



GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MINISTRY OF TOURISM

**SRI LANKA TOURISM DEVELOPMENT AUTHORITY
(SLTDA)**

Boundary opening, Surveying and fencing Work at Dedduwa Lake Resort

Contract No: SLTDA/P&D/W/NCB/Survey & Fencing Work/2020/16

National Competitive Bidding (NCB)

SRILANKA TOURISM DEVELOPMENT AUTHORITY

No.80, Galle Road, Colombo 03

December 2020

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SRILANKA TOURISM DEVELOPMENT AUTHORITY

**Boundary Opening, Surveying and Fencing Work at Dedduwa Lake Resort
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National Competitive Bidding (NCB)

INVITATION FOR BIDS (IFB)

01. The Chairman, Departmental Procurement Committee of Sri Lanka Tourism Development Authority invites sealed proposals from the eligible & qualified Bidder for Boundary opening, Surveying and fencing Work at Dedduwa Lake Resort
02. To be eligible for contract award, the successful bidder shall not have been blacklisted and shall fulfill the following requirements;
 - a) The bidder shall be registered in the Construction Industry Development Authority (CIDA) for Grade **C5 or above** for Building works.
 - b) Qualification requirements to qualify for Contract award include:
 - i. Average annual volume of Construction Work performed in last five years shall be at least **Rs. 75Mn.**
 - ii. Experiences in at least one Contract above 10 million similar nature work on Surveying & Fencing work and complexity equivalent to the works during the last **05 years** as a main Contractor.
 - iii. The minimum amount of credit facilities, after setting apart for the other contractual commitments and exclusive of any Advance Payments which may be made under the Contract, shall be not less than Rs. **10Mn.** This should be exclusive for the Project.
 - c) Technical staff at Site to be
 - i. Registered Survey Officer - NDT 5+yrs Exp. Part Time (Should be on site when required)
 - ii. One Technical Officer - HNDE, NDES or equivalent with 3 year experience
 - iii. One Work Supervisor - NCT or equivalent with 1 year experience
03. The construction period is **91 days**.
04. Interested bidders may obtain further information from Assistant Director (Procurement) Sri Lanka Tourism Development Authority, Contact No.0112426800 (Ext: 305), Electronic mail address: amilam@srilanka.travel of Assistant Director (Procurement) and inspect the bidding documents at the SLTDA Web site (<https://sltda.gov.lk/tender>).
05. A complete set of Bidding Documents in English language may be downloaded from the SLTDA Website (<https://sltda.gov.lk/tender>) by interested bidders from **10th Dec 2020 to 30th Dec 2020**.
06. The payment of **non-refundable fee LKR 7,500/=** (in Cash) should be deposited to the Bank **AC No. 7119413 Bank of Ceylon, Corporate Branch, Sri Lanka Tourism Development Authority** (Note: Please Fill the Depositors Details and Purpose of Deposit in the Deposit Slip as “Non Refundable Tender Fee” and it is mandatory to submit the aforesaid original slip with the Bid. If the Bidder failed to make aforesaid cash payment, it will be a reason to disqualify)
07. Bids shall be delivered with duplicate to the Procurement Division (4th Floor) addressing to, **Chairman, Departmental Procurement Committee, Sri Lanka Tourism Development Authority, No.80, Galle**

Road, Colombo 03 on or before 14.00 Hrs on 31st December 2020.

08. **Late bids shall be rejected** and Bids will be opened soon after closing in the presence of the bidders' representatives who choose to attend.
09. Pre Bid Meeting will be held on 18th December 2020 at 14:00 hrs. through online (Zoom meeting) and interested Bidders are advised to send a request to join the Pre Bid Meeting to email address to amilam@srilanka.travel.
10. Bids shall be valid **119 days** (Up to including 29th April 2021) from the date of Bid closing.
11. All Bids shall be accompanied by a Bid Security of **Sri Lanka Rupees Three Hundred Fifteen Thousand Five Hundred Only (LKR 315,500.00)**. The Bid Security shall be valid 28 days beyond the Bid Validity (Up to including 27th March 2021).
12. All bids shall be accompanied a certificate of registration of the bidder issued by the registrar of Public Contracts in Sri Lanka according to the Public Contract Act No.03 of 1987 of the government of Sri Lanka and subsequent gazette notifications (PCA3 from).
13. An Employee or a firm and/or an individual that has a close family relationship with an employee of the Ministry of Tourism & Aviation, Sri Lanka Tourism Development Authority and any other institution under the control of the Ministry of Tourism & Civil Aviation shall not be eligible for award the contract.

Chairman,

Departmental Procurement Committee

Sri Lanka Tourism Development Authority

SECTION I

INSTRUCTIONS TO BIDDERS

(Instructions to Bidders Shall be Read in Conjunction with Bidding Data)

INSTRUCTIONS TO BIDDERS

Instruction to Bidders applicable to this Contract is those given in Section I of the Standard

Bidding document for Procurement of works, CIDA Publication No. ICTAD/ SBD/01, 2nd Edition, January 2007, addendum 01 issued in October 2009 and addendum 02 issued in February 2011 Published by Construction Industry Development Authority (CIDA) “Savsiripaya”, 123, Wijerama Mawatha, Colombo 07.

This publication will not be issued with the Bidding document and the Bidder is advised to purchase it from CIDA.

Instructions to Bidders shall be read in conjunction with Bidding Data under section 05.

SECTION II
STANDARD FORMS

- 1. Form of Bid Security**
- 2. Letter of Acceptance**
- 3. Agreement**
- 4. Performance Security**
- 5. Advance Payment Security**
- 6. Retention Money Guarantee**

1. FORM OF BID GUARANTEE / SECURITY (Unconditional)

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

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

Beneficiary: Director General,
Sri Lanka Tourism Development Authority
No.80, Galle Road,
Colombo 03

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

BID GUARANTEE No.: ----- *[insert (by issuing agency) number]*

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

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

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

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

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

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

.....
[Signature(s)]

2. FORM OF LETTER OF ACCEPTANCE

[Letter heading paper of the procuring entity]

..... *[Date]*

To:

[Name and address of the Contractor]

This is to notify you that your bid dated..... *(Insert date)* for the construction and remedying defects of the *[name of the Contract and identification number,]* for the Contract price of Rupees *[name of currency]**[amount in figures and words]* as corrected in accordance with Instructions to Bidders and / or modified by a Memorandum of Understanding, is hereby accepted. The adjudicator shall be *[name and address of the adjudicator, if agreed]* / shall be appointed by the Construction Industry Development Authority (CIDA).

You are hereby instructed to proceed with the execution of the said works in accordance with the Contract documents. The start date shall be :..... (fill the dates as per conditions of contract). The amount of performance security is :.....(fill the date as per conditions of contract). The performance security shall be submitted on or before (Fill the date as per conditions of contract).

Authorized Signature :
Name and title of Signatory :
Name of Agency :

3. FORM OF AGREEMENT

This AGREEMENT, made the..... [day] day of{month} 20.....

[year] between..... [name and address of Employer] (hereinafter called "the Employer") of the one part, and

..... [name and address of Contractor] "hereinafter called "the Contractor") of the other part.

WHEREAS the Employer desires that the Contractor execute

..... [Name and identification number of Contract] (Hereinafter called "the Works") and the Employer has accepted the Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Initial 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 thereto have caused this Agreement to be executed the day and year aforementioned in accordance with laws of Sri Lanka.

