

**HYDERABAD ELECTRIC SUPPLY COMPANY LIMITED**



**BIDDING DOCUMENT**

**SINGLE STAGE SINGLE ENVELOPE PROCEDURE**

**TENDER NO.GSC-21/2025-26**

**FOR**

**Construction of Foundation of steel Tubular Poles, Erection and Stringing work  
for 132KV D/C Transmission Line feed for Nooriabad-II Grid Station**

**HESCO Own Resources**

-- Name & Address of the Registered Contractor \_\_\_\_\_

--Tender documents Issuing officer:

**Project Director GSC HESCO Hyderabad**

# Standard Bidding Documents For **Procurement of Works**

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**Section II- Instructions to Bidders (ITB)**

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**PART-A**  
**BIDDING PROCEDURE & REQUIREMENTS**

**SECTION I: INVITATION FOR BIDS**

# **HYDERABAD ELECTRIC SUPPLY COMPANY**



## **TENDER NO. GSC- 21/2025-26**

**For**

**Construction of Foundation of steel Tubular Poles, Erection and Stringing work for  
132KV D/C Transmission Line feed for Nooriabad-II Grid Station**

## **INVITATION FOR E-BID (IFEB)**

1. This Invitation to e-Bid follows Tender No. GSC-21/2025-26 for the **CONSTRUCTION OF FOUNDATION OF STEEL TUBULAR POLES, ERECTION AND STRINGING WORK FOR 132KV D/C TRANSMISSION LINE FEED FOR NOORIABAD-II GRID STATION.**
2. HESCO has reserved the funds (Own resources) for the procurement of this work during the financial year 2025-26. It is intended that part of the proceeds of the fund will be used to cover eligible payments under the contract for the Subject Work.
3. HESCO now invites E BIDS from all eligible Bidders that are registered with PEC having active tax payers of FBR and SRB for “Construction of Foundation of Steel Tubular Poles, Erection And Stringing Work For 132kv D/C Transmission Line Feed For Nooriabad-II Grid Station”. The completion Schedule of this work is 130 days.
4. The bidding shall be conducted in line with the Single Stage Single Envelope procedure prescribed under Public Procurement Rules 2004, e-Pak Procurement Regulations, 2023 and any Regulations, Regulatory Guides, Procurement Guidelines or Instructions issued by the Authority (from time to time), and is open to all potential bidders registered in the EPADS.
5. All e-bids must be accompanied by a Bid Security issued by the scheduled bank of Pakistan equal to PKR 1,500,000/- the bidders shall upload scanned copy of Bid Security on EPADS and the original bid security must be submitted to Project Director GSC, HESCO, Wapda Water Wing Colony, Hussainabad Hyderabad 01 (one) working day before the bid submission date & time i.e., 11<sup>th</sup> June, 2026 at 10:00a.m.
6. The electronic bids prepared in accordance with the instructions prescribed in the electronic bidding documents must be submitted through EPADS on or before 11<sup>th</sup> June, 2026, 10:00a.m. Electronic bids will be opened by using EPADS on the same day at 10:30 Hrs.

Note: Notification of the GRC constituted in terms of Rule-48 of PPRA rules, 2004 is provided on EPADS at [www.eprocure.gov.pk](http://www.eprocure.gov.pk) and on HESCO.

website [www.hesco.gov.pk](http://www.hesco.gov.pk)

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Address: WAPDA Water Wing Colony  
Hussainabad Hyderabad

**PROJECT DIRECTOR  
GSC HESCO HYDERABAD**

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## **SECTION II: INSTRUCTION TO BIDDERS (ITBs)**

## A. INTRODUCTION

<b>1. Scope of Bid</b>	1.1	The Procuring agency/Employer (PA), as indicated in the <b>Bid Data Sheet (BDS)</b> invites Bids for the execution of Works as specified in the BDS and <b>Section V- Works Requirements</b> . The name, identification, and number of lots (contracts) of this National/ International Competitive Bidding process are specified in the BDS.
<b>2. Source of Funds</b>	2.1	Source of funds as referred in Bid Data Sheet.
<b>3. Eligible Bidders</b>	3.1	<p>A bidder may be natural person, company or firm or public or semi-public agency of Pakistan or any foreign country, or any combination of them with a formal existing agreement (on Judicial Papers) in the form of a joint venture or consortium. In the case of a joint venture or consortium, all members shall be jointly and severally liable for the execution of the Contract in accordance with the terms and conditions of the Contract. The joint venture or consortium shall nominate a Lead Member as nominated in the BDS, who shall have the authority to conduct all business for and on behalf of any and all the members of the joint venture or consortium during the Bidding process, and in case of award of contract, during the execution of contract.</p> <p><i>(The limit on the number of members of JV or Consortium may be prescribed in BDS, in accordance with the guidelines issued by the PPRA).</i></p>
	3.2	The appointment of Lead Member in the joint venture or consortium shall be confirmed by submission of a valid Power of Attorney to the Procuring agency/Employer
	3.3	Verifiable copy of the agreement that forms a joint venture or consortium shall be required to be submitted as part of the Bid.
	3.4	Any bid submitted by the joint venture or consortium shall indicate the part of proposed contract to be performed by each party and each party shall be evaluated (or post qualified if required) with respect to its contribution only, and the responsibilities of each party shall not be substantially altered without prior written approval of the Procuring agency/Employer and in line with any instructions issued by the Authority.
	3.5	The invitation for bids is open to all prospective bidders subject to any provisions of incorporation or licensing by the respective national/ international incorporating agency or statutory body established for that particular trade or business.
	3.6 .	Foreign Bidders must be locally registered with the appropriate national incorporating body or the statutory body, before participating in the national/international competitive bidding

		<p>with the exception of such procurements made by the foreign missions of Pakistan. For such purpose the bidder must have to initiate the registration process before the bid submission and the necessary evidence shall be submitted to the Procuring agency/Employer along with their bid, however, the final award will be subject to the complete registration process.</p>
	3.7	<p>A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidders may be considered to have a conflict of interest with one or more parties in this Bidding process, if they:</p> <ul style="list-style-type: none"> <li>a) are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring agency/Employer to provide consulting services for the preparation of design or technical specifications of the works that are the subject of the bid; or</li> <li>b) any of its affiliates has been hired (or is proposed to be hired) by the Procuring agency/Employer as Engineer for the Contract implementation; or</li> <li>c) The works to be executed are resulting from or directly related to consulting services for the preparation or implementation of the project that the bidder provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm;</li> <li>d) have controlling shareholders in common; or</li> <li>e) receive or have received any direct or indirect subsidy from any of them; or</li> <li>f) have the same legal representative for purposes of this Bid; or</li> <li>g) have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another bidder, or influence the decisions of the Procuring agency/Employer regarding this Bidding process; or</li> <li>h) Submit more than one bid in this bidding process.</li> </ul>
	3.8	<p>A Bidder may be ineligible if –</p> <ul style="list-style-type: none"> <li>(a) he is declared bankrupt or, in the case of company or firm, insolvent;</li> <li>(b) payments in favor of the bidder is suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting (in accordance with the</li> </ul>

		<p>national laws) in the total or partial loss of the right to administer and dispose of its property;</p> <p>(c) legal proceedings are instituted against such bidder involving an order suspending payments and which may result, in accordance with the national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of the property;</p> <p>(d) the bidder is convicted, by a final judgment of a Court of Law or relevant Professional Statutory Body, of any offence involving professional conduct;</p> <p>(e) The bidder is debarred/ blacklisted by a national level Procuring agency/Employer and hence debarred due to involvement in corrupt and fraudulent practices, or performance failure or due to breach of bid securing declaration.</p> <p>(f) The bidder is blacklisted or debarred by a foreign country, international organization, or other foreign institutions for the period defined by them.</p>
	3.9	Bidders shall provide to the Procuring agency/Employer evidence of their eligibility, proof of compliance with the necessary legal requirements to carry out the contract effectively.
	3.10	Bidders shall provide such evidence of their continued eligibility to the satisfaction of the Procuring agency/Employer, as the Procuring agency/Employer shall reasonably request.
	3.11	Bidders shall submit proposal relating to the nature, conditions and modalities of sub-contracting wherever the sub-contracting of any elements of the contract is envisaged.
<b>4. Eligible Material and Equipment</b>	4.1	All the material and equipment to be mobilized under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such materials and equipment. For this purpose, ineligible countries are stated in the section-IV titled as “Eligible Countries”.
	4.2	For purposes of this Clause, “origin” means the place where the material, equipment is produced, manufactured, or processed, or through manufacture, procession, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from where the services are/to be supplied.
	4.3	The nationality of the bidder shall not determine the origin of the material and equipment.

	4.4	To establish the eligibility of the material and equipment, Bidders shall fill the country-of-origin declarations included in the Form of Bid.
<b>5. One Bid per Bidder</b>	5.1	A bidder shall submit only one bid, in the same bidding process, either individually as a bidder or as a member in a joint venture or any similar arrangement.
	5.2	No bidder can be a sub-contractor while submitting a bid individually or as a member of a joint venture in the same bidding process.
<b>6. Cost of Bidding</b>	6.1	The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Procuring agency/Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**B. BIDDING DOCUMENTS**

<b>7. Contents of Bidding Documents</b>	7.1	The scope of Works, bidding procedures, and terms and conditions of the contract are prescribed in the bidding documents. In addition to the Invitation for Bids, the bidding documents which should be read in conjunction with any addenda issued in accordance with <b>ITB 9.2</b> include: <b>Section I</b> -Invitation for Bids <b>Section II</b> Instructions to Bidders (ITBs) <b>Section III</b> Bid Data Sheet (BDS) <b>Section IV</b> Eligible Countries <b>Section V</b> Works Requirements Technical Specifications & Schedule of Requirements <b>Section VI</b> Standard Bidding Forms <b>Section VII</b> General Conditions of Contract (GCC) <b>Section VIII</b> Special Conditions of Contract (SCC) <b>Section IX</b> Contract Forms
	7.2	The number of copies to be completed and submitted with the Bid is specified in the BDS.
	7.3	The Procuring agency/Employer is not responsible for the completeness of the bidding documents and their addenda, if they were not obtained directly from the Procuring agency/Employer or the signed pdf version downloaded from the website of the Procuring agency/Employer or the Authority's website or e-Procurement System as the case may be. However, Procuring agency/Employer shall place both the pdf and editable version of the same on its website and Authority's website or e-Procurement System to facilitate the bidder for filling the standard bidding forms.
	7.4	The bidder is expected to examine all instructions, forms, specifications, terms and conditions prescribed in the bidding documents. Failure to furnish all the information required in the

		bidding documents will be at the bidder's risk and may result in the rejection of his bid.
<b>8. Clarification of Bidding Document, Pre-bid Meeting</b>	8.1	A prospective bidder requiring any clarification of the bidding document may notify the Procuring agency/Employer in writing or in electronic form that provides record of the contents of communication at the Procuring agency/Employer's address indicated in the BDS.
	8.2	The Procuring agency/Employer will within three (3) working days after receiving the request for clarification, respond in writing or in electronic form to any request for clarification provided that such request is received not later than three (03) days prior to the deadline for the submission of Bids as prescribed in <b>ITB 24.1</b> . However, this clause shall not apply in case of alternate methods of procurement.
	8.3	Copies of the Procuring agency/Employer's response will be forwarded to all identified prospective bidders through an identified source of communication, including a description of the inquiry, but without specifying its source. In case of downloading of the bidding documents from the website of Procuring agency/Employer or e-Procurement System, the response of all such queries will also be available on the same platform available at the website.
	8.4	Should the Procuring agency/Employer deem it necessary to amend the bidding documents as a result of a clarification, it shall do so following the procedure as prescribed under <b>ITB 09</b> .
	8.5	If indicated <b>in the BDS</b> , the bidder's designated representative is invited at the bidder's cost to attend a pre-bid meeting at the place, date and time mentioned in the BDS. During this pre-bid meeting, prospective bidders may request clarification of the schedule of requirement, the evaluation criteria or any other aspects of the bidding documents.
	8.6	Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by bidders, including those during the meeting (without identifying the source) and the responses given, together with any responses prepared after the meeting will be transmitted promptly to all prospective bidders who have obtained the bidding documents. Any modification to the bidding documents that may become necessary as a result of the pre-bid meeting shall be made by the Procuring agency/Employer exclusively through the use of an Addendum pursuant to <b>ITB 9</b> . Non-attendance at the pre-bid meeting will not be a cause for disqualification of a bidder.
	8.7	The bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for

		preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the bidder's own expense.
	8.8	The bidder and any of its authorized personnel will be granted permission by the Procuring agency/Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the bidder and its personnel will release and indemnify the Procuring agency/Employer from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
<b>9. Amendment of Bidding Documents</b>	9.1	Before the deadline for submission of bids, the Procuring agency/Employer for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder or pre-bid meeting may modify the bidding documents by issuing addenda.
	9.2	Any addendum issued including the notice of any extension of the deadline shall be part of the bidding documents pursuant to <b>ITB 7.1</b> and shall be communicated in a timely manner and on equal opportunity basis. Where notification of such change, addition, modification or deletion becomes essential, such notification shall be made in a manner similar to the original advertisement.  <i>Provided that the bidder who had either already submitted their bid or handed over the bid to the courier prior to the issuance of any such addendum shall have the right to withdraw his already filed bid and submit the revised bid prior to the original or extended bid submission deadline.</i>
	9.3	To give prospective bidders reasonable time in which to take an addendum/corrigendum into account in preparing their bids, the Procuring agency/Employer may, at its discretion, extend the deadline for the submission of bids:  <i>Provided that the Procuring agency/Employer shall extend the deadline for submission of bid, if such an addendum is issued within last three (03) days of the bid submission deadline.</i>

### C. PREPARATION OF BIDS

<b>10. Language of Bid</b>	10.1	The bid prepared by the bidder, as well as all correspondence and documents relating to the bid exchanged by the bidder and the Procuring agency/Employer shall be written in the English
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		language unless specified in the BDS. 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 pages in the English language unless specified in the BDS, in which case, for purposes of interpretation of the bidder, the translation shall govern.
<b>11. Documents Establishing Eligibility of Material, Equipment and Works, their Conformity to Bidding Documents</b>	11.1	<p>The bid prepared by the bidder shall constitute the following components: -</p> <ul style="list-style-type: none"> <li>a) Documentary evidence established in accordance with <b>ITB 11</b> that the material, equipment and services to be provided by the Bidder are eligible material, equipment and services, and conform to the Bidding Documents;</li> <li>b) Documentary evidence established in accordance with <b>ITB 12</b> that the bidder has been authorized to carry out the Construction works;</li> <li>c) Documentary evidence established in accordance with <b>ITB 12</b> that the bidder is eligible and/or qualified for the subject bidding process;</li> <li>d) Form of Bid and Bid Prices completed in accordance with <b>ITB 14 and 15</b>;</li> <li>e) Completed schedules as required, including priced Bill of Quantities in accordance with <b>ITB 13 &amp; 15</b>.</li> <li>f) Technical Proposal completed in all aspects in accordance with <b>ITB-17</b>.</li> <li>g) Bid security or Bid Securing Declaration furnished in accordance with <b>ITB 19</b>;</li> <li>h) Alternative bids, if permissible, in accordance with <b>ITB 20</b>;</li> <li>i) Duly Notarized Power of Attorney authorizing the signatory of the Bidder to submit the bid; and</li> <li>j) Any other document required in the BDS.</li> </ul>
	11.2	In addition to the requirements, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.
	11.3	The bidder shall furnish, as part of its bid, all those documents establishing the eligibility in conformity to the terms and conditions specified in the bidding documents for all material, equipment and works which the bidder proposes to execute.
	11.4	The documentary evidence of conformity of the material, equipment and works to the Bidding Documents may be in the form of literature, drawings, and data, and shall consist of:

		<ul style="list-style-type: none"> <li>a) a detailed description of the work methodology, approach, schedule and resources to be mobilized at site;</li> <li>b) an item-by-item commentary on the Procuring agency/Employer’s Technical Specifications demonstrating substantial responsiveness of the material, equipment and works to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications;</li> <li>c) any other procurement specific documentation requirement as stated in the BDS.</li> </ul>
	11.5	The required documents and other accompanying documents must be in English. In case any other language than English is used the pertinent translation into English shall be attached to the original version.
<b>12. Documents Establishing Eligibility and Qualification of the Bidder</b>	12.1	The bidder shall furnish, as part of its bid, all those documents establishing the bidder’s eligibility to participate in the bidding process and/or its qualification to perform the contract if its bid is accepted.
	12.2	The documentary evidence of the bidder’s eligibility to bid shall establish to the satisfaction of the Procuring agency/Employer that the bidder, at the time of submission of its bid, is from an eligible country as defined in Section-IV titled as “Eligible Countries”.
	12.3	<p>The documentary evidence of the bidder’s qualification to perform the contract if its bid is accepted shall establish to the satisfaction of Procuring agency/Employer that:</p> <ul style="list-style-type: none"> <li>a) The bidder has the financial and technical capability necessary to perform the Contract, meets the qualification criteria specified in Section-V, Evaluation and Qualification Criteria and BDS.</li> <li>b) In the case of a bidder not doing business within Pakistan, the bidder is or will be (if awarded the contract) represented by a local bidder (Joint Venture) in accordance with the PEC works bylaws, and in case of award of works such foreign firm is required to participate in the execution of works to carry out its obligations as prescribed in the Conditions of Contract and /or Technical Specifications.</li> <li>c) That the bidder meets the qualification criteria listed in Section-V, Evaluation and Qualification Criteria and BDS.</li> </ul>
<b>13. Letter of Bid and Schedules</b>	13.1	The Letter of Bid (Technical or Financial as the case may be) and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Standard Bid Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under <b>ITB</b>

		<b>22.</b> All blank spaces shall be filled in with the information requested.
<b>14. Letter of Bid</b>	14.1	The bidder shall fill the Letter of Bid (Technical or Financial as the case may be) furnished in the bidding documents. The Standard Bid Forms must be completed without any alterations to its format and no substitute shall be accepted.
<b>15. Bid Prices</b>	15.1	The bid prices quoted by the bidder in the Standard bid Forms, Bill of Quantities and in the Price Schedules shall conform to the requirements specified below or exclusively mentioned hereafter in the bidding documents.
	15.2	The bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. If a Price Schedule shows items listed but not priced, their prices shall be construed to be included in the prices of other items in the Bill of Quantities and will not be paid for separately by the Procuring agency/Employer.
	15.3	Items not listed in the Price Schedule shall be assumed not to be included in the bid, and provided that the bid is still substantially responsive in their absence or due to their nominal nature, the corresponding average price of the respective item(s) of the remaining substantially responsive bidder(s) shall be construed to be the price of those missing item(s): Provided that: a) where there is only one (substantially) responsive bidder, or b) where there is provision for alternate proposals and the respective items are not listed in the other bids, The Procuring agency/Employer may fix the price of missing items in accordance with market survey, and the same shall be considered as final price.
	15.4	The Bid price to be quoted in the Form of Bid in accordance with <b>ITB 15.1</b> shall be the total price of the bid.
	15.5	Unless otherwise specified in the BDS and the Contract, the rates and prices quoted by the bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract.
	15.6	If so specified in <b>ITB 1.1</b> , bids may be invited for individual lots (contracts) or for any combination of lots (packages).
	15.7	Prices quoted by the Bidder shall be fixed during the bidder's performance of the contract and not subject to variation on any account. A bid submitted with an adjustable price will be treated as non-responsive and shall be rejected, pursuant to <b>ITB 30</b> , unless otherwise price adjustment is permissible under Conditions of the Contract.

	15.8	All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date twenty-eight (28) days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder.
<b>16. Currencies of Bid and Payment</b>	16.1	The currency(ies) of the bid and the currency(ies) of payments shall be as specified in the BDS.
	16.2	For the purposes of comparison of bids quoted in different currencies, the price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate, prevailing on the date of opening of (financial part of) bids specified in the bidding documents, as notified by the State Bank of Pakistan on that day.
	16.3	Bidders shall indicate details of their expected foreign currency requirements in the Bid, if prescribed in the BDS.
	16.4	Bidders may be required by the Procuring agency/Employer to clarify their foreign currency requirements, if prescribed in the BDS and to substantiate that the amounts included in Lump Sum and in the <b>SCC</b> are reasonable and responsive to <b>ITB 16.1</b> .
<b>17. Documents Comprising the Technical Proposal</b>	17.1	The bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in <b>Section IV – Standard Bid Forms</b> , in sufficient detail to demonstrate the adequacy of the bidder’s proposal to meet the work requirements and the completion time.
<b>18. Bid Validity Period</b>	18.1	Bids shall remain valid for the period specified in the BDS after the bid submission deadline prescribed by the Procuring agency/Employer. A bid valid for a shorter period shall be rejected by the Procuring agency/Employer as non-responsive. The period of bid validity will be determined from the complementary bid securing instrument i.e. the expiry period of bid security or bid securing declaration as the case may be.
	18.2	Under exceptional circumstances, prior to the expiration of the initial bid validity period, the Procuring agency/Employer may request the bidders’ consent to an extension of the period of validity of their bids only once, for the period not more than the period of initial bid validity. The request and the bidders’ responses shall be made in writing or in electronic forms that provide record of the content of communication. The Bid Security provided under <b>ITB 19</b> shall also be extended 28 days beyond the deadline of extended bid validity period. A bidder may refuse the request for the extension of his bid without forfeiting his bid security or causing to be executed his Bid Securing Declaration. A bidder agreeing to the request will not

		be required nor permitted to modify its bid, but will be required to extend the validity of its Bid Security or Bid Securing Declaration for the period of the extension, and in compliance with <b>ITB 19</b> in all respects.
<b>19. Bid Security or Bid Securing Declaration</b>	19.1	<p>Pursuant to <b>ITB 11.1</b> unless otherwise specified in the BDS, the bidder shall furnish as part of its bid, a Bid Security in form of fixed amount not exceeding five percent of the estimated value of procurement determined by the Procuring agency/Employer and in the amount and currency specified in the BDS or Bid Securing Declaration as specified in the BDS in the format provided in <b>Section VI (Standard Bidding Forms)</b>.</p> <p>In case Procuring agency/Employer is inviting bids in lots / packages, the bidder shall be required to submit his bid security against the respective lot/ package for which he is submitting his bid, which shall not exceed five percent of the estimated value of that particular lot/ package.</p>
	19.2	The Bid Security or Bid Securing Declaration is required to protect the Procuring agency/Employer against the risk of Bidder's conduct before award of the contract to the most advantageous bidder which would warrant the security's forfeiture, pursuant to <b>ITB 19.9</b> .
	19.3	<p>The Bid Security shall be denominated in the local currency or in another freely convertible currency, and it shall be in the form specified in the BDS which shall be in any of the following:</p> <p>a) A bank guarantee, an irrevocable letter of credit issued by a Scheduled bank in the form provided in the Bidding Documents or another form acceptable to the Procuring agency/Employer and valid for twenty-eight (28) days beyond the end of the validity of the Bid. This shall also apply if the period for Bid Validity is extended. In either case, the form must include the complete name of the bidder;</p> <p>b) A cashier's or certified cheque; or</p> <p>c) Another security as indicated in the BDS.</p>
	19.4	The Bid Security or Bid Securing Declaration shall be in accordance with the Form of the Bid Security or Bid Securing Declaration included in <b>Section VI (Standard Bidding Forms)</b> or another form approved by the Procuring agency/Employer prior to the bid submission.
	19.5	The Bid Security shall be payable promptly upon written demand by the Procuring agency/Employer in case any of the conditions listed in <b>ITB 19.9</b> are invoked.
	19.6	Any bid not accompanied by a Bid Security or Bid Securing Declaration in accordance with <b>ITB 19.1 or 19.3</b> shall be rejected

		by the Procuring agency/Employer and shall be declared as non-responsive bid, pursuant to <b>ITB 30</b> .
	19.7	<p>Unsuccessful bidders' Bid Security will be discharged or returned as promptly as possible, however in no case later than thirty (30) days after the expiration of the period of Bid Validity prescribed by the Procuring agency/Employer pursuant to <b>ITB 18</b>. The Procuring agency/Employer shall make no claim to the amount of the Bid Security, and shall promptly return the Bid Security document, after whichever of the following that occurs earliest:</p> <ul style="list-style-type: none"> <li>(a) The expiry of the Bid Security;</li> <li>(b) The entry into force of a procurement contract and the provision of a performance security (or guarantee), for the performance of the contract if such a security (or guarantee), is required by the Bidding documents;</li> <li>(c) The rejection by the Procuring agency/Employer of all Bids;</li> <li>(d) The withdrawal of the bid prior to the deadline for the submission of bids, unless the bidding documents stipulate that no such withdrawal is permitted.</li> </ul>
	19.8	The successful bidder's Bid Security will be discharged upon the bidder signing the contract pursuant to <b>ITB 47</b> , or furnishing the performance security (or guarantee), pursuant to <b>ITB 48</b> .
	19.9	<p>The Bid Security may be forfeited or the Bid Securing Declaration executed:</p> <ul style="list-style-type: none"> <li>a) if a Bidder: <ul style="list-style-type: none"> <li>i) Withdraws its Bid during the period of Bid Validity as specified by the Procuring agency/Employer, and referred by the bidder on the Form of Bid except as provided for in <b>ITB 18.2</b>; or</li> <li>ii) Does not accept the correction of errors pursuant to <b>ITB 32</b>; or</li> </ul> </li> <li>b) In the case of a successful bidder, if the bidder fails: <ul style="list-style-type: none"> <li>i) to sign the contract in accordance with <b>ITB 47</b>; or</li> <li>ii) to furnish performance security (or guarantee) in accordance with <b>ITB 48</b>.</li> </ul> </li> </ul>
	19.10	In case of Bid Security issued by the foreign bank is allowed by the Procuring agency/Employer, the same should be counter guaranteed by a corresponding bank in Pakistan. Furthermore, in case of joint venture, it should be in the name of Joint venture to ensure joint responsibility.
<b>20. Alternative Bids by Bidders</b>	20.1	Bidders shall submit offers that comply with the requirements of the bidding documents, including the basic bidder's technical design as indicated in the specifications and Bill of Quantities.

		Alternatives will not be considered, unless specifically allowed for in the BDS. If so allowed, <b>ITB 20</b> shall prevail.
	20.2	When alternative schedule for execution of works is explicitly invited, a statement of that effect will be included in the BDS as will the method for evaluating different schedule for execution of works.
	20.3	If so allowed in the BDS, bidders wishing to offer technical alternatives to the requirements of the bidding documents must also submit a bid that complies with the requirements of the bidding documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic bid, the bidder shall provide all information necessary for a complete evaluation of the alternative by the Procuring agency/Employer, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the Most Advantageous Bidder conforming to the basic technical requirements (without altering the bid price) shall be considered by the Procuring agency/Employer.
<b>21. Withdrawal of Bids</b>	21.1	Before bid submission deadline, any bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and the corresponding must accompany the respective written notice.
	21.2	Bids requested to be withdrawn in accordance with <b>ITB 21.1</b> shall be returned unopened to the bidders.
<b>22. Format and Signing of Bid</b>	22.1	The Bidder shall prepare an original and the number of copies of the bid as indicated in the BDS, clearly marking each <b>“ORIGINAL”</b> and <b>“COPY”</b> as appropriate. In the event of any discrepancy between them, the original shall prevail: <i>Provided that except in Single Stage One Envelope Procedure, the bid shall include only the copies of technical proposal.</i>
	22.2	The original and the copy (ies) of the bid shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to sign on behalf of the bidder. This authorization shall consist of a written confirmation as specified in the BDS and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid, except for un-amended printed literature, shall be initialed by the person or persons signing the bid.
	22.3	Any interlineations, erasures, or overwriting shall be valid only if they are signed by the person(s) authorized for signing the Bid.

#### D. SUBMISSION OF BIDS

<b>23. Sealing and Marking of Bids</b>	23.1	<p>In case of Single Stage One Envelope Procedure, the bidder shall seal the original and each copy of the bid in separate envelopes, duly marking the envelopes as “<b>ORIGINAL</b>” and “<b>COPY</b>”. The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.</p> <p><b>Note:</b> <i>The envelopes shall be sealed and marked in accordance with the bidding procedure adopted as referred in Rule-36 of Public Procurement Rules,2004.</i></p>
	23.2	<p>The inner and outer envelopes shall:</p> <ol style="list-style-type: none"><li>a) be addressed to the Procuring agency/Employer at the address given in the BDS; and</li><li>b) bear the title of the subject procurement or project name, as the case may be as indicated in the BDS, the Invitation for Bids (ITB) title and number indicated in the BDS, and a statement: “<b>DO NOT OPEN BEFORE</b>”, to be completed with the time and the date specified in the BDS, pursuant to <b>ITB 24.1</b>.</li></ol>
	23.3	<p>In case of Single Stage Two Envelope Procedure, The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Proposal and the other Financial Proposal. Both envelopes to be enclosed together in an outer single envelope called the Bid. Each Bidder shall submit his bid as under:</p> <ol style="list-style-type: none"><li>a) Bidder shall submit his <b>TECHNICAL PROPOSAL</b> and <b>FINANCIAL PROPOSAL</b> in separate inner envelopes and enclosed in a single outer envelope.</li><li>b) <b>ORIGINAL</b> and each copy of the Bid shall be separately sealed and put in separate envelopes and marked as such.</li><li>c) The envelopes containing the <b>ORIGINAL</b> and copies will be put in one sealed envelope and addressed / identified as given in <b>ITB 23.2</b>.</li></ol>
	23.4	<p>The inner and outer envelopes shall:</p> <ol style="list-style-type: none"><li>a) be addressed to the Procuring agency/Employer at the address provided in the BDS;</li><li>b) bear the name and identification number of the contract as defined in the BDS; and provide a warning not to open before the time and date for bid opening, as specified in the BDS pursuant to <b>ITB 24.1</b>.</li><li>c) In addition to the identification required in <b>ITB 23</b> hereof, the inner envelope shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared “late” pursuant to <b>ITB 25</b>.</li></ol>

	23.5	If all envelopes are not sealed and marked as required by <b>ITB 23.2, ITB 23.3</b> and <b>ITB 23.4</b> or incorrectly marked, the Procuring agency/Employer will assume no responsibility for the misplacement or premature opening of bid.
<b>24. Deadline for Submission of Bids</b>	24.1	Bids shall be received to the Procuring agency/Employer no later than the date and time specified in the BDS.
	24.2	The Procuring agency/Employer may, under exceptional circumstances and at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with <b>ITB 9</b> , in which case all rights and obligations of the Procuring agency/Employer and bidders previously subject to the deadline will thereafter be subject to the new deadline.
<b>25. Late Bids</b>	25.1	The Procuring agency/Employer shall not consider for evaluation of any bid that arrives after the deadline for submission of bids, in accordance with <b>ITB 24</b> .
	25.2	Any bid received by the Procuring agency/Employer after the deadline for submission of bids shall be declared late, recorded, rejected and returned unopened to the bidder.
<b>26. Substitution and Modification of bids</b>	26.1	A bidder may substitute or modify his bid after it has been submitted, provided that written notice of the substitution or modification of the bid, is received by the Procuring agency/Employer prior to the deadline for submission of bids.
	26.2	Revised bid may be submitted after the substitution or modification made in the original bid in accordance with the provisions referred in <b>ITB 22</b> .

#### **E. OPENING AND EVALUATION OF BIDS**

<b>27. Opening of Bids</b>	27.1	The Procuring agency/Employer will open all bids, in public, in the presence of bidders' or their representatives who choose to attend, and other parties with a legitimate interest in the bid proceedings at the place, on the date and at the time, specified in the BDS. The bidders' representatives present shall sign a attendance sheet as a proof of their attendance.
	27.2	First, envelopes marked " <b>WITHDRAWAL</b> " shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.
	27.3	Second, outer envelopes marked " <b>SUBSTITUTION</b> " shall be opened. The inner envelopes containing the Substitution Bid shall be exchanged for the corresponding Original Bid being substituted, which is to be returned to the bidder unopened. No envelope shall be substituted unless the corresponding

		Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.
	27.4	Next, outer envelopes marked “ <b>MODIFICATION</b> ” shall be opened. No Technical Proposal and/or Financial Proposal shall be modified unless the corresponding Modification Notice contains a valid authorization to request the modification and is read out and recorded at the opening of the bids. Any modification shall be read out along with the Original Bid except in case of Single Stage Two Envelope Procedure where only the Technical Proposal, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Financial Proposal, both Original and Modification, will remain unopened till the prescribed financial bid opening date.
	27.5	Other envelopes holding the bids shall be opened one at a time, in case of Single Stage One Envelope Procedure, the bidders’ names, the bid prices, the total amount of each bid and of any alternative bid (if alternatives have been requested or permitted), the presence or absence of Bid Security, Bid Securing Declaration and such other details as the Procuring agency/Employer may consider appropriate, will be announced by the Procurement Evaluation Committee.
	27.6	In case of Single Stage Two Envelope Procedure, the Procuring agency/Employer will open the Technical Proposals in public at the address, date and time specified in the BDS in the presence of bidders’ designated representatives who choose to attend and other parties with a legitimate interest in the bid proceedings. The Financial Proposals will remain unopened and will be held in custody of the Procuring agency/Employer until the specified time of their opening.
	27.7	The envelopes holding the Technical Proposals shall be opened one at a time, and the following read out and recorded: (a) the name of the bidder; (b) whether there is a modification or substitution; (c) the presence of a Bid Security or Bid Securing Declaration, if required; and (d) Any other details as the Procuring agency/Employer may consider appropriate.
	27.8	Bids not opened and not read out at the bid opening shall not be considered further for evaluation, irrespective of the circumstances.
	27.9	Bidders are advised to send in a representative with the knowledge of the content of the bid who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent bidder’s representative shall indemnify the Procuring

		agency/Employer against any claim or failure to read out the correct information contained in the bidder's bid.
	27.10	No bid will be rejected at the time of bid opening except for late bids which will be returned unopened to the bidder, pursuant to <b>ITB 25</b> .
	27.11	The Procuring agency/Employer shall prepare minutes of the bid opening. The record of the bid opening shall include, as a minimum: the name of the bidder and whether or not there is a withdrawal, substitution or modification, the bid price if applicable and the presence or absence of a Bid Security or Bid Securing Declaration.
	27.12	The bidders' representatives who are present shall be requested to sign on the attendance sheet. The omission of a bidder's signature on the record shall not invalidate the contents and affect the record. A copy of the record shall be distributed to all the bidders.
	27.13	A copy of the minutes of the bid opening shall be furnished to individual bidders upon request.
	27.14	In case of Single Stage -Two Envelop Bidding Procedure, after the announcement of technical evaluation report, the Procuring agency/Employer, shall at a time within the bid validity period, publicly open the financial proposals of the technically responsive bidder only. The financial proposal of bidders found technically non-responsive shall be returned un-opened to the respective bidders after seven days of the announcement of technical evaluation report, except those aggrieved bidder(s) whose complaints are pending before the Grievance Redressal Committee.
<b>28. Confidentiality</b>	28.1	Information relating to the examination, clarification, evaluation and comparison of bids and recommendation of contract award shall not be disclosed to bidders or any other persons not officially concerned with such process until the time of the announcement of the respective evaluation report.
	28.2	Any effort by a bidder to influence the Procuring agency/Employer processing of bids or award decisions may result in the rejection of its bid.
	28.3	Notwithstanding <b>ITB 28.2</b> from the time of bid opening to the time of contract award, if any bidder wishes to contact the Procuring agency/Employer on any matter related to the bidding process, it should do so in writing or in electronic forms that provides record of the content of communication.

<b>29. Clarification of Bids</b>	29.1	To assist in the examination, evaluation and comparison of bids, the Procuring agency/Employer may, ask any bidder for a clarification of its bid including breakdown of prices invariably in writing. Any clarification submitted by a bidder that is not in response to a request by the Procuring agency/Employer shall not be considered.
	29.2	The request for clarification and the response shall be in writing or in electronic forms that provide record of the content of communication. No change in the prices or substance of the bid shall be sought, offered, or permitted, except clarification for the correction of arithmetic errors discovered by the Procuring agency/Employer during the evaluation of bids which shall be sought in accordance with <b>ITB 32</b> .
	29.3	The alteration or modification in the bid which in any case affect the following parameters will be considered as a change in the substance of a bid: <ul style="list-style-type: none"> <li>a) evaluation &amp; qualification criteria;</li> <li>b) required scope of work;</li> <li>c) contract price;</li> <li>d) all securities requirements;</li> <li>e) tax requirements;</li> <li>f) terms and conditions of bidding documents.</li> <li>g) change in the ranking of the bidder</li> </ul>
	29.4	From the time of bid opening to the time of Contract award if any bidder wishes to contact the Procuring agency/Employer on any matter related to the bid it should do so in writing or in electronic forms that provide record of the content of communication.

