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ICTAD/SBD/04

Institute for Construction
Training and Development (ICTAD)

STANDARD BIDDING DOCUMENT
PROCUREMENT OF WORKS
DESIGN & BUILD CONTRACTS

First Edition (Reprinted) – May 2003

MINISTRY OF HOUSING AND PLANTATION INFRASTRUCTURE

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PREFACE

The growing need to standardize procurement documents was expressed from several sectors of the industry. To achieve these objectives ICTAD commenced to develop new Standard Documents and one of them is the Standard Bidding Document for Design & Build Contracts. In preparation of this Standard Bidding Document, the FIDIC "Conditions of Contract for Plant and Design - Build (First Edition, 1999)" was used as a guide.

A single point responsibility for Design and Construction recognizes an advantage to the Employer over the traditional system of the contractor submitting a tender on the design produced by the Employer. The arrangement adopted in this publication has followed the principle where the Contractor is the party responsible for the Design & Construction of the works on specified approvals obtained from the Engineer, in accordance with Employer's requirements. The use of this Standard Bidding Document is recommended for the works, which may include any combination of Building and Civil Engineering Works. Another important feature of this Standard Bidding Document is that the entire document could serve as one volume when inviting bids.

This Standard Bidding Document 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.

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 and Mr. H D Chandrasena, and all the members of the Steering Committee and Sub-Committee. Meanwhile my special thanks are also due to Dr. A D C Jayanandana, Mr. S A Karunartne, Mr. Eddie de Zylva, Eng. W M S C Piyadasa, Archt. Jayantha Perera, Dr. Gamini Kodikara, Dr. T M Pallewatte, Mr. Hemal A Pieris, Mr. J K Lankathilake, 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 Ms. Medhani Illangasinghe and Ms. W L Lalitha Ranjani.

It is my expectation that this document would serve the needs of all parties concerned in the Construction Industry while minimizing the disputes and improving the quality of Contract Management, which undoubtedly would help to regularize the procurement system.



S K R GOONEWARDENE
CHAIRMAN - ICTAD

21st November 2002.

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Guide to use this Book as a Standard Bidding Document for a Specific Contract

The Standard Bidding Document for Design & Build Contracts consists of Invitation for Bids (IFB) and nine (09) sections. For a particular project these sections are grouped into three separate volumes as listed below.

(a) IFB and all the 09 sections are normally required for the procurement of construction works where the Contractor is responsible for the Design and Construction. However, they should be adopted as necessary to suit the requirements of a particular project by making suitable adjustments in the relevant sections. To minimize a material deviation to the standard document, certain sections should be used unchanged, and have been grouped into Volume 1A (*refer page 15*). The sections that need additions, deletions, changes and/or modifications for a particular contract are included in Volume 1B, Volume 2 and Volume 3 (*refer page 16*). Hence, when inviting bids for Design & Build construction works, Volume 1A should be used as the bidding document in its entirety.

(b) The grouping of the volumes are as follows;

(i) Volume 1A (*refer page 15*) consists of this entire publication in its entirety.

(ii) Volume 1B (*refer page 16*) consists of the following ;

- Invitation to Bid (*duly perfected*)
- Section II - Bidding Data (*duly perfected*)
- Section IV - Contract Data (*duly perfected*)
- Section VI - Employer's Requirement (*duly perfected*)
- Section VII (a) - Form of Bid
- Section VIII (a) - Schedules - related to General Information ("A" Schedules)

(Note : All the foot notes in the above sections shall be deleted when preparing Volume 1B).

(iii) Volume 2 (*refer page 16*) consists of ;

- Section VII (b) - Form of Design/Technical Proposal
- Section VIII (b) - Schedules - related to Design & Technical Proposal
(*"B" Schedules*)
- Section IX - Drawings (If any)

(Note : Foot notes given in Volume 2, are guidelines to the bidders and should be retained when issuing the bidding documents).

(iv) Volume 3 (*refer page 16*) consists of ;

- Section VII (c) - Form of Price Proposal
- Section VIII (c) - Schedules - related to Price Proposal (*"C" Schedules*)

(Note : Foot notes given in Volume 3, are guidelines to the bidders and should be retained when issuing the bidding documents).

NOTES ON USE OF ICTAD STANDARD BIDDING DOCUMENTS FOR CONSTRUCTION CONTRACTS.

STANDARD BIDDING DOCUMENT FOR MINOR CONTRACTS - ICTAD/SBD/03

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

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

- (1) Recommended for use on construction contracts between Rs. 10 million and Rs. 150 million.
- (2) May be used for works of higher values, which are not of a complex nature.

STANDARD BIDDING DOCUMENT FOR MAJOR CONTRACTS – ICTAD/SBD/02

- (1) Recommended for use on construction contracts over Rs. 150 million and for contracts of a lesser value, which are of a complex nature.

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

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

Invitation for Bids (IFB)

(SAMPLE ONLY)

Note:

The relevant forms shall be filled by the Employer and included in Volume 1B before issuing the Bidding documents.

Note :

Bidders are advised to ignore the information printed in blue colour in the document, when preparing their bids. Such information is provided for the guidance of the Employer.

Invitation for Bids¹

(GOSL funded or private sector, with pre-qualification)

..... [date]

To: [name of Contractor]
[address]

Contract Name, and Identification No. /

Dear Sirs:

1. We hereby inform you that² Tender Board on behalf³ has pre-qualified you for bidding for the above cited contract.
2. We now invite you and other pre-qualified applicants to submit sealed bids for the design, construction 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. Bids shall be valid up to⁸
6. All bids must be accompanied by a security of⁹
7. Sealed bids may be delivered to the¹⁰
8. The construction period is¹¹ Days.
9. The deadline for submission of bids will be¹² on¹³ and will be opened soon after the closing.
10. Bidders or their authorized representatives are requested to be present at the opening of bids.
11. 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,

Authorized signature

Name and title

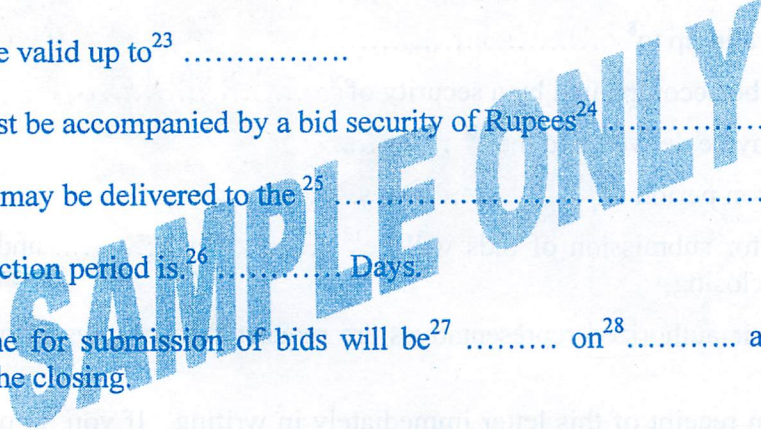
¹ This sample " Invitation for Bids" shall be used when pre-qualification of bidders had been undertaken.
² Write the relevant Tender Board (CATB, MTB, DTB etc.); for private sector modify suitably.
³ Insert name of Employer
⁴ Insert name of officer, address, facsimile number and telephone
⁵ Place of issue of bidding documents
⁶ Closing date of issue of bidding documents.
⁷ Insert the fee equivalent to cost of duplicating a set of bidding documents.
⁸ Insert validity date of bids, should be same as Bidding Data Sub-Clause 15
⁹ The amount shall be same as Bidding Data Sub-Clause 16
¹⁰ Address shall be same as Bidding Data Sub-Clause 20
¹¹ Insert number of Days.
¹² Closing time of bids
¹³ Date of closing of bids

Invitation for Bids¹⁴

(GOSL funded or private sector, without pre-qualification)

Contract Name, and Identification No. _____ / _____

1. The¹⁵ Tender Board on behalf of¹⁶ invites sealed bids from eligible bidders for the above works.
2. Bids should be submitted on the forms available from¹⁷ up to¹⁸ on a payment of non-refundable tender fee of Rupees¹⁹
3. The eligible bidders shall comply with the following qualification criteria²⁰
.....
4. You may obtain further information from, and inspect and acquire the bidding documents at²¹,
5. Bidding Documents may be inspected free of charge at²²
6. Bids shall be valid up to²³
7. All bids must be accompanied by a bid security of Rupees²⁴
8. Sealed bids may be delivered to the²⁵
9. The construction period is²⁶ Days.
10. The deadline for submission of bids will be²⁷ on²⁸ and will be opened soon after the closing.
11. Bidders or their authorized representatives are requested to be present at the opening of bids.



[Insert name of officer]

[Insert address]

¹⁴ Use this form, if pre-qualification is not undertaken.
¹⁵ Write name of relevant Tender Board (CATB, MTB, DTB etc.); for private sector modify suitably.
¹⁶ insert name of Employer
¹⁷ Place of issue of bidding documents
¹⁸ Closing date of issue of bidding documents.
¹⁹ Insert the fee equivalent to cost of duplicating a set of bidding documents.
²⁰ Insert summary of important criteria given in Instruction to Bidders Clauses 3 & 4.3
²¹ Insert name of officer, address, facsimile number and telephone
²² Insert location to inspect bidding documents
²³ Insert validity date of bids; shall be same as Instruction to Bidders Clause 15
²⁴ The amount shall be same as Instruction to Bidders Clause 16
²⁵ Address shall be same as Instruction to Bidders Clause 20
²⁶ Insert number of Days.
²⁷ Closing time of bids
²⁸ Date of closing of bids

Invitation for Bids²⁹
 (Donor funded, with pre-qualification)

..... [date]

To: [name of Contractor]
 [address]

Contract Name, and Identification No. /

Dear Sirs:

1. The Democratic Socialist Republic of Sri Lanka has received a credit/loan from the³⁰ towards the cost of³¹ and intends to apply part of the funds to cover eligible payments under the Contract for³²
2. We hereby inform you that³³ Tender Board on behalf³⁴ has pre-qualified you for bidding for the above cited contract.
3. We now invite you and other pre-qualified applicants to submit sealed bids for the design, construction and completion of the cited contract.
4. You may obtain further information from, and inspect and acquire the bidding documents at³⁵,
5. Bids should be submitted on the forms available from³⁶ up to³⁷ on a payment of non-refundable tender fee of Rupees³⁸
6. Bids shall be valid up to³⁹
7. All bids must be accompanied by a security of⁴⁰
8. Sealed bids may be delivered to the⁴¹
9. The construction period is⁴² Days.
10. The deadline for submission of bids will be⁴³ on⁴⁴ and will be opened soon after the closing.
15. Bidders or their authorized representatives are requested to be present at the opening of bids.
16. 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,

Authorized signature

Name and title

²⁹ This sample " Invitation for Bids " shall be used when pre-qualification of bidders had been undertaken.

³⁰ Name of the Donor

³¹ Name of the Project

³² Name and identification number of contract

³³ Write the relevant Tender Board (CATB, MTB, DTB etc.)

³⁴ Insert name of Employer

³⁵ Insert name of officer, address, facsimile number and telephone

³⁶ Place of issue of bidding documents

³⁷ Closing date of issue of bidding documents.

³⁸ Insert the fee equivalent to cost of duplicating a set of bidding documents.

³⁹ Insert validity date of bids, should be same as Bidding Data Sub-Clause 15

⁴⁰ The amount shall be same as Bidding Data Sub-Clause 16

⁴¹ Address shall be same as Bidding Data Sub-Clause 20

⁴² Insert number of Days.

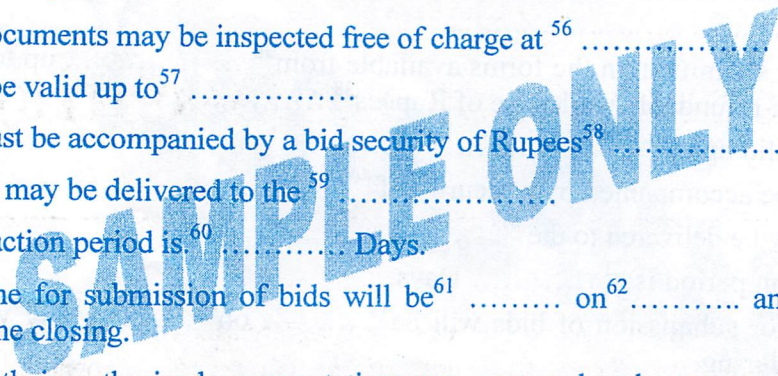
⁴³ Closing time of bids

⁴⁴ Date of closing of bids

Invitation for Bids⁴⁵
(Donor funded, without pre-qualification)

Contract Name, and Identification No. /

1. The Democratic Socialist Republic of Sri Lanka has received a credit/loan from the⁴⁶ towards the cost of⁴⁷ and intends to apply part of the funds to cover eligible payments under the Contract for⁴⁸
2. The⁴⁹ Tender Board on behalf of⁵⁰ invites sealed bids from eligible bidders for the above works.
3. Bids should be submitted on the forms available from⁵¹ up to⁵² on a payment of non-refundable tender fee of Rupees⁵³
4. The eligible bidders shall comply with the following qualification criteria⁵⁴
5. You may obtain further information from, and inspect and acquire the bidding documents at⁵⁵,
6. Bidding Documents may be inspected free of charge at⁵⁶
7. Bids shall be valid up to⁵⁷
8. All bids must be accompanied by a bid security of Rupees⁵⁸
9. Sealed bids may be delivered to the⁵⁹
10. The construction period is⁶⁰ Days.
11. The deadline for submission of bids will be⁶¹ on⁶² and will be opened soon after the closing.
12. Bidders or their authorized representatives are requested to be present at the opening of bids.