.....
Authorized signature of Contractor
Common Seal

.....
Authorized signature of Employer
Common Seal

In the presence of:

Witnesses:

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

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

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

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

**4. FORM OF PERFORMANCE SECURITY
(Unconditional)**

..... [Issuing agency's name and address of issuing branch or office]

Beneficiary:

[Name
and address of employer]

Date:

PERFORMANCE GUARANTEE NO:

We have been informed that [Name of contractor] (hereinafter called "the contractor") has entered into Contract No. [reference number of the contract] dated with you, for the [insert "construction"] of

..... [name of contract and brief description of works] (hereinafter called "the contract").

Furthermore, we understand that, according to the conditions of the contract, a performance guarantee is required.

At the request of the contractor, we [name of agency]

hereby irrevocably undertake to pay you any sum or sums not exceeding in total amount of

..... [amount in figures] (.....) [amount in words], upon receipt by us of your first demand in writing accompanied by a written statement stating that the contractor is in breach of its obligation(s) under the contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

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

.....
[Signature(s)]

5. FORM OF ADVANCE PAYMENT SECURITY

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

Beneficiary: [Name
and Address of Employer]

Date:

ADVANCE PAYMENT GUARANTEE No :

We have been informed that [name of
contractor]

(hereinafter called "the contractor") has entered into Contract No.
[reference number of the contract] dated with you, for the
..... construction of

..... [name of the
contract and brief description] (hereinafter called "the contract").

Furthermore, we understand that, according to the conditions of the contract, an advance payment in the
sum [amount in figures] (.....)

[amount in words] is to be made against an advance payment guarantee.

At the request of the contractor, we [name of issuing
agency] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of

..... [amount in figures] (.....)

[amount in words] upon receipt by us of your first demand in writing accompanied by a written statement
stating that the contractor is in breach of its obligation in repayment of the advance payment under the
contract.

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

This guarantee shall expire on [insert the date, 28 days beyond the
intended completion date]

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

.....
[signature(s)]

6. FORM OF RETENTION MONEY GUARANTEE

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

Beneficiary: [Name
and Address of Employer]

Date:

RETENTION MONEY GUARANTEE No.:

We have been informed that [name of
contractor] (hereinafter called "the contractor") has entered into contract No.
..... [reference number of contract] dated with you, for
the execution of [name of contract and brief
description of works] (hereinafter called "the contract").
Furthermore, we understand that, according to the conditions of the contract, when the works have being
taken over and the first half of the retention money has been certified for payment, payment of the second
half of the retention money may be made against a retention money guarantee.
At the request of the contractor, we [name of agency] hereby
irrevocably undertake to pay you any sum or sums not exceeding in total an amount of
..... [amount in figures] (.....)
[amount in words] upon receipt by us of your first demand is writing accompanied by a written
statement stating that the contractor is in breach of its obligation under the contract because the
contractor has not attended to the defects in accordance with the contract.
This guarantee shall expire, at the latest, [insert 28 days after the end of the
defects liability period], consequently, any demand for payment under this guarantee must be
received by us at this office on or before that date.

.....
[Signature(s)]

SECTION III
CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT

3.0 The Engineer

3.1 Engineer's Duties and Authority

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

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Contract Data. The Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor.

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

Except as otherwise stated in these Conditions:

- (a) The Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract: and
- (b) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

3.2 Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.4 (*Determinations*).

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent examination, inspection, instruction, notice, proposal, request, test,

or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

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

3.3 Instructions of the Engineer

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

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

3.4 Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.4 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination unless and until revised under Clause 19.0 (*Claims, Disputes and Arbitration*).

3.5 Engineer's Impartiality

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

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

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

4.0 The Contractor

4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract) execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

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

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

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

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

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 (*Law and Language*), and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;
- (c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered as completed for the purposes of taking-over under Sub-Clause 10.1 (*Taking Over of the*

4.2 Performance Security

Works and Sections) until these documents and manuals have been submitted to the Engineer.

The Contractor shall obtain (at his cost) a Performance Security for his proper performance of the Contract, in the amount stated in the Contract Data. The Contractor shall deliver the Performance Security to the Employer within 14 Days after the receipt of the Letter of Acceptance. The performance Security shall be in the form acceptable to the Employer as stipulated in Contract Data.

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

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 Days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

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

4.3 Contractor's Representative

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

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

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

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

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Contract Data:

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

4.5 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6 Co-operation

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

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

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

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

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

4.7 Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced Contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

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

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine: (i) whether and (if so) to what extent the error could not reasonably have been discovered; and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

4.8 Safety Procedures

The Contractor shall:

- a) comply with all applicable safety regulations;
- b) take care for the safety of all persons entitled to be on the Site;
- c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
- d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10.0 (Employer's Taking Over); and
- e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9 Site Data

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

To the extent, which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Bid or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

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

4.10 Sufficiency of the Initial Contract Price

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the bid price; and

- (b) have based the bid price on the data, interpretations necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.9 (*Site Data*).

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

4.11 Unforeseeable Physical Conditions

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

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

This notice shall describe the physical conditions, so that they can Be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions, which the Engineer may give, if an instruction constitutes a Variation, Clause 13.0 (Variations and Adjustments) shall apply.

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

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

After receiving such notice and inspecting and/or investigating the physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine (i) whether and (if so) to what extent these conditions were Unforeseeable; and (ii) the matters described in subparagraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under subparagraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Bid. If and to the extent that these more favourable conditions were

encountered, the Engineer may proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates.

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

4.12 Contractor's Equipment

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

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

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

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

4.13 Protection of the Environment

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

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

4.14 Progress Reports

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

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

Each report shall include:

(a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5.0 (*Nominated Subcontractors*));

(b) Photographs showing the status of manufacture and of progress on the Site;

(c) Where applicable, for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

I. Commencement of manufacture;

II. Contractor's inspections;

III. tests; and

IV. shipment and arrival at the Site:

(d) the details described in Sub-Clause 6.9 (*Records of Contractor's Personnel and Equipment*);

(e) copies of quality assurance documents, test results and certificates of Materials;

(f) list of notices given under Sub-Clause 2.4 (*Employer's Claims*) and notices given under Sub-Clause 19.1 (*Contractor's Claims*);

(g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

(h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

**4.15
Contractor's
Operations
Site**

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

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

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

4.16 Fossils

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

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

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

4.17 Quality Assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

**4.18
Rights of Way
and Facilities**

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

**4.19
Avoidance of
Interference**

The Contractor shall not interfere unnecessarily or improperly with:

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

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

**4.20
Access Route**

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

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes:
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions:
- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route.
- (d) the Employer does not guarantee the suitability or availability of particular access routes, and
- (e) costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

**4.21
Transport of Goods**

- (a) the Contractor shall give the Engineer not less than 7 Days notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;

(b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and

(c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.22 Security of the Site

(a) the Contractor shall be responsible for keeping unauthorized persons off the Site, and

(b) authorized persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor by the Employer or the Engineer, as authorized personnel of the Employer's other contractors on the Site.

5.0 Nominated Subcontractors

5.1 Definition of "Nominated Subcontractor"

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

(a) who is stated in the Contract as being a nominated Subcontractor; or

(b) whom the Engineer, under Clause 13.0 (*Variations and Adjustments*), instructs the Contractor to employ as a Subcontractor.

5.2 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees to indemnify the Contractor against and from the consequences of the matter:

(a) There are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;

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

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

(i) Undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;

And

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

**5.3
Payments to
nominated
Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amounts, which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with subparagraph (b) of Sub-Clause 13.4 (*Provisional Sums*), except as stated in Sub- Clause 5.4 (*Evidence of Payments*).

