prescribed by the **Contract** (hereinafter and in the **Contract** called the "**Initial Contract Price**");
- The notification of award will constitute the formation of the **Contract**;
- 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 the **Letter of Acceptance**.

Within 14 **Days** after receipt of the **Letter of Acceptance**, the successful bidder shall deliver to the **Employer** a Performance Security:

- to an amount equivalent to 05% of Initial Contract Price; and
- in the form specified in the Section 2

**32. Advance Payment and Security**

**Employer** will provide an Advance Payment equivalent to 20% of **Initial Contract Price**, within 7 **Days** of the **Contractor** submitting an acceptable guarantee.

**33. Adjudicator**

- The **Employer** nominates the Institute for Construction Training and Development (ICTAD) as the **Adjudicator**. If the bidder disagrees with the nomination, the bidder shall state so in the bid, in which event the **Employer** and the **Contractor** may reach agreement on the appointment of an **Adjudicator** by mutual consent within 14 **Days** from the Letter of Acceptance.
- If mutual consent is not reached or resorted to as above then the **Adjudicator** shall be appointed by the Institute for Construction Training and Development (ICTAD) at the request of either **Party**.
- If a person is appointed as the **Adjudicator** then he shall not be associated with the project directly or indirectly and he should be in a position to demonstrate impartiality and independence in his functions.



## Section - 2

### STANDARD FORMS (CONTRACT)

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

**Note :**

*The bidders are advised to use the information printed in blue in this volume as a check list when submitting the bid. Failure to non compliance with any of them may be a reason for rejection of the Bid.*

**Notes on Standard Forms:**

- *Bidders shall submit the completed Form of Bid Security/Bid Securing Declaration as appropriate 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 30 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 heading paper of the procuring entity]

..... [date]

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 currency<sup>2</sup>]-----[amount in figures and words] as corrected in accordance with Instructions to Bidders and/ or modified by a Memorandum of Understanding<sup>3</sup>, is hereby accepted.

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

The Start Date shall be: ..... (fill the date as per Clause 6.1 of Conditions of Contract).

The amount of Performance Security is : ..... (fill as per Clause 4.4 of Conditions of Contract).

The Performance Security shall be submitted on or before ..... (fill the date as per Clause 4.4 of Conditions of Contract).

Authorized Signature :  .....

Name and title of Signatory : .....

Name of Agency : .....

<sup>2</sup> If multiple currencies are involved indicate amounts under each currency separated with the word 'and' between them  
<sup>3</sup> 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 hereinafter referred to.
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.

.....

**Authorized signature of Contractor**

**Authorized 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 Intended Completion Date]* 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<sup>4</sup>] 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 expected  
expiration date of the Contract]

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

\_\_\_\_\_  
[signature(s)]



<sup>4</sup> 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  
being 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<sup>5</sup>]  
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)]



<sup>5</sup> The Guarantor shall insert an amount representing the amount of the second half of the Retention Money

## **Section - 3**

### **CONDITIONS OF CONTRACT**

*Conditions of Contract shall be read in conjunction with the  
Section 5 - Schedule in Volume 2, which shall take precedence over the  
Conditions of Contract*

**Table of Clauses**  
**CONDITIONS OF CONTRACT**

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## Conditions of Contract

### 1.0 General Provisions

#### 1.1 Definitions

In the Contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except where the context requires otherwise:

#### The Contract

1.1.1 The **Contract** is the Contract between the Employer and the Contractor to execute the Works and shall include the documents listed in Clause 1.3.

1.1.2 **“Contract Price”** means the amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with provisions of the Contract.

1.1.3 **“Specification”** means the specification of the Works included in the Contract and any modification or addition made or approved by the Engineer.

1.1.4 **“Initial Contract Price”** means the amount stated in the Letter of Acceptance.

1.1.5 **Letter of Acceptance** means the letter signed and issued by the Employer accepting the Bid submitted by the Contractor for the execution and completion of the Works.


1.1.6 **“Drawings”** means the Employer's drawings of the Works, and any Variation to such drawings.

1.1.7 **“Schedule”** means the completed pages entitled schedule, which forms part of the conditions of contract.

#### Persons

1.1.8 **“Employer”** means the Party named in the Schedule, who employs the Contractor to carry out the Works.

