

GOVERNMENT OF THE REPUBLIC OF
SOUTH SUDAN



STANDARD BIDDING DOCUMENTS

Procurement of Medium and Large Works

Trial Edition, Nov. 2024

Preface

Procurement for works under South Sudan public financing is carried out in accordance with policies and procedures laid down in the Public Procurement and Disposal of Assets Act, 2018 (hereinafter referred as PPDA Act 2018) and Public Procurement and Disposal of Assets Regulations, 2024 (hereinafter referred as PPDA Regulations 2024).

This Standard Bidding Document (SBD) has been prepared by the South Sudan Public Procurement and Disposal of Assets Authority for use by Procuring Entities (PEs) in the procurement of Medium and Large Works through International Competitive Bidding (ICB) procedures.

The procedures and practices presented in this document have been developed through broad international experience and are mandatory for use in public projects that are financed in whole or in part by Government funds in accordance with the provisions of the PPDA Act 2018 and PPDA Regulations 2024.

This Standard Bidding Document is issued as a trial edition for a period of one year. During this period all those using this document are welcome to share your experiences, and challenges experienced in the use of this document. These will be used to improve the document and issue it as a final Bidding Document after the expiry of the trial period.

To obtain further information on procurement of works under South Sudan public funding, contact:

Executive Director
South Sudan Public Procurement and Disposal of Assets Authority

List of Abbreviations

BDS	Bid Data Sheet
ES	Environmental and Social
FY	Financial Year
GCC	General Conditions of Contract
ICB	International Competitive Bidding
IFB	Invitation for Bids
ITB	Instruction to Bidders
JV	Joint Venture
JVCA	Joint Venture, Consortium, or Association
PE	Procuring Entity
PPDAA	Public Procurement and Disposal of Assets Authority
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
SEA	Sexual Exploitation and Abuse
SH	Sexual Harassment

Guidance Notes on the Use of this Standard Bidding Document

These guidance notes have been prepared by the South Sudan Public Procurement and Disposal of Assets Authority (PPDAA) to assist Procuring Entities (PEs) and bidders to understand the content and the provisions of the Standard Bidding Document for Procurement of Medium and Large Works under International Competitive Bidding method and other procedures as appropriate. The PE should also refer to PPDA Act 2018 and PPDA Regulations 2024

This SBD applies when a prequalification process has or has not taken place provided alternative documents should be selected as applicable.

The SBD is based upon internationally acceptable model formats, which have been adapted to suit the needs of procurement of works within Republic of South Sudan. The SBD is divided into three parts and has eleven (11) sections, **of which Section II- Instruction to Bidders and Section IX-General Conditions of Contract - must not be altered or modified under any circumstances.**

The way in which a PE addresses its specific needs is through the information provided under Section III – Bid Data Sheet and Section X-Special Conditions of Contract as well as in the detailed requirements of the procurement in Section VIII- Works Requirements.

When properly completed, this SBD will provide all the information that a Bidder needs to prepare and submit a bid. This shall provide a sound basis on which a PE can fairly, transparently and accurately carry out an evaluation process on the bids submitted by the bidders.

Parts and Sections of the SBD and how a PE should use them when preparing a particular bid document for Procurement of Small Works are described hereunder

PART 1 – BIDDING PROCEDURES

Section I: Invitation for Bids

This section provides relevant information that enables potential bidders to decide whether to participate in the bidding process. The Invitation for Bids (IFB) shall include specific details such as the name of the PE, scope of works to be executed and deadline for bid submission. Likewise, information on how the bidding documents can be obtained by prospective bidders and the minimum level of experience required by bidders to be eligible should be furnished in the IFB. **The final document should contain neither blank spaces nor options.** The Invitation for Bids will cease to have effect once a prospective bidder has accessed the bidding document.