**5.4
Evidence of
Payment**

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

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

6.0 Staff and Labour

**6.1
Rates of Wages
and Conditions of
Labour**

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

- 6.2
Persons in the
Service of
Employer** The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.
- 6.3
Labour Laws** The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.
- 6.4
Working Hours** No work shall be carried out on the Site on locally recognised Days of rest, or outside the normal working hours, unless:
- (a) otherwise stated in the Contract;
 - (b) the Engineer gives consent; or
 - (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.
- 6.5
Facilities for Staff
and Labour** The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.
- 6.6
Health and Safety** The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that first aid facilities are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- The Contractor shall designate a separate person to deal with safety and protection against accidents. The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.
- 6.7
Contractor's
Superintendence** Throughout the execution of the Works and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

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

6.8 Contractor's Personnel

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

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

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

6.9 Records of Contractor's Personnel and Equipment

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site

Details shall be submitted each calendar month in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.10 Disorderly Conduct

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

7.0 Plant, Materials and Workmanship

7.1 Samples

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

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

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

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

7.2 Inspection

The Employer's Personnel shall at all reasonable times:

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

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

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

7.3 Testing

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

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

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

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests,

unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

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

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

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

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

7.4 Rejection

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

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 (*Employer's Claims*) pay these costs to the Employer.

7.5 Remedial Work

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

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

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

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

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

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

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

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

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

8.0 Commencement, Delays and Suspension

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

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

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

- (a) Achieving the passing of the Tests on Completion; and

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

8.3 Programme The Contractor shall submit a detailed time programme to the Engineer within 14 Days after receiving the notice under Sub-Clause 8.1 (*Commencement of Works*). The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing;
- (b) each of these stages for work by each nominated Subcontractor as defined in Clause 5.0 (*Nominated Subcontractors*);
- (c) the sequence and timing of inspections and tests specified in the Contract; and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works; and

details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 14 Days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances, which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances and/or a proposal under Sub-Clause 13.3 (*Variation Procedure*).

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress

and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

8.4 The Contractor shall be entitled subject to Sub-Clause 19.1 (*Contractor's Extension of Time for Completion*) to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 (*Taking Over of the Works and Sections*) is or will be delayed by any of the following causes:

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

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

8.5 If the following conditions apply, namely:

Delays Caused by Authorities

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

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

8.6 If, at any time:

Rate of Progress

- (a) actual progress is too slow to complete within the Time for Completion; and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 (*Programme*).

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

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

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

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

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

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

8.9 Consequences of Suspension If the Contractor suffers delay and/or incurs Cost from complying with the Engineers instructions under Sub-Clause 8.8 (*Suspension of Work*) and/or from resuming the Suspension work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

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

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

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

- 8.10 Payment for Plant and Materials in Event of Suspension** The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered if
- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 Days; and
 - (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.
- 8.11 Prolonged Suspension** If the suspension under Sub-Clause 8.8 (*Suspension of Work*) has continued for more than 84 Days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 Days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13.0 (*Variations and Adjustments*) of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 (*Termination by Contractor*).
- 8.12 Resumption of Work** After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.
- 8.13 Management Meetings** The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future work. The Engineer shall record the business of such meetings and supply copies of the record to those attending the meeting and to the Employer.

9.0 Tests on Completion

9.1 Contractor's Obligations The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.3 (*Testing*), after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 (*Contractor's General Obligations*).

The Contractor shall give to the Engineer not less than 21 Days notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 Days after this date, on such day or Days as the Engineer shall instruct.

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

As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2 Delayed Tests If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.3 (*Testing*) (fifth paragraph) and/or Sub-Clause 10.3 (*Interference with Tests on Completion*), shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 Days after receiving the notice. The Contractor shall carry out the Tests on such day or Days within that period as the Contractor may fix and which he shall give notice to the Engineer.

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

9.3 Retesting If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.4 (*Rejection*) shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub Clause 9.3 (*Retesting*) the Engineer shall be entitled to:
(a) order further repetition of Tests on Completion under Sub-Clause 9.3(*Retesting*);

(b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub paragraph (c) of Sub-Clause 11.4 (*Failure to Remedy Defects*); or

(c) Issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.4 (*Employer's Claims*) and Sub-Clause 3.4 (*Determinations*).

10.0 Employer's Taking Over

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

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

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

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

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

10.2 Taking over of Parts of the Works

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

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

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

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

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to payment of any such Cost plus reasonable profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the liquidated damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the liquidated damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these liquidated damages shall be calculated

as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of liquidated damages under Sub-Clause 8.7 (*Liquidated Damages*) and shall not affect the maximum amount of these damages.

10.3 If the Contractor is prevented, for more than 14 Days, from carrying out the
Interference with Tests on Completion by a cause for which the Employer is responsible, the
Tests on Employer shall be deemed to have taken over the Works or Section (as the
Completion case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 Days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

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

11.0 Defects Liability

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

(a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and

(b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

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

11.2
Cost of Remedying Defects

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

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

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

11.3
Extension of Defects Notification Period

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

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

11.4

If the Contractor fails to remedy any defect or damage within a reasonable

Failure to Remedy Defects time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

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

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work, and the Contractor shall subject to Sub-Clause 2.4 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect of damage.
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.4 [Determinations], or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**11.5
Removal of
Defective Works**

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

**11.6
Further Tests**

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

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

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

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

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

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

11.9 Unfulfilled Obligations After the Performance Certificate has been issued, each Party shall remain liable for the 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.

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

If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

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

12.0 Measurement and Evaluation

12.1
Works to be Measured

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

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

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

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

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

12.2
Method of Measurement

Except as otherwise stated in the Contract:

- (a) measurement shall be made of the net actual quantity of each item of

the Permanent Works, and

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

12.3
Evaluation

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

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, the rate or price specified for similar work. However, a new rate or price shall be appropriate for an item of work if:

- (a) (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule, and
 - (ii) this change in quantity multiplied by such specified rate for this item exceeds 1% of the Initial Contract Price; or
- (b) (i) the work is instructed under Clause 13.0 [Variations and Adjustments],
 - (ii) no rate or price is specified in the Contract for this item, and
 - (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with reasonable profit, taking account of any other relevant matters.

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

12.4

Omissions

Whenever the omission of any work forms part (or all) of a Variation, the

value of which has not been agreed if:

- (a) The Contractor will incur (or has incurred) costs which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Initial Contract Price;
- (b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) This cost is not deemed to be included in the evaluation of any substituted work;

Then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.4 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13.0 Variations and Adjustments

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

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

Each Variation may include:

(a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),

(b) Changes to the quality and other characteristics of any item of work,

(c) Changes to the levels, positions and/or dimensions of any part of the Works,

(d) Omission of any work unless it is to be carried out by others,

(e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory works, or

(f) Changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

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

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

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) The Contractor shall design this part,
- (b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply and,
- (c) If this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.4 [Determinations] to agree to determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) Such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.6 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost] and
 - (ii) The reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3
Variation
Procedure

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

- (a) A description of the proposed work to be performed and a programme for its execution,
- (b) The Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
- (c) The Contractor's proposal for evaluation of the Variation.