1.1.9 **“Contractor”** means the person(s) who's Bid to carry out the Works has been accepted by the Employer and named in the Agreement.

 **“Engineer”** is the person named in the Schedule (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.

1.1.11 The **“Adjudicator”** is the Institute for Construction Training and Development (ICTAD) or a person as the case may be, in accordance with Sub-Clause 14.2 for determination of the disputes in the first instance, as provided for in Clause 14.0 .

**Dates, Times and Periods**

1.1.12 **“Start Date”** means the date 7 Days after the issue of Letter of Acceptance or any other date agreed between the Employer and Contractor.

1.1.13 **“Day”** means a calendar day.

1.1.14 **“Intended Completion Date”** means the date for completion of the Works as stated in the Schedule.

**Money and Payments**

1.1.15 **“Cost”** means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overheads and similar charges, but does not include profit.

**Other Definitions**

1.1.16 **“Contractor's Equipment”** means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant.

1.1.17 **“Materials”** means things of all kinds (other than Plant) intended to form or forming part of the permanent work.

1.1.18 **“Plant”** means the machinery and apparatus intended to form or forming part of the permanent work.

1.1.19 **“Site”** means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site.

1.1.20 **“Variation”** means a change to the Specification and/or Drawings (if any), which is instructed by the Engineer under Sub-Clause 9.

1.1.21 **“Works”** means all the work to be performed by the Contractor specified in the Schedule including temporary work and any variation.

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

**1.2 Interpretation**

▪ Words importing persons or parties shall include firms and organizations;

▪ Words importing singular or one gender shall include plural or the other gender where the context requires.

**1.3 Priority of Documents**

▪ The documents forming the Contract are to be taken as mutually explanatory of one another;

▪ If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary instructions to the Contractor;

▪ the priority of the documents shall be in accordance with the order as listed below:

1. the Contract Agreement.
2. the Letter of Acceptance.

3. Memorandum of Understanding (if any).
4. the Contractor's Bid.
5. Schedule
6. these Conditions of Contract.
7. the Specifications.
8. the Drawings.
9. the Bills of Quantities.

- 1.4 Law** The law of the Democratic Socialist Republic of Sri Lanka is applicable.
- 1.5 Communications** Communication by any person under the Contract, can be written in official language and/or English.

## 2.0 The Employer

- 2.1 Execution of Contract** The Employer shall ensure that the Contract is executed within 14 Days after the date of the Letter of Acceptance.
- 2.2 Provision of Site** The Employer shall provide the Site and right of access to Site before the Start Date.
- 2.3 Engineer's Instructions** The Contractor shall comply with all instructions given by the Engineer in respect of the Works including the suspension of all or part of the Works.
- 2.4 Approvals** No approval or consent or absence of comment by the Employer or the Engineer shall affect the Contractor's obligations.

## 3.0 The Engineer

- 3.1 Engineer's Decisions** Except where otherwise specifically stated, the Engineer will decide contractual matters between the Employer and the Contractor.

## 4.0 The Contractor

**4.1 General Obligations**

The Contractor shall:

- carry out the Works properly and in accordance with the Contract;
- shall provide all supervision, labour, Materials, Plant and Contractor's Equipment which may be required.

All Materials and Plant on Site shall be deemed to be the property of the Employer.

**4.2 Contractor's Representative**

The Contractor shall submit to the Employer for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.

**4.3 Subcontracting**

The Contractor shall not subcontract:

- the whole of the Works;
- any part of the Works without the consent of the Engineer.



#### 4.4 Performance Security

The Contractor shall deliver to the Employer within 14 Days of the Letter of Acceptance a Performance Security:

- from an agency approved by the Employer;
- to an amount stated in the Schedule;
- in a form specified in the Schedule.

#### 5.0 Employer's Liabilities / Risks

#### 5.1 Employer's Liabilities / Risks

In this Contract, Employer's Liabilities / Risks mean:

- war, hostilities (whether war be declared or not), invasion, act of foreign enemies, within the Country;
- rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country;
- riot, commotion or disorder by persons other than the Contractor's personnel and other employees, affecting the Site and/or the Works;
- use or occupation by the Employer of any part of the Works, except as may be specified in the Contract;
- design of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible;
- any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions;
- Force Majeure;
- a suspension unless it is attributable to the Contractor's failure;
- any failure of the Employer;
- physical obstructions or physical conditions other than climatic conditions, encountered on the Site during the performance of the Works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the Contractor immediately notified to the Employer;
- any delay or disruption caused by any Variation;
- Any Change in Law on or after the date 14 Days prior to the deadline for submission of bids for the Contract.