<p><b>30. Preliminary Examination of Bids</b></p>	<p>30.1</p>	<p>Prior to the detailed evaluation of bids, the Procuring agency/Employer will determine whether each bid:</p> <ul style="list-style-type: none"> <li>a) meets the eligibility criteria defined in <b>ITB 3</b> and <b>ITB 4</b>;</li> <li>b) has been prepared as per the format and contents defined by the Procuring agency/Employer in the bidding documents;</li> <li>c) has been properly signed;</li> <li>d) is accompanied by the required securities; and</li> <li>e) is substantially responsive to the requirements of the bidding documents.</li> </ul> <p>The Procuring agency/Employer's determination of a bid's substantial responsiveness will be based on the contents of the bid itself.</p>
	<p>30.2</p>	<p>A substantially responsive Bid is one which conforms to all the terms, conditions, and specifications of the Bidding Documents, without material deviation or reservation. A material deviation or reservation is one that: -</p> <ul style="list-style-type: none"> <li>a) affects in any substantial way the scope, quality, or performance of the Works;</li> <li>b) limits in any substantial way, inconsistent with the bidding documents, the Procuring agency/Employer's rights or the bidders' obligations under the Contract; or</li> <li>c) if rectified, would affect unfairly the competitive position of other bidders presenting substantially responsive bids.</li> </ul>
	<p>30.3</p>	<p>The Procuring agency/Employer will confirm that the documents and information specified under <b>ITB 11, 12</b> and <b>13</b> have been provided in the bid. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Bidders, the bid shall be rejected.</p>
	<p>30.4</p>	<p>The Procuring agency/Employer may waive-off any minor informality, nonconformity, or irregularity in a bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.</p> <p><i><b>Explanation:</b> A minor informality, non-conformity or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a Bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to</i></p>

		<p><i>other bidders. The defect or variation is immaterial when the effect on quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the works. The Procuring agency/Employer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is advantageous to the Procuring agency/Employer. Examples of minor informalities or irregularities include failure of a bidder to –</i></p> <p><i>(a) Submit the number of copies of signed bids required by the invitation;</i></p> <p><i>(b) Furnish required information concerning the number of its employees;</i></p> <p><i>(c) the firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature.</i></p>
	30.5	<p>Provided that a Technical Bid is substantially responsive, the Procuring agency/Employer may request the bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Technical Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any such aspect of the technical Proposal linked with the ranking of the bidders. Failure of the bidder to comply with the request may result in the rejection of its bid.</p>
	30.6	<p>Provided that a Technical Bid is substantially responsive, the Procuring agency/Employer shall rectify quantifiable nonmaterial nonconformities or omissions related to the Financial Proposal. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the missing or nonconforming item or component.</p>
	30.7	<p>If a bid is not substantially responsive, it will be rejected by the Procuring agency/Employer and may not subsequently be evaluated for complete technical responsiveness.</p>

<p><b>31. Examination of Terms and Conditions; Technical Evaluation</b></p>	<p>31.1</p>	<p>The Procuring agency/Employer shall examine the bid to confirm that all terms and conditions specified in the <b>GCC</b> and the <b>SCC</b> have been accepted by the bidder without any material deviation or reservation.</p> <p>For this purpose:  “Deviation” means departure from the requirements specified in the Bidding Document.  “Reservation” means setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document.</p>
	<p>31.2</p>	<p>The Procuring agency/Employer shall evaluate the technical aspects of the bid submitted in accordance with <b>ITB 31</b>, to confirm that all requirements specified in <b>Section V – Works Requirement, Technical Specifications</b> of the Bidding Documents have been met without material deviation or reservation.</p>
	<p>31.3</p>	<p>If after the examination of the terms and conditions and the technical evaluation, the Procuring agency/Employer determines that the bid is not substantially responsive in accordance with <b>ITB 30</b>, it shall reject the bid.</p>
<p><b>32. Correction of Arithmetic Errors</b></p>	<p>32.1</p>	<p>Bids determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows: -</p> <ul style="list-style-type: none"> <li>a) if there is a discrepancy between unit prices and the sub-total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the sub-total price shall be corrected, unless in the opinion of the Procuring agency/Employer there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;</li> <li>b) if there is an error in a total corresponding to the addition or subtraction of sub-totals, the sub-totals shall prevail, and the total shall be corrected; and</li> <li>c) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.</li> <li>d) Where there is discrepancy between grand total of price schedule and amount mentioned on the Form of Bid, the amount referred in Price Schedule shall be treated as correct subject to elimination of other errors.</li> </ul>
	<p>32.2</p>	<p>The amount stated in the Bid will, be rectified by the Procuring agency/Employer in accordance with the above procedure for the correction of errors and, with, the concurrence of the bidder,</p>

		shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount, its bid shall be rejected after forfeiture of Bid Security or execution of the Bid Securing Declaration, as the case may be, in accordance with <b>ITB 19.9</b> .
<b>33. Conversion to Single Currency</b>	33.1	The unit rates and the prices shall be quoted by the bidder entirely in Pak rupees. A bidder expecting to incur expenditures in other currencies for inputs to the Works from outside the Procuring agency/Employer's country (referred to as the "Foreign Currency Requirements") shall indicate the same in the letter of bid-financial proposal. The proportion of the Bid Price (excluding Provisional Sums) needed by him for the payment of such Foreign Currency Requirements either (i) entirely in the currency of the Bidder's home country or, (ii) at the bidder's option, entirely in Pak rupees provided always that a bidder expecting to incur expenditures in a currency or currencies other than those stated in (i) and (ii) above for a portion of the foreign currency requirements, and wishing to be paid accordingly, shall indicate the respective portions in his bid.
	33.2	To facilitate evaluation and comparison, the Procuring agency/Employer will convert all bid prices expressed in the amounts in various currencies in which the bid prices are payable. For the purposes of comparison of bids quoted in different currencies, the price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate, prevailing on the date of opening of (financial part of) bids specified in the bidding documents, as notified by the State Bank of Pakistan on that day.
	33.3	The currency selected for converting bid prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the BDS.
<b>34. Evaluation of Bids</b>	34.1	The Procuring agency/Employer shall evaluate and compare only the bids determined to be substantially responsive, pursuant to <b>ITB 30</b> .
	34.2	In evaluating the Technical Proposal of each Bid, the Procuring agency/Employer shall use the criteria and methodologies listed in the BDS and in terms of works requirement. No other evaluation criteria or methodologies shall be permitted.
	34.3	The Procuring agency/Employer's evaluation of a bid will take into account: <ul style="list-style-type: none"> <li>a) the bid price, excluding provisional sums and the provision, if any, for contingencies in the summary bill of quantities, but including day work items, where priced competitively;</li> </ul>

		<p>b) price adjustment for correction of arithmetic errors in accordance with <b>ITB 32.1</b>;</p> <p>c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with <b>ITB 33</b>;</p>
	34.4	The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
	34.5	If these bidding documents allow bidders to quote separate prices for different lots, and the award to a single bidder of multiple lots, the methodology of evaluation to determine the lowest evaluated lot combinations in the Form of Bid, is specified in the BDS.
	34.6	<p>If the bid, which results in the Evaluated Bid Price (Most Advantageous Bid), is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. 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 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.</p> <p><b>Explanation:</b>  <i>“Unbalanced” or “front-loaded” bids consist of deliberately submitting bids with artificially high prices or unit rates for the early stages of a construction project, offset by artificially low prices or unit rates for the later stages of the project, to improve the contractor’s cash flow.</i></p>

<b>35. Domestic Preference</b>	35.1	If the BDS so specifies, the Procuring agency/Employer will grant a margin of preference to the domestic contractor in line with the rules, regulations, regulatory guides or instructions issued by the Authority from time to time.
<b>36. Determination of Most Advantageous Bid</b>	36.1	The Procuring agency/Employer shall compare the evaluated bids in accordance with the predefined bidding procedure, of all substantially responsive bids to determine the Most Advantageous bidder.
<b>37. Qualification of Bidder</b>	37.1	<p>The Procuring agency/Employer shall determine to its satisfaction whether the bidder is substantially responsive and whose bid is declared as most advantageous bid either continues to meet (if prequalification applies) or meets (if post-qualification applies) the qualifying criteria specified in Evaluation and Qualification Criteria.</p> <p><i>Note: In case of International bidding, the parameters for incorporation or licensing within Pakistan may be fulfilled as part of post qualification.</i></p>
	37.2	The determination shall be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder, pursuant to <b>ITB 12</b> .
	37.3	Prior to contract award, the Procuring agency/Employer will verify that the successful bidder (including each member of a JV) is not blacklisted/debarred. The Procuring agency/Employer will conduct the same verification for each sub-contractor proposed by the successful bidder.
<b>38. Sub-Contractors</b>	38.1	The bidder shall provide details regarding any specialized sub-contractor to the Procuring agency/Employer. In case change of sub-contractors, the bidder shall promptly notify the Procuring agency/Employer and obtain approval for replacement of sub-contractors.
	38.2	Bidders may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the BDS.

<p><b>39. Abnormally Low Financial Bid</b></p>	<p>39.1</p>	<p>Where the bid price is considered to be abnormally low, the Procuring agency/Employer shall perform price analysis either during determination of Most Advantageous Bid or as a part of the post-qualification process. The following process shall apply:</p> <ul style="list-style-type: none"> <li>a) The Procuring agency/Employer may reject a bid if the Procuring agency/Employer has determined that the price in combination with other constituent elements of the bid is abnormally low in relation to the subject matter of the procurement (i.e. scope of the procurement or ancillary services) and raises concerns as to the capability and capacity of the respective Bidder to perform that contract;</li> <li>b) Before rejecting an abnormally low bid the Procuring agency/Employer shall request the bidder an explanation of the bid or of those sections which it considers contribute to the bid being abnormally low; take account of the evidence provided in response to a request in writing; and subsequently verify the bid or parts of the bid being abnormally low;</li> <li>c) The decision of the Procuring agency/Employer to reject a bid and reasons for the decision shall be recorded in the procurement proceedings and promptly communicated to the bidder concerned;</li> <li>d) The Procuring agency/Employer shall not incur any liability solely by rejecting abnormally bid; and</li> <li>e) An abnormally low bid means, in the light of the Procuring agency/Employer’s estimate and of all the bids submitted, the bid appears to be abnormally low by not providing a margin for normal levels of profit.</li> </ul> <p><b>Guidance for Procuring agency/Employer:</b> In order to identify the Abnormally Low Bid (ALB) following approaches can be considered to minimize the scope of subjectivity:</p> <ul style="list-style-type: none"> <li>(i) Comparing the bid price with the cost estimate;</li> <li>(ii) Comparing the bid price with the bids offered by other bidders submitting substantially responsive bids; and</li> <li>(iii) Comparing the bid price with prices paid in similar contracts in the recent past either government- or development partner-funded.</li> </ul>
	<p>39.2</p>	<p>The Procuring agency/Employer will determine to its satisfaction whether the bidder that is selected as having submitted the most advantageous bid is qualified to perform the</p>

		contract satisfactorily, in accordance with the criteria listed in <b>ITB 12</b>
	39.3	The determination will take into account the bidder's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the bidder's qualifications submitted by the bidder, pursuant to <b>ITB 12</b> , as well as such other information as the Procuring agency/Employer deems necessary and appropriate. Factors not included in these bidding documents shall not be used in the evaluation of the bidders' qualifications.
	39.4	Procuring agency/Employer may seek "Certificate for Independent Price Determination" from the bidder and the results of reference checks may be used in determining award of contract.  <i><b>Explanation:</b> The Certificate shall be furnished by the bidder. The bidder shall certify that the price is determined keeping in view of all the essential aspects such as raw material, its processing, value addition, optimization of resources due to economy of scale, transportation, insurance and margin of profit etc.</i>
	39.5	An affirmative determination will be a prerequisite for award of the contract to the bidder. A negative determination will result in rejection of the bidder's bid, in which event the Procuring agency/Employer will proceed to the next ranked bidder to make a similar determination of that bidder's capabilities to perform satisfactorily.

**F. AWARD OF CONTRACT**

<b>40. Criteria of Award</b>	40.1	<p>Subject to <b>ITB 36</b> and <b>37</b>, the Procuring agency/Employer will award the Contract to the bidder whose bid has been determined to be substantially responsive to the bidding documents and who has been declared as Most Advantageous Bidder, provided that such bidder has been determined to be:</p> <ul style="list-style-type: none"> <li>a) eligible in accordance with the provisions of <b>ITB 3</b>;</li> <li>b) is determined to be qualified to perform the Contract satisfactorily; and</li> <li>c) Successful negotiations have been concluded, if any.</li> </ul>
<b>41. Negotiations</b>	41.1	<p>The Committee of the Procuring agency/Employer may negotiate with the Most Advantageous Bidder relating to the following areas:</p> <ul style="list-style-type: none"> <li>(a) a minor alteration to the technical (drawings, design technical specifications) details of the statement of works;</li> <li>(b) Methodology, work plan, staffing in view to streamline the work;</li> <li>(c) a minor amendment to the special conditions of Contract;</li> <li>(d) finalizing payment arrangements;</li> <li>(e) clarifying details that were not apparent or could not be finalized at the time of Bidding;</li> </ul>
	41.2	<p>Where negotiation fails to result into an agreement, the Procuring agency/Employer may invite the next ranked bidder for negotiations. Where negotiations are commenced with the next ranked bidder, the Procuring agency/Employer shall not reopen earlier negotiations.</p>
<b>42. Procuring agency/Employer's Right to reject All Bids</b>	42.1	<p>Notwithstanding <b>ITB 37</b>, the Procuring agency/Employer reserves the right to reject all the bids, and to annul the bidding process at any time prior to acceptance of bid, without thereby incurring any liability to the affected bidder(s). However, the Authority (i.e. PPRA) may call from the Procuring agency/Employer the justification of those grounds.</p>
	42.2	<p>Notice of the rejection of all bids shall be given promptly to all bidders that have submitted bids.</p>
	42.3	<p>The Procuring agency/Employer shall upon request communicate to any bidder the grounds for its rejection of its bids, but is not required to justify those grounds.</p>

<p><b>43. Variations</b></p>	<p>43.1</p>	<p>The Engineer shall make any variation in the quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:</p> <ul style="list-style-type: none"> <li>a) increase or decrease the quantity of any work included in the Contract,</li> <li>b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),</li> <li>c) change the character or quality or kind of any such work,</li> <li>d) change the levels, lines, position and dimensions of any part of the Works,</li> <li>e) execute additional work of any kind necessary for the completion of the Works, or</li> <li>f) change any specified sequence or timing of construction of any part of the Works.</li> </ul> <p>No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with <b>ITB 15</b>. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.</p>
<p><b>44. Instructions for variations</b></p>	<p>44.1</p>	<p>The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.</p>

<p><b>45. Valuation of Variations</b></p>	<p>45.1</p>	<p>All variations and any additions to the Contract Price which are required to be determined in accordance with <b>ITB 15</b> (for the purposes of this Clause referred to as "varied work"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Procuring agency/Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement, the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with <b>ITB 15</b>.</p>
<p><b>46. Notification of Award</b></p>	<p>46.1</p>	<p>Prior to the award of contract, the Procuring agency/Employer shall issue a Final Evaluation Report giving justification for acceptance or rejection of the bids.</p>
	<p>46.2</p>	<p>Where no complaints have been lodged, the bidder whose bid has been accepted will be notified of the award by the Procuring agency/Employer prior to expiration of the bid validity period in writing or through electronic means that provide record of the content of communication. However, the Procuring agency/Employer shall not award any procurement contract atleast for fifteen (15) days after the acceptance of bid. The notification letter (herein after and in the condition of the contract and contract form called "Letter of Acceptance" will specify the sum that the Procuring agency/Employer will pay the successful bidder in consideration for the execution and completion of the works as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).</p>
	<p>46.3</p>	<p>The notification of award will constitute the formation of the Contract, subject to the bidder furnishing the Performance Security (or guarantee) in accordance with <b>ITB 48</b> and signing of the contract in accordance with <b>ITB 47</b>.</p>
	<p>46.4</p>	<p>Upon the successful bidder's furnishing of the performance security (or guarantee) pursuant to <b>ITB 48</b>, the Procuring agency/Employer will promptly notify each unsuccessful bidder, the name of the successful bidder and the Contract amount and will discharge the Bid Security or Bid Securing Declaration of the bidder(s) pursuant to <b>ITB 19</b>.</p>

<b>47. Signing of Contract</b>	47.1	Promptly after notification of award, Procuring agency/Employer shall send the successful bidder the draft agreement, incorporating all terms and conditions as agreed by the parties to the contract.
	47.2	Immediately after the Redressal of grievance by the GRC, and after fulfillment of all conditions precedent of the Contract Form, the successful bidder and the Procuring agency/Employer shall sign the contract.
	47.3	Where no formal signing of a contract is required, work order issued to the bidder shall be construed to be the contract.
<b>48. Performance Security (or Guarantee)</b>	48.1	After the receipt of the Letter of Acceptance, the successful bidder, within the specified time, shall deliver to the Procuring agency/Employer a Performance Guarantee in the amount and in the form stipulated in the BDS <b>and SCC</b> , denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
	48.2	<p>If the Performance Guarantee is provided by the successful bidder and it shall be in the form specified in the BDS which shall be in any of the following:</p> <ul style="list-style-type: none"> <li>(a) certified cheque, cashier's or manager's cheque, or bank draft;</li> <li>(b) irrevocable letter of credit issued by a scheduled bank of Pakistan or in the case of an irrevocable letter of credit issued by a foreign bank, the letter shall be confirmed or authenticated by a scheduled bank of Pakistan;</li> <li>(c) bank guarantee confirmed by a reputable local bank or, in the case of a successful foreign bidder, bonded by a foreign bank; or</li> <li>(d) surety bond callable upon demand issued by any reputable surety or insurance company.</li> </ul> <p>Any Performance Guarantee submitted shall be enforceable in Pakistan.</p>
	48.3	Failure of the Most Advantageous Bidder to comply with the requirement of <b>ITB 47</b> shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or declare blacklisted (in case bid securing declaration is submitted) in which event the Procuring agency/Employer may make the award to the next most advantageous bidder or reinitiate the procurement process afresh (as a case may be).
<b>49. Advance Payment</b>	49.1	Advance payment will be provided to the bidder in percentage and in the manner as agreed by the both parties in terms of Conditions of the Contract.
	49.2	The Procuring agency/Employer will provide an advance payment as stipulated in the Conditions of Contract, subject to a maximum amount, as stated and/or Conditions of the Contract.

		The advance payment request shall be accompanied by an advance payment security (guarantee) in the form provided in Section X. For the purpose of receiving the advance payment, the bidder shall make and estimate of, and include in its bid, the expenses that will relate to the purchase of equipment, machinery, materials, and on the engagement of labor during the first month beginning with the date of the Procuring agency/Employer’s “Notice to Commence” as specified in the <b>SCC</b> .
<b>50. General Performance of the Bidders</b>	50.1	The Procuring agency/Employer reserves the right to obtain information regarding performance of the bidders on their previously awarded contracts / works. The Procuring agency/Employer may seek information / report from the previous employer for consideration. However, the Procuring agency/Employer shall incorporate such parameters in the evaluation criteria and accordingly decide the fate of the bid submitted.
<b>51. Corrupt &amp; Fraudulent Practices</b>	51.1	Procuring agencies (including beneficiaries of Government funded projects and procurement) as well as Bidders/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts, and will avoid to engage in any corrupt and fraudulent practices.

**F. GRIEVANCE REDRESSAL & COMPLAINT REVIEW MECHANISM**

<b>52. Constitution of Grievance Redressal</b>	52.1	Procuring agency/Employer shall constitute a Grievance Redressal Committee (GRC) comprising of odd number of persons with proper power and authorization to address the complaint. The GRC shall not have any of the members of Procurement Evaluation Committee. The committee must have one subject specialist depending the nature of the procurement.
<b>53. GRC Procedure</b>	53.1	Any party can file its written complaint against the eligibility parameters or any other terms and conditions prescribed in the prequalification or bidding documents found contrary to provision of Procurement Regulatory Framework, and the same shall be addressed by the GRC well before the bid submission deadline.
	53.2	Any bidder feeling aggrieved by any act of the Procuring agency/Employer after the submission of his bid may lodge a written complaint concerning his grievances not later than seven days of the announcement of technical evaluation report and five days after issuance of final evaluation report.

	53.3	In case, the complaint is filed against the technical evaluation report, the GRC shall suspend the procurement proceedings.
	53.4	In case, the complaint is filed after the issuance of the final evaluation report, the complainant cannot raise any objection on technical evaluation of the report: Provided that the complainant may raise the objection on any part of the final evaluation report in case where single stage one envelope bidding procedure is adopted.
	53.5	The GRC, in both the cases shall investigate and decide upon the complaint within ten days of its receipt.
	53.6	Any bidder or the Procuring agency/Employer not satisfied with the decision of the GRC may file Appeal before the Appellate Committee of the Authority on prescribed format after depositing the Prescribed fee.
	53.7	The Committee, upon receipt of the Appeal against the decision of the GRC complete in all respect shall serve notices in writing upon all the parties to Appeal.
	53.8	The committee shall call the record from the concerned Procuring agency/Employer or the GRC as the case may be, and the same shall be provided within prescribed time.
	53.9	The committee may after examination of the relevant record and hearing all the concerned parties, shall decide the complaint within fifteen (15) days of receipt of the Appeal.
	53.10	The decision of the Committee shall be in writing and shall be signed by the Head and each Member of the Committee. The decision of the committee shall be final.

#### **G. MECHANISM OF BLACKLISTING**

<b>54. Mechanism of Blacklisting</b>	54.1	The Procuring agency/Employer shall bar for not more than the time prescribed in Rule-19 of the Public Procurement Rules, 2004, from participating in their respective procurement proceedings, bidder or contractor who either: Involved in corrupt and fraudulent practices as defined in Rule-2 of Public Procurement Rules; i) Fails to perform his contractual obligations; and ii) Fails to abide by the id securing declaration;
	54.2	The show cause notice shall contain: (a) precise allegation, against the bidder or contractor; (b) the maximum period for which the Procuring agency/Employer proposes to debar the bidder or contractor from participating in any public procurement of the Procuring agency/Employer; and (c) the statement, if needed, about the intention of the Procuring agency/Employer to make a request to the Authority for debarring the bidder or contractor from participating in public procurements of all the procuring agencies.

	54.3	The Procuring agency/Employer shall give minimum of seven days to the bidder or contractor for submission of written reply of the show cause notice.
	54.4	In case, the bidder or contractor fails to submit written reply within the requisite time, the Procuring agency/Employer may issue notice for personal hearing to the bidder or contractor/ authorize representative of the bidder or contractor and the Procuring agency/Employer shall decide the matter on the basis of available record and personal hearing, if availed.
	54.5	In case the bidder or contractor submits written reply of the show cause notice, the Procuring agency/Employer may decide to file the matter or direct issuance of a notice to the bidder or contractor for personal hearing.
	54.6	The Procuring agency/Employer shall give minimum of seven days to the bidder or contractor for appearance before the designated officer of the Procuring agency/Employer for personal hearing. The designated officer shall decide the matter on the basis of the available record and personal hearing of the bidder or contractor, if availed.

	54.7	The Procuring agency/Employer shall decide the matter within fifteen (15) days from the date of personal hearing unless the personal hearing is adjourned to a next date and in such an eventuality, the period of personal hearing shall be reckoned from the last date of personal hearing.
	54.8	The Procuring agency/Employer shall communicate to the bidder or contractor the order of debaring the bidder or contractor from participating in any public procurement with a statement that the bidder or contractor may, within thirty (30) days, prefer a representation against the order before the Authority.
	54.9	Such blacklisting or barring action shall be communicated by the Procuring agency/Employer to the Authority and respective bidder or bidders in the form of decision containing the grounds for such action. The same shall be publicized by the Authority after examining the record whether the procedure defined in blacklisting and debarment mechanism has been adhered to by the Procuring agency/Employer.
	54.10	The bidder may file the review petition before the Review Petition Committee Authority within thirty (30) days of communication of such blacklisting or barring action after depositing the prescribed fee and in accordance with “Procedure of filing and disposal of review petition under Rule-19(3) Regulations, 2021”. The Committee shall evaluate the case and decide within ninety (90) days of filing of review petition.
	54.11	The committee shall serve a notice in writing upon all respondent of the review petition. The notices shall be accompanied by the copies of review petition and all attached documents of the review petition including the decision of the Procuring agency/Employer. The parties may file written statements along with essential documents in support of their contentions. The Committee may pass such order on the representation may deem fit.
	54.12	The Authority on the basis of decision made by the committee either may debar a bidder or contractor from participating in any public procurement process of all or some of the procuring agencies for such period as the deemed appropriate or acquit the bidder from the allegations. The decision of the Authority shall be final.

## **SECTION III: BID DATA SHEET**

## ***Bid Data Sheet (BDS)***

The following specific data for the procurement of works shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITBs). Whenever there is a conflict, the provisions herein shall prevail over those in ITBs.

BDS Clause Number	ITB Number	Amendments of, and Supplements to, Clauses in the Instruction to Bidders
<b>A. Introduction</b>		
1.	1.1	<p><b>Name of Procuring agency/Employer:</b> HYDERABAD ELECTRIC SUPPLY COMPANY (HESCO)</p> <p><b>The subject of procurement is:</b> Construction of Foundation of Steel Tubular Poles, Erection And Stringing Work For 132kv D/C Transmission Line Feed For Nooriabad-II Grid Station.</p> <p><b>Period for completion of the works:</b> [130 Days]. The defect liability period is one year after completion of work.</p> <p><b>Commencement date execution of the works:</b> From the date of signing contract agreement /as mentioned in Letter of acceptance/ commencement of work.</p> <p><b>Type of Procurement:</b> National competitive bidding.</p>
2.	2.1	<p>Name of financing institution: HESCO (Own Sources)</p> <p>Name &amp; identification number of the Contract: <b>GSC-21/2025-26</b></p>
3.	3.1	<p>The Following may be added:</p> <p><b>Eligibility of firm:</b></p> <ul style="list-style-type: none"> <li>• Valid PEC LICENSE IN C4 Category with Field of specialization CE02, CE10 &amp; EE05.</li> <li>• Registration with FBR, firm must be in active tax payer list of FBR.</li> <li>• Registration with SRB, firm must be in active tax payer list of SRB.</li> <li>• The firm is not black listed from any organization.</li> </ul> <p><b>Qualification of Firm:</b></p> <ul style="list-style-type: none"> <li>• Firm must have experience of atleast 02 Nos. Similar Works within last Seven years in any DISCO/ NTDC. The Firm shall submit 02 Nos. such work orders with satisfactory completion certificate.</li> <li>• Bidders are required to submit details of all litigation, and arbitration whether pending, threatened or resolved in the last 5 years. The procuring agency may disqualify bidder in the event that the total amount of pending or threatened litigation, and arbitration represents twenty five percent (25 %) of the bidder's net worth.</li> <li>• The Bidder should have sound financial status. In order to determine the same the bidder shall provide its upto</li> </ul>

		<p>date financial statements i.e: audited balance sheet, income statement and cash flow statements for the last three years. The Difference between cash in hand and short term liabilities should be adequate enough for smooth execution of this order. The bidder's net worth of last three years calculated as difference between Total Assets and Total liabilities should be positive. In this context the bidder is required to fill the relevant form of bidding document and submit the bid.</p> <ul style="list-style-type: none"> <li>• The bidder having Average Annual Turn Over last three years equal to or more than that of the quoted price. The annual turnover of partners in JV shall be calculated by summing their individual turnovers.</li> <li>• A bidder or partners in case of JV have sufficient financial sources available to meet the total cash flow demand of the contract. The firm /JV has to demonstrate its / their availability to at-least 25% of the total quoted amount.</li> <li>• Maximum number of members in the joint venture, consortium shall be: <b>Two</b>.</li> </ul>
	<b>3.11</b>	Not Applicable.

### **B. Bidding Documents**

<b>4.</b>	<b>7.2</b>	The Bids will be submitted through E-Procurement/EPADS ( <a href="https://eprocure.gov.pk">https://eprocure.gov.pk</a> ).
<b>5.</b>	<b>7.3</b>	The Procuring Agency is not responsible for the completeness of the Bidding Documents and their addenda if they were not download directly from EPADS.
<b>6.</b>	<b>8.1</b>	A prospective Bidder requiring any clarification of the Bidding Documents may notify the Procuring Agency through EPADS.
	<b>8.2</b>	The Procuring Agency will within three (3) working days after receiving the request for clarification, respond in writing through EPADS to any request for clarification provided that such request is received not later than three (03) working days before the deadline for the submission of Bids as prescribed in ITB 24.1.
	<b>8.3</b>	The Clarification and their response will only be available on EPADS.
	<b>8.5</b>	Pre-bid meeting: N/A

### **C. Preparation of Bids**

7.	9.2	<p>Any addendum issued including the notice of any extension of the deadline shall be part of the Bidding Documents according to ITB 7.1 and shall be communicated through EPADS.</p> <p>Provided that the bidder who had either already submitted their bid before the issuance of any such addendum shall have the right to withdraw his already filed bid and submit the revised bid on EPADS before the original or extended bid submission deadline.</p>
8.	10.1	<p>The Language of all correspondences and documents related to the Bid is: <b>English</b></p>
9.	11.1 (j)	<p>In addition to the documents stated in <b>ITB 11</b>, the following documents must be included with the Bid.</p> <ul style="list-style-type: none"> <li>➤ In case of JV, Joint Venture Agreement and Letter of Intent to enter in JV, FBR and SRB Registration and proof of joint bank account.</li> </ul>
10.	11.2	<p>A copy of the agreement entered into by the joint venture partners shall be submitted with the bid stating the conditions under which it will function, its period of duration, the persons authorized to represent and obligate it and which persons will be directly responsible for due performance of the Contract and can give valid receipts on behalf of the joint venture, the proportionate participation of the several firms forming the joint venture, and any other information necessary to permit a full appraisal of its functioning. No amendments / modifications whatsoever in the joint venture agreement shall be agreed to between the joint venture partners without prior written consent of the Employer.</p>
11.	11.4 (c)	<p>Detail of Equipment and Machinery.</p>
12.	12.2,12.3	<p>All requisite documents as mentioned in notice inviting bid, bidding document shall be submitted. The requisite documents as per the following eligibility and qualification criteria shall be submitted by the bidder.</p> <p><b>Eligibility of firm:</b></p> <ul style="list-style-type: none"> <li>• Valid PEC LICENSE IN C4 Category with Field of specialization CE02, CE10 &amp; EE05.</li> <li>• Registration with FBR, firm must be in active tax payer list of FBR.</li> <li>• Registration with SRB, firm must be in active tax payer list of SRB.</li> <li>• The firm is not black listed from any organization.</li> </ul> <p><b>Qualification of Firm:</b></p> <ul style="list-style-type: none"> <li>• Firm must have experience of 02 Nos. Similar Works Within 07 years in any DISCO/ NTDC. The Firm shall submit 02 Nos. such work orders with satisfactory completion certificate</li> </ul>

		<ul style="list-style-type: none"> <li>The Firm shall provide the certified/ audited financial record for the last three years from a recognized firm registered with Institute of Chartered Accountant Pakistan, which shows as: <ul style="list-style-type: none"> <li>(a) Average Annual Turn Over (AATO) in (PKR) @ equal to the quoted cost of each NCB.</li> <li>(b) Net worth should be positive.</li> <li>(c) Financial Resources/ Cash Flow (PKR) @25%of the quoted cost in PKR for each NCB.</li> </ul> </li> </ul>
13.	14.1	The bidder shall fill the Letter of Bid (Bids invited through Single Stage, Single Envelope method).
14.	15.5	<b>Price Adjustment: Not Applicable</b>
15.	15.6	Name of the works: Construction of Foundation of Steel Tubular Poles, Erection And Stringing Work For 132kv D/C Transmission Line Feed For Nooriabad-II Grid Station. The identification No. <b>GSC-21/2025-26</b> The No. and identification of lots (contracts) comprising this open competitive bid: <b>N/A</b>
16.	16.1	The currency of the Bid shall be <i>in PKR</i> ;
17.	16.2,3	The bidder must quote the Bid in PKR Only
18.	18.1	The Bid Validity period shall be <b>120</b> days.
19.	18.2	The following Para may be added in this clause: The Bidder shall submit original requisite bid security in office of Project Director GSC HESCO Hyderabad before 01 (one) working day prior to Bid Submission time as mentioned in the Notice Inviting Bid, failing which the bid shall be considered as non-responsive.
20.	19.1	The amount of Bid Security shall be: PKR: 1,500,000. Bid Securing Declaration is <b>NOT</b> applicable.
21.	19.3	<ul style="list-style-type: none"> <li>➤ The Bid Security shall be in the form of: <b>Bank Guarantee, CDR or Bankers Cheque</b></li> </ul>
22.	19.3 (c)	Other forms of security are: <b>NA</b>
23.	19.6	If a bidder fails to submit bid security in original before 01 (one) working day prior to the bid submission date and time, the bid will not be entertained.
24.	20.1	Alternative Bids <b>not permitted</b>
25.	21.1 & 21.2	The bidder may submit / resubmit and withdraw bid only on EPADS.
26.	22.1	The Bids will be submitted through E-Procurement /EPADS ( <a href="https://eprocure.gov.pk">https://eprocure.gov.pk</a> ). The bids submitted through EPADS will only be acceptable. All the PPRA rules regarding e-procurement will be followed.

		The bidder will submit a signed hard copy of technical bid same uploaded bid as if required by the employer.
27.	22.2	The signed and stamped bid shall be submitted through EPADS. The authority letter to sign on the bid should be submitted with the bid.

#### **D. Submission of Bids**

28.	23.1 ,2	The Bids will be submitted through E-Procurement/EPADS ( <a href="https://eprocure.gov.pk">https://eprocure.gov.pk</a> ).
29.	23.3	SINGLE STAGE SINGLE ENVELOPE PROCEDURE.
30.	24.1	The deadline for Bid submission is Day: Thursday Date: 11 <sup>th</sup> June.2026 Time: 10:00 hrs
31.	25.2	Original bid security received by the Procuring agency/Employer later than as mentioned in NIT shall be declared late, recorded, rejected and returned unopened to the bidder.

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

32.	27	<b>The existing clause will be replaced as following:</b> 1. The Bids will be opened electronically on; Day: Thursday Date: 11 <sup>th</sup> June .2026 Time: 10:30 hrs  <b>Bids submitted through EPADS will be entertained. Manual bids will not be allowed.</b>
33.	29.3	Change in substance of Bid is not allowed.
34.	33.2	The currency which shall be used in Offered bid is in PKR only.
35.	33.3	The bids shall be quoted in (PKR)
36.	34	<b>Evaluation Techniques</b> <b>Least Cost Based Selection (LCBS)</b> After declaring responsive in offered proposal and substantial responsiveness, the substantially responsive bid having lowest evaluated cost shall be considered highest ranked bid. The responsive bidder who offered the lowest cost is considered as most advantageous bidder.
37.	35	Domestic preference: <b>Not Applicable.</b>
38.	37.1	The bidder must fulfill the eligibility and qualification criteria as already mentioned in BDS of bidding document. In addition to experience and qualification criteria as mentioned in bidding document, both JV partners shall have valid PEC license in requisite category and one/both of JV partner shall meet the minimum requirement for eligibility and qualification criteria as mentioned in part V.
39.	38.2	Sub-contracting: <b>Not Permitted.</b>
<b>F. Award of Contract</b>		

<b>40.</b>	<b>48.1</b>	The Performance Security (or guarantee) shall be: <b>10 percent of the Contract Price Without S.S.T</b>
<b>41.</b>	<b>48.2</b>	The Performance Security (or guarantee) shall be in the form of: Bank Guarantee / CDR
<b>42.</b>	<b>49</b>	Advance Payment: Not permitted

### **G. Review of Procurement Decisions**

<b>43.</b>	<b>53</b>	<b>GRC Committee already constituted on EPADS as per PPRA rules amended to date.</b>
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### **H. MECHANISM OF BLACKLISTING**

<b>44.</b>	<b>54</b>	<p><b>After Clause 54.1(ii) Following clauses are added.</b></p> <p><b>(iii) Failure of the firm/contractor to complete the work within the stipulated time period without any valid reason.</b></p> <p><b>(iv) Any other reason(s) as provided in the debarment/blacklisting procedure of HESCO.</b></p>
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## **Section IV. Eligible Countries**

All the bidders are allowed to participate in the subject procurement without regard to nationality, except bidders of some nationality, prohibited in accordance with policy of the Federal Government.

Following countries are ineligible to participate in the procurement process:

1. India
2. Israel

## Section V. Evaluation and Qualification Criteria

The Procuring agency/Employer shall evaluate the bids in accordance with predefined evaluation and qualification criteria mentioned in this document. No other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in the Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the currency prescribed in the BDS.

### Evaluation

For evaluation purpose, the bidder must submit the attested copies of the document as mentioned below in the qualification check list.

### Qualification

Eligibility and Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>1. Eligibility</b>							
1.1	<b>Nationality</b>	Nationality in accordance with <b>ITB 4.3</b>	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.3	<b>PEC Registration</b>	The firm should be registered with PEC in C4 Category and specialization CE02, CE10 & EE05 as mentioned in the Notice Inviting Tender/ Bid data sheet (Valid PEC License).	Must meet requirement	----	The firm should be registered with PEC in C4 Category.	The firm should be registered with PEC in C4 Category and specialization on CE02, CE10 & EE05	Notice inviting Bid / Bidding Document
1.4	<b>Registered and Active Tax Payer In Federal Board of Revenue</b>	The firm from within the country should be registered with Federal Board of Revenue and must be in its Active Tax payer list.	Must meet requirement		Must meet requirement	N/A	Notice inviting Bid
1.5	<b>Registered and Active Tax Payer In Sindh Revenue Board</b>	The firm from within the country should be registered with Sindh Revenue Board and must be in its Active Tax payer list.	Must meet requirement		Must meet requirement	N/A	NIT

Eligibility and Qualification Criteria		Compliance Requirements				Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>Litigation history</b>							
2.1	<b>Litigation History</b>	Bidders are required to submit details of all litigation, arbitration and other claims whether pending, threatened or resolved in the last 5 years. The procuring agency may disqualify bidder in the event that the total amount of pending or threatened litigation, and arbitration claims represents twenty five percent (25 %) of the bidder's net worth.	Must meet requirement	-----	Must meet requirement	N/A	Form CON-1

Eligibility and Qualification Criteria		Compliance Requirements				Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>3. Financial Situation and Performance</b>							
3.1	<b>Financial Capabilities</b>	In order to determine the Financial status, the bidder shall provide its up to date financial statements for the last three years. The difference between cash in hand and short term liabilities should be adequate enough for smooth execution of this order and the bidders net worth for the last three years calculated as the difference between total assets and total liabilities should be positive.	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN – 3.1
3.2	<b>Average Annual Turnover</b>	To be awarded a contract for this tender, the bidder has to have an average Annual Turnover the last 03 years equal to or more than that of the quoted price. The annual Turnover of partners in a JV shall be calculated by summing their individual Turnovers.	Must meet requirement	---	Must meet 50% of the requirement		Form FIN – 3.2

Eligibility and Qualification Criteria		Compliance Requirements			Documentation		
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3.3	<b>Cash or Cash Equivalent</b>	The bidder or all partners of JV have sufficient financial sources, liquid assets, lines of credit and other financial means available to meet the total cash flow demands of the contract. To be awarded a contract a bidder/ members of JV (Jointly) has to demonstrate its/ their availability to at-least 25% of the total quoted amount.	Must meet requirement	Must meet requirement	---		As per eligibility/ qualification criteria.

Eligibility and Qualification Criteria		Compliance Requirements				Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
<b>Experience</b>							
4.1 (a)	<b>Specific Construction &amp; Contract Management Experience</b>	Firm must have experience of 02 Nos. Similar Works in any DISCO/ NTDC. The Firm shall submit 02 Nos. such work orders within 07 years with satisfactory completion certificate.	Must meet requirement	Must meet requirement	N/A	---	Form EXP 1

## **Contractor's Representative and Key Personnel**

The Bidder must demonstrate that it will have a suitably qualified Contractor's Representative and suitably qualified (and in adequate numbers) Key Personnel, as described in the Specification.

The Bidder shall provide details of the Representative and Key Personnel and such other Key Personnel that the Bidder considers appropriate to perform the Contract, together with their academic qualifications and work experience. The Bidder shall complete the relevant Forms in the Bidding Forms.

## Equipment

The Bidder must demonstrate that it has access to the key equipment:

<b>No.</b>	<b>Equipment Type and Characteristics</b>	<b>Numbers</b>
1		
2		
3		
4		
5		

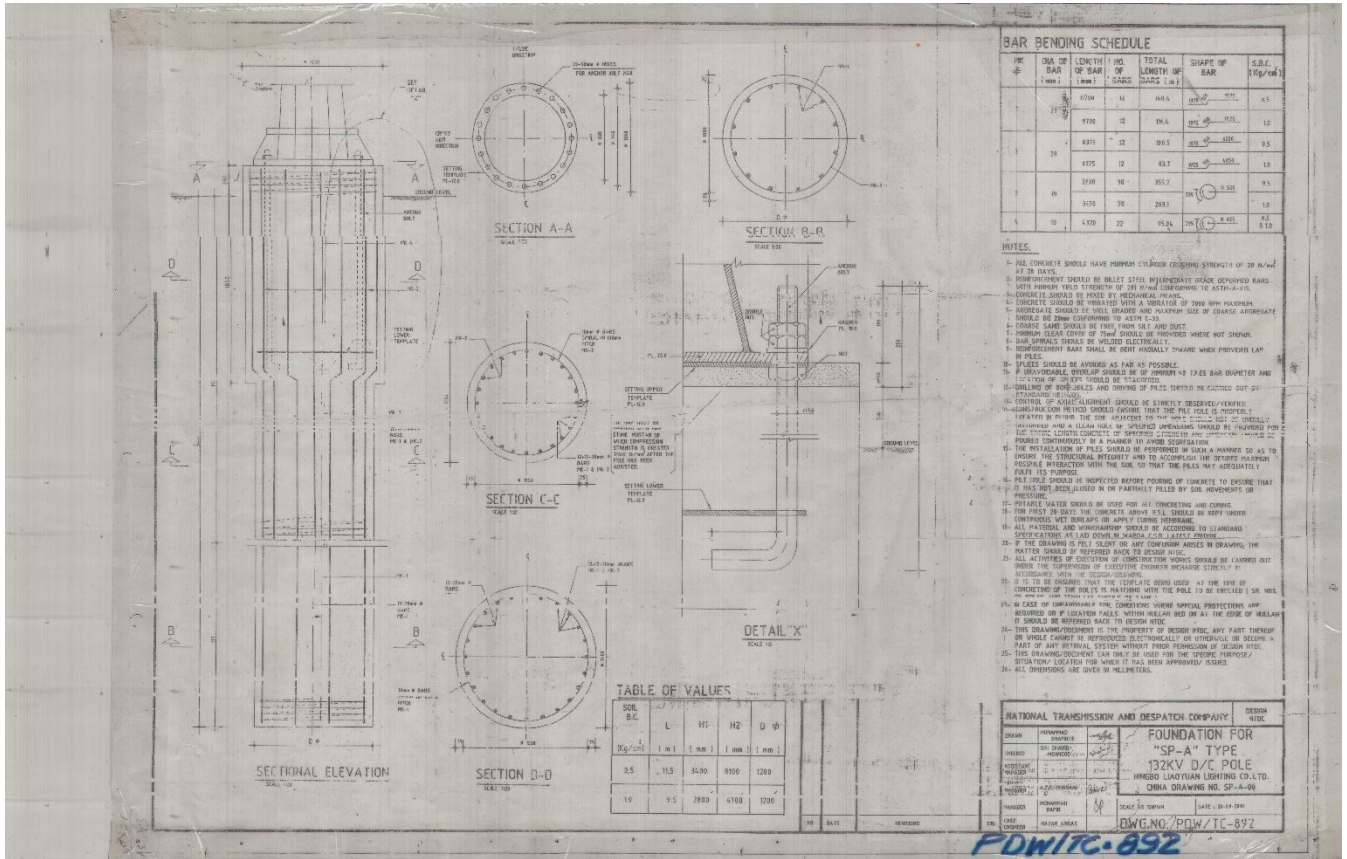
**SECTION VI: Scope of Works Requirements, Drawings Technical Specifications, Bill of Quantities Supplementary Information**

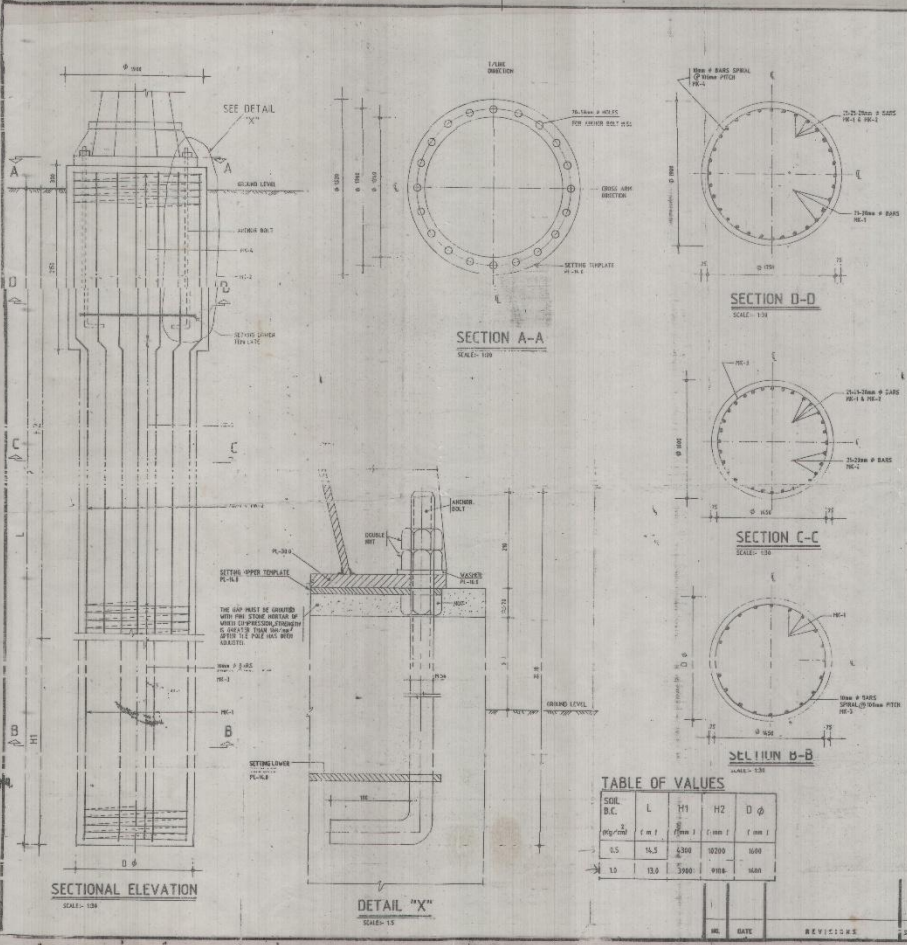
## **SCOPE OF WORKS**

**Construction of Foundation, Erection and Stringing work for 132KV D/C  
Transmission Line for Nooriabad-II Grid Station**

# Drawings

- All the standard drawings are to be used for this specific work as attached.