Section II: Instructions to Bidders (ITB)

This section provides information to help bidders to prepare responsive bids. It provides information on constituent of the bid document, preparation and submission of bids, opening and evaluation of bids, the award of contract and on submitting complaints regarding the bid process. **The Section contains provisions that are to be used without modification.** The Instructions to Bidders will not be part of the Contract and will cease to have effect once the Contract is signed.

Section III. Bid Data Sheet (BDS)

This Section includes provisions that are specific to each procurement and that supplement Section II, Instructions to Bidders. Amendments, if any, to **the ITB** should be made through **the BDS**. If

duplication of a subject is inevitable in the different sections of the document, care must be exercised to avoid contradiction between clauses dealing with the same matter. All italicized spaces in **the BDS** should be filled out by the PE prior to issuance of the bidding documents **No entry should be made in the BDS if it is not cross referenced in the ITB.**

Section IVA. Evaluation and Qualification Criteria *(to be used when Prequalification has taken place before bidding)*

This Section specifies the criteria to determine the lowest evaluated bid and to ascertain the continued qualification of the Bidder to perform the contract.

Section IVB. Evaluation and Qualification Criteria *(to be used when Prequalification has not taken place before bidding)*

This Section includes the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract.

Section V: Bidding Forms

This Section includes the forms which are to be completed by the Bidder and submitted as part of his Bid.

Section VI. Eligible Countries

This Section contains information regarding eligible countries.

Section VII. Corrupt and Fraudulent Practices

This Section provides the Bidders with the reference to the South Sudan Government policy regarding corrupt and fraudulent practices applicable to this process.

PART 2 – PROCURING ENTITY’S REQUIREMENTS

Section VIII. Works Requirements

This Section contains the Specification, the Drawings, and supplementary information that describe the Works to be procured. The Works Requirements shall also include the environmental and social (ES) requirements (including requirements relating to Sexual Exploitation and Abuse (SEA) and Sexual Harassment (SH) which are to be satisfied by the Contractor in executing the Works.

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section IX. General Conditions of Contract (GCC)

This section contains the general clauses to be applied to all contracts. The General Conditions of Contract (GCC) form a complete document expressing all the rights and obligations of the parties during the execution of the contract. **The text of the clauses in this Section shall not be modified.**

Section X. Special Conditions of Contract (SCC)

This Section consists of Contract Data and Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement the GCC. All italicized spaces in the SCC should be filled out by the PE prior to issuance of the bidding documents. **No entry should be made in the SCC if it is not cross referenced in the GCC.**

Section XI: Contract Forms

This Section contains forms which, once completed and submitted, will form part of the Contract. The forms for Performance Security or Securing Declaration shall be completed and submitted by successful Bidder before signing of the contract. When advance payment is required, Advance Payment Security shall be completed and submitted after contract signature. The Section also contains the Letter of Intention to Award the Contract, which shall not form part of the contract.

BIDDING DOCUMENTS**for****Procurement of***[insert identification of the proposed Works]*

Bid No: *[insert Bid number]***Project:** *[insert name of Project]***PE:** *[insert name of PE]***Issued on:** *[insert date]*

Table of Contents

PART 1 – Bidding Procedures	1
Section 1: Invitation for Bids.....	2
Section II. Instructions to Bidders	4
Section II. Bid Data Sheet.....	32
Section IV(a). Evaluation and Qualification Criteria (<i>Following Prequalification</i>)	38
Section IV(b). Evaluation and Qualification Criteria (<i>Without Prequalification</i>)	43
Section V. Bidding Forms	57
Section VI. Eligible Countries	116
Section VII. Corrupt and Fraudulent Practices.....	117
PART 2 –Works Requirements	120
Section VIII. Works Requirements	121
PART 3 – Conditions of Contract and Contract Forms	132
Section IX. General Conditions of Contract (GCC)	133
Section X : Special Conditions of Contract.....	240
Section XI. Contract Forms.....	246