[Insert name of officer]

[Insert address]

⁴⁵ Use this form, if pre-qualification is not undertaken.
⁴⁶ Name of the Donor
⁴⁷ Name of the Project
⁴⁸ Name and identification number of contract
⁴⁹ Write name of relevant Tender Board (CATB, MTB, DTB etc.)
⁵⁰ insert name of Employer
⁵¹ Place of issue of bidding documents
⁵² Closing date of issue of bidding documents.
⁵³ Insert the fee equivalent to cost of duplicating a set of bidding documents.
⁵⁴ Insert summary of important criteria given in Instruction to Bidders Clauses 3 & 4.3
⁵⁵ Insert name of officer, address, facsimile number and telephone
⁵⁶ Insert location to inspect bidding documents
⁵⁷ Insert validity date of bids; shall be same as Instruction to Bidders Clause 15
⁵⁸ The amount shall be same as Instruction to Bidders Clause 16
⁵⁹ Address shall be same as Instruction to Bidders Clause 20
⁶⁰ Insert number of Days.
⁶¹ Closing time of bids
⁶² Date of closing of bids

Section - I

INSTRUCTIONS TO BIDDERS (ITB)

Notes:

Instructions to Bidders shall be read in conjunction with the Bidding Data. Matters relating to the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights, and obligations of the parties under the Contract are not included in this Section, but are given in Section III - Conditions of Contract, Volume 1A and the Contract Data under Section IV, Volume 1B.

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 ignore the information printed in blue colour in the document, when preparing their bids. Such information is provided for the guidance of the Employer.

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Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Employer, as defined in the Bidding Data, hereinafter "the Employer," wishes to receive Bids for the Design, Construction, Commissioning and Remedying Defects of Works specified in the Bidding Data, and as described in the Employer's Requirements (Section VI), hereinafter referred to as "the Works."
 - 1.2 The successful bidder will be expected to complete the Works within the Time for Completion specified in the Bidding Data. If the Contractor fails to complete the Works during that period the Contractor shall pay delay damages to the Employer as specified in Bidding Data. The Defects Notification Period for remedying Defects is given in Bidding Data
- 2. Source of Funds**
 - 2.1 Works will be financed by the source given in Bidding Data.
- 3. Eligible Bidders**
 - 3.1 All bidders shall be registered with the Institute for Construction Training and Development (ICTAD), under the grade and specialty given in Bidding Data. However, in the case of a joint venture the partner in charge shall be registered with ICTAD, under the grade and specialty given in Bidding Data.
 - 3.2 All bidders shall hold a valid membership of the National Construction Association of Sri Lanka (NCASL) at the time of collection of bidding documents and at the time of award as well.
 - 3.3 All bidders shall confirm in Section VII, Form of Bid, a statement that the Bidder (including all members of a joint venture and sub-contractors) is not associated directly or indirectly in the preparation of the bidding document.
 - 3.4 A foreign bidder may submit a bid only if specified in Bidding Data.
- 4. Qualification of the Bidders**
 - 4.1 All bidders shall include the following information and documents with their Bid in Section VIII:
 - (a) certified copies of original documents defining the constitution or legal status, place of registration, and principle place of business; written power of attorney of the signatory to the Bid to commit the Bidder;
 - (b) In the event that pre-qualification of bidders 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 VIII

- (c) In the event that pre-qualification of bidders was 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 VIII:
- (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 (design works and construction works) 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 Design Team, and Site Management and Technical Personnel proposed for the Contract;
 - (vii) information regarding any litigation, current or during the last five years, in which the Bidder or any partners of a joint venture are involved, the parties concerned, and disputed amount;
 - (viii) proposals for subcontracting components of the Works amounting to more than 10 percent of the contract amount; and
 - (ix) Proposals for work methods, staffing and schedules, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to Employer's Requirements and the completion time described in the bidding documents.

- 4.2 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 Sub-Clause 4.1 above for each joint venture partner;
 - (b) the Bid and, in case of successful bid, the Contract Agreement shall be signed so as to be legally binding on all partners;
 - (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
 - (d) one of the partners shall be nominated as being a partner in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture;
 - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge; and
 - (f) a copy of the agreement entered into by the joint venture partners shall be submitted with the Bid.
- 4.3 To qualify for the award of the Contract, bidders shall meet the following minimum qualifying criteria:
- (a) average annual volume of construction work performed in last five years shall be at least the amount specified in Bidding Data;
 - (b) experience as prime contractor in the construction of at least one contract of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);
 - (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment if any specified in Bidding Data;
 - (d) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager;
 - (e) each of the proposed design team member should have minimum qualifications and experience if given in the Employer's Requirements;

- (f) each of the proposed design team member should have carried out designs within the last 5 years, of at least two works of a nature and complexity equivalent to the task for which they are proposed for.
 - (g) 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; and
 - (h) a consistent history of litigation or arbitration awards against the Bidder or any partner of a Joint Venture may result in disqualification.
- 4.4 The construction volume 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 4.3(a), (b) and (g); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 4.3 (a), (b), and (g); and the partner in charge 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.
- 5. One Bid per Bidder** 5.1 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.
- 6. Cost of Bidding** 6.1 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.
- 7. Site Visit** 7.1 The Bidders are advised to visit and examine the Site of Works and its surroundings and obtain for himself on its own responsibility all information that may be necessary for preparing the Bid and entering into a Contract for Design and Construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.2 The Employer may conduct a Site visit concurrently with the pre-bid meeting referred to in Clause 17.

B. Bidding Documents

8. **Content of Bidding Documents** 8.1 The Bidding documents are those stated below, and should be read in conjunction with any addenda issued in accordance with Clause 10:

Volume 1A (*Text of this entire Publication*)

Invitation to Bid (*Sample only*)

Section I - Instructions to Bidders

Bidding Data (*Sample only – Bidders to ignore the samples and refer Section II in Vol. IB*)

Section III - Conditions of Contract

Contract Data (*Sample only – Bidders to ignore the samples and refer Section IV in Vol. IB*)

Section V - Standard Forms

Employer's Requirement (*Guidelines – Bidders to ignore the Guidelines and refer Section VI in Vol. IB*)

Form of Bid (*Bidders to ignore the form and refer Section VII (a) in Vol. IB*)

Form of Design/Technical Proposal (*Bidders to ignore the form and refer Section VII (b) in Vol. 2*)

Form of Price Proposal (*Bidders to ignore the form and refer Section VII (c) in Vol. 3*)

Schedules -- related to General Information ("A" Schedules)
(*Sample only – Bidders to ignore the samples and refer Section VIII (a) in Vol. IB*)

Schedules – related to Design & Technical Proposal
("B" Schedules)

(*Sample only – Bidders to ignore the samples and refer Section VIII (b) in Vol. 2*)

Schedules – related to Price Proposal ("C" Schedules)
(*Sample only – Bidders to ignore the samples and refer Section VIII (c) in Vol.3*)

Drawings (*Bidders to refer Section IX in Vol. 2*)

Volume 1B

Invitation to Bid

Section II - Bidding Data

Section IV - Contract Data

Section VI - Employer's Requirement

Section VII (a) - Form of Bid

Section VIII (a) - Schedules – related to General Information
(“A” Schedules)**Volume 2**

Section VII (b) - Form of Design/Technical Proposal

Section VIII (b) - Schedules – related to Design & Technical
Proposal (“B” Schedules)

Section IX - Drawings (If any)

Volume 3

Section VII (c) - Form of Price Proposal

Section VIII (c) - Schedule – related to Price Proposal
(“C” Schedules)

- 9. Clarification of Bidding Documents**
- 9.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Employer in writing or by facsimile at the Employer's address indicated in Bidding Data. The Employer will respond to any request for clarification, which 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.
- 10. Amendment of Bidding Documents**
- 10.1 At any time prior to the deadline for submission of Bids, the Employer may amend the bidding documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the bidding documents pursuant to Sub-Clause 8.1, 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 to the Employer.

- 10.3 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 20.

C. Preparation of Bids

11. Language of Bid

- 11.1 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.

12. Documents Comprising the Bid

- 12.1 The Bid submitted by the Bidder shall comprise all the documents described under Clause 19 and any other information requested in the Employer's Requirements.

13. Bid Prices

- 13.1 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 lump sum price submitted by the Bidder.

- 13.2 Depending on the Bidder's proposal, the Bidder shall fill all relevant items in the Price Schedules required for the Works. Bidders may add any new activities items which are not included in the price schedules, but are needed to complete the Works in accordance with the bidder's proposal and carry them to the Bid Price.. Similarly Bidders may delete items which are included in the Price Schedule but are not required in accordance with the bidder's proposal.

- 13.3 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 Bid Price.

- 13.4 Unless otherwise provided in the Bidding Data, the lump sum price quoted by the Bidder, shall not be subjected to adjustment during the performance of the Contract.

14. Currencies of Bid and Payment

- 14.1 The prices shall be quoted by the bidder entirely in Sri Lanka Rupees unless otherwise provided in Bidding Data.

15. Bid Validity

- 15.1 Bids shall remain valid for the period stipulated in the Bidding Data.

15.2 In exceptional circumstances, prior to expiry of the original bid validity period, the Employer may request from the Bidders to extend the period of validity for a specified additional period. The request and the responses thereto shall be made in writing or by facsimile. 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 16 in all respects.

16. Bid Security

16.1 The Bidder shall furnish, as part of its Bid, a Bid security in the amount stipulated in the Bidding Data.

16.2 The Bid security shall, at the Bidder's option, be in the form of a certified cheque, letter of credit or a guarantee from a reputed bank or insurance bond 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.

16.3 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.

16.4 The Bid securities of unsuccessful Bidders will be returned as promptly as possible, but not later than 28 days after the expiration of the period of Bid validity.

16.5 The Bid security of the successful Bidder will be returned when the Bidder has signed the agreement and furnished the required Performance Security.

16.6 The Bid Security may be forfeited:

(a) if the Bidder withdraws its Bid, except as provided in Sub-Clause 22.2;

(b) if the bidder does not accept the correction of its Bid Price. Pursuant to Sub-Clause 28.1; 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.

17. Pre-Bid Meeting

17.1 Bidder's designated representative(s) is invited to attend a pre-Bid meeting, which, if convened, will take place at the venue and time specified in the Bidding Data.

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

17.3 The Bidders are 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. All questions raised at the pre-bid meeting or under Clause 9.0 will be responded to in writing by the Employer.

18. Format and Signing of Bid

18.1 The Bidder shall prepare one original of the documents comprising the Bid as described in Clause 19 of these Instructions to Bidders." In addition, the Bidder shall submit a copy of the Bid, as described in clause 19. In the event of discrepancy between them, the original shall prevail. The bid shall be sealed in accordance with clause 19.

18.2 The original and the copy of the Bid shall be signed by a person or persons duly authorized to sign on behalf of the Bidder. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

18.4 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**19. Sealing and Marking of Bids**

19.1 The Bidder shall submit the Bid under **three** separately sealed envelopes as follows:

(a) The first envelope shall be clearly marked "ENVELOPE 1- GENERAL INFORMATION" and shall include separately sealed inner envelope of the original and copy of the Preliminary Information;

(b) The second envelope shall be clearly marked "ENVELOPE 2 - DESIGN/TECHNICAL PROPOSAL" and warning "DO NOT OPEN, EXCEPT IN THE PRESENCE OF THE EVALUATION COMMITTEE" and shall include separately sealed inner envelope of the original and copy of the Design/Technical Proposal; and

- (c) The third envelope shall be clearly marked **“ENVELOPE 3 – PRICE PROPOSAL”** and warning **“DO NOT OPEN, EITHER WITH THE GENERAL INFORMATION OR DESIGN/ TECHNICAL PROPOSAL”** and shall include separately sealed inner envelope of the original and copy of the Price Proposal;

19.2 The Bidder shall seal the original and the copy of the Preliminary Information in two separate covers, duly marked as **“ORIGINAL OF GENERAL INFORMATION”** and **“COPY OF GENERAL INFORMATION.”** The two covers shall then be sealed as inner covers in the Envelope 1 described under Sub-Clause 19.1(a) above. The original cover shall include the originals and the copy shall include copies of the following:

- (i) Volume 1A of the Bidding Document
- (ii) Invitation to Bid
- (iii) Section II – Bidding Data
- (iv) Section IV – Contract Data
- (v) Section VI – Employer’s Requirement
- (vi) Power of Attorney for the signatory to the bid;
- (vii) Duly filled and signed Form of Bid;
- (viii) Bid security;
- (ix) Duly filled **“A”** schedules – **“General Information”**
- (x) Other information listed in Bidding Data; and
- (xi) Any other information, bidder may wish to include

19.3 The Bidder shall seal the original and the copy of the Design/Technical Proposal in two separate covers, duly marked as **“ORIGINAL OF DESIGN/ TECHNICAL PROPOSAL”** and **“COPY OF DESIGN/TECHNICAL PROPOSAL.”** The two covers shall then be sealed as inner covers in the Envelope 2 described under Sub-Clause 19.1(b) above. The original cover shall include the originals and the copy shall include copies of the following:

- (i) Duly filled and signed Form of Design /Technical Proposal
- (ii) Duly filled **“B”** Schedules -**“Comments and suggestions on Employer’s Requirements”** (if any);
- (iii) Contractor’s Proposal;
- (iv) Drawings (if any);
- (v) Other Information listed in the Bidding Data; and
- (vi) Any other information, bidder may wish to include

- 19.4 The Bidder shall seal the original and the copy of the Price Proposal in two separate covers, duly marked as "**ORIGINAL OF PRICE PROPOSAL**" and "**COPY OF PRICE PROPOSAL**." The two covers shall then be sealed as inner covers in the Envelope 3 described under Sub-Clause 19.1(c) above. The original cover shall include the originals and the copy shall include copies of the following:
- (i) Duly filled and signed Form of Price Proposal;
 - (ii) Duly filled "C" Schedules - "Price Schedules"
- 19.5 All inner and outer envelopes/covers 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 Bidding Data; and
 - (c) provide a warning as specified in the Sub-Clause 19.1
- 19.6 In addition to the identification required in Sub-Clause 19.5 (b), all inner covers shall indicate the name and address of the Bidder to enable the Bid to be returned unopened.
- 19.7 If the outer cover is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid.
- 20. Deadline for Submission of Bids**
- 20.1 Bids must be received by the Employer at the address specified in Invitation to Bid no later than the time and date stipulated in the Bidding Data
- 20.2 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 10, 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.
- 21 Late Bids**
- 21.1 Any Bid received by the Employer after the deadline for submission of Bids prescribed in Clause 20 will be returned unopened to the Bidder.
- 22.Modification, Substitution, and Withdrawal of Bids**
- 22.1 The Bidder may modify, substitute, 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.
- 22.2 The Bidder's modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with the provisions of Clause 18 and 19, with the

outer and inner envelopes additionally marked "Modification to Envelope 1- General Information" and/or "Modification to Envelope 2 - Design / Technical Proposal" and/or "Modification to Envelope 3 - Price Proposal" or " substitute" or "withdrawal" as appropriate.