**BAR BENDING SCHEDULE**

NO	NO. OF BAR	DIAM. OF BAR (mm)	LENGTH OF BAR (mm)	NO. OF BARS	TOTAL LENGTH OF BARS (m)	SHAPE OF BAR	S.B.C. Kg/cm <sup>2</sup>
1	28	14750	21	309.6	6773.16	SEE DETAIL 'X'	0.5
		13250	21	278.3			
2	28	10525	21	221.1	4864.14	SEE DETAIL 'X'	0.5
		9425	21	198.0			
3	10	5010	125	1263.0	63150.00	SEE DETAIL 'X'	1.0
		5010	102	551.1			
4	10	6050	25	1512.5	75625.00	SEE DETAIL 'X'	1.0

- NOTES**
1. ALL CONCRETE SHOULD HAVE MINIMUM CYLINDER COMPRESSIVE STRENGTH OF 24MPa AT 28 DAYS.
  2. REINFORCEMENT SHOULD BE BILLET STEEL WITH MINIMUM GRADE DEFORMED BARS WITH MINIMUM YIELD STRENGTH OF 275MPa.
  3. CONCRETE SHOULD BE KEPT UNDER CURING THROUGHOUT.
  4. CONCRETE SHOULD BE VIBRATED WITH ACCESS-TOP BY 7000 RPM PLASTERER.
  5. AGGREGATE SHOULD BE WELL GRADED AND THE PROPORTION OF COARSE AGGREGATE SHOULD BE ZONE CORRESPONDING TO ACTIVITY.
  6. CURSE SAND SHOULD BE FREE FROM SALT AND CLUSTERS.
  7. MINIMUM CLEAR COVER OF 25mm SHOULD BE PROVIDED WHERE NOT SHOWN.
  8. BAR SPALLS SHOULD BE WELDED ELECTRICALLY.
  9. REINFORCEMENT BARS SHALL BE KEPT RADIALLY STRAIGHT WHEN PROVIDED LAP IN PILES.
  10. SLEETS SHOULD BE PROVIDED AS FAR AS POSSIBLE.
  11. IF UNAVOIDABLE CLEARANCE SHOULD BE OF MINIMUM 40 TIMES BAR DIAMETER AND LOCATION OF SLEETS SHOULD BE NOTED.
  12. BENDING OF BARS SHALL BE DONE BY THE USE OF BENDING MACHINES.
  13. CONTROLLING OF AXIAL ALIGNMENT SHOULD BE STRICTLY OBSERVED/VERIFIED.
  14. CONSTRUCTION METHOD SHOULD ENSURE THAT THE PILE IS PROPERLY LOCATED AND A CLEAR HOLE OF SPECIFIED DIMENSIONS SHOULD BE PROVIDED FOR THE ENTIRE LENGTH. CONCRETE OF SPECIFIED STRENGTH AND DIMENSION SHOULD BE POURED CONTINUOUSLY IN A MANNER TO AVOID SEGREGATION.
  15. IF NECESSARY, THE PILE SHOULD BE PROTECTED BY AN ANTI-COLLAPSE DEVICE TO PREVENT COLLAPSE OF THE PILE DURING CONSTRUCTION.
  16. THE PILE SHOULD BE INSPECTED BEFORE POURING OF CONCRETE TO ENSURE THAT IT HAS NOT BEEN CLOSED OR PARTIALLY FILLED BY SOIL INFERMENTS OR PRESSURE.
  17. PLUMBABLE WATER SHOULD BE USED FOR ALL CONCRETING AND CURING.
  18. FOR FIRST 20 CM OF THE CONCRETE ABOVE S.S.L. SHOULD BE KEPT UNDER CONTINUOUS VIBRATIONS OR APPLY CURING MEMBRANE.
  19. ALL MATERIAL AND WORKMANSHIP SHOULD BE ACCORDING TO STANDARD SPECIFICATIONS AS Laid DOWN IN DRAWING C.E.R. LATEST EDITION.
  20. IF THE DRAWING IS SILENT ON ANY CONSTRUCTION MATTER THE MATTER SHOULD BE REFERRED BACK TO DESIGN NOTE.
  21. ALL ACTIVITIES OF CONSTRUCTION WORKS SHOULD BE CARRIED OUT UNDER THE SUPERVISION OF EXECUTIVE ENGINEER IN ACCORDANCE WITH THE DESIGN/DRAWING.
  22. IT IS TO BE ENSURED THAT THE TEMPLATE BOUND USED AT THE TIME OF CONCRETING OF THE BILLS IS MATCHING WITH THE POLE TO BE ERRECTED (S.E. NO. OF POLES AND TEMPLATE SHOULD BE SAME).
  23. IN CASE OF UNAVOIDABLE SOIL CONDITIONS WHERE SPECIAL PROTECTIONS ARE REQUIRED OR IF LOCATION FALLS WITHIN UNLAWFUL ZONE OR AT THE EDGE OF MALLIAN IT SHOULD BE REFERRED BACK TO DESIGN NOTE.
  24. WHOLE CANNOT BE SUPERSEDED BY ANY OTHER DRAWING OR SPECIFICATION.
  25. IF ANY RETRAVAL SYSTEM WITHOUT PRIOR PERMISSION OF DESIGN NTC.
  26. THIS DRAWING/DESIGN CAN ONLY BE USED FOR THE SPECIFIC PURPOSE/SITUATION/LOCATION FOR WHICH IT HAS BEEN APPROVED/ISSUED.
  27. ALL DIMENSIONS ARE GIVEN IN METERS.

**TABLE OF VALUES**

S.B.C.	L	H1	H2	D	φ
0.5	16.5	4300	10200	1000	1000
1.0	13.0	3900	9800	1000	1000

NATIONAL TRANSMISSION AND DISPATCH COMPANY		DESIGN	NTDC
FOUNDATION FOR "SP-D" TYPE		NO. DRAWING	132KV D/C POLE
132KV D/C POLE		REVISION	1
HONGRO LADYUAN LIGHTING CO. LTD.		DATE	26-07-2018
CHINA DRAWING NO. SP-D-02		SCALE	AS SHOWN
DWG. NO. PDW/TC-893			

**PDW/TC-893**



# Bill of Quantities

## PREAMBLE TO SCHEDULE OF PRICES

### 1. General

- 1.1 The Schedule of Prices shall be read in conjunction with the Conditions of Contract, Contract Data together with the Specifications and Drawings, if any.
- 1.2 The Contract shall be for the whole of the Works as described in these Bidding Documents. Bids must be for the complete scope of works.

### 2. Description

- 2.1 The general directions and descriptions of works and materials are not necessarily repeated nor summarized in the Schedule of Prices. References to the relevant sections of the Bidding Documents shall be made before entering prices against each item in the Schedule of Prices.

### 3. Units & Abbreviations

- 3.1 Units of measurement, symbols and abbreviations expressed in the Bidding Documents shall comply with the System International d' Unites (SI Units).

#### **Abbreviations: -**

Cum	-	Cubic meter
Kg	-	Kilo gram
Sqm	-	Square meter

### 4. Rates and Prices

- 4.1 Except as otherwise expressly provided under the Conditions of Contract, the rates and amounts entered in the Schedule of Prices shall be the rates at which the Contractor shall be paid and shall be the full inclusive value of the works set forth or implied in the Contract; except for the amounts reimbursable, if any to the Contractor under the Contract.
- 4.2 Unless otherwise stipulated in the Contract Data, the rates and prices entered by the bidder shall not be subject to adjustment during the performance of the Contract.

4.3 The whole cost of complying with the provisions of the Contract shall be included in the items provided in the Schedule of Prices, and where no items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related items of the Works and no separate payment will be made for those items.

The rates, prices and amounts shall be entered against each item in the Schedule of Prices. Any item against which no rate or price is entered by the bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates and prices for other items in the Schedule of Prices.

- 4.4 (a) The bidder shall be deemed to have obtained all information as to and all requirements related thereto which may affect the bid price.
- (b) The Contractor shall be responsible to make complete arrangements for the transportation of the Plant to the Site.

4.5 The Contractor shall provide for all parts of the Works to be completed in every respect. Notwithstanding that any details, accessories, etc. required for the complete installation and satisfactory operation of the Works, are not specifically mentioned in the Specifications, such details shall be considered as included in the Contract Price.

**5. Bid Prices**

5.1 Break-up of Bid Prices

The various elements of Bid Prices shall be quoted as detailed by the Employer in the format of Schedule of Prices.

The bidder shall recognize such elements of the costs which he expects to incur the performance of the Works and shall include all such costs in the rates and amounts entered in the Schedule of Prices.

5.2 Total Bid Price

The total of bid prices in the Schedule of Prices shall be entered in the Summary of Bid Prices.

**6. Provisional Sums**

6.1 Provisional Sums included and so designated in the Schedule of Prices if any, shall be expended in whole or in part at the direction and discretion of the Employer. The Contractor will only receive payment in respect of Provisional Sums if he has been instructed by the Employer to utilize such sums.

**BILL OF QUANTITY FOR CONSTRUCTION OF FOUNDATION OF STEEL TUBULAR POLES, ERECTION AND STRINGING WORK FOR 132KV D/C TRANSMISSION LINE FEED FOR NOORIABAD-II GRID STATION**

1. <b>FINAL ROUTE ALIGNMENT:</b>							
S.No	Description	Qty (Km)	Unit Rate/ KM		Amount		
i.	Final Route Alignment, Center Peg Marking, Staking of Towers / poles along with clearance of route i.e cutting of trees/ bushes & making platform with all requisite activities as per site requirement.	3.8 km	Rs		Rs		
<b>Total of (1)</b>					Rs		
2. <b>A- BORE DRILLING &amp; CONCRETING WORK:</b>							
S.No	Description						
	Providing and casting-in-situ bored RCC Pile in (1:1-1/2:3) cement concrete of approved crushed stone and coarsed sand including all costs of boring, drilling with rotary or any approved method) placing concrete with tremie including cost of supply and fabrication steel bar reinforcement cage bending & binding wire and screening and washing of shingle complete in all aspect as per approved drawing design.						
S.No	Drawing No.	Tower Type and Quantity	Per Location Pile Length (Linear Meter)	Commulative Pile Length (Linear Meter)	Rate/Linear Meter (Unit Rate)		Amount (Rs)
		<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E=CxD</b>	
i.	PDW/TC-892 (1200 mm Dia) =11.5×16×1=184	SPA (16 No.)	11.5	184	Rs		Rs
ii.	PDW/TC-893 (1600 mm Dia) =14.5×04×1=58	SPD (04 No.)	14.5	58	Rs		Rs
iii.	PDW/TC-894 (1600 mm Dia) =19.5×6×1=117	SPG (06 No.)	19.5	117	Rs		Rs
<b>Total 2(A)</b>					Rs		

<b>2. B- CHIMNEY CONCRETING WORK:</b>								
<b>S.No</b>	<b>Description</b>							
	Re-inforced concrete including excavation in varied type of soil using S.R cement. RCC mix Ratio 1:1/2:3. crushed stone and coarse sand, providing steel shuttering as per NTDC/HESCO approved design, including steel setting i-e bending, binding and Anchor bolt setting, welding and cutting as per NTDC/HESCO approve design. backfilling, curing, compacting and cylinder/cube test at 28 days curing upto 28 N/mmsq (4000 PSI) strength. Moreover minimum two coats of bitumen coating (Expan Proof" 10 - Fospak bitumen) to all/ complete concrete surfaces should be applied before backfilling of foundation.							
<b>S.No</b>	<b>Drawing No.</b>	<b>Tower Type</b>	<b>Nos</b>	<b>Total Footing</b>	<b>Unit Rate</b>		<b>Amount</b>	
			<b>A</b>	<b>B</b>	<b>C</b>		<b>D=BxC</b>	
i.	Steel Tubular Pole SPA (Chimney Dia=1400mm) Drawing No. PDW/TC-892	SPA	16	16	Rs.		Rs.	
ii.	Steel Tubular Pole SPD ( Chimney Dia=1900mm) Drawing No. PDW/TC-893	SPD	04	04	Rs.		Rs.	
iii.	Steel Tubular Pole SPG (Chimney Dia=2000mm) Drawing No. PDW/TC-894	SPG	06	06	Rs.		Rs.	
<b>Total 2(B)</b>							<b>Rs.</b>	

<b>3. ERECTION OF TOWERS:</b>								
<b>S.No</b>	<b>Description</b>							
	Transportation / Shifting of tower material from Regional Store HESCO Hyderabad / Jamshoro to Site Camp / Site of Work and Erection of following Type Poles along with welding of anchor nut bolts of tubular poles. Also Marking the number of location on each tower/ Pole with luminous synthetic metallic enamel paint.							
<b>S.No</b>	<b>Description</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate</b>		<b>Amount</b>		
i.	Steel Tublar Pole SPA	No.	16	Rs.		Rs.		
ii.	Steel Tublar Pole SPD	No.	04	Rs.		Rs.		

iii.	Steel Tublar Pole SPG	No.	06	Rs.		Rs.	
<b>Total of (3)</b>						Rs.	

<b>4. STRINGING WORK:</b>							
S.No	Description						
	Transportation / Shifting of stringing material from Regional Store Hyderabad / Jamshoro to site camp/ site of work, for stringing & Sagging of 6 Nos. Greely conductor including earth wire and installation of Disc Insulators Assemblies, S.S fitting, S.T fitting, S.B. dampers, jumpers, repair sleeves and PG clamps completed in all respects.						
S.No	Description	Unit	Qty	Unit Rate		Total Amount	
i.	Stringing Work of 06 No. AAAC Greely Conductors & 01 No. 9mm Earth wire in all respect . (All allied work including installation of disc insulators , assemblies etc)	/Km	3.8	Rs		Rs	
<b>Total of (4)</b>						Rs	
<b>Total of (1+2A+2B+3+4)</b>						Rs	
<b>Total Amount in Words:</b> _____							
<b>15% Sind Sales Tax (SRB)</b>						Rs	
<b>Grand Total</b>						Rs	
<b>Grand Total Amount in Words:</b> _____							
<b>Sd/- Sub Engineer Civil TLC Division GSC HESCO</b>		<b>Sd/- Sub Divisional Officer 1<sup>st</sup> Sub Division TLC GSC HESCO</b>			<b>Sd/- Executive Engineer TLC Division GSC HESCO</b>		

# Technical Proposal

- **Site Organization**
- **Method Statement**
- **Mobilization Schedule**
- **Construction Schedule**
- **Equipment**

## Site Organization

## Method Statement

## **Mobilization Schedule**

In accordance with the Particular Conditions, Sub-Clause 4.1, the Contractor shall not carry out mobilization to Site unless the Engineer gives consent.

## **Construction Schedule**

## Form EQU: Equipment

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder.

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

Omit the following information for equipment owned by the Bidder.

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

## **SECTION VII: STANDARD BIDDING FORMS**

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# Letter of Bid – FORM OF BID

*Note: All italicized text is to help Bidders in preparing this form.*

**Date of this Bid submission:** *[insert date (as day, month and year) of Bid submission]*

**Tender No.:**

**Name of Project.:** -----  
-----

Alternative No.:

**To:**  
Project Director GSC HESCO  
Water Wing Colony  
Hussain abad Hyderabad.

We, the undersigned Bidder, hereby submit the second part of our Bid, the Financial Proposal

In submitting our Financial Proposal we make the following additional declarations:

- (a) **Bid Validity Period:** Our Bid shall be valid for the period specified in BDS **18.1** (as amended, if applicable) from the date fixed for the bid submission deadline specified in BDS **24.1** (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (b) **Total Price:** The total price of our Bid is: \_\_\_\_\_ in words: \_\_\_\_\_
- (c) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

- (d) **Binding Contract:** We understand that this Bid, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed.

**Name of the Bidder:\***

**Name of the person duly authorized to sign the Bid on behalf of the Bidder: \*\***

**Title of the person signing the Bid:**

**Signature of the person named above:**

**Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

\*: In the case of the Bid submitted by a Joint Venture specify the name of the Joint Venture as Bidder.

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder. The power of attorney shall be attached with the Bid Schedules.

# FORM (ELI 1)

## Bidder Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date of Bid Submission:

Tender No.: GSC-----/-----

Alternative No.:

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Name <i>[insert Bidder's legal name]</i>
2. In case of JV, legal name of each member : <i>[insert legal name of each member in JV]</i>
3. Bidder's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Bidder's year of registration: <i>[insert Bidder's year of registration]</i>
5. Bidder's Address in country of registration: <i>[insert Bidder's legal address in country of registration]</i>
6. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above. <input type="checkbox"/> In case of JV, JV agreement, in accordance with ITB 3.3. <input type="checkbox"/> Establishing that the Bidder is not under the supervision of the Procuring agency/Employer[ in case of subsidiaries]
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

# FORM (ELI2)

## Bidder's JV Members Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Bidder and for each member of a Joint Venture]].*

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

RFB No.: *[insert number of RFB process]*

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

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1. Bidder's Name: <i>[insert Bidder's legal name]</i>
2. Bidder's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Bidder's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Bidder's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Bidder's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Bidder's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

# Personnel

## Form PER -1

### Contractor's Representative and Key Personnel Schedule

Bidders should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Contractor' Representative and Key Personnel

1.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
2.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
3.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>
4.	<b>Title of position:</b>	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i>

	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>5.</b>	<b>Title of position:</b>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
<b>6.</b>	<b>Title of position:</b> <i>[insert title]</i>	
	<b>Name of candidate</b>	
	<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	<b>Time commitment for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

**Form PER-2:  
Resume and Declaration  
Contractor's Representative and Key Personnel**

<b>Name of Bidder</b>
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<b>Position [#1]: [title of position from Form PER-1]</b>
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<b>Personnel information</b>	<b>Name:</b>	<b>Date of birth:</b>
	<b>Address:</b>	<b>E-mail:</b>
	<b>Professional qualifications:</b>	
	<b>Academic qualifications:</b>	
	<b>Language proficiency:</b> <i>[language and levels of speaking, reading and writing skills]</i>	
<b>Details</b>	<b>Address of Procuring agency/Employer:</b>	
	<b>Telephone:</b>	<b>Contact (manager / personnel officer):</b>
	<b>Fax:</b>	
	<b>Job title:</b>	<b>Years with present Procuring agency/Employer:</b>

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>Project</b>	<b>Role</b>	<b>Duration of involvement</b>	<b>Relevant experience</b>
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

## Declaration

I, the undersigned [ *insert either “Contractor’s Representative” or “Key Personnel” as applicable* ] , certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

<b>Commitment</b>	<b>Details</b>
<b>Commitment to duration of contract:</b>	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>
<b>Time commitment:</b>	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Bid evaluation;
- (b) result in my disqualification from participating in the Bid;
- (c) result in my dismissal from the contract.

**Name of Contractor’s Representative or Key Personnel:** *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_

**Date: (day month year):** \_\_\_\_\_

**Form (CON – 1)**

**Pending Litigation (Last 5 Years)**

Each Bidder or member of a JV must fill in this form

<b>Pending Litigation</b>					
<b>Year</b>	<b>Name of other Party(ies)</b>	<b>Matter of Dispute</b>	<b>Litigation Where (Court/arbitration)</b>	<b>Amount involved</b>	<b>Value of pending claim as a % of net worth</b>

**Signature and Seal of the bidder:**

# Financial Situation

## Form FIN – 3.1:

### Financial Situation and Performance

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ICB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

#### 1. Financial data

Type of Financial information in (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, PKR equivalent)				
	Year 1	Year 2	Year 3		
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\*Refer to ITB 16 for the exchange rate

## 2. Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (PKR)
1		
2		
3		

## 2. Financial documents

The Bidder and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant to Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Bidder or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements for the \_\_\_\_\_ years required above; and complying with the requirements

**Form FIN – 3.2:**

**Average Annual Construction Turnover**

Bidder's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ICB/NCB No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

		Annual turnover data (construction only)	
Year	Amount Currency	Exchange rate	PKR equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria.

### Form FIN – 3.3:

#### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section (Evaluation and Qualification Criteria)

Financial Resources		
No.	Source of financing	Amount
1		
2		
3		

## Form (FIN –3.4)

### Current Contract Commitments / Works in Progress

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

<b>Current Contract Commitments</b>					
<b>No.</b>	<b>Name of Contract</b>	<b>Procuring agency/Employer's Contact Address, Tel, Fax</b>	<b>Value of Outstanding Work [PKR Equivalent]</b>	<b>Estimated Completion Date</b>	<b>Average Monthly Invoicing Over Last Six Months [PKR/month]</b>
1					
2					
3					
4					
5					

## Form EXP – (1): Construction Experience

Note: To be filled in accordance with criteria described in clause IB3.1 (b) Section-II of the bidding documents

(For a period of last 7 years)

Name of project: \_\_\_\_\_

Order Placed by (Full address of Employer)	Order No. and Date	Description of works	Value of Order	Date of Completion as per Contract	Date of actual completion	Remarks indicating reasons for late completion, if any	Has the project been running satisfactorily? (Attach a certificate from the Employer)	Contact Person alongwith Telephone No. Fax No. and email address

Signature & Seal of Bidder: \_\_\_\_\_

Place: \_\_\_\_\_

Date: \_\_\_\_\_

# Appendix-A

## Form of Bid Security

**(Bank Guarantee)**

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[Purchaser to insert its name and address]*

**No.:** *[Purchaser to insert reference number for the Request for Bids]*

**Alternative No.:** *[Insert identification No if this is a Bid for an alternative]*

**Date:** *[Insert date of issue]*

**BID GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_\_\_\_\_ *[insert name of the Bidder, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ under Request for Bids No. \_\_\_\_\_ ("the RFB").

Furthermore, we understand that, according to the Beneficiary's conditions, Bids must be supported by a Bid guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- (a) has withdrawn its Bid during the period of Bid validity set forth in the Applicant's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Applicant, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the Contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such Contract agreement; or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

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*[Signature(s)]*

*Note: All italicized text is for use in preparing this form and shall be deleted from the final product.*

## Appendix-B Form of Bid-Securing Declaration

*[The Bidder shall fill in this Form in accordance with the instructions indicated.]*

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

No.: *[number of bidding process]*

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

To: *[complete name of Procuring agency/Employer]*

We, the undersigned, declare that:

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

We accept that we will be blacklisted and henceforth cross debarred for participating in respective category of public procurement proceedings for a period of (not more than) six months, if fail to abide with a bid securing declaration, however without indulging in corrupt and fraudulent practices, if we are in breach of our obligation(s) under the Bid conditions, because we:

- (a) have withdrawn our Bid during the period of Bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Procuring agency/Employer during the period of Bid validity, (i) fail or refuse to sign the Contract; or (ii) fail or refuse to furnish the Performance Security (or guarantee), if required, in accordance with the ITB.

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

Name of the Bidder\* \_\_\_\_\_

Name of the person duly authorized to sign the Bid on behalf of the Bidder\*\* \_\_\_\_\_

Title of the person signing the Bid \_\_\_\_\_

Signature of the person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\*: In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder

\*\* : Person signing the Bid shall have the power of attorney given by the Bidder attached to the Bid

*[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all members to the Joint Venture that submits the Bid.]*

# Appendix-C

## Formula for Price Adjustment

*[Note to Procuring agency/Employer: It is recommended that in the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved. When finalizing the contract document, ensure that the finalized Schedule of Cost Indexation is attached to the Contract Agreement.]*

- a) Price Adjustment/ escalation shall not be applicable on Civil, Mechanical and Electrical projects /contracts having contract life less than 365 days from the date of the signing of the contract.
- b) Procuring Agency/Employer is advised not to change any provisions hereof unless otherwise stated by the Authority.
- c) No method, other than given in this formula will be applicable to compute the price adjustment.
- d) This document will be applicable only for Price Adjustment in local currency (Pak. Rs.). Price Adjustment in foreign currency is not allowed.
- e) Price Adjustment formula and corresponding references to be inferred for price adjustment shall be agreed and firmed up before signing of the contract. Procuring agency and contractor shall firm up the weightages and co-efficient for respective items before signing of the contract and there shall be no change permissible in the weightages after signing of the contract.
- f) For imported plant/ equipment and materials quoted in local currency (Pak. Rs.), foreign currency, exchange rates shall be fixed at the respective interbank currency exchange rates, 28 days prior to the tender opening date. The change in foreign currency exchange rate will be applicable to the foreign currency component stated in the Letter of Credit established by the Contractor or his Vendor.
- g) This procedure is to assist the Procuring agency/Employer and bidder for the preparation of provisions for price adjustment in their bidding / contract documents. All the coefficients of the price adjustment formula shall be specified in the bidding document at the time of advertisement.

*[The formulae for price adjustment shall be of the following general type:]*

$$P_n = A + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{E_n}{E_o} + \dots$$

where,

“P<sub>n</sub>” is the Price Adjustment factor for the work carried out in the period “n”.

“A” is a constant or the Non-Adjustable Portion of the Price Adjustment Factor to be specified in Appendix-C to Bid, representing the Non-Adjustable Portion of the Contract Price.

“b, c, d.....” are Coefficients or weightages of the order of 0.xx (i.e., fractions rounded off to two decimals) for each specified element of adjustment in the Contract. The sum of A, b, c, d, etc., shall be one.

“Ln”, “En”, “Mn”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 28 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“Lo”, “Eo”, “Mo”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

1. Construction schedule should be provided by the contractor as required in the Contract. Price Adjustment shall be payable in full for the original scheduled completion period.
2. In the event the completion of contract exceeds the original scheduled period:
  - 2.1 In case of default on the part of the contractor causing delay in original scheduled completion, the rate of Price Adjustment will be frozen at the original scheduled date of completion; however Price Adjustment will be applicable till actual completion. While computing Price Adjustment beyond the scheduled completion period, in the event the rate is reduced, then that reduced rate will be applied.
3. The Price Adjustment will be payable in full for the extended period if the contractor has been granted an extension of time for no fault on the part of the contractor, duly approved by the Employer.
4. Unless specifically stated otherwise in the contract, the basis for compensation will be only those elements, which are specifically listed as specified items in the tender documents. This list will specify the elements for Civil, Electrical, Mechanical, Sanitary, HVAC, etc., separately.
5. Formula for Price Adjustment provided herein will be applicable for all the contracts such as Civil, Electrical, Mechanical, etc.
6. There shall be no Price Adjustment for the elements which the Employer has either supplied free of cost or at fixed prices as well as for those elements for which an umbrella *ex gratia* or escalation cover is provided by the Government through an Executive Order or Statutory Regulatory Order (SRO).

### **Weightages of Specified Items**

Each of the cost elements, having cost impact of five (05) percent or higher can be selected for adjustment.

In determining the weightages, the following procedure shall be adopted:

- a) Base Date Price alone of an element based on market rate shall be considered excluding cost of construction/ installation, overheads and profit.
- b) Engineer's Estimate shall be prepared for complete project.
- c) Appropriate Rate Analysis of the Engineer's Estimate shall be made to determine costs of the basic elements.
- d) For such cost elements having various types of a particular element, individual cost of such family of the element used in the project to be determined and added to work out the element cost. (Grade-40 and Grade-60 steel shall be treated under same category).
- e) Each cost element determined as above, shall be divided by the total amount of Engineer's Estimate to determine various weightages.

### **Weightage of Fixed Portion**

Weightage of fixed portion (Non-adjustable portion of the estimated cost of the contract), shall be determined as under:

- a) First the weightages of all the cost elements having value of five (5) percent or more to be added up to see whether the total is 75 percent or less. In that case the total is to be subtracted from one (01) to determine the weightage of the fixed portion,
- b) In case total weightage of the cost elements including HSD and labour exceeds 75 percent, the element(s) having lowest weightage(s) other than HSD and labour, shall be excluded in considering the adjustable costs elements.
- c) Fixed portion shall be 25 percent and in case the fixed portion exceeds 25 percent it shall be supported by calculations attached with the bidding documents.
- d) Sum of fixed portion and weightages b, c, d, ....etc., of the adjustable portion shall always be one (01).

### **Base Date Price**

The base date price (or base date index) of any element shall be the price of the element for the month on the day falling 28 days prior to the last day for submission of bids.

### **Current Date Price**

The current date price (or current date index) of any element shall be the price of the element for the month falling on the day 28 days prior to the last day of the period to which the particular Payment Certificate relates.

### **Sources of Prices**

The prices of elements subject to Price Adjustment shall be to the extent possible as given in the Statistical Bulletins published by Federal Bureau of Statistics (FBS), Statistical Division

Government of Pakistan. Statutory notifications and official price from public sector organizations, where available, may be used at the option of the Employer. The source for prices of High Speed Diesel (HSD) shall be either Statistical Bulletins or Pakistan State Oil (PSO) or Oil and Gas Regulatory Authority (OGRA). However, for a particular adjustable element, the same source should be used throughout the currency of contract as also stipulated in the tender documents before issuing the tender documents.

The Base Date Prices and Current Date Prices of the specified elements shall be obtained from the sources specified in the contract.

### **Method for payment of bills**

The billed amount of the Works for each calendar month will be obtained from the checked bills submitted by the Contractor. In case the billed amount is for more than one month, the amount of the bill shall be segregated for actual workdone in each month.

### **Coefficient or Weightages**

- a) The coefficient for each specified element shall be calculated and given in the bidding/tender documents. The coefficient for each specified adjustable element shall be determined by the user proportionate to its ratio in the total amount of the Engineer's Estimate, in accordance with the prescribed procedure. The sum of these coefficients shall form the adjustable portion of the Contract, which shall not exceed 0.75.
- b) Coefficients for each adjustable item shall be agreed by both parties and shall be fixed and locked at the time of the signing of the contract and shall remain constant during the currency of the contract.

### **Price Adjustment for Lump Sum Contract**

- a) Formula of Price Adjustment shall be used in determining Price Adjustment for contracts having detailed breakdown of cost. However, when a contract is assigned on lump sum basis without detailed breakdown of quantities and cost, Price Adjustment for the Specified Elements in the contract will be computed as follows:

$$\text{Increase/ Decrease in Cost (Price Adjustment Factor)} = \frac{\text{Current Date Price} - \text{Base Date Price}}{\text{Base Date Price}}$$

- b) If the resulting Price Adjustment Factor is positive (+ve), the price should be added to the contractor's payable amount. If the result is negative (-ve), the price should be subtracted from the payable amount.
- c) The executed quantities of the elements subject to Price Adjustment can be obtained from the actual measurement or from certified invoice of the contractor or any other mode agreed between the parties which shall be stipulated in the contract.

## **Section VIII. General Conditions (GC)**

**Red Book:**

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The Conditions of Contract are the “General Conditions” which form part of the “Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (“Red book”) Second edition 2017” published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC) and the following “Particular Conditions” which shall complement the General Conditions of the Contract.

An original copy of the above FIDIC publication i.e. “*Conditions of Contract for Building and Engineering Works Designed by the Employer*” must be obtained from FIDIC.

**International Federation of Consulting Engineers (FIDIC)**

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FIDIC code: ISBN13: 978-2-88432-084-9

## 1. General Provisions

### 1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated, except where the context requires otherwise:

**1.1.1 Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution of the Works in accordance with the Contract.

**1.1.2 Advance Payment Certificate** means a Payment Certificate issued by the Engineer for advance payment under Sub-Clause 14.2.2.

**1.1.3 Advance Payment Guarantee** means the guarantee under Sub-Clause 14.2.1.

**1.1.4 Base Date** means the date 28 days before the latest date for submission of the Tender.

**1.1.5 Bill of Quantities** means the document entitled bill of quantities included in the Schedules.

**1.1.6 Claim** means a request or assertion by one Party to the other Party for an entitlement or relief.

**1.1.7 Commencement Date** means the date stated in the Engineer's Notice under Sub-Clause 8.1.

**1.1.8 Compliance Verification System** means the system prepared by the Contractor under Sub-Clause 4.9.2.

**1.1.9 Conditions of Contract** means these General Conditions as amended by the Particular Conditions.

**1.1.10 Contract** means the Contract Agreement, Letter of Acceptance, Letter of Tender, and other listed documents.

**1.1.11 Contract Agreement** means the agreement entered into by both Parties under Sub-Clause 1.6.

**1.1.12 Contract Data** means the pages entitled Contract Data.

**1.1.13 Contract Price** means the price defined in Sub-Clause 14.1.

**1.1.25 day** means a calendar day.

**1.1.26 Daywork Schedule** means the schedule included in the Contract for daywork payments.

**1.1.27 Defects Notification Period** means the period stated in Contract Data.

**1.1.28 Delay Damages** means damages under Sub-Clause 8.8.

**1.1.29 Dispute** means any situation defined under Clause 21.

**1.1.30 Drawings** means the drawings included in the Contract.

**1.1.31 Employer** means the person named in Contract Data.

**1.1.32 Employer's Equipment** means equipment made available under Sub-Clause 2.6.

**1.1.33 Employer's Personnel** means the Engineer and other Employer staff.

**1.1.34 Employer-Supplied Materials** means materials supplied under Sub-Clause 2.6.

**1.1.35 Engineer** means the person appointed by the Employer.

**1.1.36 Engineer's Representative** means the person appointed under Sub-Clause 3.3.

**1.1.37 Exceptional Event** means an event defined in Sub-Clause 18.1.

**1.1.38 Extension of Time** means an extension under Sub-Clause 8.5.

**1.1.39 FIDIC** means the International Federation of Consulting Engineers.

**1.1.40 Final Payment Certificate** means the certificate issued under Sub-Clause 14.13.

**1.1.41 Final Statement** means the statement under Sub-Clause 14.11.2.

**1.1.42 Foreign Currency** means any currency other than Local Currency.

**1.1.43 General Conditions** means this document as published by FIDIC.

- 1.1.44 Goods** means Contractor's Equipment, Materials, Plant and Temporary Works.
- 1.1.45 Interim Payment Certificate** means a certificate issued under Sub-Clause 14.6.
- 1.1.46 Joint Venture** means a joint venture or consortium.
- 1.1.47 JV Undertaking** means the undertaking submitted with the Tender.
- 1.1.48 Key Personnel** means positions stated in the Specification.
- 1.1.49 Laws** means all applicable legislation.
- 1.1.50 Letter of Acceptance** means the Employer's formal acceptance.
- 1.1.51 Letter of Tender** means the Contractor's offer.
- 1.1.52 Local Currency** means the currency of the Country.
- 1.1.53 Materials** means things intended to form part of the Permanent Works.
- 1.1.54 month** means a calendar month.
- 1.1.55 No-objection** means the Engineer has no objection.
- 1.1.56 Notice** means a written communication identified as a Notice.
- 1.1.57 Notice of Dissatisfaction** means a Notice given under Sub-Clause 3.7 or 21.4.
- 1.1.58 Part** means a part of the Works deemed taken over.
- 1.1.59 Particular Conditions** means Part A and Part B.
- 1.1.60 Party** means the Employer or Contractor.
- 1.1.61 Payment Certificate** means a certificate issued under Clause 14.
- 1.1.62 Performance Certificate** means the certificate under Sub-Clause 11.9.
- 1.1.63 Performance Security** means the security under Sub-Clause 4.2.
- 1.1.64 Permanent Works** means the works of a permanent nature.
- 1.1.65 Plant** means apparatus and equipment forming part of the Works.
- 1.1.66 Programme** means the detailed time programme under Sub-Clause 8.3.
- 1.1.67 Provisional Sum** means a sum specified under Sub-Clause 13.4.
- 1.1.68 QM System** means the Contractor's quality management system.
- 1.1.69 Retention Money** means retention under Sub-Clause 14.3.
- 1.1.70 Review** means examination by the Engineer.
- 1.1.71 Schedules** means the documents attached to the Letter of Tender.
- 1.1.72 Schedule of Payments** means the schedule showing payment amounts.
- 1.1.73 Section** means a part of the Works specified in Contract Data.
- 1.1.74 Site** means the places where the Works are executed.
- 1.1.75 Special Provisions** means Part B of the Particular Conditions.
- 1.1.76 Specification** means the document specifying the Works.
- 1.1.77 Statement** means a statement submitted under Clause 14.
- 1.1.78 Subcontractor** means any person appointed as subcontractor.
- 1.1.79 Taking-Over Certificate** means a certificate issued under Clause 10.
- 1.1.80 Temporary Works** means all temporary works required.
- 1.1.81 Tender** means the Letter of Tender and related documents.
- 1.1.82 Tests after Completion** means tests stated in the Specification.
- 1.1.83 Tests on Completion** means tests under Clause 9.
- 1.1.84 Time for Completion** means the time stated in Contract Data.
- 1.1.85 Unforeseeable** means not reasonably foreseeable by the Base Date.
- 1.1.86 Variation** means any change instructed under Clause 13.
- 1.1.87 Works** means the Permanent and Temporary Works.
- 1.1.88 year** means 365 days.

## **1.2 Interpretation**

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders; and “he”, “his” and “himself” shall be read as “he/she”, “his/her” and “himself/herself” respectively;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) “may” means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
- (f) “shall” means that the Party or person referred to has an obligation under the Contract to perform the duty referred to;
- (g) “consent” means that the Employer, the Contractor or the Engineer (as the case may be) agrees to or gives permission for, the requested matter;
- (h) “including”, “include” and “includes” shall be interpreted as not being limited to, or qualified by, the stated items that follow;
- (i) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and other legal entities); and
- (j) “execute the Works” or “execution of the Works” means the construction and completion of the Works and the remedying of any defects (and shall be deemed to include design to the extent, if any, specified in the Contract).

In any list in these Conditions, where the second-last item of the list is followed by “and” or “or” or “and/or” then all of the list items going before this item shall also be read as if they are followed by “and” or “or” or “and/or” (as the case may be).

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

### **1.3 Notices and Other Communications**

Wherever these Conditions provide for the giving of a Notice (including a Notice of Dissatisfaction) or the issuing, providing, sending, submitting or transmitting of another type of communication (including acceptance, acknowledgement, advising, agreement, approval, certificate, Claim, consent, decision, determination, discharge, instruction, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, Statement, statement, submission or any other similar type of communication), the Notice or other communication shall be in writing and:

- (a) shall be:
    - (i) a paper-original signed by the Contractor’s Representative, the Engineer, or the authorised representative of the Employer (as the case may be); or
    - (ii) an electronic original generated from any of the systems of electronic transmission stated in the Contract Data (if not stated, system(s) acceptable to the Engineer), where the electronic original is transmitted by the electronic address uniquely assigned to each of such authorised representatives,
- or both, as stated in these Conditions; and

- (b) if it is a Notice, it shall be identified as a Notice. If it is another form of communication, it shall be identified as such and include reference to the provision(s) of the Contract under which it is issued where appropriate;
- (c) delivered by hand (against receipt), or sent by mail or courier (against receipt), or transmitted using any of the systems of electronic transmission under sub-paragraph (a)(ii) above; and
- (d) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However, if the recipient gives a Notice of another address, all Notices and other communications shall be delivered accordingly after the sender receives such Notice.

Where these Conditions state that a Notice or NOD or other communication is to be delivered, given, issued, provided, sent, submitted or transmitted, it shall have effect when it is received (or deemed to have been received) at the recipient's current address under sub-paragraph (d) above. An electronically transmitted Notice or other communication is deemed to have been received on the day after transmission, provided no non-delivery notification was received by the sender.

All Notices, and all other types of communication as referred to above, shall not be unreasonably withheld or delayed.