PART 1 – BIDDING PROCEDURES

Section 1: Invitation for Bids

Name of PE: -----

[NAME OF PROJECT]: : _____

Contract Title: _____

Reference No. (as per Procurement Plan): _____

1. This Invitation for Bids follows the General Procurement Notice for this Project which appeared in the [**insert dates of publication of GPN**] and PPDA's website.
2. The Government of South Sudan has set aside funds for the operation of the [**insert the name PE**] during the financial year [**insert the financial year**]. It is intended that part of the proceeds of the fund will be used to cover eligible payment under the contract for the [**insert the name of the contract**]¹

Or

The [**insert name of PE**] has received/has applied for/intends to apply for a [**loan/credit /grant**] from the [**name of financing institution**] towards the cost of [**insert name of project**], and it intends to apply part of the proceeds of this [**loan/credit/grant**] to cover eligible payments under the contract for [**insert name. of the contract**].

3. The [**insert name of PE**] now invites sealed bids from eligible bidders for [**insert brief description of Works required, including quantities, location, construction period, margin of preference if applicable, etc.**]².

Or if prequalification has been conducted use the version below³

The [**insert name of PE**] now invites sealed bids from prequalified eligible bidders for [**insert brief description of Works required, including quantities, location, construction period, margin of preference if applicable, etc.**].

4. Bidding will be conducted through the International Competitive Bidding procedures as specified in the Public Procurement and Disposal of Assets Act, 2018 and Public Procurement and Disposal of Assets Regulations, 2024 and is open to all eligible bidders as defined in the Act and the Regulations.

¹ Use this version if the contract is fully funded by the Government of South Sudan or the other version when it is donor funded. Remove the version which is not applicable from the IFB.

² A brief description of the type(s) of Works should be provided, including quantities, location of Project, construction period, application of margin of preference and other information necessary to enable potential bidders to decide whether or not to respond to the Invitation. Bidding Documents may require bidders to have specific experience or capabilities; such qualification requirements should also be included in this paragraph.

³ Omit the version which is not applicable from the IFB

5. Interested eligible bidders may obtain further information from *[insert name of PE, insert name and e-mail of officer in charge]* and inspect the bidding documents⁴ during office hours *[insert office hours if applicable i.e. 0900 to 1700 hours]* at the address given below *[state address at the end of this invitation]*⁵.
6. A complete set of bidding documents in *[insert name of language]* may be purchased by eligible bidders upon the submission of a written application to the address below and upon payment of a non-refundable fee⁶ of *[insert amount in SSP or in a convertible currency]*. The method of payment will be *[insert method of payment]*.⁷ The document will be sent by *[insert delivery procedure]*.⁸
7. Bids must be delivered to the address below *[state address at the end of this invitation]*⁹ on or before *[insert time and date]*. Electronic bidding will *[will not]* be permitted. Late bids will be rejected. Bids will be publicly opened in the presence of the bidders' designated representatives and anyone who choose to attend at the address below *[state address at the end of this invitation]* on *[insert time and date]*.
8. All bids must be accompanied by a *[insert "Bid Security" or "Bid-Securing Declaration," as appropriate]* of *[insert amount and currency in case of a Bid Security.]*
9. The address(es) referred to above is(are): *[insert detailed address(es)]*

[insert name of office, room number]

Attn: *[insert name of officer & title]*

[insert postal address and/or street address]

Tel: *[include the country and city code]*

E-mail: *[insert electronic address if electronic bidding is permitted]*

Web site:

⁴ Bidders at their own discretion have the right of inspecting bidding documents before deciding to collect the bidding document by paying the required fee. PEs must avail a space where the documents can be made accessible for inspection.

⁵ The office for inquiry and issuance of bidding documents and that for bid submission may or may not be the same.

⁶ The fee chargeable should only be nominal to defray reproduction and mailing costs. An amount between SSP equivalent to USD 50 to 300 is deemed appropriate depending on the complexity and bulkiness of the Bidding Documents.

⁷ For example, cashier's check, direct deposit to specified account number, etc.

⁸ The delivery procedure is usually airmail for overseas delivery and surface mail or courier for local delivery. If urgency or security dictates, courier services may be required for overseas delivery..