22.3 No Bid may be modified by the Bidder after the deadline for submission of Bids.

22.4 Withdrawal of a Bid during the interval between the deadline for submission of Bids and expiration of the period of Bid validity may result in the forfeiture of the Bid security pursuant to Sub-Clause 16.

E. Bid Opening and Evaluation

23. Bid Opening

23.1 The Employer will open the envelope marked, 'Envelope 1 - General Information', including withdrawals and modifications made to envelope marked 'Modification to Envelope 1 - General Information' pursuant to Clause 22, in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the Invitation to Bid. The Bidders' representatives who are present shall confirm their attendance by signing the attendance sheet.

23.2 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 22 shall not be opened.

23.3 The Bidders' names, presence (or absence) of Modification to Bid and withdrawals, the presence (or absence) of Bid security, and any such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. Subsequently, all envelopes marked "Modification to Envelope 1 – General Information" shall be opened and the submissions therein read out in appropriate detail. No Bid shall be rejected at Bid opening except for late Bids pursuant to Clause 21.

23.4 The envelopes marked 'Envelope 2 – Design /Technical Proposal' and 'Modification to Envelope 2 – Design/ Technical Proposal' will be opened by the evaluators with the commencement of evaluation of envelopes marked 'Envelope 2 – Design /Technical Proposal'.

- 23.5 The envelopes marked 'Envelope 3 – Price Proposal' will be opened after the completing the evaluation of envelope marked 'Envelope 2 – Design /Technical Proposal', in the manner described in Sub-Clause 27.6 and Sub-Clause 27.7.
- 24. Process to be Confidential** 24.1 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's processing of Bids or award decisions may result in the rejection of the Bidder's Bid.
- 25. Clarification of Bids** 25.1 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 prices. 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.
- 26. Examination of Bids and Determination of Responsiveness** 26.1 Prior to the detailed evaluation of Bids, the Employer will evaluate the information submitted with the envelope marked 'Envelope 1 – General Information' to 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 document; and (e) provides any clarification and/or substantiation that the Employer may require to determine responsiveness pursuant to Sub-Clause 26.2.
- 26.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the bidding document 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 document, 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.
- 26.3 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.

27. Evaluation and Comparison of Bids **Note:** Two options, Option A and Option B are given below. The applicable option for the bid is given in Bidding Data. The evaluation and comparison will be done accordingly. If no option is selected in the Bidding Data, evaluation and comparison will be done following Option A.

OPTION A

27.1 The Employer will evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 26.

27.2 Evaluators of envelope marked 'Envelope 2 - Design/Technical Proposal' shall have no access to the envelope marked 'Envelope 3 - Price Proposal' until the technical evaluation, is concluded. The Employer, evaluates the Envelope 2 - Design/ Technical Proposals on the basis of their responsiveness to the Employer's Requirements, applying the evaluation criteria, and point system specified in Sub-Clause 27.3 and 27.4. The Employer will also use the appropriate information submitted in the envelope marked 'Envelope 1 - General Information' in allocating points.

27.3 During the evaluation of Envelope 2, the Employer will determine whether the Bidders are qualified and whether technical aspects are substantially responsive to the requirements set forth in the bidding document. In order to reach such a determination, the Employer will examine the information supplied by the Bidders, and other requirements in the bidding document, taking into account the following factors (but not limited to):

(a) Qualification

(i) The determination will take into account the Bidder's financial and production capabilities and past performance; it will be based upon an examination of the documentary evidence of the Bidder's qualification submitted by the Bidder, as well as such other information as the Employer deems necessary and appropriate;

(ii) The Employer will examine whether the bidder is satisfying the minimum criteria given under Sub-Clause 4.3.

(iii) An affirmative determination under 27.3 (a) ii above, will be a prerequisite for the Employer to continue with the evaluation of the Envelope 2; a negative determination will result in rejection of the Bid.

(b) Technical

The determination will take into account the Bidder's Design/Technical Proposal with special attention given to the following and will assign a technical score based on the point system and the criteria given in Sub-Clause 27.4.

- (i) Overall completeness and compliance with the Employer's Requirements; and deviations/shortcomings from or the Employer's Requirements
- (ii) The design team
- (iii) Work plan and methodology
- (iv) Compliance with the time schedule

27.4 The following point system will be used for evaluation of the Design Team and the Design/Technical Proposal:

Criteria		Maximum Points	Minimum Required
(i)	Specific experience of the bidder or the composition of the Design Team related to the design of proposed Works	10	05
(ii)	Overall compliance with the requirements of the bidding document	10	05
(iii)	Experience of the key Members of the Design Team	30	20
(iv)	Work Plan and time schedules	15	08
(v)	Preliminary Design approach	25	13
(vi)	Any other improvements to the Employer's Requirements, suggested by the Bidder	10	-
Total		100	65

The following Sub-Criteria will be used in assigning points to (i), (ii), (iv), and (v) above

- (a) Satisfactory - 50%
- (b) Good - 75%
- (c) Very Good - 100%

For allocating points for (iii) above, each key member of the Design Team will be assigned a weighting in accordance with their roles for the assignment. Subjected to the weightings assigned each key staff member will be evaluated using the following Sub-Criteria:

- (a) General qualifications - 25%
- (b) Total experience - 25%
- (c) Experience related to the task - 50%

- 27.5 Each responsive Design/Technical proposal will be given a technical score as above. A Bid shall be rejected at this stage if it does not respond to important aspects of the Employer's Requirements or if it fails to achieve an overall minimum of 65 points together with the minimum given against each criteria.
- 27.6 After the evaluation of Envelope 2 is completed, the Employer shall notify those Bidders whose Design/Technical proposal did not meet the minimum qualifying mark or were considered nonresponsive to the Employer's Requirements, indicating that their envelope marked 'Envelope 3 - Price Proposal' will be returned unopened after completing the selection process. The Employer shall simultaneously notify the Bidders that have secured the minimum qualifying mark, indicating the date and time set for opening the envelope marked 'Envelope 3 - Price Proposal'. The notification may be sent by registered letter, or facsimile,.
- 27.7 The Envelope 3 shall be opened in the presence of the Bidders' representatives who choose to attend. The name of the bidder, the Bid prices together with any discounts offered shall be read aloud and recorded when the envelopes marked 'Envelope 3 - Price Proposal' are opened
- 27.8 In evaluating the Price Proposal, the Employer will determine for each Bid the Evaluated Bid Price by adjusting the Bid Price as follows:
- (a) excluding Provisional Sums and the provision, if any, but including Day work, where priced competitively;
 - (b) correct the arithmetical errors in-pursuant to Clause 28.
 - (c) making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations or alternative offers.
 - (d) applying any discounts offered by the Bidder.
- 27.9 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 document shall not be taken into account in Bid evaluation.
- 27.10 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.

27.11 If the Bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in relation to the Employer'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 Price Schedule, 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 32 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.

OPTION B

27.1 The Employer will evaluate and compare only the Bids determined to be substantially responsive in accordance with Clause 26

27.2 Evaluators of envelope marked 'Envelope 2 – Design/ Technical Proposal' shall have no access to the envelope marked 'Envelope 3 - Price Proposal' until the technical evaluation, is concluded. The Employer, evaluates the Envelope 2 - Design/ Technical Proposals on the basis of their responsiveness to the Employer's Requirements, applying the evaluation criteria, and point system specified in Sub-Clause 27.3 and 27.4

27.3 During the evaluation of Envelope 2, the Employer will determine whether the Bidders are qualified and whether technical aspects are substantially responsive to the requirements set forth in the bidding document. In order to reach such a determination, the Employer will examine the information supplied by the Bidders, and other requirements in the bidding document, taking into account the following factors (but not limited to):

(a) Qualification

(i) The determination will take into account the Bidder's financial and production capabilities and past performance; it will be based upon an examination of the documentary evidence of the Bidder's qualification submitted by the Bidder, as well as such other information as the Employer deems necessary and appropriate;

(ii) The Employer will examine whether the Bidder is satisfying the minimum criteria given under Sub-Clause 4.3; and

(iii) An affirmative determination under 27.3 (a) ii above, will be a prerequisite for the Employer to continue with the evaluation of the Envelope 2; a negative determination will result in rejection of the Bid.

(b) Technical

The determination will take into account the Bidder's Design/Technical Proposal with special attention given to the following and will assigned a technical score based on the point system and the criteria given in Sub-Clause 27.4:

- (i) Overall completeness and compliance with the Employer's Requirements; and deviations/shortcomings from or the Employer's Requirements,
- (ii) The design team,
- (iii) Work plan and methodology,
- (iv) Compliance with the time schedule

27.4 The following point system will be used for evaluation of the Design Team and the Design/Technical Proposals:

Criteria		Points
(i)	Specific experience of the bidder or the composition of the Design Team related to the design of proposed Works	10
(ii)	Overall compliance with the requirements of the bidding document	10
(iii)	Experience of the key Members of the Design Team	30
(iv)	Work Plan and time schedules	15
(v)	Preliminary Design approach	25
(vi)	Any other improvements to the Employer's Requirements, suggested by the Bidder	10
Total		100

The following Sub-Criteria will be used in assigning points to (i), (ii), (iv), and (v) above

- (a) Satisfactory, but needs improvements - 50%
- (b) Good - 75%
- (c) Very Good - 100%

For allocating points for (iii) above, each key member of the Design Team will be assigned a weighting in accordance with their roles for the assignment. Subjected to the weightings assigned each key staff member will be evaluated using the following Sub-Criteria:

- (a) General qualifications - 25%
- (b) Total experience - 25%
- (c) Experience related to the task - 50%

- 27.5 Each responsive Design/Technical proposal will be given a technical score (St) as above. A proposal shall be rejected at this stage if it does not respond to important aspects of the Employer's Requirements or if it fails to achieve a minimum overall total 65 points or if it fails to achieve a minimum of 50% under each criteria, other than criteria vi given in Sub-Clause 27.4.
- 27.6 After the evaluation of Envelope 2 is completed, the Employer shall notify those Bidders whose Design/Technical proposal did not meet the minimum qualifying mark or were considered non responsive to the Employer's Requirements, indicating that their envelope marked 'Envelope 3 – Price Proposal' will be returned unopened after completing the selection process. The Employer shall simultaneously notify the Bidders that have secured the minimum qualifying mark, indicating the date and time set for opening the envelope marked 'Envelope 3 – Price Proposal'. The notification may be sent by registered letter, or facsimile.
- 27.7 The Envelope 3 shall be opened in the presence of the Bidders' representatives who choose to attend. The name of the Bidder, the scores obtained for Design/Technical proposal and the Bid prices together with any discounts offered shall be read aloud and recorded when the envelopes marked 'Envelope 3 – Price Proposal' are opened.
- 27.8 In evaluating the Financial Proposal, the Employer will determine for each Bid the Evaluated Bid Price by adjusting the Bid Price as follows:
- (a) excluding Provisional Sums and the provision, if any, but including Day work, where priced competitively;
 - (b) correct the arithmetical errors in-pursuant to Clause 28;

- (c) making an appropriate adjustment on sound technical and/or financial grounds for any other quantifiable acceptable variations, deviations or alternative offers;
- (d) applying any discounts offered by the Bidder.

27.9 The Bid with lowest evaluated price (F_m) will be given a financial score (S_f) of 100 points. The financial scores (S_f) of the other Bid prices (F) will be computed as follows:

$$S_f = 100 \times F_m / F$$

27.10 Bids will be ranked according to their combined score (S) using weights $DT\%$ for Design/Technical Proposal as given in Bidding Data; and $P\%$ for Evaluated Bid Price as given in Bidding Data;

$$S = S_t \times DT\% + S_f \times P\% .$$

27.11 The Bidder achieving the highest combined Design/Technical and financial score will be considered as the best evaluated Bidder.

27.12 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 Bid documents shall not be taken into account in Bid evaluation.

27.13 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.

27.14 If the Bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in relation to the Employer'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 Price Schedule, 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 32 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.

28. Correction of Errors

28.1 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 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) unless this sub-clause is modified in Bidding Data and if the bid price decreases 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. If the bidder does not accept the corrected amount of bid, his bid will be rejected, and the bid security may be forfeited in accordance with sub clause 16.6(b).
- (d) unless this sub-clause is deleted in Bidding Data and if the total Bid price increases due to corrections made on above procedure, the bid price shall not be adjusted to the increased price and the corrections should be readjusted within the Bid price in consultation with the Bidder.

F. Award of Contract**29. Award****29.1 (If Option A under clause 27 is applicable)**

Subject to Clause 30, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding document in accordance with Clause 26.1, has achieved minimum points given under Sub-Clause 27.5 for Design and Technical Proposal, 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 4.3

29.1 (If Option B under clause 27 is applicable)

Subject to Clause 30, the Employer will award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding document in accordance with Clause 26.1, has achieved minimum points given under Sub-Clause 27.5 for Design and Technical Proposal, and has achieved the highest combined technical and financial score in accordance with Sub-Clause 27.10, 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 4.3.

Clause 27.5 for Design and Technical Proposal, and has achieved the highest combined technical and financial score in accordance with Sub-Clause 27.10, 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 4.3

- 30. Employer's Right to Accept any Bid and to Reject any or all Bids**
- 30.1 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.
- 31. Notification of Award**
- 31.1 Prior to expiration of the period of Bid validity prescribed by the Employer, the Employer will notify the successful Bidder by registered letter that its Bid has been accepted. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") shall specify the sum which the Employer will pay the Contractor in consideration of the design, 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").
- 31.2 The Letter of Acceptance will constitute the formation of the Contract.
- 31.3 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.
- 31.4 After issuing the Letter of Acceptance, the Employer will send the Bidder the Agreement in the form provided in the bidding documents, incorporating all agreements between the parties.
- 31.5 Upon the furnishing by the successful Bidder of the Performance Security, the Employer will promptly notify the other Bidders that their bids have been unsuccessful.
- 31.6 The Employer shall notify the successful bidder the date, time and venue for entering into executing the contract agreement.
- 32. Performance Security**
- 32.1 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.