When a Notice or NOD or certificate is issued by a Party or the Engineer, the paper and/or electronic original shall be sent to the intended recipient and a copy shall be sent to the Engineer or the other Party, as the case may be. All other communications shall be copied to the Parties and/or the Engineer as stated under these Conditions or elsewhere in the Contract.

#### **1.4 Law and Language**

The Contract shall be governed by the law of the country (or other jurisdiction) stated in the Contract Data (if not stated, the law of the Country), excluding any conflict of law rules.

The ruling language of the Contract shall be that stated in the Contract Data (if not stated, the language of these Conditions). If there are versions of any part of the Contract which are written in more than one language, the version which is in the ruling language shall prevail.

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

#### **1.5 Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is any conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement;
- (b) the Letter of Acceptance;
- (c) the Letter of Tender;
- (d) the Particular Conditions Part A – Contract Data;
- (e) the Particular Conditions Part B – Special Provisions;
- (f) these General Conditions;
- (g) the Specification;
- (h) the Drawings;
- (i) the Schedules;

- (j) the JV Undertaking (if the Contractor is a JV); and
- (k) any other documents forming part of the Contract.

If a Party finds an ambiguity or discrepancy in the documents, that Party shall promptly give a Notice to the Engineer, describing the ambiguity or discrepancy. After receiving such Notice, or if the Engineer finds an ambiguity or discrepancy in the documents, the Engineer shall issue the necessary clarification or instruction.

### **1.6 Contract Agreement**

The Parties shall sign a Contract Agreement within 35 days after the Contractor receives the Letter of Acceptance, unless they agree otherwise. The Contract Agreement shall be based on the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

If the Contractor comprises a JV, the authorised representative of each member of the JV shall sign 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 of the Contract 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 the Party's right to any moneys due, or to become due, under the Contract without the prior agreement of the other Party.

### **1.8 Care and Supply of Documents**

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

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until submitted to the Engineer. The Contractor shall supply to the Engineer one paper-original, one electronic copy (in the form as stated in the Specification or, if not stated, a form acceptable to the Engineer) and additional paper copies (if any) as stated in the Contract Data of each of the Contractor's Documents.

The Contractor shall keep at all times, on the Site, a copy of:

- (a) the Contract;
- (b) the records under Sub-Clause 6.10 [Contractor's Records] and Sub-Clause 20.2.3 [Contemporary records];
- (c) the publications (if any) named in the Specification;
- (d) the Contractor's Documents;
- (e) the Drawings; and
- (f) Variations, Notices and other communications given under the Contract.

The Employer's Personnel shall have right of access to all these documents during all normal working hours, or as otherwise agreed with the Contractor.

If a Party (or the Engineer) becomes aware of an error or defect (whether of a technical nature or otherwise) in a document which was prepared for use in the execution of the Works, the Party (or the Engineer) shall promptly give a Notice of such error or defect to the other Party (or to the Parties).

### **1.9 Delayed Drawings or Instructions**

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

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the Notice with supporting details, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

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

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

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

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

- (a) apply throughout the actual or intended operational 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 (and such other design documents, if any) for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works;
- (c) in the case of Contractor's Documents (and such other design documents, if any) which are in the form of electronic or digital files, computer programs and other software, permit their use on any computer on the Site and/or at the locations of the Employer and the Engineer and/or at other places as envisaged by the Contract; and
- (d) in the event of termination of the Contract:
  - (i) under Sub-Clause 15.2 [Termination for Contractor's Default], entitle the Employer to copy, use and communicate the Contractor's Documents (and other design documents made by or for the Contractor, if any); or
  - (ii) under Sub-Clause 15.5 [Termination for Employer's Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 18.5 [Optional Termination], entitle the Employer to copy, use and communicate the Contractor's Documents for which the Contractor has received payment

for the purpose of completing the Works and/or arranging for any other entities to do so.

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

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

As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification and Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at the Contractor's cost, copy, use and communicate these documents for the purposes of the Contract.

These documents (in whole or in part) shall not, without the Employer's prior consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

### **1.12 Confidentiality**

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

The Contractor shall treat all documents forming the Contract as confidential, except to the extent necessary to carry out the Contractor's obligations under the Contract. The Contractor shall not publish, permit to be published, or disclose any particulars of the Contract in any trade or technical paper or elsewhere without the Employer's prior consent.

The Employer and the Engineer shall treat all information provided by the Contractor and marked "confidential", as confidential. The Employer shall not disclose or permit to be disclosed any such information to third parties, except as may be necessary when exercising the Employer's rights under Sub-Clause 15.2 [Termination for Contractor's Default].

A Party's obligation of confidentiality under this Sub-Clause shall not apply where the information:

- (a) was already in that Party's possession without an obligation of confidentiality before receipt from the other Party;
- (b) becomes generally available to the public through no breach of these Conditions; or
- (c) is lawfully obtained by the Party from a third party which is not bound by an obligation of confidentiality.

### **1.13 Compliance with Laws**

The Contractor and the Employer shall, in performing the Contract, comply with all applicable Laws. Unless otherwise stated in the Specification:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning or building permit or similar permits, permissions, licences and/or approvals for the Permanent Works, and any other permits, permissions, licenses and/or approvals described in the Specification as having been (or being) obtained by the Employer. The Employer shall indemnify and hold the Contractor harmless against and from the consequences of any delay or failure to do so, unless the failure is caused by the Contractor's failure to comply with sub-paragraph (c) below;

(b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all other permits, permissions, licences and/or approvals, as required by the Laws in relation to the execution of the Works. The Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so unless the failure is caused by the Employer's failure to comply with Sub-Clause 2.2 [Assistance];

(c) within the time(s) stated in the Specification the Contractor shall provide such assistance and all documentation, as described in the Specification or otherwise reasonably required by the Employer, so as to allow the Employer to obtain any permit, permission, licence or approval under sub-paragraph (a) above; and

(d) the Contractor shall comply with all permits, permissions, licences and/or approvals obtained by the Employer under sub-paragraph (a) above.

If, having complied with sub-paragraph (c) above, the Contractor suffers delay and/or incurs Cost as a result of the Employer's delay or failure to obtain any permit, permission, licence or approval under sub-paragraph (a) above, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

If the Employer incurs additional costs as a result of the Contractor's failure to comply with:

- (i) sub-paragraph (c) above; or
- (ii) sub-paragraph (b) or (d) above, provided that the Employer shall have complied with Sub-Clause 2.2 [Assistance],

the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of these costs by the Contractor.

#### **1.14 Joint and Several Liability**

If the Contractor is a Joint Venture:

- (a) the members of the JV shall be jointly and severally liable to the Employer for the performance of the Contractor's obligations under the Contract;
- (b) the JV leader shall have authority to bind the Contractor and each member of the JV; and
- (c) neither the members nor (if known) the scope and parts of the Works to be carried out by each member nor the legal status of the JV shall be altered without the prior consent of the Employer (but such consent shall not relieve the altered JV from any liability under sub-paragraph (a) above).

#### **1.15 Limitation of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under:

- (a) Sub-Clause 8.8 [Delay Damages];
- (b) sub-paragraph (c) of Sub-Clause 13.3.1 [Variation by Instruction];
- (c) Sub-Clause 15.7 [Payment after Termination for Employer's Convenience];
- (d) Sub-Clause 16.4 [Payment after Termination by Contractor];
- (e) Sub-Clause 17.3 [Intellectual and Industrial Property Rights];
- (f) the first paragraph of Sub-Clause 17.4 [Indemnities by Contractor];

and

(g) Sub-Clause 17.5 [Indemnities by Employer].

The total liability of the Contractor to the Employer under or in connection with the Contract, other than:

- (i) under Sub-Clause 2.6 [Employer-Supplied Materials and Employer's Equipment];
- (ii) under Sub-Clause 4.19 [Temporary Utilities];
- (iii) under Sub-Clause 17.3 [Intellectual and Industrial Property Rights]; and
- (iv) under the first paragraph of Sub-Clause 17.4 [Indemnities by Contractor],

shall not exceed the sum stated in the Contract Data or (if a sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the defaulting Party.

## **1.16 Contract Termination**

Subject to any mandatory requirements under the governing law of the Contract, termination of the Contract under any Sub-Clause of these Conditions shall require no action of whatsoever kind by either Party other than as stated in the Sub-Clause.

## **2 The Employer**

### **2.1 Right of Access to the Site**

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

If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, those parts of the Site within such times as may be required to enable the Contractor to proceed in accordance with the Programme or, if there is no Programme at that time, the initial programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

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 applicable Contractor's Documents, the Contractor shall not be entitled to such EOT and/or Cost Plus Profit.

### **2.2 Assistance**

If requested by the Contractor, the Employer shall promptly provide reasonable assistance to the Contractor so as to allow the Contractor to obtain:

- (a) copies of the Laws of the Country which are relevant to the Contract but are not readily available; and

(b) any permits, permissions, licences or approvals required by the Laws of the Country (including information required to be submitted by the Contractor in order to obtain such permits, permissions, licences or approvals):

- (i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws];
- (ii) for the delivery of Goods, including clearance through customs; and
- (iii) for the export of Contractor's Equipment when it is removed from the Site.

### **2.3 Employer's Personnel and Other Contractors**

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors (if any) on or near the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation]; and
- (b) comply with the same obligations which the Contractor is required to comply with under sub-paragraphs (a) to (e) of Sub-Clause 4.8 [Health and Safety Obligations] and under Sub-Clause 4.18 [Protection of the Environment].

The Contractor may require the Employer to remove (or cause to be removed) any person of the Employer's Personnel or of the Employer's other contractors (if any) who is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice.

### **2.4 Employer's Financial Arrangements**

The Employer's arrangements for financing the Employer's obligations under the Contract shall be detailed in the Contract Data.

If the Employer intends to make any material change (affecting the Employer's ability to pay the part of the Contract Price remaining to be paid at that time as estimated by the Engineer) to these financial arrangements, or has to do so because of changes in the Employer's financial situation, the Employer shall immediately give a Notice to the Contractor with detailed supporting particulars.

If the Contractor:

- (a) receives an instruction to execute a Variation with a price greater than ten percent (10%) of the Accepted Contract Amount, or the accumulated total of Variations exceeds thirty percent (30%) of the Accepted Contract Amount;
- (b) does not receive payment in accordance with Sub-Clause 14.7 [Payment]; or
- (c) becomes aware of a material change in the Employer's financial arrangements of which the Contractor has not received a Notice under this Sub-Clause,

the Contractor may request and the Employer shall, within 28 days after receiving this request, provide reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the part of the Contract Price remaining to be paid at that time (as estimated by the Engineer).

### **2.5 Site Data and Items of Reference**

The Employer shall have made available to the Contractor for information, before the Base Date, all relevant data in the Employer's possession on the topography of the Site and on sub-surface, hydrological, climatic and environmental conditions at the Site. The Employer shall promptly make available to the Contractor all such data which comes into the Employer's possession after the Base Date.

The original survey control points, lines and levels of reference (the “items of reference” in these Conditions) shall be specified on the Drawings and/or in the Specification or issued to the Contractor by a Notice from the Engineer.

## **2.6 Employer-Supplied Materials and Employer’s Equipment**

If Employer-Supplied Materials and/or Employer’s Equipment are listed in the Specification for the Contractor’s use in the execution of the Works, the Employer shall make such materials and/or equipment available to the Contractor in accordance with the details, times, arrangements, rates and prices stated in the Specification.

## **3 The Engineer**

### **3.1 The Engineer**

The Employer shall appoint the Engineer, who shall carry out the duties assigned to the Engineer in the Contract.

The Engineer shall be vested with all the authority necessary to act as the Engineer under the Contract.

If the Engineer is a legal entity, a natural person employed by the Engineer shall be appointed and authorised to act on behalf of the Engineer under the Contract.

The Engineer (or, if a legal entity, the natural person appointed to act on its behalf) shall be:

- (a) a professional engineer having suitable qualifications, experience and competence to act as the Engineer under the Contract; and
- (b) shall be fluent in the ruling language defined in Sub-Clause 1.4 [Law and Language].

Where the Engineer is a legal entity, the Engineer shall give a Notice to the Parties of the natural person (or any replacement) appointed and authorised to act on its behalf. The authority shall not take effect until this Notice has been received by both Parties. The Engineer shall similarly give a Notice of any revocation of such authority.

### **3.2 Engineer’s Duties and Authority**

Except as otherwise stated in these Conditions, whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall act as a skilled professional and shall be deemed to act for the Employer.

The Engineer shall have no authority to amend the Contract or, except as otherwise stated in these Conditions, to relieve either Party of any duty, obligation or responsibility under or in connection with 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 consent of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions.

There shall be no requirement for the Engineer to obtain the Employer’s consent before the Engineer exercises his/her authority under Sub-Clause 3.7 [Agreement or Determination].

The Employer shall not impose further constraints on the Engineer’s authority.

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

Any acceptance, agreement, approval, check, certificate, comment, consent, disapproval, examination, inspection, instruction, Notice, No-objection, record(s) of meeting, permission, proposal, record, reply, report, request, Review, test, valuation, or similar act (including the absence of any such act) by the Engineer, the Engineer's Representative or any assistant shall not relieve the Contractor from any duty, obligation or responsibility the Contractor has under or in connection with the Contract.

### **3.3 The Engineer's Representative**

The Engineer may appoint an Engineer's Representative and delegate to him/her in accordance with Sub-Clause 3.4 [Delegation by the Engineer] the authority necessary to act on the Engineer's behalf at the Site, except to replace the Engineer's Representative.

The Engineer's Representative (if appointed) shall comply with sub-paragraphs (a) and (b) of Sub-Clause 3.1 [The Engineer] and shall be based at the Site for the whole time that the Works are being executed at the Site. If the Engineer's Representative is to be temporarily absent from the Site during the execution of the Works, an equivalently qualified, experienced and competent replacement shall be appointed by the Engineer, and the Contractor shall be given a Notice of such replacement.

### **3.4 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, by giving a Notice to the Parties, describing the assigned duties and the delegated authority of each assistant. The assignment, delegation or revocation shall not take effect until this Notice has been received by both Parties.

However, the Engineer shall not delegate the authority to:

- (a) act under Sub-Clause 3.7 [Agreement or Determination]; and/or
- (b) issue a Notice to Correct under Sub-Clause 15.1 [Notice to Correct].

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

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the Engineer's Notice of delegation under this Sub-Clause. Any act by an assistant, in accordance with the Engineer's Notice of delegation, shall have the same effect as though the act had been an act of the Engineer. However, if the Contractor questions any instruction or Notice given by an assistant, the Contractor may by giving a Notice refer the matter to the Engineer. The Engineer shall be deemed to have confirmed the assistant's instruction or Notice if the Engineer does not respond, within 7 days after receiving the Contractor's Notice, reversing or varying the assistant's instruction or Notice (as the case may be).

### **3.5 Engineer's Instructions**

The Engineer may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from the Engineer's Representative (if appointed) or an assistant to whom the appropriate authority to give instruction has been delegated under Sub-Clause 3.4 [Delegation by the Engineer].

Subject to the following provisions of this Sub-Clause, the Contractor shall comply with the instructions given by the Engineer or the Engineer's Representative (if appointed) or delegated assistant, on any matter related to the Contract.

If an instruction states that it constitutes a Variation, Sub-Clause 13.3.1 [Variation by Instruction] shall apply.

If not so stated, and the Contractor considers that the instruction:

- (a) constitutes a Variation (or involves work that is already part of an existing Variation);
- or
- (b) does not comply with applicable Laws or will reduce the safety of the Works or is technically impossible

the Contractor shall immediately, and before commencing any work related to the instruction, give a Notice to the Engineer with reasons. If the Engineer does not respond within 7 days after receiving this Notice, by giving a Notice confirming, reversing or varying the instruction, the Engineer shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Engineer's response.

### **3.6 Replacement of the Engineer**

If the Employer intends to replace the Engineer, the Employer shall, not less than 42 days before the intended date of replacement, give a Notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer.

If the Contractor does not respond within 14 days after receiving this Notice, by giving a Notice stating an objection to such replacement with reasons, the Contractor shall be deemed to have accepted the replacement.

The Employer shall not replace the Engineer with a person (whether a legal entity or a natural person) against whom the Contractor has raised reasonable objection by a Notice under this Sub-Clause.

If the Engineer is unable to act as a result of death, illness, disability or resignation (or, in the case of an entity, the Engineer becomes unable or unwilling to carry out any of its duties, other than for a cause attributable to the Employer) the Employer shall be entitled to immediately appoint a replacement by giving a Notice to the Contractor with reasons and the name, address and relevant experience of the replacement. This appointment shall be treated as a temporary appointment until this replacement is accepted by the Contractor, or another replacement is appointed, under this Sub-Clause.

### **3.7 Agreement or Determination**

When carrying out his/her duties under this Sub-Clause, the Engineer shall act neutrally between the Parties and shall not be deemed to act for the Employer.

Whenever these Conditions provide that the Engineer shall proceed under this Sub-Clause to agree or determine any matter or Claim, the following procedure shall apply:

#### **3.7.1 Consultation to reach agreement**

The Engineer shall consult with both Parties jointly and/or separately, and shall encourage discussion between the Parties in an endeavour to reach agreement. The Engineer shall commence such consultation promptly to allow adequate time to comply with the time limit for agreement under Sub-Clause 3.7.3 [Time limits]. Unless otherwise proposed by the

Engineer and agreed by both Parties, the Engineer shall provide both Parties with a record of the consultation.

If agreement is achieved, within the time limit for agreement under Sub-Clause 3.7.3 [Time limits], the Engineer shall give a Notice to both Parties of the agreement, which agreement shall be signed by both Parties. This Notice shall state that it is a “Notice of the Parties’ Agreement” and shall include a copy of the agreement.

If:

- (a) no agreement is achieved within the time limit for agreement under Sub-Clause 3.7.3 [Time limits]; or
- (b) both Parties advise the Engineer that no agreement can be achieved within this time limit

whichever is the earlier, the Engineer shall give a Notice to the Parties accordingly and shall immediately proceed as specified under Sub-Clause 3.7.2 [Engineer’s Determination].

### **3.7.2 Engineer’s Determination**

The Engineer shall make a fair determination of the matter or Claim, in accordance with the Contract, taking due regard of all relevant circumstances.

Within the time limit for determination under Sub-Clause 3.7.3 [Time limits], the Engineer shall give a Notice to both Parties of his/her determination. This Notice shall state that it is a “Notice of the Engineer’s Determination”, and shall describe the determination in detail with reasons and detailed supporting particulars.

### **3.7.3 Time limits**

The Engineer shall give the Notice of agreement, if agreement is achieved, within 42 days or within such other time limit as may be proposed by the Engineer and agreed by both Parties (the “time limit for agreement” in these Conditions), after:

- (a) in the case of a matter to be agreed or determined (not a Claim), the date of commencement of the time limit for agreement as stated in the applicable Sub-Clause of these Conditions;
- (b) in the case of a Claim under sub-paragraph (c) of Sub-Clause 20.1 [Claims], the date the Engineer receives a Notice under Sub-Clause 20.1 from the claiming Party; or
- (c) in the case of a Claim under sub-paragraph (a) or (b) of Sub-Clause 20.1 [Claims], the date the Engineer receives:
  - (i) a fully detailed Claim under Sub-Clause 20.2.4 [Fully Detailed Claim]; or
  - (ii) in the case of a Claim under Sub-Clause 20.2.6 [Claims of continuing effect], an interim or final fully detailed Claim (as the case may be).

The Engineer shall give the Notice of his/her determination within 42 days or within such other time limit as may be proposed by the Engineer and agreed by both Parties (the “time limit for determination” in these Conditions), after the date corresponding to his/her obligation to proceed under the last paragraph of Sub-Clause 3.7.1 [Consultation to reach agreement].

If the Engineer does not give the Notice of agreement or determination within the relevant time limit:

- (i) in the case of a Claim, the Engineer shall be deemed to have given a determination

rejecting the Claim; or

(ii) in the case of a matter to be agreed or determined, the matter shall be deemed to be a Dispute which may be referred by either Party to the DAAB for its decision under Sub-Clause 21.4 [Obtaining DAAB's Decision] without the need for a NOD (and Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination] and sub-paragraph (a) of Sub-Clause 21.4.1 [Reference of a Dispute to the DAAB] shall not apply).

#### **3.7.4 Effect of the agreement or determination**

Each agreement or determination shall be binding on both Parties (and shall be complied with by the Engineer) unless and until corrected under this Sub-Clause or, in the case of a determination, it is revised under Clause 21 [Disputes and Arbitration].

If an agreement or determination concerns the payment of an amount from one Party to the other Party, the Contractor shall include such an amount in the next Statement and the Engineer shall include such amount in the Payment Certificate that follows that Statement.

If, within 14 days after giving or receiving the Engineer's Notice of agreement or determination, any error of a typographical or clerical or arithmetical nature is found:

- (a) by the Engineer: then he/she shall immediately advise the Parties accordingly; or
- (b) by a Party: then that Party shall give a Notice to the Engineer, stating that it is given under this Sub-Clause 3.7.4 and clearly identifying the error. If the Engineer does not agree there was an error, he/she shall immediately advise the Parties accordingly.

The Engineer shall within 7 days of finding the error, or receiving a Notice under sub-paragraph (b) above (as the case may be), give a Notice to both Parties of the corrected agreement or determination. Thereafter, the corrected agreement or determination shall be treated as the agreement or determination for the purpose of these Conditions.

#### **3.7.5 Dissatisfaction with Engineer's determination**

If either Party is dissatisfied with a determination of the Engineer:

- (a) the dissatisfied Party may give a NOD to the other Party, with a copy to the Engineer;
- (b) this NOD shall state that it is a "Notice of Dissatisfaction with the Engineer's Determination" and shall set out the reason(s) for dissatisfaction;
- (c) this NOD shall be given within 28 days after receiving the Engineer's Notice of the determination under Sub-Clause 3.7.2 [Engineer's Determination] or, if applicable, his/her Notice of the corrected determination under Sub-Clause 3.7.4 [Effect of the agreement or determination] (or, in the case of a deemed determination rejecting the Claim, within 28 days after the time limit for determination under Sub-Clause 3.7.3 [Time limits] has expired); and
- (d) thereafter, either Party may proceed under Sub-Clause 21.4 [Obtaining DAAB's Decision].

If no NOD is given by either Party within the period of 28 days stated in sub-paragraph (c) above, the determination of the Engineer shall be deemed to have been accepted by both Parties and shall be final and binding on them.

If the dissatisfied Party is dissatisfied with only part(s) of the Engineer's determination:

- (i) this part(s) shall be clearly identified in the NOD;
- (ii) this part(s), and any other parts of the determination that are affected by such part(s) or rely on such part(s) for completeness, shall be deemed to be severable from the remainder of the determination; and

(iii) the remainder of the determination shall become final and binding on both Parties as if the NOD had not been given.

In the event that a Party fails to comply with an agreement of the Parties under this Sub-Clause 3.7 or a final and binding determination of the Engineer, the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 21.6 [Arbitration] in which case the first and the third paragraphs of Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] shall apply to such reference in the same manner as these paragraphs apply to a final and binding decision of the DAAB.

### **3.8 Meetings**

The Engineer or the Contractor's Representative may require the other to attend a management meeting to discuss arrangements for future work and/or other matters in connection with execution of the Works.

The Employer's other contractors, the personnel of legally constituted public authorities and/or private utility companies, and/or Subcontractors may attend any such meeting, if requested by the Engineer or the Contractor's Representative.

The Engineer shall keep a record of each management meeting and supply copies of the record to those attending and to the Employer. At any such meeting, and in the record, responsibilities for any actions to be taken shall be in accordance with the Contract.

## **4 The Contractor**

### **4.1 Contractor's General Obligations**

The Contractor shall execute the Works in accordance with the Contract. The Contractor undertakes that the execution of the Works and the completed Works will be in accordance with the documents forming the Contract, as altered or modified by Variations.

The Contractor shall provide the Plant (and spare parts, if any) and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under the Contract.

The Contractor shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of construction and of all the Temporary Works. Except to the extent specified in the Contract, the Contractor:

- (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract; and
- (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

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

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

- (a) the Contractor shall prepare, and submit to the Engineer for Review, the Contractor's Documents for this part (and any other documents necessary to complete and implement the

- design during the execution of the Works and to instruct the Contractor's Personnel);
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs. If the Engineer instructs that further Contractor's Documents are reasonably required to demonstrate that the Contractor's design complies with the Contract, the Contractor shall prepare and submit them promptly to the Engineer at the Contractor's cost;
- (c) construction of this part shall not commence until a Notice of No-objection is given (or is deemed to have been given) by the Engineer under sub-paragraph (i) of Sub-Clause 4.4.1 [Preparation and Review] for all the Contractor's Documents which are relevant to its design, and construction of such part shall be in accordance with these Contractor's Documents;
- (d) the Contractor may modify any design or Contractor's Documents which have previously been submitted for Review, by giving a Notice to the Engineer with reasons. If the Contractor has commenced construction of the part of the Works to which such design or Contractor's Documents are relevant, work on this part shall be suspended, the provisions of Sub-Clause 4.4.1 [Preparation and Review] shall apply as if the Engineer had given a Notice in respect of the Contractor's Documents under sub-paragraph (ii) of Sub-Clause 4.4.1, and work shall not resume until a Notice of No-objection is given (or is deemed to have been given) by the Engineer for the revised documents;
- (e) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purpose(s) for which the part is intended as are specified in the Contract (or, where no purpose(s) are so defined and described, fit for their ordinary purpose(s));
- (f) in addition to the Contractor's undertaking above, the Contractor undertakes that the design and the Contractor's Documents for this part will comply with the technical standards stated in the Specification and Laws (in force when the Works are taken over under Clause 10 [Employer's Taking Over]) and in accordance with the documents forming the Contract, as altered or modified by Variations;
- (g) if Sub-Clause 4.4.2 [As-built Records] and/or Sub-Clause 4.4.3 [Operation and Maintenance Manuals] apply, the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with such Sub-Clause(s) and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part; and
- (h) if Sub-Clause 4.5 [Training] applies, the Contractor shall carry out training of the Employer's Personnel in the operation and maintenance of this part.

## **4.2 Performance Security**

The Contractor shall obtain (at the Contractor's cost) a Performance Security to secure the Contractor's proper performance of the Contract, in the amount and currencies stated in the Contract Data. If no amount is stated in the Contract Data, this Sub-Clause shall not apply.

### **4.2.1 Contractor's obligations**

The Contractor shall deliver the Performance Security to the Employer, with a copy to the Engineer, within 28 days after receiving the Letter of Acceptance. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer gives consent and shall be in the form annexed to the Particular Conditions, or in another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Performance Security remains valid and enforceable until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [Clearance of Site]. If the terms of the Performance Security specify an expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days before the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [Clearance of Site].

Whenever Variations and/or adjustments under Clause 13 [Variations and Adjustments] result in an accumulative increase or decrease of the Contract Price by more than twenty percent (20%) of the Accepted Contract Amount:

- (a) in the case of such an increase, at the Employer's request the Contractor shall promptly increase the amount of the Performance Security in that currency by a percentage equal to the accumulative increase. If the Contractor incurs Cost as a result of this Employer's request, Sub-Clause 13.3.1 [Variation by Instruction] shall apply as if the increase had been instructed by the Engineer; or
- (b) in the case of such a decrease, subject to the Employer's prior consent the Contractor may decrease the amount of the Performance Security in that currency by a percentage equal to the accumulative decrease.

#### **4.2.2 Claims under the Performance Security**

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 this Sub-Clause, in which event the Employer may claim the full amount (or, in the case of previous reduction(s), the full remaining amount) of the Performance Security;
- (b) failure by the Contractor to pay the Employer an amount due, as agreed or determined under Sub-Clause 3.7 [Agreement or Determination] or agreed or decided under Clause 21 [Disputes and Arbitration], within 42 days after the date of the agreement or determination or decision or arbitral award (as the case may be);
- (c) failure by the Contractor to remedy a default stated in a Notice given under Sub-Clause 15.1 [Notice to Correct] within 42 days or other time (if any) stated in the Notice;
- (d) circumstances which entitle the Employer to terminate the Contract under Sub-Clause 15.2 [Termination for Contractor's Default], irrespective of whether a Notice of termination has been given; or
- (e) if under Sub-Clause 11.5 [Remedying of Defective Work off Site] the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date of expiry of the relevant duration stated in the Contractor's Notice (or other date agreed by the Employer).

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Employer was not entitled to make the claim.

Any amount which is received by the Employer under the Performance Security shall be taken into account:

- (i) in the Final Payment Certificate under Sub-Clause 14.13 [Issue of FPC]; or
- (ii) if the Contract is terminated, in payment due to the Contractor under Sub-Clause 15.4

[Payment after Termination for Contractor's Default], Sub-Clause 15.7 [Payment after Termination for Employer's Convenience], Sub-Clause 16.4 [Payment after Termination by Contractor], Sub-Clause 18.5 [Optional Termination], or Sub-Clause 18.6 [Release from Performance under the Law] (as the case may be).

#### **4.2.3 Return of the Performance Security**

The Employer shall return the Performance Security to the Contractor:

- (a) within 21 days after the issue of the Performance Certificate and the Contractor has complied with Sub-Clause 11.11 [Clearance of Site]; or
- (b) promptly after the date of termination if the Contract is terminated in accordance with Sub-Clause 15.5 [Termination for Employer's Convenience], Sub-Clause 16.2 [Termination by Contractor], Sub-Clause 18.5 [Optional Termination] or Sub-Clause 18.6 [Release from Performance under the Law].

#### **4.3 Contractor's Representative**

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

The Contractor's Representative shall be qualified, experienced and competent in the main engineering discipline applicable to the Works and fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

Unless the Contractor's Representative is named in the Contract, the Contractor shall, before the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable replacement for such appointment. If the Engineer does not respond within 28 days after receiving this submission, by giving a Notice to the Contractor objecting to the proposed person or replacement, the Engineer shall be deemed to have given his/her consent.

The Contractor shall not, without the Engineer's prior consent, revoke the appointment of the Contractor's Representative or appoint a replacement (unless the Contractor's Representative is unable to act as a result of death, illness, disability or resignation, in which case his/her appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Engineer gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. The Contractor's Representative shall act for and on behalf of the Contractor at all times during the performance of the Contract, including issuing and receiving all Notices and other communications under Sub-Clause 1.3 [Notices and Other Communications] and for receiving instructions under Sub-Clause 3.5 [Engineer's Instructions].

The Contractor's Representative shall be based at the Site for the whole time that the Works are being executed at the Site. If the Contractor's Representative is to be temporarily absent

from the Site during the execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Engineer's prior consent.

The Contractor's Representative may delegate any powers, functions and authority except:

- (a) the authority to issue and receive Notices and other communications under Sub-Clause 1.3 [Notices and Other Communications]; and
- (b) the authority to receive instructions under Sub-Clause 3.5 [Engineer's Instructions]),

to any suitably competent and experienced person and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received a Notice from the Contractor's Representative, naming the person, specifying the powers, functions and authority being delegated or revoked, and stating the timing of the delegation or revocation.

All these persons shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

#### **4.4 Contractor's Documents**

##### **4.4.1 Preparation and Review**

The Contractor's Documents shall comprise the documents:

- (a) stated in the Specification;
- (b) required to satisfy all permits, permissions, licences and other regulatory approvals which are the Contractor's responsibility under Sub-Clause 1.13 [Compliance with Laws];
- (c) described in Sub-Clause 4.4.2 [As-Built Records] and Sub-Clause 4.4.3 [Operation and Maintenance Manuals], where applicable; and
- (d) required under sub-paragraph (a) of Sub-Clause 4.1 [Contractor's General Obligations], where applicable.

Unless otherwise stated in the Specification, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language].

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

If the Specification or these Conditions specify that a Contractor's Document is to be submitted to the Engineer for Review, it shall be submitted accordingly, together with a Notice from the Contractor stating that the Contractor's Document is ready for Review and that it complies with the Contract.

The Engineer shall, within 21 days after receiving the Contractor's Document and this Notice from the Contractor, give a Notice to the Contractor:

- (i) of No-objection (which may include comments concerning minor matters which will not substantially affect the Works); or
- (ii) that the Contractor's Document fails (to the extent stated) to comply with the Contract, with reasons.

If the Engineer gives no Notice within this period of 21 days, the Engineer shall be deemed to have given a Notice of No-objection to the Contractor's Document.

After receiving a Notice under sub-paragraph (ii), above, the Contractor shall revise the Contractor's Document and resubmit it to the Engineer for Review in accordance with this

Sub-Clause and the period of 21 days for Review shall be calculated from the date that the Engineer receives it.

#### **4.4.2 As-Built Records**

If no as-built records to be prepared by the Contractor are stated in the Specification, this Sub-Clause shall not apply.

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 by the Contractor. The format, referencing system, system of electronic storage and other relevant details of the as-built records shall be as stated in the Specification (if not stated, as acceptable to the Engineer). These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause.

The as-built records shall be submitted to the Engineer for Review, and the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over the Works and Sections] until the Engineer has given (or is deemed to have given) a Notice of No-objection under sub-paragraph (i) of Sub-Clause 4.4.1 [Preparation and Review].

The number of copies of as-built records to be submitted by the Contractor under this Sub-Clause shall be as required under Sub-Clause 1.8 [Care and Supply of Documents].

#### **4.4.3 Operation and Maintenance Manuals**

If no operation and maintenance manuals to be prepared by the Contractor are stated in the Specification, this Sub-Clause shall not apply.

The Contractor shall prepare, and keep up-to-date, the operation and maintenance manuals in the format and other relevant details as stated in the Specification.

The operation and maintenance manuals shall be submitted to the Engineer for Review, and the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over the Works and Sections] until the Engineer has given (or is deemed to have given) a Notice of No-objection under sub-paragraph (i) of Sub-Clause 4.4.1 [Preparation and Review].

#### **4.5 Training**

If no training of employees of the Employer (and/or other identified personnel) by the Contractor is stated in the Specification, this Sub-Clause shall not apply.

The Contractor shall carry out training of the Employer’s employees (and/or other personnel identified in the Specification) in the operation and maintenance of the Works, and any other aspect of the Works, to the extent stated in the Specification. The timing of the training shall be as stated in the Specification (if not stated, as acceptable to the Employer). The Contractor shall provide qualified and experienced training staff, training facilities and all training materials as necessary and/or as stated in the Specification.

If the Specification 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 Sub-Clause 10.1 [Taking Over the Works and Sections] until this training has been completed in accordance with the Specification.

## **4.6 Co-operation**

The Contractor shall, as stated in the Specification or as instructed by the Engineer, co-operate with and allow appropriate opportunities for carrying out work by:

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

who may be employed in the carrying out, on or near the Site, of any work not included in the Contract. Such appropriate opportunities may include the use of Contractor's Equipment, Temporary Works, access arrangements which are the responsibility of the Contractor, and/or other Contractor's facilities or services on the Site.

The Contractor shall be responsible for the Contractor's construction activities on the Site, and shall use all reasonable endeavours to co-ordinate these activities with those of other contractors to the extent (if any) stated in the Specification or as instructed by the Engineer.

If the Contractor suffers delay and/or incurs Cost as a result of an instruction under this Sub-Clause, to the extent (if any) that co-operation, allowance of opportunities and coordination was Unforeseeable having regard to that stated in the Specification, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

## **4.7 Setting Out**

The Contractor shall set out the Works in relation to the items of reference under Sub-Clause 2.5 [Site Data and Items of Reference].

### **4.7.1 Accuracy**

The Contractor shall:

- (a) verify the accuracy of all these items of reference before they are used for the Works;
- (b) promptly deliver the results of each verification to the Engineer;
- (c) rectify any error in the positions, levels, dimensions or alignment of the Works; and
- (d) be responsible for the correct positioning of all parts of the Works.

### **4.7.2 Errors**

If the Contractor finds an error in any items of reference, the Contractor shall give a Notice to the Engineer describing it:

- (a) within the period stated in the Contract Data (if not stated, 28 days) calculated from the Commencement Date, if the items of reference are specified on the Drawings and/or in the Specification; or
- (b) as soon as practicable after receiving the items of reference, if they are issued by the Engineer under Sub-Clause 2.5 [Site Data and Items of Reference].

### **4.7.3 Agreement or Determination of rectification measures, delay and/or Cost**

After receiving a Notice from the Contractor under Sub-Clause 4.7.2 After receiving a Notice from the Contractor under Sub-Clause 4.7.2 [Errors], the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine:

- (a) whether or not there is an error in the items of reference;
  - (b) whether or not (taking account of cost and time) an experienced contractor exercising due care would have discovered such an error
- when examining the Site, the Drawings and the Specification before submitting the

Tender; or

- if the items of reference are specified on the Drawings and/or in the Specification and the Contractor's Notice is given after the expiry of the period stated in sub-paragraph (a) of Sub-Clause 4.7.2; and

- (c) what measures (if any) the Contractor is required to take to rectify the error

(and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's Notice under Sub-Clause 4.7.2 [Errors] shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

If, under sub-paragraph (b) above, an experienced contractor would not have discovered the error:

- (i) Sub-Clause 13.3.1 [Variation by Instruction] shall apply to the measures that the Contractor is required to take (if any); and

- (ii) if the Contractor suffers delay and/or incurs Cost as a result of the error, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

#### **4.8 Health and Safety Obligations**

The Contractor shall:

- (a) comply with all applicable health and safety regulations and Laws;

- (b) comply with all applicable health and safety obligations specified in the Contract;

- (c) comply with all directives issued by the Contractor's health and safety officer (appointed under Sub-Clause 6.7 [Health and Safety of Personnel]);

- (d) take care of the health and safety of all persons entitled to be on the Site and other places (if any) where the Works are being executed;

- (e) keep the Site, Works (and the other places (if any) where the Works are being executed) clear of unnecessary obstruction so as to avoid danger to these persons;

- (f) provide fencing, lighting, safe access, guarding and watching of:

- (i) the Works, until the Works are taken over under Clause 10 [Employer's Taking Over]; and

- (ii) any part of the Works where the Contractor is executing outstanding works or remedying any defects during the DNP;

and

- (g) 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 and property.

Within 21 days of the Commencement Date and before commencing any construction on the Site, the Contractor shall submit to the Engineer for information a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. This manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws.

The health and safety manual shall set out all the health and safety requirements:

- (i) stated in the Specification;

- (ii) that comply with all the Contractor's health and safety obligations under the Contract; and

- (iii) that are necessary to effect and maintain a healthy and safe working environment for

all persons entitled to be on the Site and other places (if any) where the Works are being executed.

This manual shall be revised as necessary by the Contractor or the Contractor's health and safety officer, or at the reasonable request of the Engineer. Each revision of the manual shall be submitted promptly to the Engineer.

In addition to the reporting requirement of sub-paragraph (g) of Sub-Clause 4.20 [Progress Reports], the Contractor shall submit to the Engineer details of any accident as soon as practicable after its occurrence and, in the case of an accident causing serious injury or death, shall inform the Engineer immediately.

The Contractor shall, as stated in the Specification and as the Engineer may reasonably require, maintain records and make reports (in compliance with the applicable health and safety regulations and Laws) concerning the health and safety of persons and any damage to property.

## **4.9 Quality Management and Compliance Verification Systems**

### **4.9.1 Quality Management System**

The Contractor shall prepare and implement a QM System to demonstrate compliance with the requirements of the Contract. The QM System shall be specifically prepared for the Works and submitted to the Engineer within 28 days of the Commencement Date. Thereafter, whenever the QM System is updated or revised, a copy shall promptly be submitted to the Engineer.

The QM System shall be in accordance with the details stated in the Specification (if any) and shall include the Contractor's procedures:

- (a) to ensure that all Notices and other communications under Sub-Clause 1.3 [Notices and Other Communications], Contractor's Documents, as-built records (if applicable), operation and maintenance manuals (if applicable), and contemporary records can be traced, with full certainty, to the Works, Goods, work, workmanship or test to which they relate;
- (b) to ensure proper coordination and management of interfaces between the stages of execution of the Works, and between Subcontractors; and
- (c) for the submission of Contractor's Documents to the Engineer for Review.

The Engineer may Review the QM System and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract. Within 14 days after receiving this Notice, the Contractor shall revise the QM System to rectify such non-compliance. If the Engineer does not give such a Notice within 21 days of the date of submission of the QM System, the Engineer shall be deemed to have given a Notice of No-objection.

The Engineer may, at any time, give a Notice to the Contractor stating the extent to which the Contractor is failing to correctly implement the QM System to the Contractor's activities under the Contract. After receiving this Notice, the Contractor shall immediately remedy such failure.

The Contractor shall carry out internal audits of the QM System regularly, and at least once every 6 months. The Contractor shall submit to the Engineer a report listing the results of each internal audit within 7 days of completion. Each report shall include, where appropriate, the proposed measures to improve and/or rectify the QM System and/or its implementation.

If the Contractor is required by the Contractor's quality assurance certification to be subject to external audit, the Contractor shall immediately give a Notice to the Engineer describing any failing(s) identified in any external audit. If the Contractor is a JV, this obligation shall apply to each member of the JV.