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.

- losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through any land, and to occupy this land for the permanent work; and
- damage which is an unavoidable result of the Contractor's obligations to execute the Works and to remedy any defects.

all of which would entitle the Contractor to an extension to the Intended Completion Date under Section 6 and/or right to claim under Section 9.

## 6.0 Time for Completion

### 6.1 Execution of the Works

The Contractor shall:

- commence the Works on the Start Date;
- proceed expeditiously and without delay;
- complete the Works within the Intended Completion Date.

### 6.2 Programme

The Contractor shall submit a programme for the Works to the Engineer:

- within 14 Days from the Start Date;
- in a form acceptable to the Engineer.

### 6.3 Extension of Time

- Subject to Clause 9.0 the Contractor shall be entitled to an extension to the Intended Completion Date if he is or will be delayed by any of the Employer's Liabilities / Risks.

- On receipt of an application from the Contractor, the Engineer shall:
  - consider all supporting details provided by the Contractor;
  - extend the Intended Completion Date as appropriate.

### 6.4 Late Completion

If the Contractor fails to complete the Works within the Intended Completion Date, the Contractor's only liability to the Employer for such failure shall be to pay the amount stated in the Schedule for each Day for which he fails to complete the Works.

## 7.0 Taking-Over

### 7.1 Completion

The Contractor may notify the Engineer when he considers that the Works are completed.

### 7.2 Taking-Over Notice

- The Engineer shall notify the Contractor when he considers that the Contractor has completed the Works stating the date accordingly;
- Alternatively, the Engineer may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly;
- The Employer shall take over the Works upon the issue of this notice;
- The Contractor shall promptly complete any outstanding work and, subject to Clause 8.0 clear the Site.

## 8.0 Remedying Defects

### 8.1 Remedying Defects

- The Engineer may at any time prior to the expiry of the period stated in the Schedule calculated from the date of Taking-Over Notice under Sub-Clause 7.2 notify the Contractor of any defects or outstanding work;

- The Contractor shall remedy at no cost to the Employer any defects due to the Materials, Plant or workmanship not being in accordance with the Contract;
- The cost of remedying defects attributable to any other cause shall be valued as a Variation;
- Failure to remedy any defects or complete outstanding work within a reasonable time of the Engineer's notice shall entitle the Employer to carry out all necessary work at the Contractor's cost.

## 8.2 Uncovering and Testing

- The Engineer may give instruction as to the uncovering and/or testing of any work;
- Unless as a result of any uncovering and/or testing it is established that the Materials, Plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a variation in accordance with Sub - Clause 9.1

## 9.0 Variations and Claims

### 9.1 Right to Vary

The Engineer may instruct variations.

### 9.2 Valuation of Variations

Variations shall be valued as follows:

- a) at a lump sum price agreed between the Engineer and the Contractor;
- b) where appropriate, at rates in the Contract; however, if the final quantity of the work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent, provided the change exceeds one (1) percent of the Initial Contract Price, an appropriate new rates, as may be agreed shall be used for the excess quantity.
- c) in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation, or failing which;
- d) at appropriate new rates, as may be agreed or which the Engineer considers appropriate.

### 9.3 Early Warning

A Party shall notify the other as soon as he is aware of any circumstance which may delay or disrupt the Works, or which may give rise to a claim for additional payment;

- The Contractor shall take all reasonable steps to minimize these effects;
- The Contractor's entitlement to extension to the Intended Completion Date or additional payment shall be limited to the time and payment which would have been due if he had given prompt notice and had taken all reasonable steps.

### 9.4 Right to Claim

- If the Contractor incurs Cost as a result of any of the Employer's Liabilities / Risks, the Contractor shall be entitled to the amount of such Cost;

### 9.5 Variation and Claim Procedure

- If as a result of any of the Employer's Liabilities / Risks, it is necessary to change the Works, this shall be dealt with as a Variation;
- The Contractor shall submit to the Engineer an itemized make-up of the value of variations and claims within 28 Days of the instruction or of the event giving rise to the claim;
- The Engineer shall check and if possible agree the value. In the absence of agreement, the Engineer shall determine the value.