- 33. Advance Payment and Security**
- 33.1 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.
- 34. Payments to the Contractor**
- 34.1 The payments made to the Contractor will be subjected to a deduction for retention. calculated by applying the percentage of retention stated in Bidding Data, until the amount so retained reaches the limit of retention stated in Bidding Data;
- 34.2 No Interim Payment will be made to the Contractor if the value of the Interim Certificate is less than the amount stated in the Bidding Data.
- 35. Adjudicator**
- 35.1 The Employer proposes the person named in the Bidding Data to be appointed as Adjudicator under the Contract. If the Bidder disagrees with this proposal, the bidder should so state in the Bid. Then the Adjudicator shall be appointed by the Appointing Authority designated in the Bidding Data at the request of either party.

In any event 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 - II

BIDDING DATA

(SAMPLE ONLY)

Note:

This section shall be read in conjunction with Section I - Instructions to Bidders, and is intended to provide specific information in relation to corresponding Clauses in Section I. Whenever there is a ambiguity, the provisions in Section II - Bidding Data shall supersede these provided in the Section I - Instructions to Bidders.

Bidders are advised to ignore the information printed in blue colour in the document, when preparing their bids. Such information is provided for the guidance of the Employer.

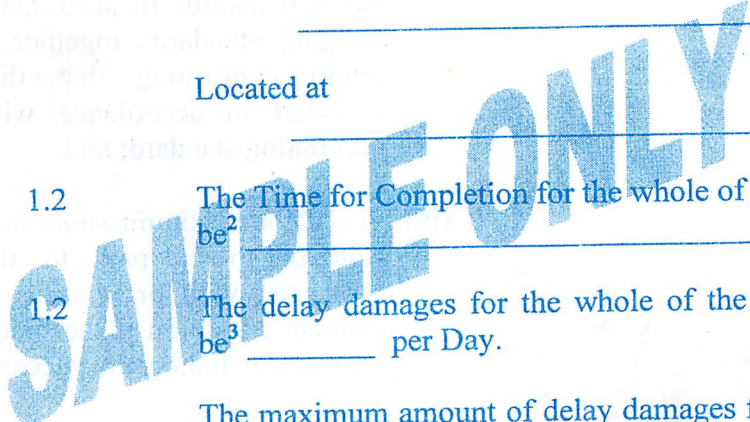
Note :

The Bidding Data included herein are Samples only. The Employer shall fill the necessary information and include them as Section II in Volume 1B before issuing the bidding documents.

Bidding Data

Instructions to Bidders Sub-Clause

Item	Sub-Clause	Entry
Employer's name and address	1.1.& 9.1	The Employer is Name : _____ _____ Address: _____ _____
Scope of Works	1,1	The Works consists of ¹ _____ _____ Located at _____ _____
Time for Completion	1.2	The Time for Completion for the whole of Works shall be ² _____
Delay damages for the Works	1.2	The delay damages for the whole of the Works shall be ³ _____ per Day. The maximum amount of delay damages for the whole of the Works shall be ⁴ _____ percent of the Initial Contract Price.
Defects Notification Period	1.2	Defects Notification Period is: _____ Days from Employer's Taking over
Source of funds	2.1	The source of funds is ⁵ _____
ICTAD registration required	3.1	The registration required ⁶ _____ Specialty _____ Grade _____



¹ Brief summary; including name, identification number, relationship to other contracts under the project etc
² If different dates are specified for completion of the Works by section ("sectional completion), these dates should be listed
³ Depends on the urgency of the project. Generally 0.05 % of the Initial Contract Price may be appropriate
⁴ Generally 10%
⁵ Insert GOSL or name of donor
⁶ Shall be same as Invitation to Bid

Eligible bidders 3.4⁷

Foreign bidders may submit a bid with or without a local agent(s). If the foreign bidder uses a local agent(s), and if the bid price exceed Rupees 250 m the bidder shall provide the following information with the bid. Failing to furnish such information may result the rejection of the bid by the Employer.

- (i) the name and address of the local agent(s)
- (ii) the year of registration of the business of the local agent(s);
- (iii) a certified copy of the audited accounts of the local agent(s) for any one of the two financial years immediately preceding the date of submission of Bids audited by an independent external auditor in accordance with Sri Lanka auditing standards together with the auditor's report confirming that the accounts were prepared in accordance with the Sri Lanka accounting standard; and
- (iv) all details of commissions or gratuities, if any, paid or to be paid to the local agent(s) connected with or relating to the Bid up to contract execution if the bidder is awarded the contract, including any success fees payable.

Qualification Information

3.1, 3.2, 4.1⁸

The following information shall be provided in Section VIII:

- ICTAD registration*
 - Registration number _____
 - Grade _____
 - Specialty _____
 - Expiry date _____
- NCCASL membership*
 - Number _____
 - 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;

⁷ Insert the Entry under Clause 3.4, **only** if foreign bidders are allowed to bid:

⁸ Select appropriately from the list provided, and add any other information

* Use appropriate schedules provided

		<ul style="list-style-type: none"> • Experience in works of a similar nature and size for each of the last five years;* • Construction equipment;* • Staffing;* • Attach Work plan and methods;
Average annual volume of construction work performed in last five	4.3(a)	Average annual volume of construction work performed in last five years shall be at least Rupees _____ (state the amount ⁹)
Essential equipment	4.3(c)**	Essential equipment required.***
Liquid assets and/or credit facilities required	4.3(g)	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 Rupees ¹⁰ _____
Bid price	13.3	VAT component shall not be included in the rates. The amount written in the Form of Bid shall be without VAT. However VAT component shall be shown separately at the end of the price schedule summary.
Contract is subjected to price adjustment for fluctuation of prices	13.4	The Contract is/is not ¹¹ subject to price adjustment in accordance with Clause 13.7 of the Conditions of Contract.

⁹ 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.

¹⁰ Usually estimated payments flow-over a period of 3 months at the average (straight line distribution)

¹¹ Select "is" or "is not"

* Use appropriate schedules provided

** Insert only if required

*** List equipment required

Currency of bid 14.1¹²

Bidders may bid in foreign currency(ies) stated, for the 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 Clause 27, 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 (ies)

Bid validity period

15.1

The Bid shall be valid up to¹³ _____ (date¹⁴).

Amount of Bid security

16.1

The amount¹⁵ of Bid security shall be Sri Lanka Rupees _____

Validity of Bid security

16.2

The Bid security shall be valid up to _____ (date¹⁶)

Pre-Bid meeting

17.1

Pre Bid meeting will be held/ will not be held
 Venue _____
 Date¹⁷ _____ time _____

Sealing and marking of Bids

19.2¹⁸

The following information also shall be included in the inner covers of envelope marked as “Envelope 1- Preliminary Information”:

- (i) Schedule, “Annual turn-over Information”;
- (ii) Schedule “Adequacy of Working capital”;
- (iii) Schedule, “Construction experience in last five Years;
- (iv) Schedule, “Construction experience in last five Years”;
- (v) Schedule, “Major items of construction equipment proposed”;

¹² Insert **only** if bidders are allowed to bid in foreign currency.

¹³ Shall be same as Invitation to Bid

¹⁴ The period should be realistic. Usually the period is 91 - 147 Days from deadline for submission of Bids.

¹⁵ The usually used amounts are:

- a) Refundable tender deposits – Up to one percent of the total cost estimate;
- b) Bid security – not more than 2% (usually 1% of the total cost estimate)

¹⁶ Insert the date which shall be at least 28 days beyond the expiry of validity of Bid

¹⁷ Allow sufficient time to circulate the minutes of the pre-bid meeting and the bidders to consider the contents of the minutes in preparation of the Bid

¹⁸ Select/Add as appropriate

- 19.3 The following information also shall be included in the inner covers of envelope marked as "Envelope 2-Design/Technical Proposal":
- (i) Schedule, "Team composition and Task assignment";
 - (ii) Curriculum vitae of key staff;
 - (iii) Schedule, "Time Schedule for key staff";
 - (iv) Work program (Design related activities);
 - (v) Work program (Construction related activities);
- 19.4²⁰
- The following information also shall be included in the inner covers of envelope marked as "Envelope 3-Financial Proposal":
- (i) Daywork rates schedule;
 - (ii) Schedule, "Overhead and profit percentage for Provisional Sum activities";
 - (iii) Schedule, "Input percentages for price adjustments".
- 19.5 (a) The Employer's address for the purpose of Bid submission is²¹
- 19.5 (b) Contract name: _____
Contract No. _____
- Deadline for submission of Bids** 20.1 The deadline for submission of Bids shall be²²

- Address for submission of Bids _____
- Evaluation and comparison of Bids** 27.0 For evaluation and comparison of Bids²³ option ____ is selected.
- 27.1* Weight for Design/Technical proposal shall be:
DT²⁴ = _____
Weight for Price proposal shall be:
P²⁵ = _____
- Correction of errors** (28.1) c²⁶ For GOSL funded projects insert "Sub-Clause 28.1(c) not modified".

¹⁹ Select/Add as appropriate

²⁰ Select/Add as appropriate

²¹ Shall be same as Invitation to Bid

²² Shall be same as Invitation to Bid

²³ Indicate 'A' or 'B'

²⁴ DT shall not be more than 25 %; 15% is recommended; DT + P shall be equal to 100

²⁵ P shall not be less than 75%; 85% is recommended; DT + P shall be 100

²⁶ Select appropriately

* Only if Option B is selected.

For foreign funded projects insert following:
 Clause 28.1(c) modified as follows:

The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the bidder, shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of Bid, his Bid will be rejected, and the Bid Security may be forfeited in accordance with Sub-Clause 16.6(b)

Correction of errors (28.1) d²⁷ For GOSL funded projects insert "Sub-Clause 28.1(d) is applicable".

For foreign funded projects insert "Sub-Clause 28.1(d) is deleted".

Amount of Performance Security 32.1 The standard form of performance security acceptable to the Employer shall be a bank guarantee or a Performance Bond from a reputed insurance company operating in Sri Lanka and accepted by the treasury for acceptance of guarantees or from any other organization approved by the treasury for this purpose.

The amount of Performance Security is²⁸ _____ of the Initial Contract Price.

Percentage of retention 34.1 The retention from each payment shall be²⁹ _____ percent.

The limit of retention shall be³⁰ _____ percent of the Initial Contract Price.

Minimum amount of Interim Payment Certificates 34.2 %³¹ of Initial Contract Price.

Adjudicator proposed by Employer (35.1)³² The Adjudicator proposed by the Employer is _____

If the Bidder disagrees with the proposal of the

²⁷ Select appropriately

²⁸ Generally 5%

²⁹ Generally 10 percent

³⁰ Generally 5 percent

³¹ 50% of the average monthly cash flow (excluding provisional sums and Day Works)

³² insert name and address

If the Bidder disagrees with the proposal of the Employer or the Adjudicator was not proposed, then the Adjudicator shall be appointed by the Appointing Authority who shall be the Institute for Construction Training and Development (ICTAD)

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:

**Amendments to Conditions of Contract
Conditions of Contract Sub-Clause**

Item	Sub-Clause	Entry
Right of access to, and possession of Site shall be	2.1*	The right of access to, and possession is amended and shall be ----- days
This Amount of insurance per occurrence is amended as:	18.2**	The amount of insurance required is amended and shall be Rupees ____ per event
Commencement of Work	8.1***	The Start Date is amended and shall be ____ Days ³³ from the issue of the Letter of Acceptance
Tests After Completion	12.1	Sub paragraphs (a), and (b) are amended, and Employer's obligations are limited as follows: (a) (b)
Professional Indemnity Insurance	18.4	The amount of insurance shall be Rs.

³³ Depends on the complexity of the Contract; 14, 21 or 28 Days may be appropriate
 * Insert if amount of insurance is required is different from Rupees one million per occurrence.
 ** Insert if possession of site is different from 14 days.
 *** Insert only if start date is different from 14 days from issue of Letter of acceptance.

Section - III
CONDITIONS OF CONTRACT

Conditions of Contract shall be read in conjunction with Contract Data

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**1.1.2
Parties and
Persons**

- 1.1.2.1 **"Party"** means the Employer or the Contractor, as the context requires.
- 1.1.2.2 **"Employer"** means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 **"Contractor"** means the person(s) named as contractor in the Bid accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 The **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 named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 (*Contractor's Representative*), who act on behalf of the Contractor.
- 1.1.2.6 **"Employer's Personnel"** means the Engineer, the assistants referred to in Sub-Clause 3.2 (*Delegation by the Engineer*) and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer's Personnel.
- 1.1.2.7 **"Qualified Designer"** means a corporate member of respective national professional body and/or be a professional registered with the respective national registration board (if any).
- 1.1.2.8 **"Contractor's Personnel"** means the Contractor's Representative and all personnel whom the Contractor utilizes 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.
- 1.1.2.9 **"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.
- 1.1.2.10 The **"Adjudicator"** is the person appointed jointly by the Employer and the Contractor or by the appointing authority

Conditions of Contract

1.0 General Provisions

- 1.1 Definitions** In the Conditions of Contract ("these Conditions"), which include Contract Data and these Conditions, the following words and expressions shall have the meanings stated.
- 1.1.1**
- 1.1.1.1** **"Contract"** means the Contract Agreement, the Letter of Acceptance, the Form of Bid the Form of Design/Technical Proposal, the Form of Price Proposal, these Conditions, Contract Data, the Employers Requirements, the Schedules., and the further documents (if any which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2** **"Contract Agreement"** means the contract agreement (if any) referred to Sub-Clause 1.6 (*Contract Agreement*).
- 1.1.1.3** **"Letter of Acceptance"** means the letter of formal acceptance, signed by the Employer, including any annexed memoranda comprising agreements between and signed by both Parties.
- 1.1.1.4** **"Contract Data"** means the completed pages entitled contract data, which forms part of the conditions of contract.
- 1.1.1.5** **"Employer's Requirements"** means the document entitled employer's requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.
- 1.1.1.6** **"Schedules"** means the document(s) entitled schedules, completed by the Contractor and submitted with the Bid, as included in the Contract. Such document may include data, lists and schedules of payments and/or prices.
- 1.1.1.7** **"Contractor's Proposal"** means the document entitled contractor's proposal, which the Contractor submitted with the Bid, as included in the Contract. Such document may include the Contractor's preliminary design.
- 1.1.1.8** **"Bid"** means the form of bid and all other documents, which the Contractor submitted with the bid, as included in the Contract.