#### **4.9.2 Compliance Verification System**

The Contractor shall prepare and implement a Compliance Verification System to demonstrate that the design (if any), Materials, Employer-Supplied Materials (if any), Plant, work and workmanship comply in all respects with the Contract.

The Compliance Verification System shall be in accordance with the details stated in the Specification (if any) and shall include a method for reporting the results of all inspections and tests carried out by the Contractor. In the event that any inspection or test identifies a non-compliance with the Contract, Sub-Clause 7.5 [Defects and Rejection] shall apply.

The Contractor shall prepare and submit to the Engineer a complete set of compliance verification documentation for the Works or Section (as the case may be), fully compiled and collated in the manner described in the Specification or, if not so described, in a manner acceptable to the Engineer.

#### **4.9.3 General provision**

Compliance with the QM System and/or Compliance Verification System shall not relieve the Contractor from any duty, obligation or responsibility under or in connection with the Contract.

#### **4.10 Use of Site Data**

The Contractor shall be responsible for interpreting all data referred to under Sub-Clause 2.5 [Site Data and Items of Reference].

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, access to the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all matters relevant to the execution of the Works, including:

- (a) the form and nature of the Site, including sub-surface conditions;
- (b) the hydrological and climatic conditions, and the effects of climatic conditions at the Site;
- (c) the extent and nature of the work and Goods necessary for the execution of the Works;
- (d) the Laws, procedures and labour practices of the Country; and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and any other utilities or services.

#### **4.11 Sufficiency of the Accepted Contract Amount**

The Contractor shall be deemed to:

- (a) have satisfied himself/herself as to the correctness and sufficiency of the Accepted Contract Amount; and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary

information, inspections, examinations and satisfaction as to all relevant matters described in Sub-Clause 4.10 [Use of Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount shall be deemed to cover all the Contractor's obligations under the Contract and all things necessary for the proper execution of the Works in accordance with the Contract.

#### **4.12 Unforeseeable Physical Conditions**

In this Sub-Clause, "physical conditions" means natural physical conditions and physical obstructions (natural or man-made) and pollutants, which the Contractor encounters at the Site during execution of the Works, including sub-surface and hydrological conditions but excluding climatic conditions at the Site and the effects of those climatic conditions.

If the Contractor encounters physical conditions which the Contractor considers to have been Unforeseeable and that will have an adverse effect on the progress and/or increase the Cost of the execution of the Works, the following procedure shall apply:

##### **4.12.1 Contractor's Notice**

After discovery of such physical conditions, the Contractor shall give a Notice to the Engineer, which shall:

- (a) be given as soon as practicable and in good time to give the Engineer opportunity to inspect and investigate the physical conditions promptly and before they are disturbed;
- (b) describe the physical conditions, so that they can be inspected and/or investigated promptly by the Engineer;
- (c) set out the reasons why the Contractor considers the physical conditions to be Unforeseeable; and
- (d) describe the manner in which the physical conditions will have an adverse effect on the progress and/or increase the Cost of the execution of the Works.

##### **4.12.2 Engineer's inspection and investigation**

The Engineer shall inspect and investigate the physical conditions Within 7 days, or a longer period agreed with the Contractor, after receiving the Contractor's Notice.

The Contractor shall continue execution of the Works, using such proper and reasonable measures as are appropriate for the physical conditions and to enable the Engineer to inspect and investigate them.

##### **4.12.3 Engineer's instructions**

The Contractor shall comply with any instructions which the Engineer may give for dealing with the physical conditions and, if such an instruction constitutes a Variation, Sub-Clause 13.3.1 [Variation by Instruction] shall apply.

##### **4.12.4 Delay and/or Cost**

If and to the extent that the Contractor suffers delay and/or incurs Cost due to these physical conditions, having complied with Sub-Clauses 4.12.1 to 4.12.3 above, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost.

##### **4.12.5 Agreement or Determination of Delay and/or Cost**

The agreement or determination, under Sub-Clause 20.2.5 [Agreement or determination of the Claim], of any Claim under Sub-Clause 4.12.4 [Delay and/or Cost] shall include

consideration of whether and (if so) to what extent the physical conditions were Unforeseeable.

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 by the Base Date. If and to the extent that these more favourable conditions were encountered, the Engineer may take account of the reductions in Cost which were due to these conditions in calculating the additional Cost to be agreed or determined under this Sub-Clause 4.12.5.

However, the net effect of all additions and reductions under this Sub-Clause 4.12.5 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 by the Base Date, which the Contractor may include in the supporting particulars for the Claim under Sub-Clause 20.2.4 [Fully detailed Claim], but shall not be bound by any such evidence.

#### **4.13 Rights of Way and Facilities**

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which may be required for the purposes of the Works, including those for access to the Site.

The Contractor shall also obtain, at the Contractor's risk and cost, any additional facilities outside the Site which may be required for the purposes of the Works.

#### **4.14 Avoidance of Interference**

The Contractor shall not interfere unnecessarily or improperly with:

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

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

#### **4.15 Access Route**

The Contractor shall be deemed to have been satisfied, at the Base Date, as to the suitability and availability of the access routes to the Site. The Contractor shall take all necessary measures to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These measures shall include the proper use of appropriate vehicles (conforming to legal load and width limits (if any) and any other restrictions) and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for repair of any damage caused to, and any maintenance which may be required for the Contractor's use of, access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permissions or permits which may be required from the relevant authorities, for the Contractor's use of routes, signs and directions;
- (c) the Employer shall not be responsible for any third party claims which may arise from the Contractor's use or otherwise of any access route;
- (d) the Employer does not guarantee the suitability or availability of particular access

routes; and

(e) all Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

To the extent that non-suitability or non-availability of an access route arises as a result of changes to that access route by the Employer or a third party after the Base Date and as a result the Contractor suffers delay and/or incurs Cost, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost.

#### **4.16 Transport of Goods**

The Contractor shall:

- (a) give a Notice to the Engineer not less than 21 days before the date on which any Plant, or a major item of other Goods (as stated in the Specification), will be delivered to the Site;
- (b) be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works;
- (c) be responsible for customs clearance, permits, fees and charges related to the import, transport and handling of all Goods, including all obligations necessary for their delivery to the Site; and
- (d) indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the import, transport and handling of all Goods, and shall negotiate and pay all third party claims arising from their import, transport and handling.

#### **4.17 Contractor's Equipment**

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

In addition to any Notice given under Sub-Clause 4.16 [Transport of Goods], the Contractor shall give a Notice to the Engineer of the date on which any major item of Contractor's Equipment has been delivered to the Site. This Notice shall be given within 7 days of the delivery date, shall identify whether the item of Contractor's Equipment is owned by the Contractor or a Subcontractor or another person and, if rented or leased, shall identify the rental or leasing entity.

#### **4.18 Protection of the Environment**

The Contractor shall take all necessary measures to:

- (a) protect the environment (both on and off the Site);
- (b) comply with the environmental impact statement for the Works (if any);
- (c) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Specification, nor those prescribed by applicable Laws.

#### **4.19 Temporary Utilities**

The Contractor shall, except as stated below, be responsible for the provision of all temporary utilities, including electricity, gas, telecommunications, water and any other services the Contractor may require for the execution of the Works.

The following provisions of this Sub-Clause shall only apply if, as stated in the Specification, the Employer is to provide utilities for the Contractor's use.

The Contractor shall be entitled to use, for the purposes of the Works, the utilities on the Site for which details and prices are given in the Specification.

The Contractor shall, at the Contractor's risk and cost, provide any apparatus necessary for the Contractor's use of these services and for measuring the quantities consumed. The apparatus provided for measuring quantities consumed shall be subject to the Engineer's consent. The quantities consumed (if any) during each period of payment stated in the Contract Data (if not stated, each month) shall be measured by the Contractor, and the amount to be paid by the Contractor for such quantities (at the prices stated in the Specification) shall be included in the relevant Statement.

#### **4.20 Progress Reports**

Monthly progress reports, in the format stated in the Specification (if not stated, in a format acceptable to the Engineer) shall be prepared by the Contractor and submitted to the Engineer. Each progress report shall be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data. The first report shall cover the period up to the end of the first month following the Commencement Date.

Reports shall be submitted monthly thereafter, each within 7 days after the last day of the month to which it relates.

Reporting shall continue until the Date of Completion of the Works or, if outstanding work is listed in the Taking-Over Certificate, the date on which such outstanding work is completed. Unless otherwise stated in the Specification, each progress report shall include:

- (a) charts, diagrams and detailed descriptions of progress, including each stage of (design by the Contractor, if any) Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing;
- (b) photographs and/or video recordings showing the status of manufacture and of progress on and off the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - (i) commencement of manufacture,
  - (ii) Contractor's inspections,
  - (iii) tests, and
  - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [Contractor's Records];
- (e) copies of quality management documents, inspection reports, test results, and compliance verification documentation (including certificates of Materials);
- (f) a list of Variations, and any Notices given (by either Party) under Sub-Clause 20.2.1 [Notice of Claim];
- (g) health and 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 adversely affect the completion of the Works in accordance with the Programme and the Time for Completion, and the measures being (or to be) adopted to overcome delays. However, nothing stated in any progress report shall constitute a Notice under a Sub-Clause of these Conditions.

#### **4.21 Security of the Site**

The Contractor shall be responsible for the security of the Site, and:

- (a) for keeping unauthorised persons off the Site; and
- (b) authorised persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and to any other personnel identified as authorised personnel (including the Employer's other contractors on the Site), by a Notice from the Employer or the Engineer to the Contractor.

#### **4.22 Contractor's Operations on Site**

The Contractor shall confine the Contractor's operations to the Site, and to any additional areas which may be obtained by the Contractor and acknowledged 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.

At all times, the Contractor shall keep the Site free from all unnecessary obstruction, and shall properly store or remove from the Site any Contractor's Equipment (subject to 4.17 [Contractor's Equipment]) and/or surplus materials. The Contractor shall promptly clear away and remove from the Site any wreckage, rubbish, hazardous waste and Temporary Works which are no longer required.

Promptly after 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, hazardous waste 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 at locations on the Site agreed with the Engineer, during the DNP, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **4.23 Archaeological and Geological Findings**

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 all reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, as soon as practicable after discovery of any such finding, give a Notice to the Engineer in good time to give the Engineer opportunity to promptly inspect and/or investigate the finding before it is disturbed. This Notice shall describe the finding and the Engineer shall issue instructions for dealing with it.

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost.

## **5 Subcontracting**

### **5.1 Subcontractors**

The Contractor shall not subcontract:

- (a) works with a total accumulated value greater than the percentage of the Accepted Contract Amount stated in the Contract Data (if not stated, the whole of the Works); or
- (b) any part of the Works for which subcontracting is not permitted as stated in the Contract Data.

The Contractor shall be responsible for the work of all Subcontractors, for managing and coordinating all the Subcontractors' works, and for the acts or defaults of any Subcontractor, any Subcontractor's agents or employees, as if they were the acts or defaults of the Contractor.

The Contractor shall obtain the Engineer's prior consent to all proposed Subcontractors, except:

- (i) suppliers of Materials; or
- (ii) a subcontract for which the Subcontractor is named in the Contract

Where the Contractor is required to obtain the Engineer's consent to a proposed Subcontractor, the Contractor shall submit the name, address, detailed particulars and relevant experience of such a Subcontractor and the work intended to be subcontracted to the Engineer and further information which the Engineer may reasonably require. If the Engineer does not respond within 14 days after receiving this submission (or further information if requested), by giving a Notice objecting to the proposed Subcontractor, the Engineer shall be deemed to have given his/her consent.

The Contractor shall give a Notice to the Engineer not less than 28 days before the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site.

### **5.2 Nominated Subcontractors**

#### **5.2.1 Definition of "nominated Subcontractor"**

In this Sub-Clause, "nominated Subcontractor" means a Subcontractor named as such in the Specification or whom the Engineer, under Sub-Clause 13.4 [Provisional Sums], instructs the Contractor to employ as a Subcontractor.

#### **5.2.2 Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor whom the Engineer instructs and against whom the Contractor raises reasonable objection by giving a Notice to the Engineer, with detailed supporting particulars, no later than 14 days after receiving the Engineer's instruction. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence,

resources or financial strength;

(b) the subcontract does not specify that the nominated Subcontractor shall indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, the nominated Subcontractor's agents and employees; or

(c) the subcontract does not specify that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:

(i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge the Contractor's corresponding obligations and liabilities under the Contract, and

(ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities.

### **5.2.3 Payments to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.4 [Provisional Sums], except as stated in Sub-Clause 5.2.4 [Evidence of Payments].

### **5.2.4 Evidence of Payments**

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

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

(b) (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and

(ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

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

Thereafter, the Engineer shall give a Notice to the Contractor stating the amount paid directly to the nominated Subcontractor by the Employer and, in the next IPC after this Notice, shall include this amount as a deduction under sub-paragraph (b) of Sub-Clause 14.6.1 [The IPC].

## **6 Staff and Labour**

### **6.1 Engagement of Staff and Labour**

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all Contractor's Personnel, and for their payment, accommodation, feeding, transport and welfare.

## **6.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which comply with all applicable Laws and 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.

## **6.3 Recruitment of Persons**

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

Neither the Employer nor the Engineer shall recruit, or attempt to recruit, staff and labour from amongst the Contractor's Personnel.

## **6.4 Labour Laws**

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

The Contractor shall require the Contractor's Personnel to obey all applicable Laws, including those concerning health and safety at work.

## **6.5 Working Hours**

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

- (a) otherwise stated in the Contract;
- (b) the Engineer gives consent; or
- (c) the work is unavoidable or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately give a Notice to the Engineer with reasons and describing the work required.

## **6.6 Facilities for Staff and Labour**

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

If such accommodation and facilities are to be located on the Site, except where the Employer has given the Contractor prior permission, they shall be located within the areas identified in the Contract. If any such accommodation or facilities are found elsewhere within the Site, the Contractor shall immediately remove them at the Contractor's risk and cost. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

## **6.7 Health and Safety of Personnel**

In addition to the requirements of Sub-Clause 4.8 [Health and Safety Obligations], the Contractor shall at all times take all necessary precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that:

- (a) medical staff, first aid facilities, sick bay, ambulance services and any other medical

services stated in the Specification are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel; and  
(b) suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint a health and safety officer at the Site, responsible for maintaining health, safety and protection against accidents. This officer shall:

- (i) be qualified, experienced and competent for this responsibility; and
- (ii) have the authority to issue directives for the purpose of maintaining the health and safety of all personnel authorised to enter and/or work on the Site and to take protective measures to prevent accidents.

Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

### **6.8 Contractor's Superintendence**

From the Commencement Date until the issue of the Performance Certificate, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect, test and monitor the execution of the Works.

Superintendence shall be given by a sufficient number of persons:

- (a) who are fluent in or have adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]); and
- (b) who have 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.

### **6.9 Contractor's Personnel**

The Contractor's Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent 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 and Key Personnel (if any), who:

- (a) persists in any misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to comply with any provision of the Contract;
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
- (e) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice; or
- (f) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [Recruitment of Persons].

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement. In the case of replacement of the Contractor's Representative, Sub-Clause 4.3 [Contractor's Representative] shall apply. In the case of replacement of Key Personnel (if any), Sub-Clause 6.12 [Key Personnel] shall apply.

## **6.10 Contractor's Records**

Unless otherwise proposed by the Contractor and agreed by the Engineer, in each progress report under Sub-Clause 4.20 [Progress Reports], the Contractor shall include records of:

- (a) occupations and actual working hours of each class of Contractor's Personnel;
- (b) the type and actual working hours of each of the Contractor's Equipment;
- (c) the types of Temporary Works used;
- (d) the types of Plant installed in the Permanent Works; and
- (e) the quantities and types of Materials used

for each work activity shown in the Programme, at each work location and for each day of work.

## **6.11 Disorderly Conduct**

The Contractor shall at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

## **6.12 Key Personnel**

If no Key Personnel are stated in the Specification this Sub-Clause shall not apply.

The Contractor shall appoint the natural persons named in the Tender to the positions of Key Personnel. If not so named, or if an appointed person fails to act in the relevant position of Key Personnel, the Contractor shall submit to the Engineer for consent the name and particulars of another person the Contractor proposes to appoint to such position. If consent is withheld or subsequently revoked, the Contractor shall similarly submit the name and particulars of a suitable replacement for such position.

If the Engineer does not respond within 14 days after receiving any such submission, by giving a Notice stating his/her objection to the appointment of such person (or replacement) with reasons, the Engineer shall be deemed to have given his/her consent.

The Contractor shall not, without the Engineer's prior consent, revoke the appointment of any of the Key Personnel or appoint a replacement (unless the person is unable to act as a result of death, illness, disability or resignation, in which case the appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Engineer gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).

All Key Personnel shall be based at the Site (or, where Works are being executed off the Site, at the location of the Works) for the whole time that the Works are being executed. If any of the Key Personnel is to be temporarily absent during execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Engineer's prior consent.

All Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language].

## **7 Plant, Materials and Workmanship**

### **7.1 Manner of Execution**

The Contractor shall carry out the manufacture, supply, installation, testing and commissioning and/or repair of Plant, the production, manufacture, supply and testing of Materials, and all other operations and activities during the execution of the Works:

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

## **7.2 Samples**

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

(a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and

(b) additional samples instructed by the Engineer as a Variation.

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

## **7.3 Inspection**

The Employer's Personnel shall, during all the normal working hours stated in the Contract Data and at all other reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained;

(b) during production, manufacture and construction (at the Site and elsewhere), be entitled to:

(i) examine, inspect, measure and test (to the extent stated in the Specification) the Materials, Plant and workmanship,

(ii) check the progress of manufacture of Plant and production and manufacture of Materials, and

(iii) make records (including photographs and/or video recordings); and

(c) carry out other duties and inspections, as specified in these Conditions and the Specification.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing safe access, facilities, permissions and safety equipment.

The Contractor shall give a Notice to the Engineer whenever any Materials, Plant or work is ready for inspection, and before it is to be covered up, put out of sight, or packaged for storage or transport. The Employer's Personnel shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or the Engineer shall promptly give a Notice to the Contractor that the Employer's Personnel do not require to do so. If the Engineer gives no such Notice and/or the Employer's Personnel do not attend at the time stated in the Contractor's Notice (or such time as may be agreed with the Contractor), the Contractor may proceed with covering up, putting out of sight or packaging for storage or transport.

If the Contractor fails to give a Notice in accordance with this Sub-Clause, the Contractor shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's risk and cost.

## **7.4 Testing by the Contractor**

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, temporary supplies of electricity and water, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified, experienced and competent staff, as are necessary to carry out the specified tests efficiently and properly. All apparatus, equipment and instruments shall be calibrated in accordance with the standards stated in the Specification or defined by applicable Laws and, if requested by the Engineer, the Contractor shall submit calibration certificates before carrying out testing.

The Contractor shall give a Notice to the Engineer, stating the time and place for the specified testing of any Plant, Materials and other parts of the Works. This Notice shall be given in reasonable time, having regard to the location of the testing, for the Employer's Personnel to attend.

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or timing 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 and any delay incurred in carrying out this Variation shall be borne by the Contractor.

The Engineer shall give a Notice to the Contractor of not less than 72 hours of his/her intention to attend the tests. If the Engineer does not attend at the time and place stated in the Contractor's Notice under this Sub-Clause, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer. These 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 any such instruction or as a result of a delay for which the Employer is responsible, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of Cost Plus Profit.

If the Contractor causes any delay to specified tests (including varied or additional tests) and such delay causes the Employer to incur costs, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of these costs by the Contractor.

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 test certificate to the Contractor, to that effect. If the Engineer has not attended the tests, he/she shall be deemed to have accepted the readings as accurate.

Sub-Clause 7.5 [Defects and Rejection] shall apply in the event that any Plant, Materials and other parts of the Works fails to pass a specified test.

## **7.5 Defects and Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, Contractor's design (if any) or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer shall give a Notice to the Contractor describing the item of Plant, Materials, design or workmanship that has been found to be defective. The Contractor shall then promptly prepare and submit a proposal for necessary remedial work.

The Engineer may Review this proposal, and may give a Notice to the Contractor stating the extent to which the proposed work, if carried out, would not result in the Plant, Materials, Contractor's design (if any) or workmanship complying with the Contract. After receiving such a Notice the Contractor shall promptly submit a revised proposal to the Engineer. If the Engineer gives no such Notice within 14 days after receiving the Contractor's proposal (or revised proposal), the Engineer shall be deemed to have given a Notice of No-objection.

If the Contractor fails to promptly submit a proposal (or revised proposal) for remedial work, or fails to carry out the proposed remedial work to which the Engineer has given (or is deemed to have given) a Notice of No-objection, the Engineer may:

- (a) instruct the Contractor under sub-paragraph (a) and/or (b) of Sub-Clause 7.6 [Remedial Work]; or
- (b) reject the Plant, Materials, Contractor's design (if any) or workmanship by giving a Notice to the Contractor, with reasons, in which case sub-paragraph (a) of Sub-Clause 11.4 [Failure to Remedy Defects] shall apply.

After remedying defects in any Plant, Materials, design (if any) or workmanship, if the Engineer requires any such items to be retested, the tests shall be repeated in accordance with Sub-Clause 7.4 [Testing by the Contractor] at the Contractor's risk and cost. If the rejection and retesting cause the Employer to incur additional costs, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of these costs by the Contractor.

## **7.6 Remedial Work**

In addition to any previous examination, inspection, measurement or testing, or test certificate or Notice of No-objection by the Engineer, at any time before the issue of the Taking-Over Certificate for the Works the Engineer may instruct the Contractor to:

- (a) repair or remedy (if necessary, off the Site), or remove from the Site and replace any Plant or Materials which are not in accordance with the Contract;
- (b) repair or remedy, or remove and re-execute, any other work which is not in accordance with the Contract; and
- (c) carry out any remedial 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 as soon as practicable and not later than the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c) above.

The Contractor shall bear the cost of all remedial work required under this Sub-Clause, except to the extent that any work under sub-paragraph (c) above is attributable to:

- (i) any act by the Employer or the Employer's Personnel. If the Contractor suffers delay and/or incurs Cost in carrying out such work, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit; or
- (ii) an Exceptional Event, in which case Sub-Clause 18.4 [Consequences of an Exceptional Event] shall apply.

If the Contractor fails to comply with the Engineer's instruction, the Employer may (at the Employer's sole discretion) employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for work under this Sub-Clause, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of all costs arising from this failure. This entitlement shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

## **7.7 Ownership of Plant and Materials**

Each item of Plant and Materials shall, to the extent consistent with the mandatory requirements of 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 paid the value of the Plant and Materials under Sub-Clause 8.11 [Payment for Plant and Materials after Employer's Suspension]; or
- (c) when the Contractor is paid the amount determined for the Plant and Materials under Sub-Clause 14.5 [Plant and Materials intended for the Works].

## **7.8 Royalties**

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

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

## **8 Commencement, Delays and Suspension**

### **8.1 Commencement of Works**

The Engineer shall give a Notice to the Contractor stating the Commencement Date, not less than 14 days before the Commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance.

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

## **8.2 Time for Completion**

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

## **8.3 Programme**

The Contractor shall submit an initial programme for the execution of the Works to the Engineer within 28 days after receiving the Notice under Sub-Clause 8.1 [Commencement of Works]. This programme shall be prepared using programming software stated in the Specification (if not stated, the programming software acceptable to the Engineer). The Contractor shall also submit a revised programme which accurately reflects the actual progress of the Works, whenever any programme ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations.

The initial programme and each revised programme shall be submitted to the Engineer in one paper copy, one electronic copy and additional paper copies (if any) as stated in the Contract Data, and shall include:

- (a) the Commencement Date and the Time for Completion, of the Works and of each Section (if any);
- (b) the dates the Contractor requires the Employer to give right of access to and possession of (each part of) the Site;
- (c) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), preparation and submission of Contractor's Documents, procurement, manufacture, inspection, delivery to Site, construction, erection, installation, work to be undertaken by any nominated Subcontractor (as defined in Sub-Clause 5.2 [Nominated Subcontractors]) and testing;
- (d) the Review periods for any submissions stated in the Specification or required under these Conditions;
- (e) the sequence and timing of inspections and tests specified in, or required by, the Contract;
- (f) for a revised programme: the sequence and timing of the remedial work (if any) to which the Engineer has given a Notice of No-objection under Sub-Clause 7.5 [Defects and Rejection] and/or the remedial work (if any) instructed under Sub-Clause 7.6 [Remedial Work];
- (g) all activities (to the level of detail stated in the Specification), logically linked and showing the earliest and latest start and finish dates for each activity, the float (if any), and the critical path(s);
- (h) the dates of all locally recognised days of rest and holiday periods (if any);
- (i) all key delivery dates of Plant and Materials;

- (j) for a revised programme and for each activity: the actual progress to date, any delay to such progress and the effects of such delay on other activities (if any); and
- (k) a supporting report which includes:
  - (i) a description of all the major stages of the execution of the Works;
  - (ii) a general description of the methods which the Contractor intends to adopt in the execution of the Works;
  - (iii) 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 of the execution of the Works;
  - (iv) if a revised programme, identification of any significant change(s) to the previous programme submitted by the Contractor; and
  - (v) the Contractor's proposals to overcome the effects of any delay(s) on progress of the Works.

The Engineer shall Review the initial programme and each revised programme submitted by the Contractor and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations.

If the Engineer gives no such Notice:

- within 21 days after receiving the initial programme; or
  - within 14 days after receiving a revised programme
- the Engineer shall be deemed to have given a Notice of No-objection and the initial programme or revised programme (as the case may be) shall be the Programme.

The Contractor shall proceed in accordance with the Programme, subject to the Contractor's other obligations under the Contract. The Employer's Personnel shall be entitled to rely on the Programme when planning their activities.

Nothing in any programme, the Programme or any supporting report shall be taken as, or relieve the Contractor of any obligation to give, a Notice under the Contract.

If, at any time, the Engineer gives a Notice to the Contractor that the Programme fails (to the extent stated) to comply with the Contract or ceases to reflect actual progress or is otherwise inconsistent with the Contractor's obligations, the Contractor shall within 14 days after receiving this Notice submit a revised programme to the Engineer in accordance with this Sub-Clause.

#### **8.4 Advance Warning**

Each Party shall advise the other and the Engineer, and the Engineer shall advise the Parties, in advance of any known or probable future events or circumstances which may:

- (a) adversely affect the work of the Contractor's Personnel;
- (b) adversely affect the performance of the Works when completed;
- (c) increase the Contract Price; and/or
- (d) delay the execution of the Works or a Section (if any).

The Engineer may request the Contractor to submit a proposal under Sub-Clause 13.3.2 [Variation by Request for Proposal] to avoid or minimise the effects of such event(s) or circumstance(s).

## **8.5 Extension of Time for Completion**

The Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to Extension of Time if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (except that there shall be no requirement to comply with Sub-Clause 20.2 [Claims For Payment and/or EOT]);
- (b) a cause of delay giving an entitlement to EOT under a Sub-Clause of these Conditions;
- (c) exceptionally adverse climatic conditions, which for the purpose of these Conditions shall mean adverse climatic conditions at the Site which are Unforeseeable having regard to climatic data made available by the Employer under Sub-Clause 2.5 [Site Data and Items of Reference] and/or climatic data published in the Country for the geographical location of the Site;
- (d) Unforeseeable shortages in the availability of personnel or Goods (or Employer-Supplied Materials, if any) 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.

The Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT if the measured quantity of any item of work in accordance with Clause 12 [Measurement and Valuation] is greater than the estimated quantity of this item in the Bill of Quantities or other Schedule by more than ten per cent (10%) and such increase in quantities causes a delay to completion for the purposes of Sub-Clause 10.1 [Taking Over the Works and Sections].

The agreement or determination of any such Claim, under Sub-Clause 20.2.5 [Agreement or determination of the Claim], may include a review by the Engineer of measured quantities of other items of work which are significantly less (by more than 10%) than the corresponding estimated quantities in the Bill of Quantities or other Schedule. To the extent that there are such lesser measured quantities, the Engineer may take account of any favourable effect on the critical path of the Programme. However, the net effect of all such consideration shall not result in a net reduction in the Time for Completion.

When determining each EOT under Sub-Clause 20.2 [Claims For Payment and/or EOT], the Engineer shall review previous determinations under Sub-Clause 3.7 [Agreement or Determination] and may increase, but shall not decrease, the total EOT.

If a delay caused by a matter which is the Employer's responsibility is concurrent with a delay caused by a matter which is the Contractor's responsibility, the Contractor's entitlement to EOT shall be assessed in accordance with the rules and procedures stated in the Special Provisions (if not stated, as appropriate taking due regard of all relevant circumstances).

## **8.6 Delays Caused by Authorities**

If:

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

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.5 [Extension of Time for Completion].

## **8.7 Rate of Progress**

If, at any time:

- (a) actual progress is too slow to complete the Works or a Section (if any) within the relevant Time for Completion; and/or
- (b) progress has fallen (or will fall) behind the Programme (or the initial programme if it has not yet become the Programme) under Sub-Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.5 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete the Works or a Section (if any) within the relevant Time for Completion.

Unless the Engineer gives a Notice to the Contractor stating 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 the Goods, at the Contractor's risk and cost. If these revised methods cause the Employer to incur additional costs, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of these costs by the Contractor, in addition to Delay Damages (if any).

Sub-Clause 13.3.1 [Variation by Instruction] shall apply to revised methods, including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.5 [Extension of Time for Completion].

## **8.8 Delay Damages**

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of Delay Damages by the Contractor for this default. Delay Damages shall be the amount stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the relevant Date of Completion of the Works or Section. 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 the Contractor's failure to comply with Sub-Clause 8.2 [Time for Completion], other than in the event of termination under Sub-Clause 15.2 [Termination for Contractor's Default] before completion of the Works. These Delay Damages shall not relieve the Contractor from the obligation to complete the Works, or from any other duties, obligations or responsibilities which the Contractor may have under or in connection with the Contract.

This Sub-Clause shall not limit the Contractor's liability for Delay Damages in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor.

### **8.9 Employer's Suspension**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works, which instruction shall state the date and cause of the suspension.

During such suspension, the Contractor shall protect, store and secure such part or all of the Works (as the case may be) against any deterioration, loss or damage.

To the extent that the cause of such suspension is the responsibility of the Contractor, Sub-Clauses 8.10 [Consequences of Employer's Suspension], 8.11 [Payment for Plant and Materials after Employer's Suspension] and 8.12 [Prolonged Suspension] shall not apply.

### **8.10 Consequences of Employer's Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with an Engineer's instruction under Sub-Clause 8.9 [Employer's Suspension] and/or from resuming the work under Sub-Clause 8.13 [Resumption of Work], the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

The Contractor shall not be entitled to EOT, or to payment of the Cost incurred, in making good:

- (a) the consequences of the Contractor's faulty or defective (design, if any) workmanship, Plant or Materials; and/or
- (b) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [Employer's Suspension].

### **8.11 Payment for Plant and Materials after Employer's Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension instructed under Sub-Clause 8.9 [Employer's 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

- (i) the Plant and/or Materials were scheduled, in accordance with the Programme, to have been completed and ready for delivery to the Site during the suspension period; and
  - (ii) the Contractor provides the Engineer with reasonable evidence that the Plant and/or Materials comply with the Contract; and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

## **8.12 Prolonged Suspension**

If the suspension under Sub-Clause 8.9 [Employer's Suspension] has continued for more than 84 days, the Contractor may give a Notice to the Engineer requesting permission to proceed.

If the Engineer does not give a Notice under Sub-Clause 8.13 [Resumption of Work] within 28 days after receiving the Contractor's Notice under this Sub-Clause, the Contractor may either:

- (a) agree to a further suspension, in which case the Parties may agree the EOT and/or Cost Plus Profit (if the Contractor incurs Cost), and/or payment for suspended Plant and/or Materials, arising from the total period of suspension; or (and if the Parties fail to reach agreement under this sub-paragraph (a))
- (b) after giving a (second) Notice to the Engineer, treat the suspension as an omission of the affected part of the Works (as if it had been instructed under Sub-Clause 13.3.1 [Variation by Instruction]) with immediate effect including release from any further obligation to protect, store and secure under Sub-Clause 8.9 [Employer's Suspension]. If the suspension affects the whole of the Works, the Contractor may give a Notice of termination under Sub-Clause 16.2 [Termination by Contractor].

## **8.13 Resumption of Work**

The Contractor shall resume work as soon as practicable after receiving a Notice from the Engineer to proceed with the suspended work.

At the time stated in this Notice (if not stated, immediately after the Contractor receives this Notice), the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Engineer shall record any deterioration, loss, damage or defect in the Works or Plant or Materials which has occurred during the suspension and shall provide this record to the Contractor. The Contractor shall promptly make good all such deterioration, loss, damage or defect so that the Works, when completed, shall comply with the Contract.

## **9 Tests on Completion**

### **9.1 Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing by the Contractor], after submitting the documents under Sub-Clause 4.4.2 [As-Built Records] (if applicable) and Sub-Clause 4.4.3 [Operation and Maintenance Manuals] (if applicable).

The Contractor shall submit to the Engineer, not less than 42 days before the date the Contractor intends to commence the Tests on Completion, a detailed test programme showing the intended timing and resources required for these tests.

The Engineer may Review the proposed test programme and may give a Notice to the Contractor stating the extent to which it does not comply with the Contract. Within 14 days after receiving this Notice, the Contractor shall revise the test programme to rectify such non-compliance. If the Engineer gives no such Notice within 14 days after receiving the test programme (or revised test programme), the Engineer shall be deemed to have given a Notice of No-objection. The Contractor shall not commence the Tests on Completion until a Notice of No-objection is given (or is deemed to have been given) by the Engineer.

In addition to any date(s) shown in the test programme, the Contractor shall give a Notice to the Engineer, of not less than 21 days, of the date after which the Contractor will be ready to carry out each of the Tests on Completion. The Contractor shall commence the Tests on Completion within 14 days after this date, or on such day or days as the Engineer shall instruct, and shall proceed in accordance with the Contractor's test programme to which the Engineer has given (or is deemed to have given) a Notice of No-objection.

As soon as the Works or Section have, in the Contractor's opinion, passed the Tests on Completion, the Contractor shall submit a certified report of the results of these tests to the Engineer. The Engineer shall Review such a report and may give a Notice to the Contractor stating the extent to which the results of the tests do not comply with the Contract. If the Engineer does not give such a Notice within 14 days after receiving the results of the tests, the Engineer shall be deemed to have given a Notice of No-objection.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of (any part of) the Works by the Employer on the performance or other characteristics of the Works.

## **9.2 Delayed Tests**

If the Contractor has given a Notice under Sub-Clause 9.1 [Contractor's Obligations] that the Works or Section (as the case may be) are ready for Tests on Completion, and these tests are unduly delayed by the Employer's Personnel or by a cause for which the Employer is responsible, Sub-Clause 10.3 [Interference with Tests on Completion] shall apply.

If the Tests on Completion are unduly delayed by the Contractor, the Engineer may by giving a Notice to the Contractor 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 this period of 21 days as the Contractor may fix, for which the Contractor shall give a prior Notice to the Engineer of not less than 7 days.

If the Contractor fails to carry out the Tests on Completion within this period of 21 days:

- (a) after a second Notice is given by the Engineer to the Contractor, the Employer's Personnel may proceed with the tests;
- (b) the Contractor may attend and witness these tests;
- (c) within 28 days of these tests being completed, the Engineer shall send a copy of the test results to the Contractor; and
- (d) if the Employer incurs additional costs as a result of such testing, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of the costs reasonably incurred.

Whether or not the Contractor attends, these Tests on Completion shall be deemed to have been carried out in the presence of the Contractor and the results of these tests shall be accepted as accurate.

### **9.3 Retesting**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Defects and Rejection] shall apply. The Engineer or the Contractor may require these failed tests, and the Tests on Completion on any related work, to be repeated under the same terms and conditions. Such repeated tests shall be treated as Tests on Completion for the purposes of this Clause.

### **9.4 Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3 [Retesting];
  - (b) reject the Works if the effect of the failure is to deprive the Employer of substantially the whole benefit of the Works in which event the Employer shall have the same remedies as are provided in sub-paragraph (d) of Sub-Clause 11.4 [Failure to Remedy Defects];
  - (c) reject the Section if the effect of the failure is that the Section cannot be used for its intended purpose(s) under the Contract, in which event the Employer shall have the same remedy as is provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects];
- or
- (d) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (d) above, the Contractor shall then proceed in accordance with all other obligations under the Contract, and the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor or a reduction in the Contract Price as described under sub-paragraph (b) of Sub-Clause 11.4 [Failure to Remedy Defects], respectively. This entitlement shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

## **10 Employer's Taking Over**

### **10.1 Taking Over the Works and Sections**

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], Sub-Clause 10.2 [Taking Over Parts] and Sub-Clause 10.3 [Interference with Tests on Completion], the Works shall be taken over by the Employer when:

- (a) the Works have been completed in accordance with the Contract, including the passing of the Tests on Completion and except as allowed in sub-paragraph (i) below;
- (b) if applicable, the Engineer has given (or is deemed to have given) a Notice of No-objection to the as-built records submitted under Sub-Clause 4.4.2 [As-Built Records];
- (c) if applicable, the Engineer has given (or is deemed to have given) a Notice of No-objection to the operation and maintenance manuals under Sub-Clause 4.4.3 [Operation and Maintenance Manuals];
- (d) if applicable, the Contractor has carried out the training as described under Sub-Clause 4.5 [Training]; and
- (e) 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 for a Taking-Over Certificate by giving a Notice to the Engineer not more 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.

If any Part of the Works is taken over under Sub-Clause 10.2 [Taking Over Parts], the remaining Works or Section shall not be taken over until the conditions described in sub-paragraphs (a) to (e) above (where applicable) have been fulfilled.

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

- (i) 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 (as listed in the Taking-Over Certificate) which will not substantially affect the safe use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (ii) reject the application by giving a Notice to the Contractor, with reasons. This Notice shall specify the work required to be done, the defects required to be remedied and/or the documents required to be submitted by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work, remedy such defects and/or submit such documents before giving a further Notice under this Sub-Clause.

If the Engineer does not issue the Taking-Over Certificate or reject the Contractor's application within this period of 28 days, and if the conditions described in sub-paragraphs (a) to (d) above (where applicable) have been fulfilled, the Works or Section shall be deemed to have been completed in accordance with the Contract on the fourteenth day after the Engineer receives the Contractor's Notice of application and the Taking-Over Certificate shall be deemed to have been issued.

## **10.2 Taking Over Parts**

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 stated in the Specification or with the prior agreement of the Contractor) 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 the Contractor shall give a Notice to the Engineer identifying such part and describing such use, and:

- (a) that Part shall be deemed to have been taken over by the Employer 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) the Engineer shall immediately issue a Taking-Over Certificate for this Part, and any outstanding work to be completed (including Tests on Completion) and/or defects to be remedied shall be listed in this certificate.

After the Engineer has issued a Taking-Over Certificate for a Part, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out the outstanding work (including Tests on Completion) and/or remedial work for any defects listed in the certificate. The Contractor shall carry out these works as soon as practicable and, in any case, before the expiry date of the relevant DNP.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a Part, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of such Cost Plus Profit.

If the Engineer issues a Taking-Over Certificate for any part of the Works, or if the Employer is deemed to have taken over a Part under sub-paragraph (a) above, for any period of delay after the date under sub-paragraph (a) above, the Delay Damages 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. This reduction shall be calculated as the proportion which the value of the Part (except the value of any outstanding works and/or defects to be remedied) bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine this reduction (and for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's Notice under this Sub-Clause shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3). The provisions of this paragraph shall only apply to the daily rate of Delay Damages, and shall not affect the maximum amount of these damages.

### **10.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days (either a continuous period, or multiple periods which total more than 14 days), from carrying out the Tests on Completion by the Employer's Personnel or by a cause for which the Employer is responsible:

- (a) the Contractor shall give a Notice to the Engineer describing such prevention;
- (b) 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; and
- (c) the Engineer shall immediately issue a Taking-Over Certificate for the Works or Section (as the case may be).

After the Engineer has issued this Taking-Over Certificate, the Contractor shall carry out the Tests on Completion as soon as practicable and, in any case, before the expiry date of the DNP. The Engineer shall give a Notice to the Contractor, of not less than 14 days, of the date after which the Contractor may carry out each of the Tests on Completion. Thereafter, Sub-Clause 9.1 [Contractor's Obligations] shall apply.

If the Contractor suffers delay and/or incurs Cost as a result of being prevented from carrying out the Tests on Completion, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

### **10.4 Surfaces Requiring Reinstatement**

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

## **11 Defects after Taking Over**

### **11.1 Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents, and each Section and/or Part, 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 relevant Date of Completion, within the time(s) stated in the Taking-Over Certificate or such other reasonable time as is instructed by the Engineer; and
- (b) execute all work required to remedy defects or damage, of which a Notice is given to

the Contractor by (or on behalf of) the Employer on or before the expiry date of the DNP for the Works or Section or Part (as the case may be).