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

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

Each Variation shall be evaluated in accordance with Clause 12.0 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4

Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance

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

(a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or

(b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise, and for which there shall be included in the Contract Price:

(i) the actual amounts paid (or due to be paid) by the Contractor, and

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

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

13.5

Dayworks

For work of a minor or incidental nature, the Engineer may instruct that a

Variation shall be executed on a day works Schedule included in the contract, and the following procedure shall apply. If a Day work Schedule is not included in the Contract this Sub-Clause shall not apply. Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day works Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the

following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel;
- (b) the identification, type and time of Contractor's Equipment and Temporary Works; and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 (*Application for Interim Payment Certificates*).

13.6

Adjustments for Changes in Legislation

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

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

If the Contractor suffers delay and/or incurs additional Cost attributable to a Change in Law during the period commencing 28 Days prior to the Closing date of Bids and ending on the date of issuance of the Certificate of Completion or termination pursuant to Section 15 and 15, the Contractor shall give notice to the Engineer and shall be entitled subject to sub clause 19.1(Contractor's Claims) to;

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

(b) Payment of any such Cost, which shall be included in the Contract Price. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance with the provisions of Clause 13.7

After receiving this notice, the Engineer shall proceed in accordance with Sub Clause 4.3 [Determinations] to agree or determine these matters.

13.7

Adjustments for changes in Cost

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

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

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

Where:

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

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

- (b) The “Input Percentage” means the percentage proportionate contribution of any input in terms of cost of the construction based on the prices prevailing for the Month, one Month prior to the Month on which the last date for submission of the Bid falls and listed under Clause numbered 13.7 in Contract Data.
- (c) The “Non adjustable elements” means,

- (i) The work done under the BOQ items that shall not be considered for valuation of price adjustment which are listed under Clause 13.7 in Contract Data.
 - (ii) Variations carried out by the Contractor on instructions of the Engineer under Clause 13.3 and are valued under Clause 12, based on new rates.
 - (ii) Works done under Daywork rates and Provisional Sum items.
- (d) The “Current Valuation” means the certified gross value of work executed during the current valuation period and will include the 80% of the invoiced value of materials the Contractor has delivered to site but were not consumed for the physical work done.
- (e) The “Indices” means the monthly indices published by Institute for Construction Training and Development for different Inputs.
- (f) For the purpose of determining the applicable indices the Month is defined as the time period between the first and the last day of any month in the Gregorian calendar inclusive of the first and the last day.
- (g) “Base Indices” means the indices for the inputs, prevailing for the Month, one Month prior to the Month on which the last date for submission of Bids falls.
- (h) In the case of first monthly statement the current indices shall be taken as the indices prevailing on the Month where the Commencement Date falls. For any other monthly statement or for the statement at completion the current indices shall be taken as the indices prevailing for the Month where the first date of the current valuation period falls.
 - (i) If the Contractor fails to complete the Works within the time for completion prescribed under Sub- Clause 8.2 (Time for Completion) or 8.4 (Extension of Time for Completion) the price adjustment for the work performed after the due date of completion as described above shall be made using the current indices prevailed at the due date for completion.
 - (j) The weightings for each of the Inputs of cost given in this Clause shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or instructed under Sub – Clause 3.3 (Instructions of the Engineer) or for any other reason.

14.0 Contract Price and Payment

14.1

The Contract Price

Unless otherwise stated in the Contract Date:

- a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 (*Evaluation*) and be subject to adjustments in accordance with the Contract,
- b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.6 (*Adjustments for Changes in Legislation*);
- c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - i. of the Works which the Contractor is required to execute; or
 - ii. for the purposes of Clause 12.0 (*Measurement and Evaluation*); and
- d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

14.2

Advance Payment

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

The Engineer shall issue an Interim Payment Certificate for the first instalment after receiving a Statement {under Sub-Clause 14.3 (*Application for Interim Payment Certificates*)} and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 (*Performance Security*); and (ii) a guarantee in amounts equal to the advance payment. This guarantee shall be issued by an entity approved by the Employer.

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

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

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

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15.0 (*Termination by Employer*), Clause 16.0 (*Suspension and Termination by Contractor*) or Clause 20.0 (*Force Majeure*) (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificate

The Contractor shall submit a Statement in three copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.14 (*Progress Reports*).

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

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month [including Variations but excluding items described in subparagraphs (b) to (g) below];
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.6 (*Adjustments for Changes in Legislation*) and Sub-Clause 13.7 (*Adjustments for Changes in Cost*);
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract data;
- (d) any amount to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 (*Advance Payment*);
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.4 (*Plant and Materials intended for the Works*);

(f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 19.0 (*Claims, Disputes and Arbitration*), and

(g) the deduction of amounts certified in all previous Payment Certificates.

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

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

**14.5
Issue of Interim
Payment
Certificate**

No amount will be certified or paid until the Employer has received and Approved the performance Security. Thereafter, the Engineer shall, within 21 Days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate, which shall state the amount which the Engineer fairly determines to be due, with supporting particulars.

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

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

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

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

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

**14.6
Payment**

The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 14 days after issuing the Letter of Acceptance and after receiving the

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

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

**14.7
Delayed
Payment**

If the Contractor does not receive payment in accordance with Sub-Clause 14.6 (*Payment*), the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.6 (*Payment*), irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.

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

**14.8
Payment of
Retention**

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

However, if any work remains to be executed under Clause 11.0 (*Defects Liability*), the Engineer shall be entitled to withhold certificate of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.6 [Adjustments for Changes in Legislation] and Sub Clause 13.7 (*Adjustments for Changes in Cost*).

**14.9
Statement at
Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer three copies of a Statement at completion with supporting documents, in accordance with Sub - Clause 14.3 (*Application for Interim Payment Certificates*), showing:

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

The Engineer shall then certify in accordance with Sub - Clause 14.5 (*Issue of Interim Payment Certificates*).

**14.10
Application for
Final Payment
Certificate**

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

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

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

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

**14.11
Discharge**

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

**14.12
Issue of Final
Payment
Certificate**

Within 28 days after receiving the Final Statement and written discharge in accordance with Sub - Clause 14.10 (*Application for Final Payment Certificate*) and Sub - Clause 14.11 (*Discharge*), the Engineer shall issue, to the Employer, the Final Payment Certificate, which shall state:

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

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub - Clause 14.10 (*Application for Final Payment Certificate*) and Sub - Clause 14.11 (*Discharge*), the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

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

- (a) In the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificates for the Works) in the Statement of completion described in Sub-Clause 14.9 (*Statement at Completion*).

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

15.0 Termination by Employer

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

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

- (a) fails to comply with Sub-Clause 4.2 (*Performance Security*) or with a notice under Sub-Clause 15.1 (*Notice to Correct*);
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with Clause 8.0 (*Commencement, Delays and Suspension*); or
 - (ii) to comply with a notice issued under Sub-Clause 7.4 (*Rejection*) or Sub-Clause 7.5 (*Remedial Work*), within 28 Days after receiving it;
- (d) subcontracts the whole of the Works or part of the works without prior consent of the Engineer or assigns the Contract without the required agreement;

- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract; or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described this sub-paragraph. However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

(g) The Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, For the purpose of this Sub-Clause: "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in Contract execution;

"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

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

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

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

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any

Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

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

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

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

(a) proceed in accordance with Sub-Clause 2.4 (*Employer's Claims*);

(b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or

(c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, as determined by the Engineer after allowing for any sum due to the Contractor under Sub-Clause 15.3 (*Valuation at Date of Termination*) After recovering any such losses, damages and extra costs, the Employer shall pay, any balance to the Contractor.

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

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

Provided however, the Employer shall not be precluded from executing the Contract himself or by another Contractor, after a period of one year has

lapsed from the date on which the termination has taken effect pursuant to this Section and subject to the satisfaction of the Employer's payment obligations to the Contractor under the Contract.