- in accordance with sub-clause 19.2 (*Disputes*) or sub-clause 19.4 (*Replacement of Adjudicator*), to mediate in disputes in the first instance, as provided for in Clause 19.0 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 **“Start 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 Start Date.
- 1.1.3.4 **“Tests on Completion”** means the tests which are specified in the Contract or agreed by both Parties or instructed as a variation, and which are carried out under Clause 9 (*Tests on Completion*) before the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.5 **“Taking-Over Certificate”** means a certificate issued under Clause 10 (*Employer’s Taking Over*).
- 1.1.3.6 **“Tests after Completion”** means the tests (if any) which are specified in the Contract and which are carried out under Clause 12 (*Tests after Completion*) after the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.7 **“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 (*Completion of Outstanding Work and Remedying Defect*) 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 for the execution and completion of the Works and remedying of any defects, subjected to such additions thereto or deductions there from 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 14.11 (*Issue of Final Payment Certificate*).
- 1.1.4.5 “**Final Statement**” means the statement defined in Sub-Clause 14.9 (*Application for Final Payment Certificate*).
- 1.1.4.6 “**Interim Payment Certificate**” means a payment certificate issued under Clause 14 (*Contract Price and Payment*) other than the Final Payment Certificate.
- 1.1.4.7 “**Payment Certificate**” means a payment certificate issued under Clause 14 (*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 14.7 (*Payment of Retention Money*).
- 1.1.4.10 “**Statement**” means a statement submitted by the Contractor as part of an application, under Clause 14 (*Contract Price and Payment*) for a Payment Certificate.
- 1.1.5 Works and Goods**
- 1.1.5.1 “**Contractor’s Equipment**” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects.
- 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 designed and 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 drawings, calculations, computer programs and other software, specifications, samples, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract; as described in Sub-Clause 5.2 (*Contractor’s Documents*).

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 Employer’s Requirements; but does not include Plant which has not been taken over by the Employer.

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 Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

However if the Engineer purports to issue an instruction otherwise than in writing it shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Engineer as the case may be within seven (7) Days, and if not dissented from in writing by the Engineer to the Contractor then the Contractor's confirmation shall effect as from the date of confirmation by the Contractor. If the Engineer within seven (7) Days of giving such instruction confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid, and the said instruction shall take effect as from date of issue of such instruction.

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 management meetings and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities for any actions to be taken shall be in accordance with the Contract.

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 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; Form of Design/Technical Proposal; Form of Price Proposal;
- (e) the Contract Data;
- (f) these Conditions of Contract;
- (g) Contractor's Proposal;
- (h) the Employer's Requirements;
- (i) the Schedules; and
- (j) any other documents forming part of the Contract.

If the Engineer or Contractor find any ambiguity or discrepancy in the documents, he shall immediately give the other written notice specifying the discrepancy. The Engineer shall issue any necessary clarification or instruction on the ambiguity or discrepancy.

1.6
Contract Agreement The Contractor shall when called upon to do so enter and execute a Contract Agreement, to 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 entry into 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**

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 three copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Employer's Requirements, the Contractor's Documents, and Variations and other communications given under the Contract. The Employer, the Engineer or any other person nominated by the Engineer 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.

The Engineer shall have full power and authority to request from the Contractor from time to time, during the progress of the Works, further documents as shall be necessary for the proper and adequate execution of the Works.

**1.9
Errors in the
Employer's
Requirements**

If the Contractor suffers delay and/or incurs Cost as a result of an error in the Employer's Requirements, and an experienced contractor exercising due care would not have discovered the error when scrutinising the Employers Requirements under Sub-Clause 5.1 (*General Design Obligations*), 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 (i) whether and (if so) to what extent the error could not reasonably have been so discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

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.

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

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

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

**1.13
Compliance
with Laws**

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

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or similar permission for the Permanent Works, and any other permissions described in the Employer's Requirements as having been (or being) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the design, execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

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 the 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 Employer's Requirements. 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:

- (a) by obtaining copies of the laws which are relevant to the Contract but are not readily available; and
- (b) for the Contractor's applications for any permits licenses or approvals required by the laws of the country:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.13 (*Compliance with Laws*); and
 - (ii) for the delivery of Goods, including clearance through customs.

**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 require to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 (*Safety Procedures*) and under Sub-Clause 4.12 (*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 himself 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) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and
- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

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 (*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 (*Claims, Disputes and Arbitration*).

4.0 The Contractor

4.1 Contractor's General Obligations

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract. The Contractor shall employ the key personnel named in the Contract Data. Such persons can be substituted only with written approval of the Engineer.

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

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

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

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for 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 of a bank guarantee or a Performance Bond, as stipulated in Contract Data.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the Initial Contract Price, the Contractor, at the Engineer's written request, shall promptly increase the value of the Performance Security by an equal percentage. 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 not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security;

- (b) failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.4 (*Employer's Claims*) or Clause 19 (*Claims, Disputes and Arbitration*), within 42 days after this agreement or determination;
- (c) failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied; or
- (d) circumstances which entitle the Employer to termination under Sub-Clause 15.2 (*Termination by Employer*) irrespective of whether notice of termination has been given.

The Employer shall 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 Start 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 Nominated Subcontractors In this Sub-Clause, "Nominated Subcontractor" means a Subcontractor whom the Engineer, under Clause 13 (*Variations and Adjustments*), instructs the Contractor to employ as a Subcontractor. The Contractor shall not be under any obligation to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars.

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

- (a) the Employer's Personnel;
- (b) any other contractors employed by the Employer; and
- (c) the personnel of any legally constituted public authorities.

Who may be employed in the execution on or near the Site of any work not included in the Contract.

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

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

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

4.7 Setting Out 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:

- (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 all necessary efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 (*Employer's Taking Over*); and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9

Sufficiency of the Initial Contract Price

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Initial Contract Price; and
- (b) have based the Initial Contract Price on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters and any further data relevant to the Contractor's design.

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

**4.10
Unforeseeable
Physical
Conditions**

In this Sub-Clause, "physical conditions" means natural physical conditions and made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 (*Variations and Adjustments*) shall apply.

If and to the extent that the Contractor encounters physical conditions which are unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to 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 physical conditions were unforeseeable; and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii) the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Bid. If and to the extent that these more favourable 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. However, the net effect of all adjustments under subparagraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

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

4.11 Contractor's Equipment etc. The Contractor shall be responsible for all Contractor's Equipment, Materials, Temporary Works. 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, Material or Temporary Works without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.12 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 Employer's Requirements, and shall not exceed the values prescribed by applicable Laws.

4.13 Progress Reports 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 Start 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, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture;
 - (ii) contractor's inspections;

- (iii) tests; and
- (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.9 (Records of Contractor's Personnel and Equipment);
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of Variations, notices given under Sub-Clause 2.4 (*Employer's Claims*) and notices given under Sub-Clause 19.1 (*Contractor's Claims*);
- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

**4.14
Contractor's
Operations on
Site**

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

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

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

**4.15
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.

5.0 Design

5.1 General Design Obligations

The Contractor shall carry out, and be responsible for, the design of the Works. Design shall be prepared by Qualified Designers who are engineers or other professionals who comply with the criteria (if any) stated in the Employer's Requirements. Unless otherwise stated in the Contract, the Contractor shall submit to the Engineer for consent the name and particulars of each proposed designer and design Subcontractor.

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

Upon receiving notice under Sub-Clause 8.1 (*Commencement of Work*), the Contractor shall scrutinise the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Sub-Clause 4.7 (*Setting Out*). Within 45 days, calculated from the Start Date, the Contractor shall give notice to the Engineer of any error, fault or other defect found in the Employer's Requirements or these items of reference.

After receiving this notice, the Engineer shall determine whether Clause 13 (*Variations and Adjustments*) shall be applied, and shall give notice to the Contractor accordingly. If and to the extent that (taking account of cost and time) an experienced contractor exercising due care would have discovered the error, fault or other defect when examining the Site and the Employer's Requirements before submitting the Bid, the Time for Completion shall not be extended and the Contract Price shall not be adjusted.

5.2 Contractor's Documents The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.7 (*As-Built Documents*) and Sub-Clause 5.8 (*Operation and Maintenance Manuals*). Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in English language.

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

If the Employer's Requirements describe the Contractor's Documents which are to be submitted to the Engineer for review and/or for approval, they shall be submitted accordingly, together with a notice as described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Engineer for review and (if so specified) for approval; and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review and/or for approval.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 21 Days, calculated from the date on which the Engineer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Engineer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed (and, if specified, approved) in accordance with this Sub-Clause, at the Contractor's cost.

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

- (a) in the case of a Contractor's Document which has (as specified) been submitted for the Engineer's approval:
 - (i) the Engineer shall give notice to the Contractor that the Contractor's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Contract;
 - (ii) execution of such part of the Works shall not commence until the Engineer has approved the Contractor's Document; and

- (iii) the Engineer shall be deemed to have approved the Contractor's Document upon the expiry of the review periods for all the Contractor's Documents which are relevant to the design and execution of such part, unless the Engineer has previously notified otherwise in accordance with sub-paragraph (i).
- (b) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
- (c) execution of such part of the Works shall be in accordance with these reviewed (and, if specified, approved) Contractor's Documents; and
- (d) if the Contractor wishes to modify any design or document which has previously been submitted for review (and, if specified, approval), the Contractor shall immediately give notice to the Engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

If the Engineer instructs that further Contractor's Documents are required, the Contractor shall prepare them promptly.

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

5.3 Contractor's Undertaking

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

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

5.4 Technical Standards and Regulations

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

All these Laws shall, in respect of the Works and each Section, be those prevailing when the Works or Section are taken over by the Employer under Clause 10 (*Employer's Taking Over*) References in the Contract to published standards shall be understood to be references to the edition applicable on the Base Date, unless stated otherwise.

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

- (a) the Engineer determines that compliance is required; and
- (b) the proposals for compliance constitute a Variation.

then the Engineer shall initiate a Variation in accordance with Clause 13 (*Variations and Adjustments*).

5.5 Samples

The Contractor shall submit the following samples/relevant information to the Engineer for pre-construction review in accordance with the procedure for Contractor's Documents described in Sub-Clause 5.2 above:

- (a) manufacturer's standard samples of Materials;
- (b) samples specified (if any) in the Employer's Requirements; and
- (c) additional samples instructed by the Engineer.

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

5.6 Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements. If the Contract specifies training which is to be carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Clause 10.1 (*Taking Over of the Works and Sections*) until this training has been completed.

5.7 As-Built Documents

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Engineer as-built drawings of the Works, showing all Works as executed, and submit them to the Engineer for review under Sub-Clause 5.2 (*Contractor's Documents*). The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Engineer one full-size original and two (2) copies of the relevant as-built drawings, and any further documents specified in Employer's Requirements. Preferably an additional electronically stored soft copy of the aforesaid drawings and documents shall be submitted by the Contractor. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works and Sections*) until the Engineer has received these documents.

5.8 Operation and Maintenance Manuals Prior to commencement of the Tests on Completion, the Contractor shall supply to the Engineer provisional operation and maintenance manuals in sufficient detail for the Employer to operate, maintain, dismantle, reassemble adjust and repair the Plant.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the Works and Sections*) until the Engineer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

5.9 Design Error If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

5.10 Patents and Copyright The Contractor shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any copyrights in connection with drawings specifications and of any patent rights, design trademark, or name or other protected rights in respect of any Constructional Plant or Material used for or in connection with the Works or any of them and from and against all claims, proceedings, damages, costs, charges and expenses whatsoever specified and the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation connected with.

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, 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** Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employers Personnel as stated in the Employer's Requirements.
- The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.
- 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. Contractor shall ensure that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall assign to an officer at the Site, to be responsible for maintaining safety and protection against accidents.
- 6.7 Contractor's Superintendence** Throughout the design and 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 operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.
- 6.8 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
Additional
Samples**

In addition to the requirements under Sub-Clause 5.5 (*Samples*), the Contractor shall submit the following:

- (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 labeled 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 (*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*) 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*);
- (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, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials, design 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, design 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 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 Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:

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

8.0 Commencement, Delays and Suspension

- 8.1 Commencement of Work** Unless otherwise stated in the Contract Data, the Start Date shall be 14 days after the Letter of Acceptance.
- The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Start 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) given in Contract Data, 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 7 days after Start Date. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractors 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, Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, testing, commissioning and trial operation;
 - (b) the periods for reviews under Sub-Clause 5.2 (*Contractor's Documents*) and for any other submissions, approvals and consents specified in the Employer's Requirements;
 - (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 7 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.

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 Completion an extension of the Time 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*)];
- (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 Contractor's work; and
- (c) the delay or disruption was unforeseeable.

Then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 8.4 (*Extension of Time for Completion*).

- 8.6 Rate of Progress** If, at any time:
- (a) actual progress is too slow to complete within the Time for Completion; and/or
 - (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 (*Programme*).

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

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 (*Employers Claims*) pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

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

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

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

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

**8.9
Consequences
of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Engineers instructions under Sub-Clause 8.8 (*Suspension of Work*) and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 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 Employer's property in accordance with the Engineer's instructions.

**8.11
Prolonged
Suspension**

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

**8.12
Resumption of
Work**

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

9.0 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-Clause 5.7 (*As-Built Documents*) and Sub-Clause 5.8 (*Operation and Maintenance Manuals*).

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.

Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage. (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Engineer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employers Requirements and with the Schedule of Guarantees.

Trial operation shall not constitute a taking-over under Clause 10 (*Employer's Taking Over*) Unless otherwise stated in the Particular Conditions, any product produced by the Works during trial operation shall be the property of the Employer.

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 each of the Tests on Completion described in sub-paragraph (a), (b) or (c), 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 of which he shall give notice to the Engineer

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.4 (*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;
- (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 then 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 shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 (*Time for Completion*) and except as allowed in sub-paragraph (a) below; and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

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

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

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

10.2 Taking Over of Parts of the Works

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

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

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

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

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 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 delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 (*Delay Damages*), and shall not affect the maximum amount of these damages.