If a defect appears (including if the Works fail to pass the Tests after Completion, if any) or damage occurs during the relevant DNP, a Notice shall be given to the Contractor accordingly, by (or on behalf of) the Employer. Promptly thereafter:

- (i) the Contractor and the Employer's Personnel shall jointly inspect the defect or damage;
- (ii) the Contractor shall then prepare and submit a proposal for necessary remedial work; and
- (iii) the second, third and fourth paragraphs of Sub-Clause 7.5 [Defects and Rejection] shall apply.

### **11.2 Cost of Remedying Defects**

All work under 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) design (if any) of the Works for which the Contractor is responsible;
- (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 4.4.2 [As-Built Records], Sub-Clause 4.4.3 [Operation and Maintenance Manuals] and/or Sub-Clause 4.5 [Training] (where applicable) or otherwise); or
- (d) failure by the Contractor to comply with any other obligation under the Contract.

If the Contractor considers that the work is attributable to any other cause, the Contractor shall promptly give a Notice to the Engineer and the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the cause (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date of this Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3). If it is agreed or determined that the work is attributable to a cause other than those listed above, Sub-Clause 13.3.1 [Variation by Instruction] shall apply as if such work had been instructed by the Engineer.

### **11.3 Extension of Defects Notification Period**

The Employer shall be entitled to an extension of the DNP for the Works, or a Section or a Part:

- (a) if and to the extent that the Works, Section, Part or a major item of Plant (as the case may be, and after taking over) cannot be used for the intended purpose(s) by reason of a defect or damage which is attributable to any of the matters under sub-paragraphs (a) to (d) of Sub-Clause 11.2 [Cost of Remedying Defects]; and
- (b) subject to Sub-Clause 20.2 [Claims For Payment and/or EOT].

However, a DNP shall not be extended by more than a period of two years after the expiry of the DNP stated in the Contract Data.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.9 [Employer's Suspension] (other than where the cause of such suspension is the responsibility of the Contractor) or Sub-Clause 16.1 [Suspension by Contractor], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than

two years after the DNP for the Works, of which the Plant and/or Materials form part, would otherwise have expired.

#### **11.4 Failure to Remedy Defects**

If the remedying of any defect or damage under Sub-Clause 11.1 [Completion of Outstanding Works and Remedying Defects] is unduly delayed by the Contractor, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. A Notice of this fixed date shall be given to the Contractor by (or on behalf of) the Employer, which Notice shall allow the Contractor reasonable time (taking due regard of all relevant circumstances) to remedy the defect or damage.

If the Contractor fails to remedy the defect or damage by the date stated in this Notice 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 the Employer's sole discretion):

- (a) carry out the work or have the work carried out by others (including any retesting), in the manner required under the Contract and at the Contractor's cost, but the Contractor shall have no responsibility for this work. The Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) accept the damaged or defective work, in which case the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to a reduction in the Contract Price. The reduction shall be in full satisfaction of this failure only and shall be in the amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure;
- (c) require the Engineer to treat any part of the Works which cannot be used for its intended purpose(s) under the Contract by reason of this failure as an omission, as if such omission had been instructed under Sub-Clause 13.3.1 [Variation by Instruction]; or
- (d) terminate the Contract as a whole with immediate effect (and Sub-Clause 15.2 [Termination for Contractor's Default] shall not apply) if the defect or damage deprives the Employer of substantially the whole benefit of the Works. The Employer shall then be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to recover from the Contractor all sums paid for the Works, plus financing charges and any costs incurred in dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

The exercise of discretion by the Employer under sub-paragraph (c) or (d) above shall be without prejudice to any other rights the Employer may have, under the Contract or otherwise.

#### **11.5 Remedying of Defective Work off Site**

If, during the DNP, the Contractor considers that any defect or damage in any Plant cannot be remedied expeditiously on the Site the Contractor shall give a Notice, with reasons, to the Employer requesting consent to remove the defective or damaged Plant off the Site for the purposes of repair. This Notice shall clearly identify each item of defective or damaged Plant, and shall give details of:

- (a) the defect or damage to be repaired;
- (b) the place to which defective or damaged Plant is to be taken for repair;
- (c) the transportation to be used (and insurance cover for such transportation);
- (d) the proposed inspections and testing off the Site;
- (e) the planned duration required before the repaired Plant shall be returned to the Site; and
- (f) the planned duration for reinstallation and retesting of the repaired Plant (under

Sub-Clause 7.4 [Testing by the Contractor] and/or Clause 9 [Tests on Completion] if applicable).

The Contractor shall also provide any further details that the Employer may reasonably require.

When the Employer gives consent (which consent shall not relieve the Contractor from any obligation or responsibility under this Clause), the Contractor may remove from the Site such items of Plant as are defective or damaged. As a condition of this consent, the Employer may require the Contractor to increase the amount of the Performance Security by the full replacement cost of the defective or damaged Plant.

### **11.6 Further Tests after Remedying Defects**

Within 7 days of completion of the work of remedying of any defect or damage, the Contractor shall give a Notice to the Engineer describing the remedied Works, Section, Part and/or Plant and the proposed repeated tests (under Clause 9 [Tests on Completion]). Within 7 days after receiving this Notice, the Engineer shall give a Notice to the Contractor either:

- (a) agreeing with such proposed testing; or
- (b) instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with the Contract.

If the Contractor fails to give such a Notice within the 7 days, the Engineer may give a Notice to the Contractor, within 14 days after the defect or damage is remedied, instructing the repeated tests that are necessary to demonstrate that the remedied Works, Section, Part and/or Plant comply with the Contract.

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

### **11.7 Right of Access after Taking Over**

Until the date 28 days after issue of the Performance Certificate, the Contractor shall have the right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

Whenever the Contractor intends to access any part of the Works during the relevant DNP:

- (a) the Contractor shall request access by giving a Notice to the Employer, describing the parts of the Works to be accessed, the reasons for such access, and the Contractor's preferred date for access. This Notice shall be given in reasonable time in advance of the preferred date for access, taking due regard of all relevant circumstances including the Employer's security restrictions; and
- (b) within 7 days after receiving the Contractor's Notice, the Employer shall give a Notice to the Contractor either:
  - (i) stating the Employer's consent to the Contractor's request; or
  - (ii) proposing reasonable alternative date(s), with reasons. If the Employer fails to give this Notice within the 7 days, the Employer shall be deemed to have given consent to the Contractor's access on the preferred date stated in the Contractor's Notice.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works by the Contractor, the Contractor shall be

entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of any such Cost Plus Profit.

### **11.8 Contractor to Search**

The Contractor shall, if instructed by the Engineer, search for the cause of any defect, under the direction of the Engineer. The Contractor shall carry out the search on the date(s) stated in the Engineer's instruction or other date(s) agreed with 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 Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of the Cost Plus Profit of the search.

If the Contractor fails to carry out the search in accordance with this Sub-Clause, the search may be carried out by the Employer's Personnel. The Contractor shall be given a Notice of the date when such a search will be carried out and the Contractor may attend at the Contractor's own cost. If the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of the costs of the search reasonably incurred by the Employer.

### **11.9 Performance Certificate**

Performance of the Contractor's obligations under the Contract 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 fulfilled the Contractor's obligations under the Contract.

The Engineer shall issue the Performance Certificate to the Contractor (with a copy to the Employer and to the DAAB) within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has:

- (a) supplied all the Contractor's Documents; and
- (b) completed and tested all the Works (including remedying any defects) in accordance with the Contract.

If the Engineer fails to issue the Performance Certificate within this period of 28 days, the Performance Certificate shall be deemed to have been issued on the date 28 days after the date on which it should have been issued, as required by this Sub-Clause.

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

### **11.10 Unfulfilled Obligations**

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

However in relation to Plant, the Contractor shall not be liable for any defects or damage occurring more than two years after expiry of the DNP for the Plant except if prohibited by law or in any case of fraud, gross negligence, deliberate default or reckless misconduct.

### **11.11 Clearance of Site**

Promptly after the issue of the Performance Certificate, the Contractor shall:

- (a) remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and

Temporary Works from the Site;

(b) reinstate all parts of the Site which were affected by the Contractor's activities during the execution of the Works and are not occupied by the Permanent Works; and

(c) leave the Site and the Works in the condition stated in the Specification (if not stated, in a clean and safe condition).

If the Contractor fails to comply with sub-paragraphs (a), (b) and/or (c) above within 28 days after the issue of the Performance Certificate, the Employer may sell (to the extent permitted by applicable Laws) or otherwise dispose of any remaining items and/or may reinstate and clean the Site (as may be necessary) at the Contractor's cost.

The Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of the costs reasonably incurred in connection with, or attributable to, such sale or disposal and reinstating and/or cleaning the Site, less an amount equal to the moneys from the sale (if any).

## **12 Measurement and Valuation**

### **12.1 Works to be Measured**

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

Whenever the Engineer requires any part of the Works to be measured on Site, he/she shall give a Notice to the Contractor of not less than 7 days, of the part to be measured and the date on which and place on Site at which the measurement will be made. Unless otherwise agreed with the Contractor, the measurement on Site shall be made on this date and the Contractor's Representative shall:

- (a) either attend or send another qualified representative to assist the Engineer and to endeavour to reach agreement of the measurement, and
- (b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative at the time and place stated in the Engineer's Notice (or otherwise agreed with the Contractor), the measurement made by (or on behalf of) the Engineer shall be deemed to have been made in the Contractor's presence and the Contractor shall be deemed to have accepted the measurement as accurate.

Any part of the Permanent Works that is to be measured from records shall be identified in the Specification and, except as otherwise stated in the Contract, such records shall be prepared by the Engineer. Whenever the Engineer has prepared the records for such a part, he/she shall give a Notice to the Contractor of not less than 7 days, stating the date on which and place at which the Contractor's Representative shall attend to examine and agree the records with the Engineer. If the Contractor fails to attend or send a representative at the time and place stated in the Engineer's Notice (or otherwise agreed with the Contractor), the Contractor shall be deemed to have accepted the records as accurate.

If, for any part of the Works, the Contractor attends the measurement on Site or examines the measurement records (as the case may be) but the Engineer and the Contractor are unable to agree the measurement, then the Contractor shall give a Notice to the Engineer setting out the reasons why the Contractor considers the measurement on Site or records are inaccurate. If the Contractor does not give such a Notice to the Engineer within 14 days after attending the measurement on Site or examining the measurement records, the Contractor shall be deemed to have accepted the measurement as accurate.

After receiving a Contractor's Notice under this Sub-Clause, unless at that time such measurement is already subject to the last paragraph of Sub-Clause 13.3.1 [Variation by Instruction], the Engineer shall:

- proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the measurement; and
- for the purpose of Sub-Clause 3.7.3 [Time limits], the date on which the Engineer receives the Contractor's Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3.

Until such time as the measurement is agreed or determined, the Engineer shall assess a provisional measurement for the purposes of Interim Payment Certificates.

## **12.2 Method of Measurement**

The method of measurement shall be as stated in the Contract Data or, if not so stated, that which shall be in accordance with the Bill of Quantities or other applicable Schedule(s).

Except as otherwise stated in the Contract, measurement shall be made of the net actual quantity of each item of the Permanent Works and no allowance shall be made for bulking, shrinkage or waste.

## **12.3 Valuation of the Works**

Except as otherwise stated in the Contract, the Engineer shall value each item of work by applying the measurement agreed or determined in accordance with Sub-Clauses 12.1 [Works to be Measured] and 12.2 [Method of Measurement], and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Bill of Quantities or other Schedule or, if there is no such an item, specified for similar work.

Any item of work which is identified in the Bill of Quantities or other Schedule, but for which no rate or price is specified, shall be deemed to be included in other rates and prices in the Bill of Quantities or other Schedule(s).

A new rate or price shall be appropriate for an item of work if:

- (a) the item is not identified in, and no rate or price for this item is specified in, the Bill of Quantities or other Schedule and no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract;
- (b)
  - (i) the measured quantity of the item is changed by more than 10% from the quantity of this item in the Bill of Quantities or other Schedule,
  - (ii) this change in quantity multiplied by the rate or price specified in the Bill of Quantities or other Schedule for this item exceeds 0.01% of the Accepted Contract Amount,
  - (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
- (iv) this item is not specified in the Bill of Quantities or other Schedule as a "fixed rate item", "fixed charge" or similar term referring to a rate or price which is not subject to adjustment for any change in quantity; and/or
- (c) the work is instructed under Clause 13 [Variations and Adjustments] and sub-paragraph (a) or (b) above applies.

Each new rate or price shall be derived from any relevant rates or prices specified in the Bill of Quantities or other Schedule, with reasonable adjustments to take account of the matters described in sub-paragraph (a), (b) and/or (c), as applicable. If no specified rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with the applicable percentage for profit stated in the Contract Data (if not stated, five percent (5%)), taking account of any other relevant matters.

If, for any item of work, the Engineer and the Contractor are unable to agree the appropriate rate or price, then the Contractor shall give a Notice to the Engineer setting out the reasons why the Contractor disagrees. After receiving a Contractor's Notice under this Sub-Clause, unless at that time such rate or price is already subject to the last paragraph of Sub-Clause 13.3.1 [Variation by Instruction], the Engineer shall:

- proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the appropriate rate or price; and
- for the purpose of Sub-Clause 3.7.3 [Time limits], the date on which the Engineer receives the Contractor's Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3.

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

## **12.4 Omissions**

Whenever the omission of any work forms part (or all) of a Variation;

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

then the Contractor shall, in the Contractor's proposal under sub-paragraph (c) of Sub-Clause 13.3.1 [Variation by Instruction], give details to the Engineer accordingly, with detailed supporting particulars.

## **13 Variations and Adjustments**

### **13.1 Right to Vary**

Variations may be initiated by the Engineer under Sub-Clause 13.3 [Variation Procedure] at any time before the issue of the Taking-Over Certificate for the Works.

Other than as stated under Sub-Clause 11.4 [Failure to Remedy Defects], a Variation shall not comprise the omission of any work which is to be carried out by the Employer or by others unless otherwise agreed by the Parties.

The Contractor shall be bound by each Variation instructed under Sub-Clause 13.3.1 [Variation by Instruction], and shall execute the Variation with due expedition and without delay, unless the Contractor promptly gives a Notice to the Engineer stating (with detailed supporting particulars) that:

- (a) the varied work was Unforeseeable having regard to the scope and nature of the Works described in the Specification;

- (b) the Contractor cannot readily obtain the Goods required for the Variation; or
- (c) it will adversely affect the Contractor's ability to comply with Sub-Clause 4.8 [Health and Safety Obligations] and/or Sub-Clause 4.18 [Protection of the Environment].

Promptly after receiving this Notice, the Engineer shall respond by giving a Notice to the Contractor cancelling, confirming or varying the instruction. Any instruction so confirmed or varied shall be taken as an instruction under Sub-Clause 13.3.1 [Variation by instruction].

Each Variation may include:

- (i) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);
- (ii) changes to the quality and other characteristics of any item of work;
- (iii) changes to the levels, positions and/or dimensions of any part of the Works;
- (iv) the omission of any work, unless it is to be carried out by others without the agreement of the Parties;
- (v) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work; or
- (vi) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration to and/or modification of the Permanent Works, unless and until the Engineer instructs a Variation under Sub-Clause 13.3.1 [Variation by 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:

- (a) accelerate completion;
- (b) reduce the cost to the Employer of executing, maintaining or operating the Works;
- (c) improve the efficiency or value to the Employer of the completed Works; or
- (d) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the details as stated in sub-paragraphs (a) to (c) of Sub-Clause 13.3.1 [Variation by Instruction].

The Engineer shall, as soon as practicable after receiving such a proposal, respond by giving a Notice to the Contractor stating his/her consent or otherwise. The Engineer's consent or otherwise shall be at the sole discretion of the Employer. The Contractor shall not delay any work while awaiting a response.

If the Engineer gives his/her consent to the proposal, with or without comments, the Engineer shall then instruct a Variation. Thereafter, the Contractor shall submit any further particulars that the Engineer may reasonably require, and the last paragraph of Sub-Clause 13.3.1 [Variation by Instruction] shall apply which shall include consideration by the Engineer of the sharing (if any) of the benefit, costs and/or delay between the Parties stated in the Particular Conditions.

If a proposal under this Sub-Clause, to which the Engineer gives his/her consent, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (i) the Contractor shall design this part at his/her cost; and

(ii) sub-paragraphs (a) to (h) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply.

### **13.3 Variation Procedure**

Subject to Sub-Clause 13.1 [Right to Vary], Variations shall be initiated by the Engineer in accordance with either of the following procedures:

#### **13.3.1 Variation by Instruction**

The Engineer may instruct a Variation by giving a Notice (describing the required change and stating any requirements for the recording of Costs) to the Contractor in accordance with Sub-Clause 3.5 [Engineer's Instructions].

The Contractor shall proceed with execution of the Variation and shall within 28 days (or other period proposed by the Contractor and agreed by the Engineer) of receiving the Engineer's instruction, submit to the Engineer detailed particulars including:

- (a) a description of the varied work performed or to be performed, including details of the resources and methods adopted or to be adopted by the Contractor;
- (b) a programme for its execution and the Contractor's proposal for any necessary modifications (if any) 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 by valuing the Variation in accordance with Clause 12 [Measurement and Valuation], with supporting particulars (which shall include identification of any estimated quantities and, if the Contractor incurs or will incur Cost as a result of any necessary modification to the Time for Completion, shall show the additional payment (if any) to which the Contractor considers that the Contractor is entitled). If the Parties have agreed to the omission of any work which is to be carried out by others, the Contractor's proposal may also include the amount of any loss of profit and other losses and damages suffered (or to be suffered) by the Contractor as a result of the omission.

Thereafter, the Contractor shall submit any further particulars that the Engineer may reasonably require.

The Engineer shall then proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine:

- (i) EOT, if any; and/or
- (ii) the adjustment to the Contract Price (including valuation of the Variation in accordance with Clause 12 [Measurement and Valuation] using measured quantities of the varied work) (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's submission (including any requested further particulars) shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3). The Contractor shall be entitled to such EOT and/or adjustment to the Contract Price, **without any requirement to comply with Sub-Clause 20.2 [Claims For Payment and/or EOT]**.

#### **13.3.2 Variation by Request for Proposal**

The Engineer may request a proposal, before instructing a Variation, by giving a Notice (describing the proposed change) to the Contractor.

The Contractor shall respond to this Notice as soon as practicable, by either:

- (a) submitting a proposal, which shall include the matters as described in sub-paragraphs (a) to (c) of Sub-Clause 13.3.1 [Variation by Instruction]; or

(b) giving reasons why the Contractor cannot comply (if this is the case), by reference to the matters described in sub-paragraphs (a) to (c) of Sub-Clause 13.1 [Right to Vary].

If the Contractor submits a proposal, the Engineer shall, as soon as practicable after receiving it, respond by giving a Notice to the Contractor stating his/her consent or otherwise. The Contractor shall not delay any work whilst awaiting a response.

If the Engineer gives consent to the proposal, with or without comments, the Engineer shall then instruct the Variation. Thereafter, the Contractor shall submit any further particulars that the Engineer may reasonably require and the last paragraph of Sub-Clause 13.3.1 [Variation by Instruction] shall apply.

If the Engineer does not give consent to the proposal, with or without comments, and if the Contractor has incurred Cost as a result of submitting it, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment of such Cost.

#### **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 for which adjustments to the Contract Price shall be agreed or determined under Sub-Clause 13.3.1 [Variation by Instruction]; and/or
- (b) Plant, Materials, works or services to be purchased by the Contractor from a nominated Subcontractor (as defined in Sub-Clause 5.2 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
  - (i) the actual amounts paid (or due to be paid) by the Contractor; and
  - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the applicable Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

If the Engineer instructs the Contractor under sub-paragraph (a) and/or (b) above, this instruction may include a requirement for the Contractor to submit quotations from the Contractor's suppliers and/or subcontractors for all (or some) of the items of the work to be executed or Plant, Materials, works or services to be purchased. Thereafter, the Engineer may respond by giving a Notice either instructing the Contractor to accept one of these quotations (but such an instruction shall not be taken as an instruction under Sub-Clause 5.2 [Nominated Subcontractors]) or revoking the instruction. If the Engineer does not so respond within 7 days of receiving the quotations, the Contractor shall be entitled to accept any of these quotations at the Contractor's discretion.

Each Statement that includes a Provisional Sum shall also include all applicable invoices, vouchers and accounts or receipts in substantiation of the Provisional Sum.

#### **13.5 Daywork**

If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule, and the following procedure shall apply.

Before ordering Goods for such work (other than any Goods priced in the Daywork Schedule), the Contractor shall submit one or more quotations from the Contractor's suppliers and/or subcontractors to the Engineer. Thereafter, the Engineer may instruct the Contractor to accept one of these quotations (but such an instruction shall not be taken as an instruction under Sub-Clause 5.2 [Nominated Subcontractors]). If the Engineer does not so instruct the Contractor within 7 days of receiving the quotations, the Contractor shall be entitled to accept any of these quotations at the Contractor's discretion.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate (and one electronic copy), which shall include records (as described under Sub-Clause 6.10 [Contractor's Records]) of the resources used in executing the previous day's work.

One copy of each statement shall, if correct and agreed, be signed by the Engineer and promptly returned to the Contractor. If not correct or agreed, the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the resources (and for the purpose of Sub-Clause 3.7.3 [Time limits], the date the works which are the subject of the Variation under this Sub-Clause are completed by the Contractor shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

In the next Statement, the Contractor shall then submit priced statements of the agreed or determined resources to the Engineer, together with all applicable invoices, vouchers and accounts or receipts in substantiation of any Goods used in the daywork (other than Goods priced in the Daywork Schedule).

Unless otherwise stated in the Daywork Schedule, the rates and prices in the Daywork Schedule shall be deemed to include taxes, overheads and profit.

### **13.6 Adjustments for Changes in Laws**

Subject to the following provisions of this Sub-Clause, the Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in:

- (a) the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws);
- (b) the judicial or official governmental interpretation or implementation of the Laws referred to in sub-paragraph (a) above;
- (c) any permit, permission, license or approval obtained by the Employer or the Contractor under sub-paragraph (a) or (b), respectively, of Sub-Clause 1.13 [Compliance with Laws]; or
- (d) the requirements for any permit, permission, licence and/or approval to be obtained by the Contractor under sub-paragraph (b) of Sub-Clause 1.13 [Compliance with Laws],

made and/or officially published after the Base Date, which affect the Contractor in the performance of obligations under the Contract. In this Sub-Clause "change in Laws" means any of the changes under sub-paragraphs (a), (b), (c) and/or (d) above.

If the Contractor suffers delay and/or incurs an increase in Cost as a result of any change in Laws, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost.

If there is a decrease in Cost as a result of any change in Laws, the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to a reduction in the Contract Price.

If any adjustment to the execution of the Works becomes necessary as a result of any change in Laws:

- (i) the Contractor shall promptly give a Notice to the Engineer, or
- (ii) the Engineer shall promptly give a Notice to the Contractor (with detailed supporting particulars).

Thereafter, the Engineer shall either instruct a Variation under Sub-Clause 13.3.1 [Variation by Instruction] or request a proposal under Sub-Clause 13.3.2 [Variation by Request for Proposal].

### **13.7 Adjustments for Changes in Cost**

If Schedule(s) of cost indexation are not included in the Contract, this Sub-Clause shall not apply.

The amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts calculated in accordance with the Schedule(s) of cost indexation.

To the extent that full compensation for any rise or fall in Costs is not covered by this Sub-Clause or other Clauses of these Conditions, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as certified in Payment Certificates, shall be calculated for each of the currencies in which the Contract Price is payable. No adjustment shall be applied to work valued on the basis of Cost or current prices.

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

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either:

- (a) each index or price applicable on the date 49 days before the expiry of the Time for Completion of the Works; or
- (b) the current index or price

whichever is more favourable to the Employer.

## **14 Contract Price and Payment**

### **14.1 The Contract Price**

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be the value of the Works in accordance with Sub-Clause 12.3 [Valuation of the Works] and be subject to adjustments, additions (including Cost or Cost Plus Profit to which the Contractor is entitled under these Conditions) and/or deductions in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by the Contractor 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 Laws];

- (c) any quantities which may be set out in the Bill of Quantities or other Schedule(s) are estimated quantities and are not to be taken as the actual and correct quantities:
- (i) of the Works which the Contractor is required to execute, or
  - (ii) for the purposes of Clause 12 [Measurement and Valuation]; and
  - (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price (if any) in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

## **14.2 Advance Payment**

If no amount of advance payment is stated in the Contract Data, this Sub-Clause shall not apply.

After receiving the Advance Payment Certificate, the Employer shall make an advance payment, as an interest-free loan for mobilisation (and design, if any). The amount of the advance payment and the currencies in which it is to be paid shall be as stated in the Contract Data.

### **14.2.1 Advance Payment Guarantee**

The Contractor shall obtain (at the Contractor's cost) an Advance Payment Guarantee in amounts and currencies equal to the advance payment, and shall submit it to the Employer with a copy to the Engineer. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) to which the Employer gives consent, and shall be based on the sample form included in the tender documents or on another form agreed by the Employer (but such consent and/or agreement shall not relieve the Contractor from any obligation under this Sub-Clause).

The Contractor shall ensure that the Advance Payment 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 stated in the Payment Certificates.

If the terms of the Advance Payment Guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days before the expiry date:

- (a) the Contractor shall extend the validity of this guarantee until the advance payment has been repaid;
- (b) the Contractor shall immediately submit evidence of this extension to the Employer, with a copy to the Engineer; and
- (c) if the Employer does not receive this evidence 7 days before the expiry date of this guarantee, the Employer shall be entitled to claim under the guarantee the amount of advance payment which has not been repaid.

When submitting the Advance Payment Guarantee, the Contractor shall include an application (in the form of a Statement) for the advance payment.

### **14.2.2 Advance Payment Certificate**

The Engineer shall issue an Advance Payment Certificate for the advance payment within 14 days after:

- (a) the Employer has received both the Performance Security and the Advance Payment Guarantee, in the form and issued by an entity in accordance with Sub-Clause 4.2.1 [Contractor's Obligations] and Sub-Clause 14.2.1 [Advance Payment Guarantee]

respectively; and

(b) the Engineer has received a copy of the Contractor's application for the advance payment under Sub-Clause 14.2.1 [Advance Payment Guarantee].

### **14.2.3 Repayment of Advance Payment**

The advance payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Contract Data:

- (a) deductions shall commence in the IPC in which the total of all certified interim payments in the same currency as the advance payment (excluding the advance payment and deductions and release of retention moneys) exceeds ten percent (10%) of the portion of the Accepted Contract Amount payable in that currency less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate of one quarter (25%) of the amount of each IPC (excluding the advance payment and deductions and release of retention moneys) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.

If the advance payment has not been repaid before the issue of the Taking-Over Certificate for the Works, or before termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 18 [Exceptional Events] (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

### **14.3 Application for Interim Payment**

The Contractor shall submit a Statement to the Engineer after the end of the period of payment stated in the Contract Data (if not stated, after the end of each month). Each Statement shall:

- (a) be in a form acceptable to the Engineer;
- (b) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data; and
- (c) show in detail the amounts to which the Contractor considers that the Contractor is entitled, with supporting documents which shall include sufficient detail for the Engineer to investigate these amounts together with the relevant report on progress in accordance with Sub-Clause 4.20 [Progress Reports].

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

- (i) the estimated contract value of the Works executed, and the Contractor's Documents produced, up to the end of the period of payment (including Variations but excluding items described in sub-paragraphs (ii) to (x) below);
- (ii) any amounts to be added and/or deducted for changes in Laws under Sub-Clause 13.6 [Adjustments for Changes in Laws], and for changes in Cost under Sub-Clause 13.7 [Adjustments for Changes in Cost];
- (iii) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the amounts under sub-paragraphs (i), (ii) and (vi) of this Sub-Clause, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (iv) any amounts to be added and/or deducted for the advance payment and repayments under Sub-Clause 14.2 [Advance Payment];
- (v) any amounts to be added and/or deducted for Plant and Materials under Sub-Clause

14.5 [Plant and Materials intended for the Works];

(vi) any other additions and/or deductions which have become due under the Contract or otherwise, including those under Sub-Clause 3.7 [Agreement or Determination];

(vii) any amounts to be added for Provisional Sums under Sub-Clause 13.4 [Provisional Sums];

(viii) any amount to be added for release of Retention Money under Sub-Clause 14.9 [Release of Retention Money];

(ix) any amount to be deducted for the Contractor's use of utilities provided by the Employer under Sub-Clause 4.19 [Temporary Utilities]; and

(x) the deduction of amounts certified in all previous Payment Certificates.

#### **14.4 Schedule of Payments**

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

(a) the instalments quoted in the Schedule of Payments shall be treated as the estimated contract values for the purposes of sub-paragraph (i) of Sub-Clause 14.3 [Application for Interim Payment];

(b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and

(c) if:

(i) these instalments are not defined by reference to the actual progress achieved in the execution of the Works; and

(ii) actual progress is found by the Engineer to differ from that on which the Schedule of Payments was based,

then the Engineer may proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine revised instalments (and for the purpose of Sub-Clause 3.7.3 [Time limits] the date when the difference under sub-paragraph (ii) above was found by the Engineer shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3). Such revised instalments shall take account of the extent to which progress differs from that on which the Schedule of Payments was based.

If the Contract does not include a Schedule of Payments, the Contractor shall submit non-binding estimates of the payments which the Contractor expects to become due during each period of 3 months. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at intervals of 3 months, until the issue of the Taking-Over Certificate for the Works.

#### **14.5 Plant and Materials intended for the Works**

If no Plant and/or Materials are listed in the Contract Data for payment when shipped and/or payment when delivered, this Sub-Clause shall not apply.

The Contractor shall include, under sub-paragraph (v) of Sub-Clause 14.3 [Application for Interim Payment]:

– an amount to be added for Plant and Materials which have been shipped or delivered (as the case may be) to the Site for incorporation in the Permanent Works; and

– an amount to be deducted when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (i) of Sub-Clause 14.3 [Application for Interim Payment].

The Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine each amount to be added for Plant and Materials if the following conditions are fulfilled (and for the purpose of Sub-Clause 3.7.3 [Time limits] the date these conditions are fulfilled shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3):

(a) the Contractor has:

(i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection by the Engineer;

(ii) submitted evidence demonstrating that the Plant and Materials comply with the Contract (which may include test certificates under Sub-Clause 7.4 [Testing by the Contractor] and/or compliance verification documentation under Sub-Clause 4.9.2 [Compliance Verification System]) to the Engineer; and

(iii) submitted a statement of the Cost of acquiring and shipping or delivering (as the case may be) the Plant and Materials to the Site, supported by satisfactory evidence; and either:

(b) the relevant Plant and Materials:

(i) are those listed in the Contract Data for payment when shipped;

(ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and

(iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with:

- evidence of payment of freight and insurance;
- any other documents reasonably required by the Engineer; and
- a written undertaking by the Contractor that the Contractor will deliver to the Employer (prior to submitting the next Statement) a bank guarantee in a form and issued by an entity to which the Employer gives consent (but such consent shall not relieve the Contractor from any obligation in the following provisions of this sub-paragraph), in amounts and currencies equal to the amount due under this Sub-Clause.

This guarantee shall be in a similar form to the form described in Sub-Clause 14.2.1 [Advance Payment Guarantee] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

(i) are those listed in the Contract Data for payment when delivered to the Site, and

(ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The amount so agreed or determined shall take account of the evidence and documents required under this Sub-Clause and of the contract value of the Plant and Materials. If sub-paragraph (b) above applies, the Engineer shall have no obligation to certify any payment under this Sub-Clause until the Employer has received the bank guarantee in accordance with sub-paragraph (b)(iii) above. The sum to be certified by the Engineer in an IPC shall be the equivalent of eighty percent (80%) of this agreed or determined amount. The currencies for this certified sum shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (i) of Sub-Clause 14.3 [Application for Interim Payment]. At that time, the Payment Certificate shall include the applicable amount to be deducted which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

## **14.6 Issue of IPC**

No amount will be certified or paid to the Contractor until:

- (a) the Employer has received the Performance Security in the form, and issued by an entity, in accordance with Sub-Clause 4.2.1 [Contractor's obligations]; and
- (b) the Contractor has appointed the Contractor's Representative in accordance with Sub-Clause 4.3 [Contractor's Representative].

### **14.6.1 The IPC**

The Engineer shall, within 28 days after receiving a Statement and supporting documents, issue an IPC to the Employer, with a copy to the Contractor:

- (a) stating the amount which the Engineer fairly considers to be due; and
- (b) including any additions and/or deductions which have become due under Sub-Clause 3.7 [Agreement or Determination] or under the Contract or otherwise,

with detailed supporting particulars (which shall identify any difference between a certified amount and the corresponding amount in the Statement and give the reasons for such difference).

### **14.6.2 Withholding (amounts in) an IPC**

Before the issue of the Taking-Over Certificate for the Works, the Engineer may withhold an IPC in an amount which would (after retention and other deductions) be less than the minimum amount of the IPC (if any) stated in the Contract Data. In this event, the Engineer shall promptly give a Notice to the Contractor accordingly.

An IPC 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 estimated cost of rectification or replacement may be withheld until rectification or replacement has been completed;
- (b) if the Contractor was or is failing to perform any work, service or obligation in accordance with the Contract, the value of this work or obligation may be withheld until the work or obligation has been performed. In this event, the Engineer shall promptly give a Notice to the Contractor describing the failure and with detailed supporting particulars of the value withheld; and/or
- (c) if the Engineer finds any significant error or discrepancy in the Statement or supporting documents, the amount of the IPC may take account of the extent to which this error or discrepancy has prevented or prejudiced proper investigation of the amounts in the Statement until such error or discrepancy is corrected in a subsequent Statement.

For each amount so withheld, in the supporting particulars for the IPC the Engineer shall detail his/her calculation of the amount and state the reasons for it being withheld.

### **14.6.3 Correction or modification**

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 Notice of No-objection to any Contractor's Document or to (any part of) the Works.

If the Contractor considers that an IPC does not include any amounts to which the Contractor is entitled, these amounts shall be identified in the next Statement (the "identified amounts" in this paragraph). The Engineer shall then make any correction or modification that should

properly be made in the next Payment Certificate. Thereafter, to the extent that:

- (a) the Contractor is not satisfied that this next Payment Certificate includes the identified amounts; and
- (b) the identified amounts do not concern a matter for which the Engineer is already carrying out his/her duties under Sub-Clause 3.7 [Agreement or Determination]

the Contractor may, by giving a Notice, refer this matter to the Engineer and Sub-Clause 3.7 [Agreement or Determination] shall apply (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives this Notice shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

#### **14.7 Payment**

The Employer shall pay to the Contractor:

- (a) the amount certified in each Advance Payment Certificate within the period stated in the Contract Data (if not stated, 21 days) after the Employer receives the Advance Payment Certificate;
- (b) the amount certified in each IPC issued under:
  - (i) Sub-Clause 14.6 [Issue of IPC], within the period stated in the Contract Data (if not stated, 56 days) after the Engineer receives the Statement and supporting documents; or
  - (ii) Sub-Clause 14.13 [Issue of FPC], within the period stated in the Contract Data (if not stated, 28 days) after the Employer receives the IPC; and
- (c) the amount certified in the FPC within the period stated in the Contract Data (if not stated, 56 days) after the Employer receives the FPC.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

#### **14.8 Delayed Payment**

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the expiry of the time for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of sub-paragraph (b) of Sub-Clause 14.7) of the date on which any IPC is issued.

Unless otherwise stated in the Contract Data, these financing charges shall be calculated at the annual rate of three percent (3%) above:

- (a) the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or
- (b) where no such rate exists at that place, the same rate in the country of the currency of payment, or
- (c) in the absence of such a rate at either place, the appropriate rate fixed by the law of the country of the currency of payment.

The Contractor shall by request be entitled to payment of these financing charges by the Employer, without:

- (i) the need for the Contractor to submit a Statement or any formal Notice (including any requirement to comply with Sub-Clause 20.2 [Claims For Payment and/or EOT]) or certification; and
- (ii) prejudice to any other right or remedy.

## **14.9 Release of Retention Money**

After the issue of the Taking-Over Certificate for:

- (a) the Works, the Contractor shall include the first half of the Retention Money in a Statement; or
- (b) for a Section, the Contractor shall include the relevant percentage of the first half of the Retention Money in a Statement.

After the latest of the expiry dates of the Defects Notification Periods, the Contractor shall include the second half of the Retention Money in a Statement promptly after such latest date. If a Taking-Over Certificate was (or was deemed to have been) issued for a Section, the Contractor shall include the relevant percentage of the second half of the Retention Money in a Statement promptly after the expiry date of the DNP for the Section.

In the next IPC after the Engineer receives any such Statement, the Engineer shall certify the release of the corresponding amount of Retention Money. However, when certifying any release of Retention Money under Sub-Clause 14.6 [Issue of IPC], if any work remains to be executed under Clause 11 [Defects after Taking Over], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

The relevant percentage for each Section shall be the percentage value of the Section as stated in the Contract Data. If the percentage value of a Section is not stated in the Contract Data, no percentage of either half of the Retention Money shall be released under this Sub-Clause in respect of such Section.

## **14.10 Statement at Completion**

Within 84 days after the Date of Completion of the Works, the Contractor shall submit to the Engineer a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment], showing:

- (a) the value of all work done in accordance with the Contract up to the Date of Completion of the Works
- (b) any further sums which the Contractor considers to be due at the Date of Completion of the Works; and
- (c) an estimate of any other amounts which the Contractor considers have or will become due after the Date of Completion of the Works under the Contract or otherwise. These estimated amounts shall be shown separately (to those of sub-paragraphs (a) and (b) above) and shall include estimated amounts for:
  - (i) Claims for which the Contractor has submitted a Notice under Sub-Clause 20.2 [Claims For Payment and/or EOT];
  - (ii) any matter referred to the DAAB under Sub-Clause 21.4 [Obtaining DAAB's Decision]; and
  - (iii) any matter for which a NOD has been given under Sub-Clause 21.4 [Obtaining DAAB's Decision].

The Engineer shall then issue an IPC in accordance with Sub-Clause 14.6 [Issue of IPC].

## **14.11 Final Statement**

Submission by the Contractor of any Statement under the following provisions of this Sub-Clause shall not be delayed by reason of any referral under Sub-Clause 21.4 [Obtaining DAAB's Decision] or any arbitration under Sub-Clause 21.6 [Arbitration].

### **14.11.1 Draft Final Statement**

Within 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Engineer a draft final Statement.

This Statement shall:

- (a) be in the same form as Statements previously submitted under Sub-Clause 14.3 [Application for Interim Payment];
- (b) be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data; and
- (c) show in detail, with supporting documents:
  - (i) the value of all work done in accordance with the Contract;
  - (ii) any further sums which the Contractor considers to be due at the date of the issue of the Performance Certificate, under the Contract or otherwise; and
  - (iii) an estimate of any other amounts which the Contractor considers have or will become due after the issue of the Performance Certificate, under the Contract or otherwise, including estimated amounts, by reference to the matters described in sub-paragraphs (c)(i) to (iii) of Sub-Clause 14.10 [Statement at Completion].

These estimated amounts shall be shown separately (to those of sub-paragraphs (i) and (ii) above).

Except for any amount under sub-paragraph (iii) above, if the Engineer disagrees with or cannot verify any part of the draft final Statement, the Engineer shall promptly give a Notice to the Contractor. The Contractor shall then submit such further information as the Engineer may reasonably require within the time stated in this Notice, and shall make such changes in the draft as may be agreed between them.

### **14.11.2 Agreed Final Statement**

If there are no amounts under sub-paragraph (iii) of Sub-Clause 14.11.1 [Draft Final Statement], the Contractor shall then prepare and submit to the Engineer the final Statement as agreed (the “Final Statement” in these Conditions).

However if:

- (a) there are amounts under sub-paragraph (iii) of Sub-Clause 14.11.1 [Draft Final Statement]; and/or
- (b) following discussions between the Engineer and the Contractor, it becomes evident that they cannot agree any amount(s) in the draft final Statement,

the Contractor shall then prepare and submit to the Engineer a Statement, identifying separately: the agreed amounts, the estimated amounts and the disagreed amount(s) (the “Partially Agreed Final Statement” in these Conditions).

### **14.12 Discharge**

When submitting the Final Statement or the Partially Agreed Final Statement (as the case may be), the Contractor shall submit a discharge which confirms that the total of such 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 the total of the Statement is subject to any payment that may become due in respect of any Dispute for which a DAAB proceeding or arbitration is in

progress under Sub-Clause 21.6 [Arbitration] and/or that it becomes effective after the Contractor has received:

- (a) full payment of the amount certified in the FPC; and
- (b) the Performance Security.

If the Contractor fails to submit this discharge, the discharge shall be deemed to have been submitted and to have become effective when the conditions of sub-paragraphs (a) and (b) have been fulfilled.

A discharge under this Sub-Clause shall not affect either Party's liability or entitlement in respect of any Dispute for which a DAAB proceeding or arbitration is in progress under Clause 21 [Disputes and Arbitration].