16.0 Suspension and Termination by Contractor

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

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

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

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

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

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

16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Engineer fails, within 56 Days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (b) the Contractor does not receive the amount due under an Interim Payment Certificate within 56 Days after the expiry of the time stated in Sub-Clause 14.6 (*Payment*) within which payment is to be made (except for deductions in accordance with Sub-Clause 2.4 (*Employer's Claims*));
- (c) the Employer substantially fails to perform his obligations under the Contract;

- in
- (d) the Employer fails to comply with Sub-Clause 1.6 (*Contract Agreement*) or Sub-Clause 1.7 (*Assignment*);
 - (e) a prolonged suspension affects the whole of the Works as described Sub Clause 8.11 (*Prolonged Suspension*);or
 - (f) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

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

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

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

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

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

**16.4
Payment on
Termination**

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

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

17.0 Risk and Responsibility

17.1 Indemnities

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

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, 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 design (if any), the execution and completion of the Works and the remedying of any defects; 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.

17.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued {or is deemed to be issued under Sub-Clause 10. 1 (*Taking Over of the Works and Sections*)} for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 (*Employer's Risks*) the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

**17.3
Employer's Risks**

The risks referred to in Sub-Clause 17.4 below are:

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

**17.4
Consequences of
Employer's Risks**

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

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

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

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

18.0 Insurance

18.1 Insurance for Works and Contractor's Equipment

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

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

18.2 Third Party Insurance (including Employer's Property)

The Contractor within 14 Days from the Letter of Acceptance, shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property {except things insured under Sub-Clause 18.1 (*Insurance for Works and Contractor's Equipment*)} or to any person, which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in Contract Data, with no limit on the number of occurrences. The insurances specified in this Sub-Clause:

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

18.3 Insurance for Contractor's Personnel

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

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

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

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

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

19.0 Claims, Disputes and Arbitration

**19.1
Contractor's
Claims**

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

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employers liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 84 Days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim may be considered as interim;
- (b) the Contractor may send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 Days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 Days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.

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

The Engineer shall proceed in accordance with Sub-Clause 3.4 (*Determinations*) to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 (*Extension of Time for Completion*) and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

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

19.2
Dispute Resolution Any dispute of whatever nature arising out of or in relation to this agreement shall in the first instance be attempted to be resolved by way of adjudication in accordance with the adjudication procedure set forth in Clause 19.3.

19.3
Procedure for Adjudication Either party may initiate the reference of a dispute to the Adjudicator by giving 07 Days notice to the other Party.

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

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

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

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

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

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

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

**19.4
Replacement of
Adjudicator**

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

**19.5
Arbitration**

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

- (c) Any award rendered by the arbitral tribunal shall determine the extent to which the cost of arbitration is to be borne by each Party. The arbitration centre charges (if any) and the compensation to the arbitrator shall be equally shared by the Parties initially.

Composition of the Arbitral Tribunal :

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

Selection Procedure :

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

Venue & Language :

The venue of arbitration shall be in Sri Lanka.

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

20.0 Force Majeure

20.1 Definition of Force Majeure

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

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

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

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies.
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;

- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-Contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake hurricane, typhoon or volcanic activity.

**20.2
Notice of Force
Majeure**

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

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

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

**20.3
Duty to Minimise
Delay**

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

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

**20.4
Consequence of
Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 20.2 (*Notice of Force Majeure*) and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled to such Costs subject to Sub-Clause 19.1 (*Contractor's Claims*) to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 (*Extension of Time for Completion*); and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 20.1 (*Definition of Force Majeure*) and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

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

**20.5
Force Majeure
Affecting
Sub-Contractor**

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

**20.6
Optional
Termination,
Payment and
Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 Days by reason of Force Majeure of which notice has been given under Sub-Clause 20.2 (Notice of Force Majeure) or for multiple periods which total more than 140 Days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 Days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 (*Cessation of Work and Removal of Contractor's Equipment*).

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

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

**20.7
Release from
Performance
under the Law**

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

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 20.6 (*Optional Termination. Payment and Release*) if the Contract had been terminated under Sub-Clause 20.6

SECTION IV
QUALIFICATION INFORMATION
AND
FORM OF BID

QUALIFICATION INFORMATION

| | | |
|---|---|--|
| CIDA Registration | | |
| Registration Number | <i>(attach certified copies of relevant pages from the registration book, as annex)</i> | |
| Grade | | |
| Specialty | | |
| Expiry date | | |
| Back listed Contractors | | |
| Have you been declared as a defaulted contractor by NPA or any other agency? (Yes/No) | | |
| If yes provide details | | |
| | | |
| VAT Registration Number | | |
| Construction Program | | <i>(attach as annex)</i> |
| Legal Status | | <i>(Attach certified copies of Memorandum of Article / Association and details of Company Registration / Incorporation of the company / Business registration for sole proprietor or partnership. Authorized to Sign / Commit the bid – Attach the Power of Attorney or Board Resolutions)</i> |
| Value of Construction works performed in last 5 years* | | <i>(attach copies of Certificate of Completion etc., and other documents such as profit-loss and income expenditure statement)</i> |
| Year | | |
| Year | | |
| Year | | |
| Year | | |
| Year..... | | |
| Value of similar works completed in last 5 years | | |
| (indicated only for the three largest projects)* | | |
| | 1. Value..... | Year..... |
| | 2. Value..... | Year..... |
| | 3. Value..... | Year..... |

FORM OF BID

**Boundary opening, Surveying and fencing Work at Dedduwa Lake Resort
Contract No: SLTDA/P&D/W/NCB/Survey & Fencing Work/2020/16**

To: Chairman,
Departmental Procurement Committee
Sri Lanka Tourism Development Authority,
No 80, Galle Road,
Colombo 03

1. Having examined the Standard Bidding Document - Procurement of Works [(ICTAD/ SBD/ 01-second Edition, January 2007], Specifications, Drawings and Bills of Quantities and Addenda for the execution of the above-named Works, we the undersigned, offer to execute and complete such works and remedy any defect therein conformity with the aforesaid Conditions of Contract, Specifications, Drawings, Bills of Quantities and Addenda for the sum of Sri Lankan Rupees (LKR.) or such other sums as may be ascertained in accordance with the said conditions.
2. We acknowledge that the contract data forms part of our Bid.
3. We undertake, if our Bid is accepted, to commence the Work as stipulated in the Contract Data, and to complete the whole of the Works comprised in the Contract within the time stated in the Contract data.
4. We agree to abide by this Bid for the period of 120 days from the date fixed for receiving or any extended period and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Unless and until a formal Agreement is prepared and executed this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
6. We accept the Adjudicator
7. We understand that you are not bound to accept the lowest or any Bid you may receive.