## 10.0 Contract Price and Payment

### 10.1 Monthly Statements

The Contractor shall be entitled to be paid at monthly intervals:

- a) the value of the Works executed;
- b) 80% of the value of Materials and Plant delivered to the Site at a reasonable time; and
- c) adjustments under Sub-Clauses 10.10 and 10.11 subject to any additions or deductions which may be due.

### 10.2 Valuation of the Works

- The Contractor shall submit each month to the Employer a statement showing the value of the work executed less the cumulative amount certified previously;
- The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor, within 14 Days of the receipt of the Contractor's statement.

### 10.3 Interim Payments

- Within 14 Days of delivery of each certificate by the Engineer, the Employer shall pay to the Contractor the amount shown in the certificate less retention stated in the Schedule;
- No deductions shall be made for retention after the total amount deducted as retention reached the amount stated in the Schedule;
- The Employer shall not be bound by any sum previously considered by him to be due to the Contractor;
- The Employer may withhold interim payments until he receives the performance security under Sub-Clause 4.4 (if any).

- 10.4 Payment at Completion** The Contractor shall supply the Engineer with a detailed account of the amount that the Contractor considers payable under the Contract within 21 Days after issuing of Taking Over Notice as per Sub-Clause 7.2. The Engineer shall certify any payment that is due to the Contractor within 42 Days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within 14 Days a schedule that states the scope of the corrections or additions that are necessary. If the account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a payment certificate. The Employer shall pay the contractor the amount certified within 28 Days of the issue of Engineer's certification on the amount due. The contractor will be entitled to interest rate and in the same manner as stipulated in Clause 10.9 if payments as stipulated herein are delayed.
- 10.5 Payment of First Half of Retention** One half of the retention shall be paid by the Employer to the Contractor within 14 Days after issuing the notice under Sub-Clause 7.2.
- 10.6 Payment of Second Half of Retention** The remainder of the retention shall be paid by the Employer to the Contractor within 14 Days after:
- Either:**
- expiry of Defects Notification Period, calculated from the date of Taking-Over Notice under Sub-Clause 7.2; and
  - remedying of notified defects; and
  - completion of outstanding work as referred in Clause 8.0
- Or**
- After Taking Over of the completed Works in accordance with Sub clause 7.2 , and Contractor submitting a gurantee in the format given in Section 2 and valid up to 28 Days beyond the Defects Liability Period, from an agency acceptable to the Employer.
- 10.7 Final Payment**
- Within 42 Days of the completion of the Defects Notification Period and completing of outstanding work as per Clause 8.0 above, the Contractor shall submit a final account to the Engineer together with any documentation reasonably required to enable the Engineer to ascertain the final contract value;
  - Within 28 Days after the submission of this final account, the Engineer shall certify the amount due to the Contractor;
  - If the Engineer disagrees with any part of the Contractor's final account, he shall specify his reasons for disagreement when making certification;
  - Employer shall pay to the Contractor the amount due, within 21 Days of receipt of the certificate from the Engineer.
- 10.8 Currency** Payment shall be in Sri Lanka Rupees only.

**10.9 Delayed Payment**

- If the Employer makes a late payment the Contractor shall be paid interest on the late payment in the next payment.
- 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.

**10.10 Price Adjustment**

- Unless otherwise stated in Schedule, prices shall be adjusted for fluctuations in the cost of inputs;
- If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the method described below using the Option specified in the Schedule, and if no option is specified Option A is applicable.

**OPTION A**

The adjustment to the Payment Certificates in respect of Changes in Cost and Legislation shall be determined from following formula:

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

Where:

- F = price adjustment for the period concerned
- V = current valuation of work done for the period.
- V<sub>na</sub> = value of non adjustable element, or value of work not considered for price variation.
- P<sub>x</sub> = input percentage of input named X.
- I<sub>xc</sub> = current indices of input X.
- I<sub>xb</sub> = base indices of input X.

(a) 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 Bids and listed under Clause numbered 10.10 in the Schedule.