10.3
Interference
with Tests on
Completion

If the Contractor is prevented, for more than 21 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 19.1 (*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.

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 stated in Contract Data 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) the design of the Works, other than a part of the design for which the Employer is responsible (if any);
- (b) Plant, Materials or workmanship not being in accordance with the Contract;
- (c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise); or
- (d) 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 Notification Period extension of the Defects for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 (*Suspension of Work*) or Sub-Clause 16.1 (*Contractor's*

Entitlement to Suspend Work), the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

**11.4
Failure to
Remedy
Defects**

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

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

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.4 (*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
Work**

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

**11.6
Further
Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. 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 dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such disposal and restoring the Site. The Contractor shall pay the such costs to the Employer.

12.0 Tests after Completion

12.1 Procedure for Tests after Completion If Tests after Completion are specified in the Contract, this Clause shall apply. Unless otherwise stated in the Contract Data, the Employer shall:

- (a) provide all electricity, equipment, fuel, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently; and

- (b) carry out the Tests after Completion in accordance with the manuals supplied by the Contractor under Sub-Clause 5.8 (*Operation and Maintenance Manuals*) and such guidance as the Contractor may be required to give during the course of these Tests; and in the presence of such Contractor's Personnel as either Party may reasonably request.

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

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

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

12.2 Delayed Tests

If the Contractor incurs Cost as a result of any unreasonable delay by the Employer to the Tests after Completion, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 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, for reasons not attributable to the Contractor, a Test after Completion on the Works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion.

12.3 Retesting

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

- (a) sub-paragraph (b) of Sub-Clause 11.1 (*Completion of Outstanding Work and Remedying Defects*) shall apply; and
- (b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 (*Cost of Remedying Defects*) and cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 (*Employer's Claims*) pay these costs to the Employer.

**12.4
Failure to
Pass Tests
after
Completion**

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion;
- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the Contract; and
- (c) the Contractor pays this relevant sum to the Employer during the Defects Notification Period.

then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Contractor proposes to make adjustments or modifications to the Works or such Section, the Contractor may be instructed by (or on behalf of) the Employer that right of access to the Works or Section cannot be given until a time that is convenient to the Employer. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) the Employer of the time that is convenient to the Employer. However, if the Contractor does not receive this notice during the relevant Defects Notification Period, the Contractor shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed this Test after Completion.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or Plant by the Contractor, either to investigate the causes of a failure to pass a Test after Completion or to carry out any adjustments or modifications, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 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.

13.0 Variations and Adjustments

13.1 Right to Vary Employer's Requirements

The term 'Variation' means:

- (a) a change in the Employer's Requirements which necessitate any alteration or modification of the design, quality of the Works as described by or referred to in the Employer's Requirements or in the Contractor's Proposals, other than that reasonably necessary for the purposes of remedial works pursuant to Sub-Clause 7.5, including:
 - (i) addition, omission or substitution of any work;
 - (ii) alteration of the kind or standard of any of the materials or goods to be used in the Works; and
 - (iii) removal from Site of any Work executed or Materials or Goods brought by the Contractor for the purpose of the Works.
- (b) the addition, alteration or omission of any obligations or restrictions imposed by the Employer in the Employer's Requirements in regard to:
 - (i) access to the Site or use of any specific parts of the Site;
 - (ii) the execution or completion of the Works in any specific order.

A variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A variation shall not comprise the omission of any work which is to be carried out by others.

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

13.2 Value Engineering

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

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

**13.3
Variation
Procedure**

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

- (a) a description of the proposed design and/or 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 adjustment to the Contract Price.

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

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

Upon instructing or approving a Variation, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 (*Value Engineering*) if applicable.

**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, 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.

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

13.5
Day work

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a Day work basis. The work shall then be valued in accordance with the Day work schedule included in the Contract, and the following procedure shall apply. If a Day work schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day work 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 to take account of any increase or decrease in Cost resulting from a change in the laws of the country (including the introduction of new laws and the repeal or modification of existing laws) or in the judicial or official governmental interpretation of such laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract. The provision of this Sub-Clause shall not be applicable for increases or decreases in cost of Goods, if such increases or decreases are considered under Sub-Clause 13.7 (*Adjustments for Changes in Cost*).

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 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.

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, Material, Plant and other inputs to the Works, shall be added to or deducted from the payment to the Contractor only 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 :

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

Where:

- F = Price adjustment for the period concerned
 V = Current valuation of work done for the period.
 P_x = Input percentage of input named X.
 I_{xc} = Current indices of input X.
 I_{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 the input in terms of cost as agreed by the Employer and the Contractor prior to award of the Contract. The summation of these Input Percentages shall be added to 90. The agreed percentages are given in the Schedules
- (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, but excluding the value of work done under variations, provisional sums or Day work.
- (d) The "Indices" means the monthly indices published by Institute for Construction Training and Development (ICTAD) for the agreed 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.

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 Clause 13 (*Variations and Adjustments*) 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 the lump sum stated in the Letter of Acceptance 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*); and
- (c) any quantities which may be set out in a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the Works which the Contractor is required to execute;

However, if any part of the Works is to be paid according to quantity supplied or work done, the provisions for measurement and evaluation shall be as stated in the Contract Data. The Contract Price shall be determined accordingly, subject to adjustments in accordance with the Contract.

14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilization and design, when the Contractor submits a guarantee to the value of the advance payment in accordance with this Sub-Clause. The total advance payment shall not exceed 20% of Initial Contract Price and will be paid in two equal installments. First installment shall be paid within 14 days of furnishing the guarantee and submission of the Performance Security. The second installment will be paid within

14 days of certification made by the Engineer that adequate Contractor's Documents have been furnished by the Contractor for him to commence construction works.

The Engineer shall issue two separate Interim Payment Certificates for the first and second installment after receiving 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/s in amounts equal to the advance payment. This guarantee shall be issued by an entity and from 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 Certificate issued after the payment of the advance payment : and
- (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 (*Termination by Employer*), Clause 16 (*Suspension and Termination by Contractor*) or Clause 20 (*Force Majeure*), as the case may be, the whole of the outstanding advance 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 the period of payment stated in the Contract (if not stated, 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 relevant report on progress in accordance with Sub-Clause 4.13 (*Progress Reports*).

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies (if any) in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractors Documents produced up to the end of the month (including Variations but excluding items described in subparagraphs (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 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 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;
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 19 (*Claims, Disputes and Arbitration*); and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4
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 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.

**14.5
Payment**

The Employer shall pay to the Contractor:

- (a) the first installment of the advance payment within 14 days after receiving the documents in accordance with Sub-Clause 4.2 (*Performance Security*) and Sub-Clause 14.2 (*Advance Payment*), whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 28 Days after the Engineer receives the Statement and supporting documents; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate.

**14.6
Delayed
Payment**

If the Contractor does not receive payment in accordance with Sub-Clause 14.5 (*Payment*), the Contractor shall be entitled to receive an interest of amount calculated at 1 % above the published lending rate of the Central Bank of Sri Lanka to commercial banks as at the date the payment becomes overdue and the period unto the date actual payment is effected.

**14.7
Payment of
Retention
Money**

When Taking-Over Certificate has been issued, 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.

**14.8
Statement at
Completion**

Within 42 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 the date stated in the Taking-Over Certificate for the Works;
- (b) any further sums which the Contractor considers to be due; and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.4 (*Issue of Interim Payment Certificates*)

**14.9
Application
for Final
Payment
Certificate**

Within 28 Days after receiving the Performance Certificate, the Contractor shall submit to the Engineer three copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

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

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

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 19.3 (*Procedure for Disputes*) or Sub-Clause 19.5 (*Arbitration*) the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

**14.10
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 out-standing balance of this total in which event the discharge will be effective on such date.

**14.11
Issue of Final
Payment
Certificate**

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.9 (*Application for Final Payment Certificate*) and Sub-Clause 14.10 (*Discharge*) the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state:

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

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.9 (*Application for Final Payment Certificate*) and Sub-Clause 14.10 (*Discharge*) the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

**14.12
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 14.8 (*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 Works or assigns the Contract without the required agreement;

- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events; or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
- (i) for doing or forbearing to do any action in relation to the Contract; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

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

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

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

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

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

15.3 Valuation at Date of Termination As soon as practicable after a notice of termination under Sub-Clause 15.2 (*Termination by Employer*) has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*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 design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 (*Valuation at Date of Termination*). After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

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

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

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 14.4 (*Issue of Interim Payment Certificates*) or the Employer fails to comply with Sub-Clause 14.5 (*Payment*) the Contractor may, after giving not less than 42 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 14.6 (*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 Contractor does not receive the reasonable evidence within 56 days after giving notice under Sub-Clause 16.1 (*Contractor's Entitlement to Suspend Work*);
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 56 days after the expiry of the time stated in Sub-Clause 14.5 (*Payment*) within which payment is to be made [*except for deductions in accordance with Sub-Clause 2.4 (Employer's Claims)*];
- (d) the Employer substantially fails to perform his obligations under the Contract;
- (e) the Employer fails to comply with Sub-Clause 1.6 (*Contract Agreement*) or Sub-Clause 1.7 (*Assignment*);

- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 (*Prolonged Suspension*); or
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a 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 21 days notice to the Employer, terminate the Contract. However, in the case of sub paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

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

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 (*Employer's Entitlement to termination*) Sub-Clause 16.2 (*Termination by Contractor*) or Sub-Clause 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 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 Employers Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, 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 design, 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 Start 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 traveling 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, if any; 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 delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 (*Employer's Risks*), reasonable profit on the Cost shall also be included.

After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to 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 before the Start Date, 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 expected 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:

- (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 before the Start Date, 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 Rupees one million unless other amount is 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 before the Start Date, shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

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

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

**18.4
Insurance for
Professional
Indemnity**

The Contractor shall effect professional indemnity insurance, which shall cover the risk of professional negligence in the design of the Works. This insurance shall be for a limit of not less than that stated in the Contract Data. The Contractor shall use his best endeavours to maintain the professional indemnity insurance in full force and effect from Start Date until Completion of the Works. The Contractor undertakes to notify the Employer promptly of any difficulty in extending, renewing or reinstating this insurance..

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 Disputes

If the Employer and the Contractor have not agreed on the appointment of the Adjudicator prior to the signing of the agreement the Adjudicator shall be appointed by the appointing authority designated in the Contract Data.

If the Contractor believes that a decision taken by the Employer and/or the Engineer was wrongly taken or ultra vires the contract, then as a precedence to Arbitration, the decision of the Employer and/or the

Engineer shall be referred to the Adjudicator for mediation within 28 Days of the notification of the Employer's and/or the Engineer's decision.

**19.3
Procedure for
Disputes**

The Adjudicator shall give the outcome of the mediation in writing to the parties within 28 Days of the dispute being referred to him.

The cost of the Adjudicator shall be divided equally between the Employer and the Contractor, irrespective of the findings of the Adjudicator. Either party may refer the issue/s to Arbitration in accordance with Sub-Clause 19.5 (*Arbitration*) within 28 Days of the Adjudicator's written communication. If neither party refers the dispute to arbitration within the above 28 Days, the Adjudicator's written communication will be final and binding. The Adjudicator is not required or bound to appear or justify the outcome of the mediation before any arbitral tribunal or a court of justice. His findings however may be produced by any of the parties at such arbitral or judicial sittings.

**19.4
Replacement of
Adjudicator**

Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator should be removed as he is not functioning in a satisfactory manner, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. Such appointment shall be made within 28 Days, after the resignation, death or removal of the Adjudicator. In case the Employer and Contractor fail to agree on the initial appointment or replacement of the Adjudicator as above, within 28 Days, the Adjudicator shall be designated by the appointing authority designated in the Contract Data at the request of either party, within 21 Days of receipt of such request.

**19.5
Arbitration**

Any doubt, difference, dispute, controversy or claim arising, out of or in connection with or touching or concerning the execution or maintenance of the works in this contract, or on the interpretation thereof or on the rights, duties, obligations, or liabilities of any of the parties thereto or on the operation, breach termination, abandonment, foreclosure or invalidity thereof, shall be finally settled by arbitration after written notice by either party to the Contract to the other for a decision to a sole arbitrator to be appointed as hereinafter provided.

The party desiring arbitration shall nominate three arbitrators out of which one to be nominated by the other party within 21 Days of the receipt of the said request. If the other party does not nominate one to serve as Arbitrator within the stipulated period the party calling for arbitration shall nominate one of the three and inform the other party accordingly.

The arbitration shall be conducted in accordance with Arbitration Act No. 11 of 1995.

If the Arbitrator so appointed is unable or unwilling to act or resign the appointment or vacate his office due to any reason whatsoever another Arbitrator shall be appointed in the same manner as mentioned aforesaid.

The Arbitrator so appointed shall be entitled to determine the rules of procedure to be followed in the Arbitration.

The Arbitration shall be held in Sri Lanka and the venue if not finalized by the parties, shall be decided by the Arbitrator.

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 Subcontractors;
- (iv) munitions of war, explosive materials, ionizing, 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 endeavors to minimise any delay in the performance of the Contract as a result of Force Majeure.

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

**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 - IV

CONTRACT DATA

(SAMPLE ONLY)

Note:

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

Bidders are advised to ignore the information printed in blue colour in the document, when preparing their bids. Such information is provided for the guidance of the Employer.

Note :

The Contract Data included herein are Samples only. The Employer shall fill the necessary information and include them as Section IV in Volume 1B before issuing the bidding documents.

Contract Data

Contract Sub-Clause Number

Sub-Clause 1.1.2.2 **Employer is:** _____
 Address: _____

Sub-Clause 1.1.2.4 **Engineer is:** _____
 Address: _____

Sub-Clause 1.1.5.6 **Sections of Works :** _____

Sub-Clause* 2.1 The right of access to, and possession is amended and shall be -----
 Days from Letter of Acceptance.

Sub-Clause 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:

- (a) consenting to the subletting of any part of the Works under Sub-Clause 4.4 (b);
- (b) approving an extension of the Time for Completion, and/or any additional payment under Sub-Clause 19.1 (*Contractor’s Claim*) issuing variation under Sub-Clause 13.1 (*Right to vary Employer’s Requirement*), except in an emergency situation, as reasonably determined by the Engineer.
- (c) approving additional payment under Sub-Clause 13.3

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13.3 and shall notify the Contractor accordingly, with a copy to the Employer.