Dated this..... day of 20..... in the capacity ofduly authorized to sign tenders for and on behalf of (IN

BLOCK CAPITALS)

| | | | | | |
|-------------|---|-------|-----------|---|-------|
| Signature | : | ..... | Signature | : | ..... |
| Name | : | ..... | Name | : | ..... |
| Designation | : | ..... | NIC No. | : | ..... |
| Address | : | ..... | Address | : | ..... |
| Witness | | | | | |
| Signature | : | ..... | Signature | : | ..... |
| Name | : | ..... | Name | : | ..... |
| NIC No. | : | ..... | NIC No. | : | ..... |
| Address | : | ..... | Address | : | ..... |

SECTION V
BIDDING DATA & CONTRACT DATA

BIDDING DATA

| | |
|---|--|
| ITB Clause Reference (1.1) | Employer's Name and Address Name : Sri Lanka Tourism Development Authority Address : No 80, Galle Road, Colombo 03 |
| (1.2) | Time for Completion Completion date shall be 91 Days from the commencement date. |
| (1.3) | A complete set of Bidding Documents in English language may be downloaded from the SLTDA Website (https://sltda.gov.lk/tender) by interested bidders from 10th Dec 2020 to 30th Dec 2020 . |
| | The payment of non-refundable fee LKR 7,500/= (in Cash) should be deposited to the Bank AC No. 7119413 Bank of Ceylon, Corporate Branch, Sri Lanka Tourism Development Authority (Note: Please Fill the Depositors Details and Purpose of Deposit in the Deposit Slip as "Non Refundable Tender Fee" and it is mandatory to submit the aforesaid original slip with the Bid. If the Bidder failed to make aforesaid cash payment, it will be a reason to disqualify) |
| (4.1) | Qualification Information The following information and documents shall be provided in Section 4- Schedules according to the tabulated formats therein; CIDA Registration Registration number:..... Grade Specialty Expiry Date * VAT Registration number * Construction Program * Legal Status (Sole proprietor, Partnership, Company etc.) * Total monetary value of construction work performed for each of the last five years; * Experience in works of a similar nature and size for each of last five years; * Major items of construction equipment proposed to carry out the Contract; (if specified equipment be needed) * Qualifications and experience of key site management and technical personnel proposed for the Contract ; * Detail of Credit facilities * Details of work in hand * Documentary proof showing that the total value of work in hand is not exceeding the limit established by CIDA for the registered Grade * Method statement and all technical information * Proposed Subcontractors' details by the bidder. |
| 4.2 | The registration |

| | |
|--------------|---|
| | <p>Specialty : Building Construction Grade : C5 Expiry Date: Registration should not be expired before the date of closing of bid. Up dated details on CIDA registration shall be submitted</p> <ul style="list-style-type: none"> * Experience in the Construction of at least one contract above 10 million of a nature and complexity equivalent to the works over the last 5 years (to comply with this requirement, works cited should be at least 100 % completed); Attach as Annex. * Following technical and managerial staff: <ol style="list-style-type: none"> 1. Registered Surveyor (Part time) 2. Site Engineer(Part time) -full time 3. Technical Officer (Site) - full time 4. Work Supervisor (Site) - full time <p>The minimum of credit facilities net of other contractual commitments and exclusive of any advance payments which may be made under the Contract shall not be less than Rs. 10Mn This should be exclusive for the project.</p> |
| (8.1) | <p>Content of Bidding Document Content of the bidding document changed as follows to fulfill bidder's requirement in submission of Bid. The bidding document consists of three volumes (Volume 1, Volume 2 & Volume 3) and comprises the documents listed below. Volume 1 (To be retained with the Bidder) – one bound document consist of one copy of following sections Section 1 - Instruction to Bidders Section 2 - Standard Forms (Contract) Section 3 - Condition of Contract Volume 2 (To be submitted as Original of Document) – one bound document consist of one copy of following sections Invitation for Bids Section 4 - Form of Bid and Qualification Information Section 5 - Bidding Data and Contract Data Section 6 - Specifications Section 7 - Bills of Quantities and Technical Schedules Section 8 - Drawings Section 9 - Standard Forms(Bid) Volume 3 (To be submitted as Copy of Document) – one bound document consist of one copy of following sections Invitation for Bids Section 4 - Form of Bid and Qualification Information Section 7 - Bills of Quantities and Technical Schedules</p> |
| (9.1) | Employer's address for the purpose of clarification |

| | |
|--------------------|---|
| | <p>Name : Assistant Director (Procurement) Sri Lanka Tourism Development Authority No.80, Galle road, Colombo 3. Tp: 011-2426800 (Ext 305), Email – amilm@srilank.travel</p> |
| (11.1) | <p>Language of Bid The language of the bidding document shall be English.</p> |
| (12.1) | <p>Documents Comprising the Bid The Bid submitted by the Bidder shall comprise the following: (A) enclosed in the envelope marked as “ORIGINAL”; (a) Volume 2 (b) Bid security or Bid-Securing Declaration as specified (c) If alternative offers are invited, such offers shall contain adequate information for evaluation. However, the main offer of the Contractor must conform to the bidding documents. (d) any other information required to be completed and submitted by bidders, as specified in the Bidding Data. (e) any other information required to be completed and submitted by bidders, as specified in the Bidding Data. (B) enclosed in the envelope marked as “COPY” (a) Volume 3 (b) If alternative offers are invited, such offers shall contain adequate information for evaluation; and (c) Any other information required to be completed and submitted by bidders, as specified in the Bidding Data.</p> |
| (13.3) | <p>Bid price VAT component shall not be included in the rates. The amount written in the Form of Bid shall be without VAT. However, VAT component shall be shown separately at the end of the BOQ.</p> |
| (13.4) | <p>Contract Price The Contract is not subjected to price adjustment.</p> |
| (15.1) | <p>Bid Validity Bids shall be valid 119 days (Up to including 29th April 2021) from the date of Bid closing.</p> |
| (16.1) & (16.2) | <p>Bid Security Bid shall include a Bid Security using the form included in Section II. Bid Security shall be; <ul style="list-style-type: none"> • For an amount LKR 315,500.00 • Valid 28 days beyond the date of bid validity (Up to including 27th March 2021). The bid securities issued by the following agencies are acceptable strictly in accordance to the standard format.</p> |

| | |
|-----------------|--|
| | <ul style="list-style-type: none"> • A commercial bank operates under control of Central Bank of Sri Lanka • Bank based in another country but the guarantee “confirmed” by a commercial bank operating under control of Central Bank of Sri Lanka • Refundable cash deposit to Employer <p>No interests will be paid on cash deposits.</p> |
| (17.0) | <p>Pre-Bid Meeting Pre Bid Meeting will be held on 18th December 2020 at 14:00 hrs. through online (Zoom meeting) and interested Bidders are advised to send a request to join the Pre Bid Meeting to email address to amilam@srilanka.travel.</p> |
| (19.2) a | <p>Employer’s Address The Employer’s address for the purpose of Bid submission is: Procurement Division (4th Floor), Sri Lanka Tourism Development Authority No.80, Galle Road, Colombo 3.</p> |
| (19.2) b | <p>Contract name: Boundary opening, Surveying and fencing Work at Dedduwa Lake Resort</p> |
| (20.1) | <p>Deadline for Submission of Bids The deadline for submission of Bids shall be on or before 14.00 Hrs on 31st December 2020.</p> |
| (34.0) | <p>Performance Security The amount of Performance Security is 5% of the Initial Contract Price. The Performance Security shall be valid until 28 days beyond the end of the Defects Liability Period. The form acceptable is sample format which is in Volume 1 – Section 2, Standard Forms. The Performance securities issued by the following agencies are acceptable strictly in accordance to the standard format.</p> <ul style="list-style-type: none"> • A bank operating in Sri Lanka • Bank based in another country but the guarantee “confirmed” by a bank operating in Sri Lanka • Refundable cash deposit to Employer <p>No interests will be paid on cash deposits.</p> <p>Advance Payment & Security The Advance Payment is 20% of the Initial Contract Price without Provisional Sum. The forms acceptable are sample format which is in Volume I – Section 2, Standard Forms. The Advance securities issued by the following agencies are acceptable strictly in accordance to the standard format.</p> |
| (35.0) | <ul style="list-style-type: none"> • A bank operating in Sri Lanka • Bank based in another country but the guarantee “confirmed” by a bank operating in Sri Lanka • Refundable cash deposit to Employer <p>No interests will be paid on cash deposits.</p> |
| 36.0 | <p>Fees and types of reimbursable expenses to be paid to the Adjudicator shall be on a case to case basis and shall be shared by the Contractor and the Employer.</p> |