(b) 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 Sub-Clause 10.10 in the Schedule;
- (ii) Additional work carried out by the Contractor on instructions of the Engineer under Sub-Clause 9.1 and are valued under Sub-Clause 9.2 based on the prices prevailing at the time of execution;
- (iii) Works done under Daywork rates;

- (c) The “current valuation” means the gross value of work executed during the current valuation period and will include the cost of materials the contractor has purchased or delivered to site but were not consumed for the physical work done;
- (d) The “indices” means the monthly indices published by Institute for Construction Training and Development for different Inputs;
- (e) “base indices” means the indices for the input, prevailing one month prior to the latest date for submission of Bids;
- (f) 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;
- (g) If the Contractor fails to complete the Works within the time for completion prescribed under Sub-Clause 6.1 or extended time in accordance with Sub-Clause 6.3, 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;
- (h) 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 9.1 or for any other reason.

### **OPTION B**

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

$$F = 0.869 (V - V_{na}) * \frac{(I_{tc} - I_{tb})}{I_{tb}}$$

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.
- $I_{tc}$  = current indices for type of construction work
- $I_{tb}$  = base indices of type of construction work

- (b) 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 Sub-Clause 10.10 in the Schedule;

- (ii) Additional work carried out by the Contractor on instructions of the Engineer under Sub-Clause 9.1 and are valued under Sub-Clause 9.2, based on the prices prevailing at the time of execution;
- (iii) Works done under Daywork rates;
- (c) The “current valuation” means the gross value of work executed during the current valuation period and will include the cost of materials the contractor has purchased or delivered to site but were not consumed for the physical work done;
- (d) The “indices” means the monthly indices published by Institute for Construction Training and Development for different types of construction work;
- “base indices” means the indices for the input, prevailing one month prior to the latest date for submission of Bids;
- (e) 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;
- (f) If the Contractor fails to complete the Works within the time for completion prescribed under Sub-Clause 6.1 or extended time in accordance with Sub-Clause 6.3, 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;
- (g) 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 9.1 or for any other reason.

### 10.11 Subsequent Legislation

If, after the date 14 Days prior to the latest date for submission of bids for the Contract;

- changes to any Statute, Ordinance, Decree, or other Law or any regulation or by-law of any local or other duly constituted authority; or
- introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law

which causes additional or reduced cost to the Contractor, other than under Sub-Clause 10.10 above, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.



Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance Sub-Clause 10.10.

#### **10.12 Advance Payment**

- The Employer shall make advance payment to the Contractor within 14 Days after Contractor furnishing a unconditional guarantee;
- The amount of advance shall be equivalent to 20% of the Initial Contract Price (less provisional sums and contingencies);
- The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis;
- The advance payment shall be repaid in full when the total certified value of work reaches 90% of the Initial Contract Price;
- The guarantee shall be from bank or a company acceptable to the Employer;
- The guarantee shall remain effective until the advance payment has been repaid.

### **11.0 Default**

#### **11.1 Default by Contractor**

Engineer may give notice referring to this Sub-Clause and stating the default of the Contractor:

- abandons the Works;
- refuses or fails to comply with a valid instruction of the Engineer;
- fails to proceed expeditiously and without delay despite a written complaint; or
- in breach of the Contract.

If the Contractor has not taken all practicable steps to remedy the default within 7 Days after the Contractor's receipt of the Engineer's notice, the Employer may by issuing a letter within a further 21 Days, terminate the Contract.

The Contractor shall then demobilize from the Site leaving behind Materials and Plant and any Contractor's Equipment which the Employer instructs in his letter is to be used until the completion of the Works.

If the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, the Employer may, after given 14 days notice to the Contractor, terminate 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.

### 11.2 Default by Employer

- Contractor may give notice to the Employer referring to this Sub-Clause and stating the default;
  - if the Employer delayed the payments due to the Contractor for more than 42 Days; or
  - if the Employer is, despite a written complaint, in breach of the Contract; or
  - the Engineer is not carrying out his obligations.
- If the default is not remedied within 14 Days after the Employer's receipt of this notice, the Contractor may suspend the execution of all or parts of the Works;
- If the default is not remedied within 28 Days after the Employer's receipt of the Contractor's notice, the Contractor may by a second notice given within a further 21 Days, terminate the Contract;
- The Contractor shall then demobilize from the Site.

### 11.3 Insolvency

- If a Party is declared insolvent under any applicable law, the other Party may by notice terminate the Contract immediately;
- The Contractor shall then demobilize from the Site leaving behind, in the case of the Contractor's insolvency, any Contractor's Equipment which the Employer instructs in the notice is to be used until the completion of the Works.