* include only if possession of site is different from 14 days.

Sub-Clause 4.1 Key Personnel

Schedule of Key Personnel:

Names with qualifications and experience to be written:

(a) Design

(b) Contract Administration

(c) Accounting

Sub-Clause 4.2 Performance Security

The Performance Security shall be¹ _____ percent of the Initial Contract Price.

The Standard Form of Performance Security acceptable to the Employer shall be a Bank Guarantee or a Performance Bond from a reputed Insurance Company operating in Sri Lanka and accepted by the Treasury for acceptance of Guarantees or from any other organisation approved by the Treasury for this purpose.

**Sub-Clause 8.1 Start Date:
Commencement
of Work 8.1**

The Start Date is amended and shall be _____ Days² from the issue of the Letter of Acceptance

Sub-Clause 8.2 Time for Completion

The Time for Completion for the whole of Works shall be³

Sub-Clause 8.7 Delay Damages

The Delay Damages for the whole of the Works shall be⁴ _____ per Day.

The maximum amount of Delay Damages for the whole of the Works shall be⁵ _____ percent of the Initial Contract Price.

¹ Generally 5% of Initial contract Price

² Depends on the complexity of the Contract; 14, 21 or 28 Days may be appropriate

³ If different dates are specified for completion of the Works by section ("sectional completion), these dates should be listed

⁴ Depends on the urgency of the project. Generally 0.05 % of the Initial Contract Price may be appropriate

⁵ Generally 10%

Sub-Clause 11.1 Defects Notification Period

Defects Notification Period is: ____ Days from Taking-over Certificate.

Sub-Clause 12.1 Tests After Completion

Sub paragraphs (a), and (b) are amended, and Employer's obligations are limited as follows:

(a)

(b)

Sub-Clause 13.7* Adjustments for Changes in Cost

Contract is/ is not subjected to price adjustment for fluctuation of prices

Sub-Clause 14.1 Contract Price

The Sub-Clause 14.1 is modified as follows:

.....

The Works described below is to be paid according to quantity supplied or work done:

.....

Sub-Clause 14.3 Retention Money

(c)

The retention from each payment shall be⁷ _____ percent of the Initial Contract Price.

The limit of retention shall be⁸ _____ percent of the Initial Contract Price.

⁷ Generally 10 percent

⁸ Generally 5 percent

* Select "is" or "is not"

Sub-Clause 14.4 Issue of Interim Payment Certificates

Minimum amount of Interim Payment Certificates shall be*:

Sub Clause 14.7 Payment of Retention **

On reaching the limit of retention stated in Contract Data 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.

Sub-Clause 18.2* Third Party Insurance**

This Amount of insurance per occurrence is amended as:
Rupees

Sub-Clause 18.4 Professional Indemnity Insurance

This Amount of insurance shall be _____

Sub-Clause 19.2 Failure to Agree Dispute Adjudicator & 19.4

The appointing entity for appointing the Adjudicator is the Institute for Construction Training and Development (ICTAD)

* Generally 50% of the average monthly value

** Delete the entire paragraph if opted.

*** Include only if amount of third party insurance is different from Rupees one million per occurrence.

Section - V

STANDARD FORMS

*Form of Bid Security, Letter of Acceptance, Form of Agreement,
Form of Performance Guarantee, Form of Mobilization Advance
Guarantee, Form of 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.

FORM OF BID SECURITY

Whereas, ----- [name of bidder] (hereinafter called and referred to as “the Bidder”) has submitted its Bid dated -----[date] for the Design and Construction of ----- [name of Contract] (hereinafter called and referred to as “the Bid.”).

KNOW ALL PEOPLE by these presents that WE -----[name of organization] having our registered office at ----- (hereinafter called and referred to as “the Guarantor”), are bound unto ----- [name of Employer] (hereinafter called and referred to as “the Employer”) in the sum of Sri Lanka Rupees -----¹ for which payment well and truly to be made to the said Employer. The Guarantor binds itself, its successors, and assignees by these presents.

SEALED with the Common Seal of the said Guarantor this -----day of ----- 200-----.

THE CONDITIONS of this obligation are:

1. If the Bidder withdraws its Bid during the period of bid validity specified in the bidding documents; or
2. If the Bidder refuses to accept the correction of errors in its Bid; or
3. If the Bidder, having been notified of the acceptance of its Bid by the Employer, during the period of bid validity, fails or refuses to:
 - (a) execute the Form of Contract Agreement; or
 - (b) furnish the Performance Security, in accordance with the Instruction to Bidders

We undertake to pay the Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred condition or conditions.

This Guarantee will remain in force up to and including twenty-eight (28) days after the period of bid validity, and any demand in respect thereof should be received by us no later than the above date.

DATE -----

SIGNATURE OF THE GUARANTOR -----

WITNESS -----

SEAL

(Signature, Name, and Address)

¹ The Bidder should insert the amount of the guarantee in words and figures.

Notes on Form of Letter of Acceptance

The Letter of Acceptance will be the basis for formation of the Contract as described in Clause 31 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]*

To: _____
[name of the Contractor]

[address of the Contractor]

This is to notify you that your Bid dated _____ for design, construction and remedying defects of the _____ *[name of the Contract and identification number, as given in the Contract Data]* for the Contract price of Rupees _____ *[amount in numbers and words]* as corrected in accordance with Instructions to Bidders and/ or modified by a Memorandum of Understanding² (if any), is hereby accepted.

The adjudicator shall be _____ / shall be appointed by appointing authority³.

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 as per Clause 8.1 of Conditions of Contract).*

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

The deadline for submission of Performance Security is _____ *(fill as per Clause 4.2 of Conditions of Contract).*

Authorized Signature : _____

Name and title of Signatory : _____

Name of Agency : _____

² Delete "corrected in accordance with ITB and/or " or "and/or modified by a Memorandum of Understanding", if not applicable

³ Delete whichever inapplicable

FORM OF CONTRACT 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 design and 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 design, 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 design, 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 design, 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 first before written in accordance with their respective laws.

Authorised signature of Contractor

Authorised signature of Employer

SEAL

SEAL

In the presence of:
Witnesses :

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

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

**FORM OF PERFORMANCE GUARANTEE
(Unconditional)**

NUMBER : DATE :

SUM GUARANTEED :

To:[*name of Employer*] (hereinafter called and referred to as “the Employer”)
..... [*address of Employer*]

Whereas [*name and address of Contractor*] (hereinafter called and referred to as “the Contractor”) has undertaken, in pursuance of contract No. dated to execute [*name of Contract*] (hereinafter called and referred to as “the Contract”);

And Whereas it has been stipulated by the Employer in the said Contract that the Contractor shall furnish the Employer with a Guarantee issued by a recognized organization for the sum specified therein as security for compliance with its obligations in accordance with the Contract;

And Whereas we have agreed to give the Contractor such a Guarantee;

Now Therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Rupees..... [*amount of guarantee*] [*amount in words*], such sum being payable in the type and proportions of currencies in which the Contract Price is payable, and we undertake to pay the Employer, upon the Employer’s first written demand and without cavil or objection, any sum or sums within the said amount as aforesaid without the Employer’s needing to prove or to show grounds or reasons for the Employer’s demand for the sum specified therein.

We hereby waive the necessity of the Employer’s demanding the said debt from the contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between the Employer and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice or any such change, addition or modification.

This guarantee shall be valid until the date of issue of the Performance Certificate.

Signature and the Seal of the Guarantor :

Name of the Organization :

Address :

Date:

Witness :

FORM OF GUARANTEE FOR MOBILISATION ADVANCE PAYMENT

NUMBER : DATE :

SUM GUARANTEED :

To : [*name of Employer*] (hereinafter called and referred to as “the Employer”)
..... [*address of Employer*]

Name of the Contract

In accordance with the provisions of the Conditions of Contract, Sub-Clause 14.2 (Advance Payment) of the above mentioned contract [*name and address of Contractor*] (hereinafter called and referred to as “the Contractor”) shall deposit with the Employer a guarantee acceptable to the Employer to guarantee his proper and faithful performance under the said Contract in and amount of [*amount of guarantee*] [*amount in words*]

We, the [*name and address of the organization*], as instructed by the contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Employer on his first demand without whatsoever right of cavil and objection on our part and without the Employer’s needing to prove or to show grounds or reason for the Employer’s demand for the sums specified therein and without his first claim to the Contractor, in the amount not exceeding Rupees [*amount of guarantee*] [*amount in words*] such amount to be reduced periodically by the amounts recovered by the Employer from the proceeds of the contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract document which may be made between the Employer and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice or any such change, addition or modification.

No drawings may be made by the Employer under this guarantee until we have received notice in writing from the Employer that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the Contractor under the Contract until the Employer receives full repayment of the same amount from the Contractor.

Signature and the Seal of the Guarantor :

Name of the Organization :

Address.....

Date :

Witness :

FORM OF RETENTION MONEY GUARANTEE

NUMBER : DATE :

SUM GUARANTEED :

To : [name of Employer] (hereinafter called and referred to as "the Employer")
..... [address of Employer]

Whereas, it has been stipulated by the Employer in clause 14.7 of the Contract that he would release to the contractor the full sum mentioned under the contract in pursuance of clause 14.7, on the contractor furnishing an unconditional guarantee acceptable to the Employer to the full value of the retention money, valid upto 28 days beyond the end of the Defects Notification Period.

We, [name and address of the Guarantor] as instructed by the Contractor, unconditionally and irrevocably, guarantee to pay the Employer upon the Employer's first written-demand and without cavil or objection, any sum or sums within the said amount as aforesaid without the Employer's needing to prove or to show grounds or reasons for the Employer's demand for the sum specified therein and the said amount of Rupees.[amount of Guarantee] [amount in words] in the event the contractor fails to carry out his obligations to rectify defects which he is responsible to rectify under the contract.

This guarantee shall be valid up-to[date]

Signature and Seal of the Guarantor -----

Name of Organization -----

Address -----

Date -----

Witness -----

Section - VI
EMPLOYER'S REQUIREMENT

(GUIDELINES)

Guidelines for Preparation of Employer's Requirements

These guidelines for preparing the Employer's requirements are intended to assist the Employer in drafting bidding documents only, and it is not a part of the bidding document. Therefore this should not be included in the bidding document.

In the traditional contacting system the Employer employs his Consultant to design the works and to prepare technical specifications. The bidder submits his bid in conformity to the design and specification.

In Design –Build Contracts the Contractor is required to design the works to the Employer's requirements and other information provided for the preparation of his bid and technical specifications. Hence this section on Employer's Requirements replaces the usual Technical Specifications of more traditional approach.

To enable bidders to submit responsive bids and subsequently for the bids received to be evaluated in a fair and equitable manner, the Employer must state his requirements, as clearly and as precisely as possible. The Employer's Requirements must therefore, specify exactly the particular requirements of the completed Works including scope and quality. Where the performance of the completed Works could be measured in quantitative terms (e.g. production output of a manufacturing plant or maximum generating capacity of a power station) the Employer's Requirements should not only clearly specify the desired output/capacity but also the upper and lower acceptable limits of deviation from the desired capacity and how such deviations (if any) will be evaluated. It will also be necessary to specify the tests that will be carried out on completion of the Works to verify compliance with the requirements specified. The Employer's Requirements should clearly specify what associated or incidental services and goods must be supplied by the Contractor. For example, the Contractor may be required to train the Employer's personnel.

While this section of the bidding document should endeavour to define the Employer's Requirements as precisely as possible, care must be taken to avoid over specifying details to the extent that the flexibility and potential benefits associated with a Design-Build system is seriously eroded or threatened.

This section on Employer's Requirements should, therefore be carefully prepared on behalf of the Employer by suitably-qualified persons who are familiar with the requirements and with the technicality of the Works. In addition to stating the requirements of the completed Works clearly, the Employer's Requirements section should also include matters related to the execution of the Works to enable the bidders to gauge the extent of responsibility and to price the bid accordingly.

The details given below are suggested to include;

	<i>Ref. Clause no.</i>
<input type="checkbox"/> <i>Scope of Work in details</i>	<i>ITB* 1.1</i>
<input type="checkbox"/> <i>Qualifications and experience of design team</i>	<i>ITB 4.3 (e) & COC** 5.1</i>
<input type="checkbox"/> <i>Additional documents (other than listed) need to be submitted</i>	<i>ITB 12 & 19</i>
<input type="checkbox"/> <i>Equipment (if any) that will be supplied by the Employer</i>	<i>COC 1.1.6.2</i>
<input type="checkbox"/> <i>Publications (other than listed) to be kept at site</i>	<i>COC 1.8</i>
<input type="checkbox"/> <i>Approvals obtained by the Employer</i>	<i>COC 1.13</i>
<input type="checkbox"/> <i>Time and manner the possession and site will be given to the Contractor</i>	<i>COC 2.1</i>
<input type="checkbox"/> <i>Contractor's documents (if any) required to give possession of site</i>	<i>COC 4.6</i>
<input type="checkbox"/> <i>Other contractors working in the site</i>	<i>COC 4.6</i>
<input type="checkbox"/> <i>Environmental protection</i>	<i>COC 4.12</i>
<input type="checkbox"/> <i>Contractor's documents</i>	<i>COC 5.1</i>
<input type="checkbox"/> <i>Technical standards and building regulations (other than listed)</i>	<i>COC 5.4</i>
<input type="checkbox"/> <i>Samples required (if any) for pre-construction review</i>	<i>COC 5.5</i>
<input type="checkbox"/> <i>Training for employer's personnel</i>	<i>COC 5.6</i>
<input type="checkbox"/> <i>As-Built documents, further required (if any)</i>	<i>COC 5.7</i>
<input type="checkbox"/> <i>Operational maintenance and manuals</i>	<i>COC 5.8</i>
<input type="checkbox"/> <i>Facilities for employer's personnel</i>	<i>COC 6.5</i>
<input type="checkbox"/> <i>Accommodation and welfare to contractor's personnel</i>	<i>COC 6.5</i>
<input type="checkbox"/> <i>Royalty</i>	<i>COC 7.7</i>
<input type="checkbox"/> <i>Any other that employer wishes to include such as;</i>	
• <i>setting out points</i>	
• <i>environment constraints</i>	
• <i>tests required</i>	
• <i>provisional sums</i>	

* *ITB – Instructions to Bidders*

** *COC – Conditions of Contract*

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Section - VII
FORM OF BID,
FORM OF DESIGN/ TECHNICAL PROPOSAL,
FORM OF PRICE PROPOSAL

FORM OF BID

NAME OF CONTRACT: Design, Construction, and Commissioning of -----

To: *[insert name and address of the Employer]*

We have examined the Conditions of Contract, Employer's Requirements, Schedules and Addenda Nos. for the execution of the above-named Works. We accordingly offer to design, execute and complete the said Works and remedy any defects fit for the purpose, in conformity with the Bidding Documents and the enclosed Proposal, at the lump sum stated in the Form of Price Proposal included in a separate envelope and submitted with this bid, or other such sums as may be determined in accordance with the terms and conditions of the Contract.