CONTRACT DATA

(Please note that the Clause nos. given hereunder is that of Conditions of Contract)

| | |
|-------|--|
| (1.1) | <p>The Employer is Name & Address : Sri Lanka Tourism Development Authority, No 80, Galle Road, Colombo 03</p> |
| (1.1) | <p>The Engineer is Name : Sri Lanka Tourism Development Authority, No 80, Galle Road, Colombo 03</p> |
| (1.1) | <p>The Works Consists Please refer the Bill of Quantities.</p> |
| (1.1) | <p>Start Date The Start Date shall be Seven (07) Days from the Letter of Acceptance.</p> |
| (2.3) | <p>Priority of Document The following Document also form a part of the Contract:</p> <ul style="list-style-type: none"> (a) Agreement (b) Letter of Acceptance (c) Memorandum of understanding (if any) (d) Contractor's Bid (e) Contract Data (f) Conditions of Contract, (g) Specifications (h) Drawings, (i) Bills of Quantities (j) Any other document listed in the Contract Data as forming part of the Contract. <p>Sub-Contractor Add following Below</p> |
| (7.1) | <p>No subcontracting of full building is accepted at all. Subcontracting of specialized works for specialized Contractors registered at CIDA for the subject under the limitation of registration is considered, subject to the approval of Engineer. All the works should be executed under direct management of management and technical stall of Contractor. Specialized works shall be carried out by well qualified, trained and experienced personals for the purpose.</p> <p>Relevant certificate to carry out the works is required where special certificate issued by the respective authorities is a mandatory requirement (for example Anti-termite treatment should be carried out by certificate holder issued by pesticide registrar)</p> <p>The manufacturer's or his authorized agent's warranty / certificate may be required where appropriate.</p> |

| | |
|----------------------------------|---|
| | <p>If any of sub-Contractors or specialized worker proved fraud in the opinion of the Engineer, Engineer is entitled to remove him from the site.</p> <p>Any sub-contractors which the Contractor proposes to use for the works are subject to the approval of the Engineer and Employer. If the Contractor is refused permission to use any of his proposed sub-contractors then the work shall be sub-let at no extra cost to an approved sub-contractor. Any sub-contractor who has not been approved by the Engineer shall not be used in connection with the carrying out the works.</p> |
| (13.1) & (13.2) (a) | <p>Insurance</p> <p>The minimum insurance cover shall be:</p> <ul style="list-style-type: none"> • The minimum cover for insurance of the Works and Plant and Material is 110% of the Initial Contract Price. |
| (b) | <ul style="list-style-type: none"> • The maximum deductible for insurance of Works and of Plant and Material is 5% of initial Contract Price. • The minimum cover for loss or damage to Equipment is Replacement value of the Equipment. • The maximum deductible for insurance of Equipment is 5% of the minimum cover for equipment • The minimum cover for insurance of other property (other than the Site) is Rupees One Million. |
| (c) | <p>The minimum cover for personal injury or death:</p> <ul style="list-style-type: none"> • For third party and employees of the Employer and other persons engaged by the Employer in the Works is Rupees One Million per event. |
| | <p>(a) The minimum cover for personnel injury or death,</p> <ul style="list-style-type: none"> • For the Contractor's workmen is Rs. 500,000.00 per event. • Contractor's employees other than workmen is Rs. 500,000.00 per event. |
| (17.1) | <p>Intended Completion Date</p> <p>The Intended Completion Date for the whole of Works shall be 91 Days from the Date of Commencement of Works.</p> |
| (21.1) | <p>Possession of the site</p> <p>The Site Possession Date shall be Fourteen (14) Days from Letter of Acceptance.</p> |
| (27.1), (27.3) & (27.4) | <p>Programme</p> <p>The Contractor shall submit a programme for the Works within Seven Days of delivery of the Letter of Acceptance.</p> <p>Contractor must prepare construction programme and execute construction works to be completed within 3 months period considering following expected guidelines.</p> |
| | <p>The Programme will be updated Monthly.</p> |
| | <p>The amount to be withheld for late submission of an updated Programme is 2% of the Initial Contract Price.</p> |
| (35.1) | <p>Correction of Defects</p> |

| | |
|---------------|--|
| | The Defects Liability Period is 180 Days . |
| (39.2) | Variations Engineer may order variations up to a total cumulative bill value including variation not exceeding 110% of Initial Contract Price |
| (47.1) | Price Adjustment The Contract price is not subjected to price adjustment. |
| (48.1) | Retention The retention from each payment shall be Ten percent of the certified work done. The limit of maximum retention shall be Five percent of the Initial Contract Price. |
| (49.1) | Liquidated damages The liquidated damages for the whole of the Works shall be Rs. 25,000.00 per Day . The maximum amount of liquidated damages for the whole of the Works shall be Ten percent of the Initial Contract Price. |
| (52.1) | Performance Security The Performance Security shall be Five percent of the Initial Contract Price. |
| (58.1) | Schedule of operating and maintenance manuals. |
| (60.1) | The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is Twenty Five percent of Initial Contract Price. |
| (63.7) | Attendance Fee for Nominated Sub Contractor The attendance fee for payable to the Contractor on nominated sub contract work shall not exceed 5%. |

SECTION VI
SPECIFICATIONS / SCHEDULE OF REQUIREMENT

SPECIFICATIONS / SCHEDULE OF REQUIREMENT

1. Project designation

Project Name: Boundary survey and fencing of SLTDA land at Dedduwa.

2. Purpose of Project

Re opening of boundaries and fencing around the land (copy attached)

3. Client/ Agent responsible for payment of works

Payments will be done only after the completion of the work and submission of maps and plan for satisfaction of the Sri Lanka Tourism Development Authority. No advance payments will be done.

4. Location and extent of work

(a). Location: Dedduwa, Galle

(b). previous survey information: P.P. 3608 by A.K. Wanigasinghe (copy attached). Surveyor General's Plan to be taken from Snr. Supdt. of Surveys, Galle.

(c). Contact information

Site:

(i). Contact Person : Resort Officer, Bentota

(ii). Contact Number : 034-2275212

(iii). Contact Address : National Holiday Resort, Bentota

5. Project requirement summary

All boundaries of the land showing in the P.P. 3608 by A.K. Wanigasinghe (copy attached). Surveyor General's Plan has to be reopened and any missing land mark to be replaced by registered licensed surveyor under the supervision of Snr. Supdt. of Surveys, Galle.

6. Boundary should be marked under following specifications.

1. Boundary Posts should be spaced 40 feet apart and buried 2 feet in to the ground. (This may vary depending on the circumstances)
2. Boundary posts should be reinforced with 10mm tor steel (04nos.) and covered all round with at least 100mm mass concrete. Spacing between stirrups – 200mm c/c.
3. Shape and size of boundary post is given below annexed drawing.
4. Sample boundary post should be produced for approval.

7. Output – Deliverables

1. Reopening of the land (Copy attached)
2. Supply and installation of well completed concrete post.
3. Report of accuracy of work in respect to original plan.