### 11.4 Payment upon Termination

After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:

- a) any sums to which the Contractor is entitled under Sub-Clause 9.4;
- b) any sums to which the Employer is entitled;
- c) if the Employer has terminated under Sub-Clause 11.1 or 11.3, the Employer shall be entitled to a sum equivalent to 20% of the value of those parts of the Works not executed at the date of the termination;

- d) if the Contractor has terminated under Sub-Clause 11.2 or 11.3, the Contractor shall be entitled to the Cost of his suspension and demobilization.

The net balance due shall be paid or repaid within 28 Days of the notice of termination.

## 12.0 Risk and Responsibility

### 12.1 Contractor's Care of the Works

- The Contractor shall take full responsibility for the care of the Works from the Start Date until the date of the Engineer's notice under Sub-Clause 7.2;
- Responsibility shall then pass to the Employer;
- If any loss or damage happens to the Works during the above period, the Contractor shall rectify such loss or damage so that the Works conform with the Contract;
- Unless the loss or damage happens as a result of an Employer's Liability / Risk, the Contractor shall indemnify the Employer, the Employer's contractors, agents and employees against all loss or damage happening to the Works and against all claims or expense arising out of the Works caused by a breach of the Contract, by negligence or by other default of the Contractor, his agents or employees.

### 12.2 Force Majeure

- For the purposes of this Contract "Force Majeure" means an event or circumstance which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the contract impossible or so impractical as to be considered impossible under the circumstances.
- The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.
- For the avoidance of doubt, Force Majeure shall not include the inability of the Employer to make payments that are due to the Contractor, under the terms of this Contract.
- If a Party is or will be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately;
- If necessary, the Contractor shall suspend the execution of the Works and, to the extent agreed with the Employer, de-mobilize the Contractor's Equipment;

- If the event continues for a period of 84 Days, either Party may then give notice of termination which shall take effect 28 Days after the giving of the notice;
- After termination, the Contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following:
  - (a) any sums to which the Contractor is entitled under Sub-Clause 9.4;
  - (b) the Cost of his suspension and demobilization;
  - (c) any sums to which the Employer is entitled.
- The net balance due shall be paid or repaid within 28 Days of the notice of termination.

### 13.0 Insurance

**13.1 Extent of Cover** The Contractor shall, prior to commencing the Works, effect and thereafter maintain insurances to the amounts given below, in the joint names of the Employer and Contractor:

- a) 110% of the Initial Contract Price, for loss and damage to the Works, Materials and Plant;
- b) full replacement cost for the Contractor's Equipment;
- c) to the amount stated in the Schedule, per any event for liability of both Employer and the Contractor for loss, damage, death or injury to third Parties or their property arising out of the Contractor's performance of the Contract, including the Contractor's liability for damage to the Employer's property other than the Works; and

The Contractor shall, prior to commencing the Works, effect and thereafter maintain insurance cover to the amount not less than the amount stated in the Schedule, per any event for liability of both Employer and the Contractor and of any Employer's representative for death or injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their employees. The Contractor's liability for personal injury or death of workmen shall be as provided for in the Workmen's Compensation Act and any other statutory modifications or amendments thereto.

**13.2 Failure to Insure**

If the Contractor fails to effect or keep in force any of the insurances referred to in the previous Sub-Clauses, or fails to provide satisfactory evidence, policies or receipts, the Employer may, without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same with an additional charge of 30% of the premiums paid, as a deduction from any other monies due to the Contractor.

## 14.0 Resolution of Disputes

### 14.1 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 14.2.

### 14.2 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 Institute for Construction Training and Development (ICTAD) shall be the Adjudicator, unless the bidder had disagrees and stated so in the bid, in which event the Employer and the Contractor may reach agreement on the appointment of an Adjudicator by mutual consent within 14 Days from the Letter of Acceptance.
- If mutual consent is not reached or resorted to as above 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.
- If ICTAD is not accepted as the Adjudicator then 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.
- 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 14.3 within twenty eight (28) Days of the Adjudicator's determination.

### Replacement of Adjudicator

- Should the Adjudicator appointed by mutual consent of both Parties 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.

### 14.3 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 as follows;

### 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.