We confirm that our bid includes this General Information, Price Proposal, and Design/Technical Proposal sealed under three separate envelopes.

We agree to abide by this Bid until* *[insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.

We confirm that, we (including all members of a joint venture and subcontractors) are not associated, directly or indirectly, with the consultant or any other entity in preparation of the design, specifications, and other documents for the Contract.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion. We will ensure that works will be done in conformity with the contract.

Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us.

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

Signature of the persons duly authorized to sign documents for and on behalf of

Address:

Date:

* Refer Instructions to Bidder's clause 15.1

FORM OF DESIGN/TECHNICAL PROPOSAL

1. NAME OF CONTRACT: Design, Construction, and Commissioning of -----

To: [insert name and address of the Employer]

We have examined the Conditions of Contract, Employer's Requirements, Schedules, and Addenda Nos.----- for the execution of the above-named Works.

We accordingly offer to design, execute and complete the said Works and remedy any defects, fit for purpose in conformity with these Bidding Documents and the enclosed proposal. We are hereby submitting our Bid, which includes this Design/Technical Proposal, General Information and a Financial Proposal sealed under a separate envelopes.

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

Signature of the persons duly authorized to sign documents for and on behalf of

Address:

Date:

FORM OF PRICE PROPOSAL

NAME OF CONTRACT: Design, Construction, and Commissioning of -----

To: *[insert name and address of the Employer]*

We have examined the Conditions of Contract, Employer’s Requirements, Schedules and Addenda Nos. ----- for the execution of the above-named Works. We accordingly offer to design, execute and complete the said Works and remedy any defects fit for the purpose, in conformity with the Bidding Documents and the enclosed Proposal, for the fix lump sum of ----- or other such sums as may be determined in accordance with the terms and conditions of the Contract. The above amounts are in accordance with the Price Schedules herewith and are made part of this bid. We confirm that our bid includes this Price Proposal, Design/Technical Proposal, and General Information sealed under a separate envelopes.

We accept your suggestions for the appointment of the Adjudicator, as set out in Bidding Data.

We agree to abide by this Bid until* *[insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.

We confirm that, we (including all members of a joint venture and subcontractors) are not associated, directly or indirectly, with the consultant or any other entity in preparation of the design, specifications, and other documents for the Contract.

If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion. We will ensure that works will be done in conformity with the contract.

Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding Contract between us.

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

Signature of the persons duly authorized to sign documents for and on behalf of

Address:

Date:

* If the Bidder does not accept, this paragraph it may be deleted and replaced with:

We do not accept your suggestion for the appointment of the Adjudicator. We have included our suggestion in the Bid, but this suggestion is not a condition of this offer. If this suggestion is not acceptable to you, we propose that the Adjudicator be jointly appointed in accordance with Sub-Clause 35 of the Instructions to Bidders.

* Refer Instructions to bidders Clause 15.1

Section - VIII

SCHEDULES

(SAMPLE ONLY)

Schedule A1 – Preliminary Information

(enclose this Schedule in the envelope marked, "Envelope 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
3.1	ICTAD Registration		Provide certified copies and label them as attachment to Clause 3.1
	Registration number		
	Grade		
	Spatiality		
	Expiry Date		
3.2	NCCASL Membership		Provide certified copies and label them as attachment to Clause 3.2
	Number		
	Expiry Date		
4.1 (a)	Legal Status		Provide a certified copy of the Joint Venture Agreement.
	If a Joint Venture, names and addresses of Joint venture partners	1. ----- 2. ----- 3. -----	
	If a Joint Venture, name of the Lead Partner		
	<i>For joint ventures, each joint venture partner shall furnish Legal Status separately</i>		
	Name (Lead partner)		
	Legal status		Provide certified copies and label them as attachment to Clause 4.1 (a)
	Place of registration		

	Principal place of business		
	Written power of attorney of the signatory to the Bid	Provide original or certified copy of the power of attorney attested by a Notary and label them as attachment to Clause 4.1 (a)	
	VAT Registration Number		
	Name (Partner 2)		Provide certified copies and label them as attachment to Clause 4.1 (a)
	Legal status		
	Place of registration		
	Principal place of business		
	Written power of attorney of the signatory to the Bid	Provide original or certified copy of the power of attorney attested by a Notary and label them as attachment to Clause 4.1 (a)	
	VAT Registration Number		
	Name (Partner 3)		Provide certified copies and label them as attachment to Clause 4.1 (a)
	Legal status		
	Place of registration		
	Principal place of business		
	Written power of attorney of the signatory to the Bid	Provide original or certified copy of the power of attorney attested by a Notary and label them as attachment to Clause 4.1 (a)	
	VAT Registration Number		

Schedule A2 – Annual Turn-over Information
(Construction only – Last five years)

(enclose this schedule in envelope marked, “ Envelope 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.*

Year	Turn-over	Remarks
1		Attach audited reports and label them as attachment to Clause 4.1 (c) (i)
2		
3		
4		
5		

SAMPLE ONLY

Schedule A3 – Adequacy of Working Capital

(enclose this schedule in envelope marked, “ Envelope 1 – General Information)

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
		Provide documentary evidence and label them as attachment to Clause 4.1(c)(ii)
Total		

Schedule A4 – Construction Experience in last five years

(enclose this schedule in envelope marked, "Envelope 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.*
- (iii) List similar works first.*

Year	Employer	Description of Works	Amount	Contractor's Responsibility (%)
		Total		

SAMPLE ONLY

Schedule A5 – Design Experience in last five years

(enclose this schedule in envelope marked, " Envelope 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.*
- (iii) List similar works first.*

Year	Employer	Description of Works	Amount*	Responsibility (%)
		Total		

* Project Cost

SAMPLE ONLY

Schedule A6 – Major Items of Construction Equipment Proposed

(enclose this schedule in envelope marked, "Envelope I – General Information")

Type	Capacity

SAMPLE ONLY

Schedule B1 – Comments and Suggestions on Employer’s Requirements

(enclose this schedule in envelope marked, “Envelope 2–Design and Technical Proposal”)

SCHEDULE ONLY

Bidders may include observations made on Employer's Requirements and any suggestions for consideration.

Schedule B2 – Contractor’s Proposal

(enclose in envelope marked, “Envelope 2 – Design and Technical Proposal”)

Sheet 1 of

SALE ONLY

This schedule should be complete considering all the requirements given in the Employer’s Requirements, including design criteria, specifications and technical data. (use additional pages if necessary)

Schedule B3 – Team Composition and Task Assignment <i>(enclose this schedule in envelope marked, "Envelope 2 – Design and Technical Proposal")</i>		
A. Design Staff		
Name	Position	Task
B. Construction Management		
Name	Position	Task

SAMPLE ONLY

Schedule B4 – Curriculum Vitae of Key Staff

(enclose Curriculum Vitae in envelope marked, "Envelope 2 – Design and Technical Proposal")

Proposed Position:	
Name of Staff:	
Profession:	
Date of Birth:	
Membership in Professional Societies:	
Detailed Tasks Assigned:	
Key Qualifications:	<p><i>Give an outline of staff member's experience most pertinent to tasks or assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use about half a page.</i></p>
Education:	
Employment Record:	
Certification:	<p><i>I, the undersigned, certify that to the best of my knowledge and belief, the information is correct.</i></p>
Signature of staff member	Date

Schedule B5 – Time Schedule for Key Staff

(enclose this schedule in envelope marked, "Envelope 2 – Design and Technical Proposal")

Name	Position	Activities	Months (in the Form of a Bar Chart)															Number of Months				
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15					

SAMPLE ONLY

Full-time:..... Part-time:.....

Schedule B6 – Work Program (Design Related Activities)

(enclose in envelope marked, "Envelope 2 – Design and Technical Proposal")

[1st, 2nd, etc. are months from the Start Date.]

Design Activity	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th

SAMPLE ONLY

Schedule B7 – Work Program (Construction Related Activities)
(enclose this schedule in envelope marked, "Envelope 2 – Design and Technical Proposal)

Sheet 1 of

[1st, 2nd, etc. are months from the Start Date.]

Construction Activity	<i>[1st, 2nd, etc. are months from the Start Date.]</i>														
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th

SAMPLE ONLY

Schedule C1 – Price Schedule

(enclose all price schedules in envelope marked, "Envelope 3 – Financial Proposal")
 Sheet 1 of

Activity 1: Preliminaries

Item No:	Sub-activity description	Amount
1.1	Performance Security	
1.2	Insurances	
1.3		
1.4		
1.5		
1.6		
1.7		
1.8		
1.9		
1.10		
1.11		
1.12		
1.13		
Total for Activity 1 carried to summary		

Note: Employer to include relevant activities before issuing the bidding document.

SAMPLE ONLY

Schedule C1 – Price Schedule		
<i>(enclose all price schedules in envelope marked, "Envelope 3 – Financial Proposal")</i>		Sheet 2 of
Activity 2: Design		
Item No:	Sub-activity description	Amount
2.1	Survey and Investigation	
2.2	Design of	
2.3	Design of	
2.4		
2.5		
2.6		
2.7		
2.8		
2.9		
2.10		
2.11		
2.12		
	Any other Sub-activity (bidder to include)	
2.A1		
2.A2		
2.A3		
2.A4		
Total for Activity 2 carried to summary		

Note: Employer to include relevant activities before issuing the bidding document.

Schedule C1 – Price Schedule

(enclose all price schedules in envelope marked, “Envelope 3 – Financial Proposal”)

Sheet 3 of

Activity 3:

Item No:	Sub-activity description	Amount
3.1		
3.2		
3.3		
3.4		
3.5		
3.6		
3.7		
3.8		
3.9		
3.10		
3.11		
3.12		
3.13		
	Any other Sub-activity (bidder to include)	
3.A1		
3.A2		
3.A3		
Total for Activity 3 carried to summary		

Note: Employer to include relevant activities before issuing the bidding document.

Schedule C2 – Price Schedule

(enclose all price schedules in envelope marked, "Envelope 3 – Financial Proposal")

Sheet ... of

Dayworks

Item No:	Description	Unit	Qty	Rate	Amount
D.1					
D.2					
D.3					
D.4					
D.5					
D.6					
D.7					
D.8					
D.9					
D.10					
D.11					
D.12					
D.13					
Total for Dayworks carried to summary					

Note: Employer to include a list and tentative quantity before issuing the bidding document.

Schedule C3 – Percentage for Overheads and profits for Plant, Materials or services to be purchased by the Contractor (if any) under Provisional Sums, in accordance with Sub-Clause 13.4 of Conditions of Contract
 (enclose this schedule in envelope marked, "Envelope 3 – Financial Proposal")
 (Required to fill by the bidder, only if Provisional Sum items are included in the Price Schedules by the Employer)

Item Number (1)	Amount of Provisional Sum (to be filled by the Employer) (2)	Percentage (to be filled by the bidder) (3)	Amount of Overhead and Profit (to be filled by the bidder) (4) = (2) * (3)/100
<p><i>Note:</i> To be filled by the Employer before issuing the bidding document</p>		<p><i>Note:</i> To be filled by the Employer before issuing the bidding document</p>	
<p>Total Overheads and Profits carried to summary</p>			

Schedule C4 – Price Schedule

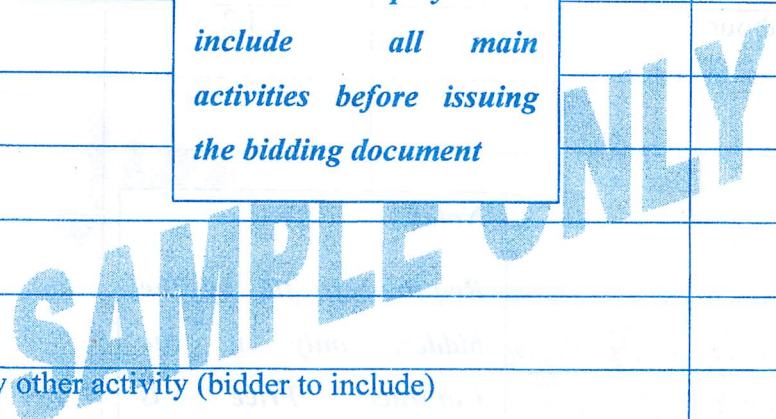
(enclose this schedule in envelope marked, "Envelope 3 – Financial Proposal")

Sheet ... of

Summary

Activity No:	Activity description	Amount
1	Preliminaries	
2	Design	
3		
4		
5		
6		
7		
8		
9		
	Any other activity (bidder to include)	
A		
B		

Note: Employer to include all main activities before issuing the bidding document



Schedule C5 – Input percentages for Price Adjustment Formula

(enclose this schedule in envelope marked, "Envelope 3 – Financial Proposal")

Input Name <i>(Include major materials below the list, together with percentages for all inputs)</i>	ICTAD Reference for Indices	Percentage <i>(percentages listed should added to 90.0)</i>
Major plant	P1	
Small equipment	P2	
Skilled Labour	L1	
Unskilled Labour	L2	
<p style="text-align: right;">Total</p>		<p style="text-align: center;">90.0</p>

Note:
Required to fill by the bidder, only if the Contract Price is adjustable for fluctuation of prices

SAM ONLY

Section - IX

DRAWINGS

Note :

Insert here a list of drawings.