8. Work schedule dates

Field work should be started within 2 months of the date of the letter of award.

Head Office should be informed the date of field work within 5 weeks of the letter of award.

9. Site access principles

The surveyor shall inform the contact person in the site in advance (at least 2 weeks before) of the proposed access dates required, so that the contact person in the site shall make arrangements with the occupiers.

10. Competence of Survey Staff

The Surveyor engage for boundary reopening should bear the license issued by the LSC to practice as registered licensed Surveyor for the current year and he/ she is responsible for ensuring that his/ her staff are qualified, competent, appropriately insured and trained to do the tasks for which they are engaged.

11. Calibration and checking of equipment:

The Surveyor is responsible for ensuring all equipment is calibrated/ verified and checked prior to use and maintained as such throughout the period of survey works, as well as ensuring it is fit for the survey purpose required.

12. Protection of property.

The contractor is responsible for the prevention of damage to property and/ or the environment caused by his/ her works or the actions of employees or people under his/ her direct control.

The site contact person will notify the contractor of any restrictions in relation to the marking of vegetation clearance and security requirements. Contractor should be aware of the potential damage that construction can cause to structures, underground utilities and to the environment and take appropriate steps to mitigate this.

13. Risk assessment and safety briefing

The contractor is responsible for the preparation of method statements, risk assessments, safety and task briefing prior to works commencement and the safety of staff.

SECTION VII
BILL OF QUANTITIES

BILL OF QUANTITIES (BOQ)

Boundary opening, Surveying and fencing Work at Dedduwa Lake Resort

Contract No: SLTDA/P&D/W/NCB/Survey & Fencing Work/2020/16

| No | Description | Unit | Qty | Unit Rate | Amount (Rs.) |
|-----|--|------|----------|-----------|--------------|
| 1 | <u>Mobilization</u> | | | | |
| | Preparatory work and operations necessary to the project site work. | | Lump Sum | | |
| 2 | <u>Boundary Survey</u> | | | | |
| | Opening the boundaries as per the Survey General's Plan, registration no. GA/BNT//05/820A, dated 2005.08.22 to cover the full extent of the SLTDA Land (Dedduwa, Warahena, Athuruwella, Galboda, Yalegama, Galagama and Mullegoda) | | | | |
| i. | Clearing jungle and removing obstacles for survey work. | m | 29280 | | |
| ii. | Opening boundaries and fixing timber pegs 12.19 mtr. apart (12.19 mtr. may vary as per th site requirement.) | m | 29280 | | |
| 3 | <u>Casting boundary posts</u> | | | | |
| | Casting boundary posts in concrete 1:2:4 (19 mm agg.) with engraved letters on face (As per the drawing), including curing. | m | 2500 | | |
| | Compressive strength test to be performed after 28 days hardening of the concrete. (Grade 20) Reinforcement in precast concrete posts shall be as per drawing and written instructions in the specification. | Note | | | |
| | Apply 2 coats of approved color semi-gloss enamel paint. Painting shall be done with spray machine. | Note | | | |
| 4 | Excavation of pits in all classes of soil including uprooting shrubs. | m | 2500 | | |
| | Sub Total 1 carried out to the summary | | | | |

| | | | | | |
|---|---|---|-------------|-------|--|
| 5 | <u>Erecting Boundary Posts</u> | | | | |
| | Erecting pre-cast concrete posts as per the specification given in the TOR to cover the full extent of the SLTDA Land. Base have to be covered all round with at least 100mm mass concrete including any shoring. Backfilling using excavated material and well ramming the base. | m | 2500 | | |
| 6 | Numbering of posts after fixing with enamel paint on the face. | m | 2500 | 50.00 | |
| 7 | <u>Demobilization</u> | | | | |
| | Removal of all equipment, machines and man power from the site after completion of the contract. | | Lump Sum | | |
| Sub Total 2 carried out to the summary | | | | | |

| <u>SUMMARY</u> | | |
|------------------------------------|------------------------------|---------------------|
| ITEM | DESCRIPTION | AMOUNT (Rs.) |
| 1 | Sub Total 1 (BOQ No 1.2.3.4) | |
| 2 | Sub Total 2 (BOQ No 5,6,7) | |
| TOTAL (Excluding VAT) | | |
| 10% Contingencies | | |
| GRAND TOTAL (without VAT) | | |
| 8% VAT | | |
| GRAND TOTAL (Including VAT) | | |

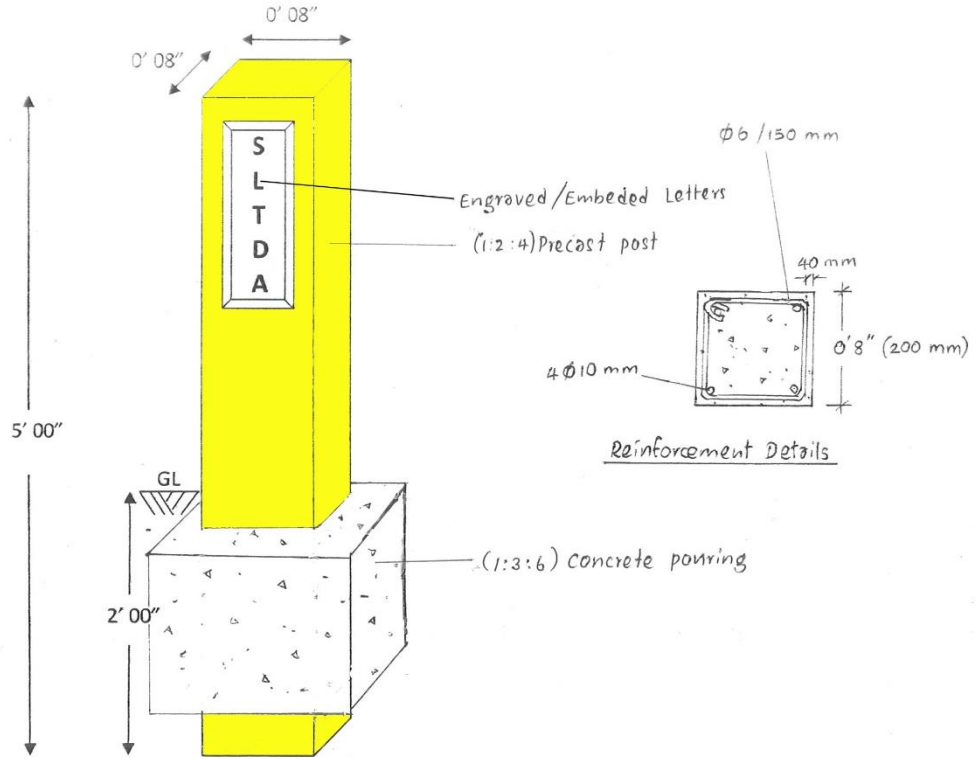
Note:

- *The payment shall be made considering the actual site quantity as confirmed by SLTDA*
- *The surveying company shall deploy a surveying team at project site comprising one licensed Surveyor and three assistants with all necessary equipment required to accompany the work.*
- *Compressive strength test to be performed after 28 days hardening of the concrete. (Grade 20)*
- *Reinforcement in precast concrete posts shall be as per drawing and written instructions in the TOR.*
- *If encroachments have occurred the Surveyor shall submit its comprehensive report.*
- *Project completion period would be 12 months between the award date and the project completion date.*

Signature and seal of the Bidder:

SECTION VIII
DRAWINGS

Pre Cast Concrete Post



Check List for Bidders

Bidders are advised to fill the following table:

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