#### **14.13 Issue of FPC**

Within 28 days after receiving the Final Statement or the Partially Agreed Final Statement (as the case may be), and the discharge under Sub-Clause 14.12 [Discharge], the Engineer shall issue to the Employer (with a copy to the Contractor), the Final Payment Certificate which shall state:

- (a) the amount which the Engineer fairly considers is finally due, including any additions and/or deductions which have become due under Sub-Clause 3.7 [Agreement or Determination] or under the Contract or otherwise; 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, and after giving credit to the Contractor for all amounts (if any) previously paid by the Contractor and/or received by the Employer under the Performance Security, 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 submitted a draft final Statement within the time specified under Sub-Clause 14.11.1 [Draft Final Statement], the Engineer shall request the Contractor to do so. Thereafter, if the Contractor fails to submit a draft final Statement within a period of 28 days, the Engineer shall issue the FPC for such an amount as the Engineer fairly considers to be due.

If:

- (i) the Contractor has submitted a Partially Agreed Final Statement under Sub-Clause 14.11.2 [Agreed Final Statement]; or
- (ii) no Partially Agreed Final Statement has been submitted by the Contractor but, to the extent that a draft final Statement submitted by the Contractor is deemed by the Engineer to be a Partially Agreed Final Statement

the Engineer shall proceed in accordance with Sub-Clause 14.6 [Issue of IPC] to issue an IPC.

#### **14.14 Cessation of Employer's Liability**

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

- (a) the Final Statement or Partially Agreed Final Statement; and
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) the Statement under Sub-Clause 14.10 [Statement at Completion].

Unless the Contractor makes or has made a Claim under Sub-Clause 20.2 [Claims For Payment and/or EOT] in respect of an amount or amounts under the FPC within 56 days of receiving a copy of the FPC the Contractor shall be deemed to have accepted the amounts so certified. The Employer shall then have no further liability to the Contractor, other than to pay the amount due under the FPC and return the Performance Security to the Contractor.

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

#### **14.15 Currencies of Payment**

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

- (a) if the Accepted Contract Amount was expressed in Local Currency only or in Foreign Currency only:
  - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Contract Data, except as otherwise agreed by both Parties;
  - (ii) payments and deductions under Sub-Clause 13.4 [Provisional Sums] and Sub-Clause 13.6 [Adjustments for Changes in Laws] shall be made in the applicable currencies and proportions; and
  - (iii) other payments and deductions under sub-paragraphs (i) to (iv) of Sub-Clause 14.3 [Application for Interim Payment] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) whenever an adjustment is agreed or determined under Sub-Clause 13.2 [Value Engineering] or Sub-Clause 13.3 [Variation Procedure], the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified in sub-paragraph (a)(i) above;
- (c) payment of Delay Damages shall be made in the currencies and proportions specified in the Contract Data;
- (d) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (e) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (f) if no rates of exchange are stated in the Contract Data, they shall be those prevailing on the Base Date and published by the central bank of the Country.

### **15 Termination by Employer**

#### **15.1 Notice to Correct**

If the Contractor fails to carry out any obligation under the Contract the Engineer may, by giving a Notice to the Contractor, require the Contractor to make good the failure and to remedy it within a specified time ("Notice to Correct" in these Conditions).

The Notice to Correct shall:

- (a) describe the Contractor's failure;

- (b) state the Sub-Clause and/or provisions of the Contract under which the Contractor has the obligation; and
- (c) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.

After receiving a Notice to Correct the Contractor shall immediately respond by giving a Notice to the Engineer describing the measures the Contractor will take to remedy the failure, and stating the date on which such measures will be commenced in order to comply with the time specified in the Notice to Correct.

The time specified in the Notice to Correct shall not imply any extension of the Time for Completion.

## **15.2 Termination for Contractor's Default**

Termination of the Contract under this Clause shall not prejudice any other rights of the Employer under the Contract or otherwise.

### **15.2.1 Notice**

The Employer shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 15.2.1) to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph (f), (g) or (h) below a Notice of termination, if the Contractor:

- (a) fails to comply with:
  - (i) a Notice to Correct;
  - (ii) a binding agreement, or final and binding determination, under Sub-Clause 3.7 [Agreement or Determination]; or
  - (iii) a decision of the DAAB under 21.4 [Obtaining DAAB's Decision] (whether binding or final and binding)and such failure constitutes a material breach of the Contractor's obligations under the Contract;
- (b) abandons the Works or otherwise plainly demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension] or, if there is a maximum amount of Delay Damages stated in the Contract Data, his failure to comply with Sub-Clause 8.2 [Time for Completion] is such that the Employer would be entitled to Delay Damages that exceed this maximum amount;
- (d) without reasonable excuse fails to comply with a Notice of rejection given by the Engineer under Sub-Clause 7.5 [Defects and Rejection] or an Engineer's instruction under Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it;
- (e) fails to comply with Sub-Clause 4.2 [Performance Security];
- (f) subcontracts the whole, or any part of, the Works in breach of Sub-Clause 5.1 [Subcontractors], or assigns the Contract without the required agreement under Sub-Clause 1.7 [Assignment];

(g) becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Contractor's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws;

or if the Contractor is a JV:

(i) any of these matters apply to a member of the JV, and  
(ii) the other member(s) do not promptly confirm to the Employer that, in accordance with Sub-Clause 1.14(a) [Joint and Several Liability], such member's obligations under the Contract shall be fulfilled in accordance with the Contract;

(h) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

### **15.2.2 Termination**

Unless the Contractor remedies the matter described in a Notice given under Sub-Clause 15.2.1 [Notice] within 14 days of receiving the Notice, the Employer may by giving a second Notice to the Contractor immediately terminate the Contract. The date of termination shall be the date the Contractor receives this second Notice.

However, in the case of sub-paragraph (f), (g) or (h) of Sub-Clause 15.2.1 [Notice], the Employer may by giving a Notice under Sub-Clause 15.2.1 immediately terminate the Contract and the date of termination shall be the date the Contractor receives this Notice.

### **15.2.3 After termination**

After termination of the Contract under Sub-Clause 15.2.2 [Termination], the Contractor shall:

(a) comply immediately with any reasonable instructions included in a Notice given by the Employer under this Sub-Clause:

(i) for the assignment of any subcontract; and  
(ii) for the protection of life or property or for the safety of the Works;

(b) deliver to the Engineer:

(i) any Goods required by the Employer,  
(ii) all Contractor's Documents, and  
(iii) all other design documents made by or for the Contractor to the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [Contractor's General Obligations]; and

(c) leave the Site and, if the Contractor does not do so, the Employer shall have the right to expel the Contractor from the Site.

### **15.2.4 Completion of the Works**

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

After such completion of the Works, the Employer shall give another Notice to the Contractor that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall then 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 (to the extent permitted by applicable Laws) by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **15.3 Valuation after Termination for Contractor's Default**

After termination of the Contract under Sub-Clause 15.2 [Termination for Contractor's Default], the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the value of the Permanent Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date of termination shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

This valuation shall include any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (a) and (b) of Sub-Clause 14.13 [Issue of FPC].

This valuation shall not include the value of any Contractor's Documents, Materials, Plant and Permanent Works to the extent that they do not comply with the Contract.

### **15.4 Payment after Termination for Contractor's Default**

The Employer may withhold payment to the Contractor of the amounts agreed or determined under Sub-Clause 15.3 [Valuation after Termination for Contractor's Default] until all the costs, losses and damages (if any) described in the following provisions of this Sub-Clause have been established.

After termination of the Contract under Sub-Clause 15.2 [Termination for Contractor's Default], the Employer shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to payment by the Contractor of:

- (a) the additional costs of execution of the Works, and all other costs reasonably incurred by the Employer (including costs incurred in clearing, cleaning and reinstating the Site as described under Sub-Clause 11.11 [Clearance of Site]), after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation after Termination for Contractor's Default];
- (b) any losses and damages suffered by the Employer in completing the Works; and
- (c) Delay Damages, if the Works or a Section have not been taken over under Sub-Clause 10.1 [Taking Over the Works and Sections] and if the date of termination under Sub-Clause 15.2 [Termination for Contractor's Default] occurs after the date corresponding to the Time for Completion of the Works or Section (as the case may be). Such Delay Damages shall be paid for every day that has elapsed between these two dates.

### **15.5 Termination for Employer's Convenience**

The Employer shall be entitled to terminate the Contract at any time for the Employer's convenience, by giving a Notice of such termination to the Contractor (which Notice shall state that it is given under this Sub-Clause 15.5).

After giving a Notice to terminate under this Sub-Clause, the Employer shall immediately:

- (a) have no right to further use any of the Contractor's Documents, which shall be returned to the Contractor, except those for which the Contractor has received payment or for which payment is due under a Payment Certificate;
- (b) if Sub-Clause 4.6 [Co-operation] applies, have no right to allow the continued use (if

any) of any Contractor's Equipment, Temporary Works, access arrangements and/or other of the Contractor's facilities or services; and

(c) make arrangements to return the Performance Security to the Contractor.

Termination under this Sub-Clause 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. Unless and until the Contractor has received payment of the amount due under Sub-Clause 15.6 [Valuation after Termination for Employer's Convenience], the Employer shall not execute (any part of) the Works or arrange for (any part of) the Works to be executed by any other entities.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Contractor's Obligations After Termination].

### **15.6 Valuation after Termination for Employer's Convenience**

After termination under Sub-Clause 15.5 [Termination for Employer's Convenience] the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Engineer) of:

(a) the value of work done, which shall include:

(i) the matters described in sub-paragraphs (a) to (e) of Sub-Clause 18.5 [Optional Termination], and

(ii) any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (a) and (b) of Sub-Clause 14.13 [Issue of FPC]; and

(b) the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.

The Engineer shall then proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the matters described in sub-paragraphs (a) and (b) above (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's particulars under this Sub-Clause shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

The Engineer shall issue a Payment Certificate for the amount so agreed or determined, **without the need for the Contractor to submit a Statement.**

### **15.7 Payment after Termination for Employer's Convenience**

The Employer shall pay the Contractor the amount certified in the Payment Certificate under Sub-Clause 15.6 [Valuation after Termination for Employer's Convenience] within **112 days** after the Engineer receives the Contractor's submission under that Sub-Clause.

## **16 Suspension and Termination by Contractor**

### **16.1 Suspension by Contractor**

If:

(a) the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of IPC];

(b) the Employer fails to provide reasonable evidence in accordance with Sub-Clause 2.4 [Employer's Financial Arrangements];

(c) the Employer fails to comply with Sub-Clause 14.7 [Payment]; or

(d) the Employer fails to comply with:

(i) a binding agreement, or final and binding determination under Sub-Clause 3.7 [Agreement or Determination]; or

(ii) a decision of the DAAB under 21.4 [Obtaining DAAB's Decision] (whether binding or final and binding)

and such failure constitutes a **material breach** of the Employer's obligations under the Contract,

the Contractor may, **not less than 21 days** after giving a Notice to the Employer (which Notice shall state that it is given under this Sub-Clause 16.1), **suspend work (or reduce the rate of work)** unless and until the Employer has remedied such a default.

This action shall not prejudice the Contractor's entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Employer subsequently remedies the default as described in the above Notice before the Contractor gives a Notice of termination under Sub-Clause 16.2 [Termination by Contractor], 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 be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

## **16.2 Termination by Contractor**

Termination of the Contract under this Clause shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

### **16.2.1 Notice**

The Contractor shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 16.2.1) to the Employer of the Contractor's intention to terminate the Contract or, in the case of sub-paragraph (g)(ii), (h), (i) or (j) below a Notice of termination, if:

(a) the Contractor does not receive the reasonable evidence within 42 days after giving a Notice under Sub-Clause 16.1 [Suspension by Contractor] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements];

(b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;

(c) the Contractor does not receive the amount due under any Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment];

(d) the Employer fails to comply with:

(i) a binding agreement, or final and binding determination under Sub-Clause 3.7 [Agreement or Determination]; or

(ii) a decision of the DAAB under 21.4 [Obtaining DAAB's Decision] (whether binding or final and binding)

and such failure constitutes a material breach of the Employer's obligations under the Contract;

(e) the Employer substantially fails to perform, and such failure constitutes a material breach of, the Employer's obligations under the Contract;

(f) the Contractor does not receive a Notice of the Commencement Date under Sub-Clause 8.1 [Commencement of Works] within 84 days after receiving the Letter of Acceptance;

- (g) the Employer:
  - (i) fails to comply with Sub-Clause 1.6 [Contract Agreement], or
  - (ii) assigns the Contract without the required agreement under Sub-Clause 1.7 [Assignment];
- (h) a prolonged suspension affects the whole of the Works as described in sub-paragraph (b) of Sub-Clause 8.12 [Prolonged Suspension];
- (i) the Employer becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Employer's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws; or
- (j) the Employer is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

### **16.2.2 Termination**

Unless the Employer remedies the matter described in a Notice given under Sub-Clause 16.2.1 [Notice] within 14 days of receiving the Notice, the Contractor may by giving a second Notice to the Employer immediately terminate the Contract. The date of termination shall then be the date the Employer receives this second Notice.

However, in the case of sub-paragraph (g)(ii), (h), (i) or (j) of Sub-Clause 16.2.1 [Notice], by giving a Notice under Sub-Clause 16.2.1 the Contractor may terminate the Contract immediately and the date of termination shall be the date the Employer receives this Notice.

If the Contractor suffers delay and/or incurs Cost during the above period of 14 days, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

### **16.3 Contractor's Obligations After Termination**

After termination of the Contract under Sub-Clause 15.5 [Termination for Employer's Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 18.5 [Optional Termination], 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. If the Contractor incurs Cost as a result of carrying out such instructed work the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to be paid such Cost Plus Profit;
- (b) deliver to the Engineer all 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 after Termination by Contractor**

After termination under Sub-Clause 16.2 [Termination by Contractor], the Employer shall promptly:

- (a) pay the Contractor in accordance with Sub-Clause 18.5 [Optional Termination]; and
- (b) subject to the Contractor's compliance with Sub-Clause 20.2 [Claims For Payment

and/or EOT], pay the Contractor the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.

## **17 Care of the Works and Indemnities**

### **17.1 Responsibility for Care of the Works**

Unless the Contract is terminated in accordance with these Conditions or otherwise, subject to Sub-Clause 17.2 [Liability for Care of the Works] the Contractor shall take full responsibility for the care of the Works, Goods and Contractor's Documents from the Commencement Date until the Date of Completion of the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is deemed to be issued) for any Section or Part, responsibility for the care of the Section or Part shall then pass to the Employer.

If the Contract is terminated in accordance with these Conditions or otherwise, the Contractor shall cease to be responsible for the care of the Works from the date of termination.

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 of Completion, until this outstanding work has been completed.

If any loss or damage occurs to the Works, Goods or Contractor's Documents, during the period when the Contractor is responsible for their care, from any cause whatsoever except as stated in Sub-Clause 17.2 [Liability for Care of the Works], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods or Contractor's Documents (as the case may be) comply with the Contract.

### **17.2 Liability for Care of the Works**

The Contractor shall be liable for any loss or damage caused by the Contractor to the Works, Goods or Contractor's Documents after the issue of a Taking-Over Certificate. The Contractor shall also be liable for any loss or damage, which occurs after the issue of a Taking-Over Certificate and which arose from an event which occurred before the issue of this Taking-Over Certificate, for which the Contractor was liable.

The Contractor shall have no liability whatsoever, whether by way of indemnity or otherwise, for loss or damage to the Works, Goods or Contractor's Documents caused by any of the following events (except to the extent that such Works, Goods or Contractor's Documents have been rejected by the Engineer under Sub-Clause 7.5 [Defects and Rejection] before the occurrence of any of the following events):

- (a) interference, whether temporary or permanent, with any right of way, light, air, water or other easement (other than that resulting from the Contractor's method of construction) which is the unavoidable result of the execution of the Works in accordance with the Contract;
- (b) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;
- (c) fault, error, defect or omission in any element of the design of the Works by the Employer or which may be contained in the Specification and Drawings (and which an experienced contractor exercising due care would not have discovered when examining the Site and the Specification and Drawings before submitting the Tender), other than design

carried out by the Contractor in accordance with the Contractor's obligations under the Contract;

- (d) any operation of the forces of nature (other than those allocated to the Contractor in the Contract Data) which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions;
- (e) any of the events or circumstances listed under sub-paragraphs (a) to (f) of Sub-Clause 18.1 [Exceptional Events]; and/or
- (f) any act or default of the Employer's Personnel or the Employer's other contractors.

Subject to Sub-Clause 18.4 [Consequences of an Exceptional Event], if any of the events described in sub-paragraphs (a) to (f) above occurs and results in damage to the Works, Goods or Contractor's Documents the Contractor shall promptly give a Notice to the Engineer. Thereafter, the Contractor shall rectify any such loss and/or damage that may arise to the extent instructed by the Engineer. Such instruction shall be deemed to have been given under Sub-Clause 13.3.1 [Variation by Instruction].

If the loss or damage to the Works or Goods or Contractor's Documents results from a combination of:

- (i) any of the events described in sub-paragraphs (a) to (f) above, and
- (ii) a cause for which the Contractor is liable,

and the Contractor suffers a delay and/or incurs Cost from rectifying the loss and/or damage, the Contractor shall subject to Sub-Clause 20.2 [Claims for Payment and/or EOT] be entitled to a proportion of EOT and/or Cost Plus Profit to the extent that any of the above events have contributed to such delays and/or Cost.

### **17.3 Intellectual and Industrial Property Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a third party claim (or proceedings pursuing a third party claim) alleging an infringement.

Whenever a Party receives a claim but fails to give notice to the other Party of the claim within 28 days of receiving it, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim (including legal fees and expenses) alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor's compliance with the Specification and Drawings and/or any Variation; or
- (b) a result of any Works being used by the Employer:
  - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor before the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim (including legal fees and expenses) alleging an infringement which arises out of or in relation to:

- (i) the Contractor's execution of the Works; or
- (ii) the use of Contractor's Equipment.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at the indemnifying Party's cost) assume overall responsibility for negotiating the settlement of the claim, and/or any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and the Contractor's Personnel or the Employer's Personnel, as the case may be) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to promptly assume overall responsibility for the conduct of any negotiations, litigation or arbitration after being requested to do so by the other Party.

#### **17.4 Indemnities by Contractor**

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

- (a) bodily injury, sickness, disease or death of any person whatsoever arising out of or in the course of or by reason of the Contractor's execution of the Works, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
  - (i) arises out of or in the course of or by reason of the Contractor's execution of the Works, and
  - (ii) is attributable to any negligence, wilful 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.

To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [Contractor's General Obligations], and/or any other design under the Contract, the Contractor shall also indemnify and hold harmless the Employer against all acts, errors or omissions by the Contractor in carrying out the Contractor's design obligations that result in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [Contractor's General Obligations].

#### **17.5 Indemnities by Employer**

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

- (a) bodily injury, sickness, disease or death, or loss of or damage to any property other than the Works, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of any event described under sub-paragraphs (a) to (f) of Sub-Clause 17.2 [Liability for Care of the Works].

## **17.6 Shared Indemnities**

The Contractor's liability to indemnify the Employer, under Sub-Clause 17.4 [Indemnities by Contractor] and/or under Sub-Clause 17.3 [Intellectual and Industrial Property Rights], shall be reduced proportionately to the extent that any event described under sub-paragraphs (a) to (f) of Sub-Clause 17.2 [Liability for Care of the Works] may have contributed to the said damage, loss or injury.

Similarly, the Employer's liability to indemnify the Contractor, under Sub-Clause 17.5 [Indemnities by Employer], shall be reduced proportionately to the extent that any event for which the Contractor is responsible under Sub-Clause 17.1 [Responsibility for Care of the Works] and/or under Sub-Clause 17.3 [Intellectual and Industrial Property Rights] may have contributed to the said damage, loss or injury.

## **18 Exceptional Events**

### **18.1 Exceptional Events**

"Exceptional Event" means an event or circumstance which:

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

An Exceptional Event may comprise but is not limited to any of the following events or circumstances provided that conditions (i) to (iv) above are satisfied:

- (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;
- (c) riot, commotion or disorder by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (d) strike or lockout not solely involving the Contractor's Personnel and other employees of the Contractor and Subcontractors;
- (e) encountering munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; or
- (f) natural catastrophes such as earthquake, tsunami, volcanic activity, hurricane or typhoon.

### **18.2 Notice of an Exceptional Event**

If a Party is or will be prevented from performing any obligations under the Contract due to an Exceptional Event (the "affected Party" in this Clause), then the affected Party shall give a Notice to the other Party of such an Exceptional Event, and shall specify the obligations, the performance of which is or will be prevented (the "prevented obligations" in this Clause).

This Notice shall be given within 14 days after the affected Party became aware, or should have become aware, of the Exceptional Event, and the affected Party shall then be excused performance of the prevented obligations from the date such performance is prevented by the Exceptional Event. If this Notice is received by the other Party after this period of 14 days, the affected Party shall be excused performance of the prevented obligations only from the date on which this Notice is received by the other Party.

Thereafter, the affected Party shall be excused performance of the prevented obligations for so long as such Exceptional Event prevents the affected Party from performing them. Other than performance of the prevented obligations, the affected Party shall not be excused performance of all other obligations under the Contract.

However, the obligations of either Party to make payments due to the other Party under the Contract shall not be excused by an Exceptional Event.

### **18.3 Duty to Minimise Delay**

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

If the Exceptional Event has a continuing effect, the affected Party shall give further Notices describing the effect every 28 days after giving the first Notice under Sub-Clause 18.2 [Notice of an Exceptional Event].

The affected Party shall immediately give a Notice to the other Party when the affected Party ceases to be affected by the Exceptional Event. If the affected Party fails to do so, the other Party may give a Notice to the affected Party stating that the other Party considers that the affected Party's performance is no longer prevented by the Exceptional Event, with reasons.

### **18.4 Consequences of an Exceptional Event**

If the Contractor is the affected Party and suffers delay and/or incurs Cost by reason of the Exceptional Event of which he/she gave a Notice under Sub-Clause 18.2 [Notice of an Exceptional Event], the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to:

- (a) EOT; and/or
- (b) if the Exceptional Event is of the kind described in sub-paragraphs (a) to (e) of Sub-Clause 18.1 [Exceptional Events] and, in the case of sub-paragraphs (b) to (e) of that Sub-Clause, occurs in the Country, payment of such Cost.

### **18.5 Optional Termination**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of an Exceptional Event of which Notice has been given under Sub-Clause 18.2 [Notice of an Exceptional Event], or for multiple periods which total more than 140 days due to the same Exceptional Event, then either Party may give to the other Party a Notice of termination of the Contract.

In this event, the date of termination shall be the date 7 days after the Notice is received by the other Party, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Contractor's Obligations After Termination].

After the date of termination the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Engineer) of the value of the work done, 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 place of business in the Contractor's country (or to any other destination(s) 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.

The Engineer shall then proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the value of work done (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the Contractor's particulars under this Sub-Clause shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

The Engineer shall issue a Payment Certificate, under Sub-Clause 14.6 [Issue of IPC], for the amount so agreed or determined, without the need for the Contractor to submit a Statement.

## **18.6 Release from Performance under the Law**

In addition to any other provision of this Clause, if any event arises outside the control of the Parties (including, but not limited to, an Exceptional Event) which:

- (a) makes it impossible or unlawful for either Party or both Parties to fulfil their contractual obligations; or
- (b) under the law governing the Contract, entitles the Parties to be released from further performance of the Contract,

and if the Parties are unable to agree on an amendment to the Contract that would permit the continued performance of the Contract, then after either Party gives a Notice to the other Party of such event:

- (i) the Parties shall be discharged from further performance, and without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
- (ii) the amount payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 18.5 [Optional Termination], and such amount shall be certified by the Engineer, as if the Contract had been terminated under that Sub-Clause.

## **19 Insurance**

### **19.1 General Requirements**

Without limiting either Party's obligations or responsibilities under the Contract, the Contractor shall effect and maintain all insurances for which the Contractor is responsible with insurers and in terms, both of which shall be subject to consent by the Employer. These terms shall be consistent with terms (if any) agreed by both Parties before the date of the Letter of Acceptance.

The insurances required to be provided under this Clause are the minimum required by the Employer, and the Contractor may, at the Contractor's own cost, add such other insurances that the Contractor may deem prudent.

Whenever required by the Employer, the Contractor shall produce the insurance policies which the Contractor is required to effect under the Contract. As each premium is paid, the Contractor shall promptly submit either a copy of each receipt of payment to the Employer (with a copy to the Engineer), or confirmation from the insurers that the premium has been paid.

If the Contractor fails to effect and keep in force any of the insurances required under Sub-Clause 19.2 [Insurances to be provided by the Contractor] then, and in any such case, the Employer may effect and keep in force such insurances and pay any premium as may be necessary and recover the same from the Contractor from time to time by deducting the amount(s) so paid from any moneys due to the Contractor or otherwise recover the same as a debt from the Contractor. The provisions of Clause 20 [Employer's and Contractor's Claims] shall not apply to this Sub-Clause.

If either the Contractor or the Employer fails to comply with any condition of the insurances effected under the Contract, the Party so failing to comply shall indemnify the other Party against all direct losses and claims (including legal fees and expenses) arising from such failure.

The Contractor shall also be responsible for the following:

- (a) notifying the insurers of any changes in the nature, extent or programme for the execution of the Works; and
- (b) the adequacy and validity of the insurances in accordance with the Contract at all times during the performance of the Contract.

The permitted deductible limits allowed in any policy shall not exceed the amounts stated in the Contract Data (if not stated, the amounts agreed with the Employer).

Where there is a shared liability the loss shall be borne by each Party in proportion to each Party's liability, provided the non-recovery from insurers has not been caused by a breach of this Clause by the Contractor or the Employer. In the event that non-recovery from insurers has been caused by such a breach, the defaulting Party shall bear the loss suffered.

## **19.2 Insurance to be provided by the Contractor**

The Contractor shall provide the following insurances:

### **19.2.1 The Works**

The Contractor shall insure and keep insured in the joint names of the Contractor and the Employer from the Commencement Date until the date of the issue of the Taking-Over Certificate for the Works:

- (a) the Works and Contractor's Documents, together with Materials and Plant for incorporation in the Works, for their full replacement value.

The insurance cover shall extend to include loss and damage of any part of the Works as a consequence of failure of elements defectively designed or constructed with defective material or workmanship; and

- (b) an additional amount of fifteen percent (15%) of such replacement value (or such other amount as may be specified in the Contract Data) to cover any additional costs incidental to the rectification of loss or damage, including professional fees and the cost of demolition and removal of debris.

The insurance cover shall cover the Employer and the Contractor against all loss or damage from whatever cause arising until the issue of the Taking-Over Certificate for the Works. Thereafter, the insurance shall continue until the date of the issue of the Performance Certificate in respect of any incomplete work for loss or damage arising from any cause occurring before the date of the issue of the Taking-Over Certificate for the Works, and for any loss or damage occasioned by the Contractor in the course of any operation carried out

by the Contractor for the purpose of complying with the Contractor's obligations under Clause 11 [Defects after Taking Over] and Clause 12 [Tests after Completion].

However, the insurance cover provided by the Contractor for the Works may exclude any of the following:

- (i) the cost of making good any part of the Works which is defective (including defective material and workmanship) or otherwise does not comply with the Contract, provided that it does not exclude the cost of making good any loss or damage to any other part of the Works attributable to such defect or non-compliance;
- (ii) indirect or consequential loss or damage including any reductions in the Contract Price for delay;
- (iii) wear and tear, shortages and pilferages; and
- (iv) unless otherwise stated in the Contract Data, the risks arising from Exceptional Events.

### **19.2.2 Goods**

The Contractor shall insure, in the joint names of the Contractor and the Employer, the Goods and other things brought to Site by the Contractor to the extent specified and/or amount stated in the Contract Data (if not specified or stated, for their full replacement value including delivery to Site).

The Contractor shall maintain this insurance from the time the Goods are delivered to the Site until they are no longer required for the Works.

### **19.2.3 Liability for breach of professional duty**

To the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [Contractor's General Obligations], and/or any other design under the Contract, and consistent with the indemnities specified in Clause 17 [Care of the Works and Indemnities]:

- (a) the Contractor shall effect and maintain professional indemnity insurance against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations in an amount not less than that stated in the Contract Data (if not stated, the amount agreed with the Employer); and
- (b) if stated in the Contract Data, such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations under the Contract that results in the Works (or Section or Part or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended under Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall maintain this insurance for the period specified in the Contract Data.

### **19.2.4 Injury to persons and damage to property**

The Contractor shall insure, in the joint names of the Contractor and the Employer, against liabilities for death or injury to any person, or loss of or damage to any property (other than the Works) arising out of the performance of the Contract and occurring before the issue of the Performance Certificate, other than loss or damage caused by an Exceptional Event.

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and the Employer as separate insureds.

Such insurance shall be effected before the Contractor begins any work on the Site and shall remain in force until the issue of the Performance Certificate and shall be for not less than the amount stated in the Contract Data (if not stated, the amount agreed with the Employer).

### **19.2.5 Injury to employees**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising out of the execution of the Works in respect of injury, sickness, disease or death of any person employed by the Contractor or any of the Contractor's other 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 the Contractor's Personnel are assisting in the execution of the Works. For any person employed by a Subcontractor, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for the Subcontractor's compliance with this Sub-Clause.

### **19.2.6 Other insurances required by Laws and by local practice**

The Contractor shall provide all other insurances required by the Laws of the countries where (any part of) the Works are being carried out, at the Contractor's own cost.

Other insurances required by local practice (if any) shall be detailed in the Contract Data and the Contractor shall provide such insurances in compliance with the details given, at the Contractor's own cost.

## **20 Employer's and Contractor's Claims**

### **20.1 Claims**

A Claim may arise:

- (a) if the Employer considers that the Employer is entitled to any additional payment from the Contractor (or reduction in the Contract Price) and/or to an extension of the DNP;
- (b) if the Contractor considers that the Contractor is entitled to any additional payment from the Employer and/or to EOT; or
- (c) if either Party considers that he/she is entitled to another entitlement or relief against the other Party. Such other entitlement or relief may be of any kind whatsoever (including in connection with any certificate, determination, instruction, Notice, opinion or valuation of the Engineer) except to the extent that it involves any entitlement referred to in sub-paragraphs (a) and/or (b) above.

In the case of a Claim under sub-paragraph (a) or (b) above, Sub-Clause 20.2 [Claims For Payment and/or EOT] shall apply.

In the case of a Claim under sub-paragraph (c) above, where the other Party or the Engineer has disagreed with the requested entitlement or relief (or is deemed to have disagreed if he/she does not respond within a reasonable time), a Dispute shall not be deemed to have arisen but the claiming Party may, by giving a Notice refer the Claim to the Engineer and Sub-Clause 3.7 [Agreement or Determination] shall apply. This Notice shall be given as soon as practicable after the claiming Party becomes aware of the disagreement (or deemed disagreement) and include details of the claiming Party's case and the other Party's or the Engineer's disagreement (or deemed disagreement).

## **20.2 Claims For Payment and/or EOT**

If either Party considers that he/she is entitled to any additional payment by the other Party (or, in the case of the Employer, a reduction in the Contract Price) and/or to EOT (in the case of the Contractor) or an extension of the DNP (in the case of the Employer) under any Clause of these Conditions or otherwise in connection with the Contract, the following Claim procedure shall apply:

### **20.2.1 Notice of Claim**

The claiming Party shall give a Notice to the Engineer, describing the event or circumstance giving rise to the cost, loss, delay or extension of DNP for which the Claim is made as soon as practicable, and no later than 28 days after the claiming Party became aware, or should have become aware, of the event or circumstance (the “Notice of Claim” in these Conditions).

If the claiming Party fails to give a Notice of Claim within this period of 28 days, the claiming Party shall not be entitled to any additional payment, the Contract Price shall not be reduced (in the case of the Employer as the claiming Party), the Time for Completion (in the case of the Contractor as the claiming Party) or the DNP (in the case of the Employer as the claiming Party) shall not be extended, and the other Party shall be discharged from any liability in connection with the event or circumstance giving rise to the Claim.

### **20.2.2 Engineer’s initial response**

If the Engineer considers that the claiming Party has failed to give the Notice of Claim within the period of 28 days under Sub-Clause 20.2.1 [Notice of Claim] the Engineer shall, within 14 days after receiving the Notice of Claim, give a Notice to the claiming Party accordingly (with reasons).

If the Engineer does not give such a Notice within this period of 14 days, the Notice of Claim shall be deemed to be a valid Notice. If the other Party disagrees with such deemed valid Notice of Claim the other Party shall give a Notice to the Engineer which shall include details of the disagreement. Thereafter, the agreement or determination of the Claim under Sub-Clause 20.2.5 [Agreement or determination of the Claim] shall include a review by the Engineer of such disagreement.

If the claiming Party receives a Notice from the Engineer under this Sub-Clause and disagrees with the Engineer or considers there are circumstances which justify late submission of the Notice of Claim, the claiming Party shall include in its fully detailed Claim under Sub-Clause 20.2.4 [Fully detailed claim] details of such disagreement or why such late submission is justified (as the case may be).

### **20.2.3 Contemporary records**

In this Sub-Clause 20.2, “contemporary records” means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.

The claiming Party shall keep such contemporary records as may be necessary to substantiate the Claim.

Without admitting the Employer’s liability, the Engineer may monitor the Contractor’s contemporary records and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Engineer to inspect all these records during normal working

hours (or at other times agreed by the Contractor), and shall if instructed submit copies to the Engineer. Such monitoring, inspection or instruction (if any) by the Engineer shall not imply acceptance of the accuracy or completeness of the Contractor's contemporary records.

#### **20.2.4 Fully detailed Claim**

In this Sub-Clause 20.2, "fully detailed Claim" means a submission which includes:

- (a) a detailed description of the event or circumstance giving rise to the Claim;
- (b) a statement of the contractual and/or other legal basis of the Claim;
- (c) all contemporary records on which the claiming Party relies; and
- (d) detailed supporting particulars of the amount of additional payment claimed (or amount of reduction of the Contract Price in the case of the Employer as the claiming Party), and/or EOT claimed (in the case of the Contractor) or extension of the DNP claimed (in the case of the Employer).

Within either:

- (i) 84 days after the claiming Party became aware, or should have become aware, of the event or circumstance giving rise to the Claim,

or

- (ii) such other period (if any) as may be proposed by the claiming Party and agreed by the Engineer

the claiming Party shall submit to the Engineer a fully detailed Claim.

If within this time limit the claiming Party fails to submit the statement under sub-paragraph (b) above, the Notice of Claim shall be deemed to have lapsed, it shall no longer be considered as a valid Notice, and the Engineer shall, within 14 days after this time limit has expired, give a Notice to the claiming Party accordingly.

If the Engineer does not give such a Notice within this period of 14 days, the Notice of Claim shall be deemed to be a valid Notice. If the other Party disagrees with such deemed valid Notice of Claim the other Party shall give a Notice to the Engineer which shall include details of the disagreement. Thereafter, the agreement or determination of the Claim under Sub-Clause 20.2.5 [Agreement or determination of the Claim] shall include a review by the Engineer of such disagreement.

If the claiming Party receives a Notice from the Engineer under this Sub-Clause 20.2.4 and if the claiming Party disagrees with such Notice or considers there are circumstances which justify late submission of the statement under sub-paragraph (b) above, the fully detailed claim shall include details of the claiming Party's disagreement or why such late submission is justified (as the case may be).

If the event or circumstance giving rise to the Claim has a continuing effect, Sub-Clause 20.2.6 [Claims of continuing effect] shall apply.

#### **20.2.5 Agreement or determination of the Claim**

After receiving a fully detailed Claim either under Sub-Clause 20.2.4 [Fully detailed Claim], or an interim or final fully detailed Claim (as the case may be) under Sub-Clause 20.2.6 [Claims of continuing effect], the Engineer shall proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine:

- (a) the additional payment (if any) to which the claiming Party is entitled or the reduction of the Contract Price (in the case of the Employer as the claiming Party); and/or

(b) the extension (if any) of the Time for Completion (before or after its expiry) under Sub-Clause 8.5 [Extension of Time for Completion] (in the case of the Contractor as the claiming Party), or the extension (if any) of the DNP (before its expiry) under Sub-Clause 11.3 [Extension of Defects Notification Period] (in the case of the Employer as the claiming Party),  
to which the claiming Party is entitled under the Contract.

If the Engineer has given a Notice under Sub-Clause 20.2.2 [Engineer's initial response] and/or under Sub-Clause 20.2.4 [Fully detailed Claim], the Claim shall nevertheless be agreed or determined in accordance with this Sub-Clause 20.2.5. The agreement or determination of the Claim shall include whether or not the Notice of Claim shall be treated as a valid Notice taking account of the details (if any) included in the fully detailed claim of the claiming Party's disagreement with such Notice(s) or why late submission is justified (as the case may be). The circumstances which may be taken into account (but shall not be binding) may include:

- whether or to what extent the other Party would be prejudiced by acceptance of the late submission;
- in the case of the time limit under Sub-Clause 20.2.1 [Notice of Claim], any evidence of the other Party's prior knowledge of the event or circumstance giving rise to the Claim, which the claiming Party may include in its supporting particulars; and/or
- in the case of the time limit under Sub-Clause 20.2.4 [Fully detailed Claim], any evidence of the other Party's prior knowledge of the contractual and/or other legal basis of the Claim, which the claiming Party may include in its supporting particulars.

If, having received the fully detailed Claim under Sub-Clause 20.2.4 [Fully detailed Claim], or in the case of a Claim under Sub-Clause 20.2.6 [Claims of continuing effect] an interim or final fully detailed Claim (as the case may be), the Engineer requires necessary additional particulars:

- (i) he/she shall promptly give a Notice to the claiming Party, describing the additional particulars and the reasons for requiring them;
- (ii) he/she shall nevertheless give his/her response on the contractual or other legal basis of the Claim, by giving a Notice to the claiming Party, within the time limit for agreement under Sub-Clause 3.7.3 [Time limits];
- (iii) as soon as practicable after receiving the Notice under sub-paragraph (i) above, the claiming Party shall submit the additional particulars; and
- (iv) the Engineer shall then proceed under Sub-Clause 3.7 [Agreement or Determination] to agree or determine the matters under sub-paragraphs (a) and/or (b) above (and, for the purpose of Sub-Clause 3.7.3 [Time limits], the date the Engineer receives the additional particulars from the claiming Party shall be the date of commencement of the time limit for agreement under Sub-Clause 3.7.3).

#### **20.2.6 Claims of continuing effect**

If the event or circumstance giving rise to a Claim under this Sub-Clause 20.2 has a continuing effect:

- (a) the fully detailed Claim submitted under Sub-Clause 20.2.4 [Fully detailed Claim] shall be considered as interim;
- (b) in respect of this first interim fully detailed Claim, the Engineer shall give his/her response on the contractual or other legal basis of the Claim, by giving a Notice to the

claiming Party, within the time limit for agreement under Sub-Clause 3.7.3 [Time limits];

(c) after submitting the first interim fully detailed Claim the claiming Party shall submit further interim fully detailed Claims at monthly intervals, giving the accumulated amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party); and

(d) the claiming Party shall submit a final fully detailed 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 claiming Party and agreed by the Engineer. This final fully detailed Claim shall give the total amount of additional payment claimed (or the reduction of the Contract Price, in the case of the Employer as the claiming Party), and/or extension of time claimed (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party).

### **20.2.7 General requirements**

After receiving the Notice of Claim, and until the Claim is agreed or determined under Sub-Clause 20.2.5 [Agreement or determination of the Claim], in each Payment Certificate the Engineer shall include such amounts for any Claim as have been reasonably substantiated as due to the claiming Party under the relevant provision of the Contract.

The Employer shall only be entitled to claim any payment from the Contractor and/or to extend the DNP, or set off against or make any deduction from any amount due to the Contractor, by complying with this Sub-Clause 20.2.

The requirements of this Sub-Clause 20.2 are in addition to those of any other Sub-Clause which may apply to the Claim. If the claiming Party fails to comply with this or any other Sub-Clause in relation to the Claim, any additional payment and/or any EOT (in the case of the Contractor as the claiming Party) or extension of the DNP (in the case of the Employer as the claiming Party), shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the Claim by the Engineer.

## **21 Disputes and Arbitration**

### **21.1 Constitution of the DAAB**

Disputes shall be decided by a DAAB in accordance with Sub-Clause 21.4 [Obtaining DAAB's Decision]. The Parties shall jointly appoint the member(s) of the DAAB within the time stated in the Contract Data (if not stated, 28 days) after the date the Contractor receives the Letter of Acceptance.

The DAAB shall comprise, as stated in the Contract Data, either one suitably qualified member (the "sole member") or three suitably qualified members (the "members"). If the number is not so stated, and the Parties do not agree otherwise, the DAAB shall comprise three members.

The sole member or three members (as the case may be) shall be selected from those named in the list in the Contract Data, other than anyone who is unable or unwilling to accept appointment to the DAAB.

If the DAAB is to comprise three members, each Party shall select one member for the agreement of the other Party. The Parties shall consult both these members and shall agree the third member, who shall be appointed to act as chairperson.

The DAAB shall be deemed to be constituted on the date that the Parties and the sole member or the three members (as the case may be) of the DAAB have all signed a DAAB Agreement.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DAAB consults, shall be mutually agreed by the Parties when agreeing the terms of the DAAB Agreement. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAAB.

Unless the Parties agree otherwise, a replacement DAAB member shall be appointed if a member declines to act or is unable to act as a result of death, illness, disability, resignation or termination of appointment. The replacement member shall be appointed in the same manner as the replaced member was required to have been selected or agreed, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone.

Unless otherwise agreed by both Parties, the term of the DAAB (including the appointment of each member) shall expire either:

- (a) on the date the discharge shall have become, or deemed to have become, effective under Sub-Clause 14.12 [Discharge]; or
- (b) 28 days after the DAAB has given its decision on all Disputes, referred to it under Sub-Clause 21.4 [Obtaining DAAB's Decision] before such discharge has become effective, whichever is later.

However, if the Contract is terminated under any Sub-Clause of these Conditions or otherwise, the term of the DAAB (including the appointment of each member) shall expire 28 days after:

- (i) the DAAB has given its decision on all Disputes, which were referred to it (under Sub-Clause 21.4 [Obtaining DAAB's Decision]) within 224 days after the date of termination; or
- (ii) the date that the Parties reach a final agreement on all matters (including payment) in connection with the termination  
whichever is earlier.

## **21.2 Failure to Appoint DAAB Member(s)**

If any of the following conditions apply, namely:

- (a) if the DAAB is to comprise a sole member, the Parties fail to agree the appointment of this member by the date stated in the first paragraph of Sub-Clause 21.1 [Constitution of the DAAB]; or
- (b) if the DAAB is to comprise three persons, and if by the date stated in the first paragraph of Sub-Clause 21.1 [Constitution of the DAAB]:
  - (i) either Party fails to select a member (for agreement by the other Party);
  - (ii) either Party fails to agree a member selected by the other Party; and/or

- (iii) the Parties fail to agree the appointment of the third member (to act as chairperson) of the DAAB;
- (c) the Parties fail to agree the appointment of a replacement within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, illness, disability, resignation, or termination of appointment; or
- (d) if, after the Parties have agreed the appointment of the member(s) or replacement, such appointment cannot be effected because one Party refuses or fails to sign a DAAB Agreement with any such member or replacement (as the case may be) within 14 days of the other Party's request to do so,

then the appointing entity or official named in the Contract Data shall, at the request of either or both Parties and after due consultation with both Parties, appoint the member(s) of the DAAB (who, in the case of sub-paragraph (d) above, shall be the agreed member(s) or replacement). This appointment shall be final and conclusive.

Thereafter, the Parties and the member(s) so appointed shall be deemed to have signed and be bound by a DAAB Agreement under which:

- (i) the monthly services fee and daily fee shall be as stated in the terms of the appointment; and
- (ii) the law governing the DAAB Agreement shall be the governing law of the Contract defined in Sub-Clause 1.4 [Law and Language].

Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official. If the Contractor pays the remuneration in full, the Contractor shall include one-half of the amount of such remuneration in a Statement and the Employer shall then pay the Contractor in accordance with the Contract. If the Employer pays the remuneration in full, the Engineer shall include one-half of the amount of such remuneration as a deduction under sub-paragraph (b) of Sub-Clause 14.6.1 [The IPC].

### **21.3 Avoidance of Disputes**

If the Parties so agree, they may jointly request (in writing, with a copy to the Engineer) the DAAB to provide assistance and/or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Contract. If the DAAB becomes aware of an issue or disagreement, it may invite the Parties to make such a joint request.

Such joint request may be made at any time, except during the period that the Engineer is carrying out his/her duties under Sub-Clause 3.7 [Agreement or Determination] on the matter at issue or in disagreement unless the Parties agree otherwise.

Such informal assistance may take place during any meeting, Site visit or otherwise. However, unless the Parties agree otherwise, both Parties shall be present at such discussions. The Parties are not bound to act on any advice given during such informal meetings, and the DAAB shall not be bound in any future Dispute resolution process or decision by any views or advice given during the informal assistance process, whether provided orally or in writing.

### **21.4 Obtaining DAAB's Decision**

If a Dispute arises between the Parties then either Party may refer the Dispute to the DAAB for its decision (whether or not any informal discussions have been held under Sub-Clause 21.3 [Avoidance of Disputes]) and the following provisions shall apply.

#### **21.4.1 Reference of a Dispute to the DAAB**

The reference of a Dispute to the DAAB (the “reference” in this Sub-Clause 21.4) shall:

- (a) if Sub-Clause 3.7 [Agreement or Determination] applied to the subject matter of the Dispute, be made within 42 days of giving or receiving (as the case may be) a NOD under Sub-Clause 3.7.5 [Dissatisfaction with Engineer’s determination]. If the Dispute is not referred to the DAAB within this period of 42 days, such NOD shall be deemed to have lapsed and no longer be valid;
- (b) state that it is given under this Sub-Clause;
- (c) set out the referring Party’s case relating to the Dispute;
- (d) be in writing, with copies to the other Party and the Engineer; and
- (e) for a DAAB of three persons, be deemed to have been received by the DAAB on the date it is received by the chairperson of the DAAB.

The reference of a Dispute to the DAAB under this Sub-Clause shall, unless prohibited by law, be deemed to interrupt the running of any applicable statute of limitation or prescription period.

#### **21.4.2 The Parties’ obligations after the reference**

Both Parties shall promptly make available to the DAAB all information, access to the Site, and appropriate facilities, as the DAAB may require for the purposes of making a decision on the Dispute.

Unless the Contract has already been abandoned or terminated, the Parties shall continue to perform their obligations in accordance with the Contract.

#### **21.4.3 The DAAB’s decision**

The DAAB shall complete and give its decision within:

- (a) 84 days after receiving the reference; or
- (b) such period as may be proposed by the DAAB and agreed by both Parties.

However, if at the end of this period, the due date(s) for payment of any DAAB member’s invoice(s) has passed but such invoice(s) remains unpaid, the DAAB shall not be obliged to give its decision until such outstanding invoice(s) have been paid in full, in which case the DAAB shall give its decision as soon as practicable after payment has been received.

The decision shall be given in writing to both Parties with a copy to the Engineer, shall be reasoned, and shall state that it is given under this Sub-Clause.

The decision shall be binding on both Parties, who shall promptly comply with it whether or not a Party gives a NOD with respect to such decision under this Sub-Clause. The Employer shall be responsible for the Engineer’s compliance with the DAAB decision.

If the decision of the DAAB requires a payment of an amount by one Party to the other Party:

- (i) subject to sub-paragraph (ii) below, this amount shall be immediately due and payable without any certification or Notice; and
- (ii) the DAAB may (as part of the decision), at the request of a Party but only if there are reasonable grounds for the DAAB to believe that the payee will be unable to repay such amount in the event that the decision is reversed under Sub-Clause 21.6 [Arbitration], require

the payee to provide an appropriate security (at the DAAB's sole discretion) in respect of such amount.

The DAAB proceeding shall not be deemed to be an arbitration and the DAAB shall not act as arbitrator(s).

#### **21.4.4 Dissatisfaction with DAAB's decision**

If either Party is dissatisfied with the DAAB's decision:

- (a) such Party may give a NOD to the other Party, with a copy to the DAAB and to the Engineer;
- (b) this NOD shall state that it is a "Notice of Dissatisfaction with the DAAB's Decision" and shall set out the matter in Dispute and the reason(s) for dissatisfaction; and
- (c) this NOD shall be given within 28 days after receiving the DAAB's decision.

If the DAAB fails to give its decision within the period stated in Sub-Clause 21.4.3 [The DAAB's decision], then either Party may, within 28 days after this period has expired, give a NOD to the other Party in accordance with sub-paragraphs (a) and (b) above.

Except as stated in the last paragraph of Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination], in Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] and in Sub-Clause 21.8 [No DAAB In Place], neither Party shall be entitled to commence arbitration of a Dispute unless a NOD in respect of that Dispute has been given in accordance with this Sub-Clause 21.4.4.

If the DAAB has given its decision as to a matter in Dispute to both Parties, and no NOD under this Sub-Clause 21.4.4 has been given by either Party within 28 days after receiving the DAAB's decision, then the decision shall become final and binding on both Parties.

If the dissatisfied Party is dissatisfied with only part(s) of the DAAB's decision:

- (i) this part(s) shall be clearly identified in the NOD;
- (ii) this part(s), and any other parts of the decision that are affected by such part(s) or rely on such part(s) for completeness, shall be deemed to be severable from the remainder of the decision; and
- (iii) the remainder of the decision shall become final and binding on both Parties as if the NOD had not been given.

#### **21.5 Amicable Settlement**

Where a NOD has been given under Sub-Clause 21.4 [Obtaining DAAB's Decision], both Parties shall attempt to settle the Dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made.

#### **21.6 Arbitration**

Unless settled amicably, and subject to Sub-Clause 3.7.5 [Dissatisfaction with Engineer's determination], Sub-Clause 21.4.4 [Dissatisfaction with DAAB's decision], Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] and Sub-Clause 21.8 [No DAAB In Place], any Dispute in respect of which the DAAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:

- (a) the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;

(b) the Dispute shall be settled by one or three arbitrators appointed in accordance with these Rules; and

(c) the arbitration shall be conducted in the ruling language defined in Sub-Clause 1.4 [Law and Language].

The arbitrator(s) shall have full power to open up, review and revise any certificate, determination (other than a final and binding determination), instruction, opinion or valuation of the Engineer, and any decision of the DAAB (other than a final and binding decision) relevant to the Dispute.

Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the Dispute.

In any award dealing with costs of the arbitration, the arbitrator(s) may take account of the extent (if any) to which a Party failed to cooperate with the other Party in constituting a DAAB under Sub-Clause 21.1 [Constitution of the DAAB] and/or Sub-Clause 21.2 [Failure to Appoint DAAB Member(s)].

Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAAB to obtain its decision, or to the reasons for dissatisfaction given in the Party's NOD under Sub-Clause 21.4 [Obtaining DAAB's Decision]. Any decision of the DAAB shall be admissible in evidence in the arbitration.

Arbitration may be commenced before or after completion of the Works. The obligations of the Parties, the Engineer and the DAAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

If an award requires a payment of an amount by one Party to the other Party, this amount shall be immediately due and payable without any further certification or Notice.

### **21.7 Failure to Comply with DAAB's Decision**

In the event that a Party fails to comply with any decision of the DAAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Sub-Clause 21.6 [Arbitration] in which case Sub-Clause 21.4 [Obtaining DAAB's Decision] and Sub-Clause 21.5 [Amicable Settlement] shall not apply to this reference. The arbitral tribunal (constituted under Sub-Clause 21.6 [Arbitration]) shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.

In the case of a binding but not final decision of the DAAB, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the Dispute are reserved until they are resolved by an award.

Any interim or provisional measure or award enforcing a decision of the DAAB which has not been complied with, whether such decision is binding or final and binding, may also include an order or award of damages or other relief.

### **21.8 No DAAB In Place**

If a Dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAAB in place (or no DAAB is being constituted), whether by reason of the expiry of the DAAB's appointment or otherwise:

- (a) Sub-Clause 21.4 [Obtaining DAAB's Decision] and Sub-Clause 21.5 [Amicable Settlement] shall not apply; and
- (b) the Dispute may be referred by either Party directly to arbitration under Sub-Clause 21.6 [Arbitration] without prejudice to any other rights the Party may have.

## **Section IX. Special Conditions of the Contract**

## Special Conditions of the Contract

The Special Conditions of Contract (SCC) complement the General Conditions of Contract (GCC) to specify data and contractual requirements of the Procuring agency/Employer/ Employer, the engineer, the sector, the overall project, and the works. In the event of a conflict, the provisions herein shall prevail over those in the GCC.

### Part A – Contract Data

Contract data of the SCC, includes data to complement the GCC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

SCC Clause Number	GCC Clause Number	Amendments of, and Supplements to, Clauses in the GCC
<b>General Provision (GCC 1)</b>		
1.	1.3	<p><b>For notices</b></p> <p><b>Procuring Agency:</b> Hyderabad Electric Supply Company Ltd:</p> <p><b>Employer:</b> Chief Executive Officer HESCO</p> <p><b>Engineer:</b> Project Director GSC HESCO Water Wing Colony Hussainabad Hyderabad.</p> <p><b>Engineer’s Authorized representative:</b></p> <ol style="list-style-type: none"> <li>1. Executive Engineer T/Line Construction Division, GSC HESCO.</li> <li>2. Executive Engineer Civil Division, GSC HESCO.</li> </ol> <p><b>Contractors Authorized representatives name and address:</b></p>
2.	1.4	<p><b>Governing Law;</b></p> <p>The Applicable Law shall be: Laws of the <b>Islamic Republic Of Pakistan</b></p>
3.	1.4	<p><b>Communication Language:</b></p> <p>The Communication Language shall be: English</p>
4.	1.5	<p><b>Documents forming the contract listed:</b></p> <ol style="list-style-type: none"> <li>1. The Contract Agreement (If completed);</li> <li>2. Work Order / Notice to commencement of work</li> <li>3. The Letter of Acceptance;</li> <li>4. Notice inviting Bid.</li> <li>5. The priced Bill of Quantities;</li> </ol>

		<p>6. The completed Form of Bid;</p> <p>7. Special provisions</p> <p>8. The Special Conditions of Contract- Part II;</p> <p>9. The General Conditions – Part I;</p> <p>10. The completed Appendices to Bid (All concerned);</p> <p>11. The Drawings; (If any)</p> <p>12. The Specifications; (If any) and</p> <p>13. Joint Venture Undertaking (If contractor is JV).</p> <p>14. Other related information as per bidding document.</p>
<b>The Employer/ Procuring agency/Employer (GCC Clause 2)</b>		
5.	2.1	<b>Time for access to the Site:</b> Within 14 days after issuance of Notice to Commencement of work or Issuance of SITE handing over certificate by Engineer’s Representative. (If applicable and mentioned in notice to commencement)
<b>The Engineer (GCC Clause 3)</b>		
6.	3.2	<p>Engineer’s Duties and Authority:</p> <p>Variations resulting in an increase of the Accepted Contract Amount in excess of <u>05%</u> shall require approval of the Procuring agency/Employer as per competency mentioned in HESCO Book Of Financial Powers.</p>
<b>The Contractor (GCC Clause 4)</b>		
7.	4.2	Performance guarantee/ security will be in the form of a Bank Guarantee / CDR issued by a Scheduled Bank Of Pakistan in the amount of 10% as a percentage of the Contract Price without S.S.Tax.
8.	4.7.2(a)	<b>Clause 4.7 Setting out</b> Period for notification of errors in the items of reference: 14 days
9.	4.22	<b>Contractor’s Operations on site</b> The Contractor is responsible to all operations at the SITE and any additional area (if applicable).
<b>Sub-Contracting (GCC Clause 5)</b>		
10.	5.1(a)	Sub-contracting Not Allowed.
11.	5.1 (b)	Works for which sub-contracting is not permitted. Complete Work
<b>Staff and Labour (GCC Clause 6)</b>		
12.	6.5	Normal working hours: 08 hours per day.
<b>Plant, Material and Workmanship (GCC Clause 7)</b>		
13.	7.2	Samples: as per BOQ/ Notice to commencement of work or any other as per instructed by Engineer / Engineer’s Representative.

<b>Commencement, Delays and Suspension (GCC Clause 8)</b>		
14.	8.3	The program shall be submitted within 14 days from the date of receipt of Letter of Acceptance, which shall be in the form of computer statement/ bar chart or any other form as acceptable to Engineer / Engineer's representative.
15.	8.8	Delay damages shall be payable for each day of delay shall be 0.05% of the Contract Price per day, in the currency and proportions in which the Contract Price is payable. Maximum amount of delay damages is 10 % of the Contract Price.
<b>Measurement and Valuation (GCC Clause 12)</b>		
16.	12.2	Method of measurement shall be recording work done in measurement book (M.B).
17.	12.3	Percentage profit: 0%
<b>Variations and Adjustments (GCC Clause 13)</b>		
18.	13.4 (b)(ii)	Percentage rate to be applied to Provisional Sums for overhead charges and profit is 0%
19.	13.7	Adjustments for Changes in Cost: The Contract Price "shall be fixed" during Contract Execution. No escalation or idle charges shall be allowed.
<b>Contract Price and Payment (GCC Clause 14)</b>		
20.	14.2	Total advance payment shall be: Not Allowed.
21.	14.2.3	Repayment of Advance payment: Not Applicable.
22.	14.3(iii)	Percentage of retention: 10% Limit of Retention Money: 5% shall be released with final bill and remaining 5 % shall be released after completion of defect liability period.
23.	14.5(b)(i)	Plant and Materials: Not applicable.
24.	14.5(c)(i)	Plant and Materials: Not applicable.
25.	14.6.2	Withholding (amounts in) an IPC 05 % of the Accepted Contract Amount (10% amount withhold from interim payment certificates. The 05% from which shall be released with the final bill and remaining 05 % shall be released after defect liability period.) The defect liability period is one year after completion of work.
26.	14.7(a)	Period of payment of Advance Payment to the Contractor Not Applicable.

27.	14.7b(i)	Period for the Procuring agency/Employer to make interim payments to the Contractor under Sub-Clause 14.6 (interim Payment): 30 days.
28.	14.7b(ii)	Period for the Procuring agency/Employer to make interim payments to the Contractor under Sub-Clause 14.13 (Final Payment): 60 days.
29.	14.7(c)	Period for the Procuring agency/Employer to make final payment to the Contractor: 60 days
30.	14.8	Financing charges for delayed payment (percentage points above the average bank short-term lending rate as referred to under subparagraph (a)): Not applicable.
31.	14.11.1(b)	Number of additional paper copies of draft Final Statement: 01 Copy
32.	14.15	<b>Currencies of Payment</b> The payment shall be made only in PKR.
33.	14.15 (a)(i)	The proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Contract Data, except as otherwise agreed by both parties: Not Applicable
34.	14.15 (c)	Payment of Delay Damages shall be made in the currencies and proportions specified in the Contract Data: Only in PKR (if applicable)
35.	14.15 (f)	If no rates of exchange are stated in the Contract Data, they shall be those prevailing on the Base Date and published by the central bank of the Country: Not applicable
36.	17.2 (d)	<b>Liability for Care of the Works</b> Any operation of the forces of nature (other than those allocated to the Contractor in the Contract Data) which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions: The contractor will be held responsible in having liability for care of works for all events except as force majeure as mentioned in GCC
<b>Insurance (GCC Clause 19)</b>		
37.	19.1	Permitted deductible limits insurance required for the Works: Full value. insurance required for Goods: Full value. insurance required for liability for breach of professional duty: N/A insurance required against liability for fitness for

		<p>purpose (if any is required): N/A</p> <p>insurance required for injury to persons and damage to property: In accordance with applicable laws of Pakistan.</p> <p>insurance required for injury to employees: : In accordance with applicable laws of Pakistan.</p> <p>other insurances required by Laws and by local practice: For loss or damage to any property Full value.</p>
38.	19.2.1(b)	Additional amount to be insured (as a percentage of the replacement value, if less or more than 15%): 15%.
39.	19.2.1(iv)	List of Exceptional Risks which shall not be excluded from the insurance cover for the Works. There shall be no obligation for insurances to include loss or damage caused by the risk already listed.
40.	19.2.2	<p>Extent of insurance required for Goods: Full value</p> <p>Amount of insurance required for Goods: Full value</p>
41.	19.2.3(a)	amount of insurance required for liability for breach of professional duty: N/A
42.	19.2.3(b)	Insurance required against liability for fitness for purpose: No
43.	19.2.3	Period of insurance required for liability for breach of professional duty: N/A
44.	19.2.4	Amount of insurance required for injury to persons and damage to property: In accordance with applicable laws of Pakistan.
45.	19.2.6	<p><b>Insurance</b></p> <p><u>Other insurances required by Laws and by local practice</u></p> <p>The contractor shall provide all other insurances required by the Laws of the countries where (any part of) the Works are being carried out, at the Contractor's own cost. Other insurances required by local practice (if any) shall be detailed in the Contract Data and the Contractor shall provide such insurances in compliance with the details given, at the Contractor's own cost: No any.</p>

## Part-B Special Provisions

Sr.no.	Clause	Description
1	1.6	<b>Signing of Contract Agreement:</b> Within 14 DAYS after issuance of Notice to commencement of work.
2	1.9	<b>Delayed Drawings or Instructions:</b> No any escalation/ profit or idle charges will be allowed in case of EOT.
3	2.4	<b>Employer's Financial Arrangement:</b> All funds shall be arranged from HESCO's Own resources.
4	3.3	<b>Engineer's Representative:</b> 1. Executive Engineer T/Line Construction Division, GSC HESCO. 2. Executive Engineer Civil Division, GSC HESCO.
5	4.2	<b>The Clause is substituted with the following:</b>  The Contractor shall provide Performance Security to the Employer on the prescribed form. The said Security shall be furnished or caused to be furnished by the Contractor within 14 days after the receipt of the Letter of Acceptance. The Performance Security shall be of an amount equal to 10% of the Contract Price stated in the Letter of Acceptance. Such Security shall, at the option of the bidder, be in the form of either bank guarantee/CDR from any Scheduled Bank in Pakistan  The cost of complying with requirements of this Sub-Clause shall be borne by the Contractor.
6	4.3	<b>The Following condition is added:</b> The contractor's representative must have valid registration of Pakistan Engineering Council.
7	4.13	<b>The following sentence may be added after phrase "all cost and charges":</b> except compensation of crops, buildings or any other property for resolving right of way problem.
8	8.1	<b>Commencement of works clause is replaced as:</b> The commencement date is considered as mentioned in Letter of Acceptance / Notice to commencement of work.
9	8.3	The Condition substituted with the following text:  The program shall be submitted within 14 days from the date of receipt of Letter of Acceptance, which shall be in the form of computer statement/ bar chart or any other form as acceptable to engineer / Engineer's representative.

10	8.5	<b>The following sub clause (f) is added:</b> other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible, being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.
11	10.2	<b>This clause is replaced with the following text:</b> The taking over shall be carried out after completion of work.
12	14.9	<b>Release of retention money:</b> 5% shall be released with final bill and remaining 5 % shall be released after completion of defect liability period. Defect liability period is 365 days after the date of completion.
13	19.3	<b>The following clause is added:</b>  The Contractor shall be solely responsible for obtaining and maintaining valid insurance coverage for all goods, materials, equipment, works, labour, and personnel engaged under the Contract, at his own cost and risk. The Contractor shall submit copies of all valid insurance policies to the concerned XEN before processing of any bill/payment, and the same shall be verified and ensured by the Engineer/Employer.  The Contractor shall also be fully responsible for the watch and ward, safety, security, and protection of all departmental materials, equipment, stores, and other properties handed over or lying at the site under the Contractor's control or possession until completion and taking over of the works.  In case of any loss, theft, damage, accident, or injury to any property, goods, works, or workmen at site during execution of work, the Contractor shall be wholly responsible and shall fully compensate the Employer for all such losses, damages, claims, liabilities, or injuries in accordance with the Contract and applicable laws.
14	20.2	<b>Claims For Payment And / Or EOT:</b> No any escalation/ profit or idle charges will be allowed in case of EOT.
15	21	<b>The subject clause 21 is deleted in its entirety and replaced with the local law i.e: Arbitration act of Pakistan 1940.</b>  The disputes shall be settled under Arbitration act of Pakistan 1940.  Arbitrator: Chief Engineer Dev PMU HESCO  Place of Arbitration: Hyderabad.
<b>Following Clauses 22.1 ,22.2, 23, 24, 25, 26, 27 &amp; 28 are Further added</b>		
16	22.1	<b>Payment of Income Tax</b> The Contractor, Subcontractors and their employees shall be responsible for payment of all their income tax, super tax and other taxes on income arising out of the Contract

		and the rates and prices stated in the Contract shall be deemed to cover all such taxes.
17	22.2	<b>Customs Duty &amp; Taxes</b> (Employer may incorporate provisions where applicable)
18	23	<b>Integrity Pact</b> If the Contractor or any of his Subcontractors, agents or servants is found to have violated or involved in violation of the Integrity Pact signed by the Contractor as Appendix-L to his Bid, then the Employer shall be entitled to: (a) recover from the Contractor an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by the Contractor or any of his Subcontractors, agents or servants; (b) terminate the Contract; and (c) recover from the Contractor any loss or damage to the Employer as a result of such termination or of any other corrupt business practices of the Contractor or any of his Subcontractors, agents or servants.
19	24	<b>Liability of Contractor</b> The Contractor shall follow strictly, all relevant labour laws including the Workmen's Compensation Act and the Employer shall be fully indemnified for all claims, damages etc. arising out of any dispute between the Contractor, his Subcontractors or assigns and the labour employed by them.
20	25	<b>Joint and Several Liabilities</b> If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the terms of the Contract and shall designate one of such persons to act as leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.
21	26	<b>Details to be Confidential</b> The Contractor shall treat the details of the Contract as private and confidential, save in so far as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the prior consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract, the same shall be referred to the decision of the Engineer whose award shall be final.
22	27	<b>Declaration Of Beneficial Owner:</b> As per S.R.O 592(I)/2022 The Gazette of Pakistan, In line with PPRA regulations, the bidders are required to submit the declaration of Beneficial Ownership information of the company as per prescribed proforma attached in the contract forms.
23	28	<b>Blacklisting</b>  <b>The process of black listing</b>

		<p>As per PPRA Rules-2004 Rule 19, following events would lead to blacklisting/debarment of the contractor/JV:</p> <p>Submission of false fabricated/forged documents for procurement in tender.</p> <ol style="list-style-type: none"> <li>i. Not attaining required quality of work</li> <li>ii. Failure to complete the work within stipulated time period without any justified reason.</li> <li>iii. Inordinate tardiness in accomplishment of assigned/agreed responsibilities / contractual obligations resulting loss to procuring agency/government.</li> <li>iv. Non execution of work as per terms &amp; condition of contract.</li> <li>v. Any unethical or unlawful professional or business behaviour detrimental to good conduct and integrity of the public procurement process.</li> <li>vi. Involvement in any sort of tender fixing.</li> <li>vii. Persistent and intentional violation of important conditions of contract.</li> <li>viii. Non-adherence to quality specifications despite being importunately pointed out.</li> <li>ix. Security consideration of the state i.e. any action that jeopardizes the security of the state or good repute of the procuring agency.</li> <li>x. Any other event not listed above but as per HESCO Debarment Policy</li> </ol>
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***Note: Special Provisions shall always over rule and supersede the respective provisions of General Conditions of the Contract. In order to conveniently trace the respective clause, reference of the concerned GCC clause must be provided.***

**Table: Summary of Sections (if any)**

<b>Description of parts of the Works that shall be designated a Section for the purposes of the Contract (Sub-Clause 1.1.73)</b>	<b>Value: Percentage<sup>1</sup> of Accepted Contract Amount (Sub-Clause 14.9)</b>	<b>Time for Completion (Sub-Clause 1.1.84)</b>	<b>Delay Damages (Sub-Clause 8.8)</b>

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<sup>1</sup> These percentages shall also be applied to each half of the Retention Money under Sub-Clause 14.9

# **SECTION X: CONTRACT FORMS**

# Notification of Award

(On Procuring agency/Employer's letterhead)

Letter of Acceptance

[Date]. . . . .

To: . . . . .[Name and address of the contractor]

Subject: . . . . .[Notification of Award Contract No.]

This is to notify you that your Bid dated . . . . .[date]. . . . . for execution of the . . . . .[name of the contract and identification number, as given in the Bid Data Sheet] . . . . . for the Accepted Contract Amount of the equivalent of . . . . . [amount in words and figures and name of currency]. . . . ., as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

## Form of Contract

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between *[name and address of Procuring agency/Employer]* of Pakistan (hereinafter called “the Procuring agency/Employer”) of the one part and *[name of Contractor]* of *[city and country of Contractor]* (hereinafter called “the ”) of Contractor other part:

WHEREAS the Procuring agency/Employer desired that the works *[brief description of works]* should be executed by the contractor, and has accepted a Bid by the contractor for the execution and completion of these works and remedying of any defects therein, in the sum of *[contract price in words and figures]* (hereinafter called “the Contract Price”).

### **NOW THIS CONTRACT WITNESSETH AS FOLLOWS:**

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Contract, In the event of any ambiguity or conflict between the Contract Documents listed below, the order of precedence shall be the order in which the Contract Documents are listed below:-
  - a). The Contract Agreement (If completed);
  - b). Work Order / Notice to commencement of work
  - c). The Letter of Acceptance;
  - d). Notice inviting Bid.
  - e). The priced Bill of Quantities;
  - f). The completed Form of Bid;
  - g). Special provisions
  - h). The Special Conditions of Contract- Part II;
  - i). The General Conditions – Part I;
  - j). The completed Appendices to Bid (All concerned);
  - k). The Drawings; (If any)
  - l). The Specifications; (If any) and
  - m). Joint Venture Undertaking (If contractor is JV).
  - n). Other related information as per bidding document
3. In consideration of the payments to be made by the Procuring agency/Employer to the contractor as mentioned in this contract, the contractor hereby covenants with Procuring agency/Employer to execute the works to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Procuring agency/Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of 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 Contract to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Procuring agency/Employer)	Signed, sealed, delivered by _____ the _____ (for the Contractor)
Witness to the signatures of the Procuring agency/Employer .....	Witness to the signatures of the Contractor .....

## Performance Guarantee Form

To: *[name of Procuring agency/Employer]*

WHEREAS *[name of Contractor]* (hereinafter called “the contractor”) has undertaken, in pursuance of Contract No. *[reference number of the contract]* dated *[insert date]* for the execution of *[insert name of the works and its brief description]* (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the contractor shall furnish you with a Bank Guarantee by a reputable bank for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Contractor a guarantee:

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of *[amount of the guarantee in words and figures]*, and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limits of *[amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the: *[insert date]*

Signature and seal of the Guarantors

---

*[name of bank or financial institution]*

---

*[address]*

---

*[date]*

# Advance Payment Security

## Demand Guarantee

\_\_\_\_\_  
**Beneficiary:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

We have been informed that [Inset name of the Contractor] (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the [insert name of the Procuring agency/Employer] (hereinafter called "the Procuring agency/Employer") for the execution of \_\_\_\_\_ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (\_\_\_\_\_) is to be made against an advance payment guarantee.

At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Procuring agency/Employer any sum or sums not exceeding in total an amount of \_\_\_\_\_ upon receipt by us of the Procuring agency/Employer's complying demand supported by the Procuring agency/Employer's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

(a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

(b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Contractor has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Procuring agency/Employer's bank stating that the advance payment referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us.

The Guarantee shall remain valid up to the aforesaid date and shall be null and void after the aforesaid date or earlier if the advance made to the Contractor is fully adjusted against payments from Interim Payment Certificates of the Contractor provided that the Guarantor agrees that the aforesaid period of validity shall be deemed to be extended if on the above mentioned date the advance payment is not fully adjusted.

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

**Note:** All italicized text is for use in preparing this form and shall be deleted from the final product.

## **Retention Money Security Demand Guarantee**

\_\_\_\_\_ [Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of Procuring agency/Employer]

**Date:** \_\_\_\_\_ [Insert date of issue]

**RETENTION MONEY GUARANTEE No.:** \_\_\_\_\_ [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ [insert reference number of the contract] dated \_\_\_\_\_ with the Procuring agency/Employer, for the execution of \_\_\_\_\_ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Procuring agency/Employer retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and, if required, the ES Performance Security] is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ [insert amount in figures] (\_\_\_\_\_ [amount in words]) upon receipt by us of the Procuring agency/Employer's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Procuring agency/Employer's bank stating that the second half of the Retention Money as referred to above has been credited to the contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ [insert name and address of Contractor's bank].

This guarantee shall expire no later than the .... day of ....., 2..., and any demand for payment under it must be received by us at the office indicated above on or before that date.

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

**Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.**

**APPENDIX-L**  
**Integrity Pact**

**DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN CONTRACTS WORTH RS.10.00 MILLION OR MORE**

Contract Number: \_\_\_\_\_  
Contract Value: \_\_\_\_\_  
Contract Title: \_\_\_\_\_

Dated: \_\_\_\_\_

[Name of Contractor] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan or any administrative subdivision or agency thereof or any other entity owned or controlled by it (GoP) through any corrupt business practice.

Without limiting the generality of the foregoing [Name of Contractor] represents and warrants that it has fully declared the brokerage, commission, fee etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultations fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP, except that which has been expressly declared pursuant hereto.

[Name of Contractor] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoP and has not taken any action or will not take any action to circumvent the above declaration, representative or warranty.

[Name of Contractor] accepts full responsibility and strict liability for making and false declaration, not making full disclosure, misrepresenting fact or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP.

Notwithstanding any rights and remedies exercised by GoP in this regard, [Name of Contractor] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten time the sum of any commission, gratification, bribe, finder's fee or kickback given by [Name of Contractor] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP.

\_\_\_\_\_  
[Procuring agency/Employer]

\_\_\_\_\_  
[Contractor]

## A. FORM OF UNDERTAKING BY THE JOINT VENTURE PARTNERS

THIS JOINT DEED OF UNDERTAKING executed on this ..... day of ..... Two Thousand and ..... by ..... a company and having its Registered Office at ..... (herewith called the "Party No.1" assigns) which expression shall include its successors, executors and permitted assigns) and M/s ..... a company and having its Registered Office at ..... (hereinafter called the "Party No.2" which expression shall include its successors, executors and permitted assigns) for the purpose of making a bid and entering into a contract [hereinafter called the "Contract" (in case of award)] against the Identification No ..... for work of \_\_\_\_\_ associated with \_\_\_\_\_ (hereinafter called the "**Employer**").

WHEREAS the Party No.1 and Party No.2 have entered into an Agreement dated ..... AND WHEREAS the Employer invited bids for \_\_\_\_\_

AND WHEREAS provisions forming part of the bidding documents, inter-alia, stipulates that an undertaking of two or more qualified partners, meeting the requirements of 'Qualification & Evaluation requirement of the Bidder', as applicable may be provided, the joint venture fulfills all other requirements as per relevant clauses of bidding document, the Letter of Bids (Technical & Price Bid Form) shall be signed by the partner in charge so as to legally bind all the Partners of the Joint Venture, who will be jointly and severally liable to perform the Contract and all obligations hereunder.

The above clause further states that this Undertaking shall be attached to the bid and the Contract performance guarantee will be as per the format enclosed with the bidding document without any restrictions or liability for either party. The Bid Security and Performance guarantee if required are from JV Bank Account.

## **NOW THIS UNDERTAKING WITNESSETH AS UNDER:**

In consideration of the above premises and agreements all the parties of this Deed of Undertaking do hereby declare and undertake:

1. In requirement of the award of the Contract by the Employer to the Joint Venture Partners, we, the Parties do hereby undertake that M/s ..... the Party No.1. shall act as Lead Partner and further declare and confirm that we the parties to the Joint Venture shall jointly and severally be bound unto the Employer for the successful performance of the Contract and shall be fully responsible for the design, manufacture, Supply, and successful performance of the equipment in accordance with the Contract:
2. In case of any breach or default of the said Contract by any of the parties to the Joint Venture, the party(s) do hereby undertake to be fully responsible for the successful performance of the Contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.
3. Further, if the Employer suffers any loss or damage on account of any breach in the Contract or any shortfall in the performance of the equipment in meeting the performances guaranteed as per the specification in terms of the Contract, the Party(s) of these presents undertake to promptly make good such loss or damages caused to the Employer, on its demand without any demur. It shall not be necessary or obligatory for the Employer to proceed against Lead Partner to these presents before proceeding against or dealing with the other Party(s), the Employer can proceed against any of the parties who shall be jointly and severally liable for the performance and all other liabilities/obligations under the Contract to the Employer.
4. The financial liability of the Parties of this Deed of Undertaking to the Employer, with respect to any of the claims rising out of the performance or non-performance of the obligations set forth in this Deed of Undertaking, read in conjunction with the relevant conditions of the Contract shall, however not be limited in any way so as to restrict or limit the liabilities or obligations of any of the Parties of this Deed of Undertaking.
5. It is expressly understood and agreed between the Parties to this Undertaking that the responsibilities and obligations of each of the Parties shall be in accordance with conditions of bidding documents / rules. It is further undertaken by the parties that the above sharing of responsibilities and obligations shall not in any way be a limitation of joint and several responsibilities of the Parties under the Contract.
6. It is also understood that this Undertaking is provided for the purposes of undertaking joint and several liabilities of the partners to the Joint Venture for submission of the bid and performance of the Contract if awarded and that this Undertaking shall not be deemed to give rise to any additional liabilities or obligations, in any manner or any law, on any of the Parties to this Undertaking or on the Joint Venture, other than the express provisions of the Contract.
7. This Undertaking shall be construed and interpreted in accordance with the provisions of the Contract.

8. It is further agreed that this Deed of Undertaking shall be irrevocable and shall form an integral part of the bid and shall continue to be enforceable till the Employer discharges the same or upon the completion of the Contract in accordance with its provisions, whichever is earlier. It shall be effective from the date first mentioned above for all purposes and intents.

**NOW THIS UNDERTAKING WITNESSETH AS UNDER (ADDITIONAL CLAUSES)**

9. That the Joint Venture has established a combined Joint Venture bank account, which is duly opened and fully operative. All financial transactions relating to the bid and execution of the Contract shall be conducted through the said account. The operation of the Joint Venture bank account shall be subject to mandatory and compulsory signatories from each Joint Venture partner firm, as per the approved bank mandate.
10. That the Joint Venture is duly registered on the e-PAD / PPRA system, and such registration shall remain valid, active, and in good standing during the bidding process as well as throughout the execution of the Contract.
11. That the Joint Venture is registered with the Federal Board of Revenue (FBR) and possesses a valid National Tax Number (NTN). The Joint Venture and its partner firms shall remain compliant with all applicable tax laws, rules, and regulations during the currency of the Contract.
12. That the Procuring Agency shall have the full and unfettered authority to initiate action against the Joint Venture jointly or against any individual partner firm of the Joint Venture separately, in the event of breach of Contract, non-performance, failure to complete the work within the stipulated time period, or termination of the Contract for any reason attributable to the Joint Venture or its partner firms.
13. That all partner firms of the Joint Venture shall be equally, jointly, and severally responsible and liable for any loss, damage, default, misrepresentation, negligence, or any act or omission in contravention of the Contract, bidding documents, PPRA Rules, or any other applicable laws, rules, and regulations.
14. That in the event of award of the Contract, the Performance Guarantee shall be furnished from the Joint Venture bank account, in the name of the Joint Venture, strictly in accordance with the format, amount, and conditions prescribed by the Procuring Agency.
15. That these additional clauses shall form an integral and inseparable part of this Deed of Undertaking and shall be read, interpreted, and enforced in conjunction with the bidding documents and the Contract.

IN WITNESS WHEREOF, the Parties to this Deed of Undertaking have through their authorized representatives executed these presents and affixed Common Seals of their companies, on the day, month and year first mentioned above.

Common Seal of.....  
has been affixed in my/our  
presence pursuant to Board of  
Director's Resolution dated .....

For Lead Partner (Party No.-1)  
For and on behalf of M/s  
.....

Name .....

Designation .....

Signature .....

(Signature of the authorized  
representative)

WITNESS:

I. ....

II. ....

Common Seal of .....

has been affixed in my/our  
presence pursuant to Board of  
Director's Resolution dated .....

For Party No.-2  
For and on behalf of M/s .....

Name .....

(Signature of the authorized  
representative)

Designation .....

Signature .....

WITNESS:

**Note:**

*This specimen joint venture agreement shall be furnished in accordance with the joint venture arrangement, commensurate with the number of participating firms.*

**ANNEXURE: I**

**Declaration of Ultimate Beneficial Owners Information for Public Procurement Contracts.**

1. Name
2. Father's Name/Spouse's Name
3. CNIC/NICOP/Passport No.
4. Nationality
5. Residential address
6. Email address
7. Date on which shareholding, control or interest acquired in the business.
8. In case of indirect shareholding, control or interest being exercised through intermediary companies, entities or other legal persons or legal arrangements in the chain of ownership or control, following additional particulars to be provided:

1	2	3	4	5	6	7	8	9	10
Name	Legal form (company/Limited Liability Partnership/ Association of Persons/Single Member Company/partnership Firm/Trust/Any other individual, body corporate (to be specified)	Date of incorporation/ registration	Name of registering authority	Business Address	Country	Email address	Percentage of shareholding, control or interest of BO in the legal person or legal arrangement	Percentage of shareholding, control or interest of legal person or legal arrangement in the Company	Identify of natural person who ultimately owns or controls the legal person or arrangement

9. Information about the Board of Directors (details shall be provided regarding number of shares in the capital of the company as set opposite respective names).

1	2	3	4	5	6	7	8
Name and sure name (In Block Letters)	CNIC No. (in case of foreigner, Passport No)	Father's/Husband's Name in full	Current Nationality	Any other Nationality (ies)	Occupation	Residential address in full or the registered/ principal office address for a subscriber other than natural person	Number of shares taken by cash subscriber (in figures and words)
			Total numbers of shares taken (in figures and words)				

10. Any other information incidental to or relevant to Beneficial Owner(s).

Name and signature

(Person authorized to issue notice on behalf of the company)