⁹ Substitute the address for bid submission if it is different from address for inquiry and issuance of bidding documents.

Section II. Instructions to Bidders

Table of Contents

A. General.....	6
1. Scope of the Bid:	6
2. Source of Funds.....	7
3. Corrupt and Fraudulent Practices	7
4. Eligible Bidders.....	8
5. Eligible Materials, Equipment, and Services	10
B. Contents of Bidding Documents.....	10
6. Sections of Bidding Documents.....	10
7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting.....	11
8. Amendment of Bidding Documents.....	12
C. Preparation of Bids	12
9. Cost of Bidding	12
10. Language of Bid	13
11. Documents Comprising the Bid.....	13
12. Letter of Bid and Schedules	14
13. Alternative Bids	14
14. Bid Prices and Discounts	14
15. Currencies of Bid and Payment	15
16. Documents Comprising the Technical Proposal.....	16
17. Documents Establishing the Qualifications of the Bidder.....	16
18. Period of Validity of Bids.....	16
19. Bid Security	17
20. Format and Signing of Bid	19
D. Submission and Opening of Bids.....	19
21. Sealing and Marking of Bids	19
22. Deadline for Submission of Bids.....	20
23. Late Bids	20
24. Withdrawal, Substitution, and Modification of Bids.....	20
25. Bid Opening.....	21
E. Evaluation and Comparison of Bids	22
26. Confidentiality.....	22
27. Clarification of Bids	22
28. Deviations, Reservations, and Omissions	23
29. Determination of Responsiveness	23
30. Nonmaterial Nonconformities	24
31. Correction of Arithmetical Errors.....	24
32. Conversion to Single Currency	25
33. Margin of Preference	25
34. Subcontractors.....	25
35. Evaluation of Bids.....	25
36. Comparison of Bids	26
37. Abnormally Low Bids.....	26
38. Qualification of the Bidder	27

39.	PE's Right to Accept Any Bid, and to Reject Any or All Bids	27
40.	Standstill Period	27
41.	Notification of Intention to Award.....	27
F. Award of Contract		28
42.	Award Criteria	28
43.	Notification of Award.....	28
44.	Debriefing by the PE	29
45.	Signing of Contract.....	29
46.	Performance Security	29
47.	Dispute Avoidance and Resolution Board.....	30
48.	Procurement Related Complaint	30

Section II. Instructions to Bidders

A. General

1. Scope of Bid

1.1. In connection with the Invitation for Bids **specified in the Bid Data Sheet (BDS)**, the PE, as **specified in the BDS**, issues these Bidding Documents for the procurement of Works as specified in Section VIII [Works Requirements]. The name, identification, and number of lots (contracts) of this International Competitive Bidding (ICB) process are **specified in the BDS**.

1.2. Throughout these Bidding Documents:

- (a) the term “in writing” means communicated in written form and delivered against receipt;
- (b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) “day” means calendar day;
- (d) “ES” means environmental and social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));
- (e) “Sexual Exploitation and Abuse” “(SEA)” stands for the following:

Sexual Exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;

Sexual Abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;

- (f) “Sexual Harassment” “(SH)” is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or PE’s Personnel;
- (g) “Contractor’s Personnel” is as defined in Sub-Clause 1.1.17 of the General Conditions; and
- (h) “PE’s Personnel” is as defined in Sub-Clause 1.1.33 of the General Conditions.

A non-exhaustive list of (i) behaviors which constitute SEA and (ii) behaviors which constitute SH is attached to the Code of Conduct form in Section V

2. Source of Funds

2.1. The Government of the Republic of South Sudan has set aside sufficient funds for the operations of the PE named in the **BDS** during the Financial Year indicated in the **BDS**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the works as described in the **BDS**.

or

The Government of the Republic of South Sudan, through the PE named in the **BDS** has applied for/received/ intends to apply for a [loan/credit/grant] from the financing institution named in the **BDS** towards the cost of the Project named in the **BDS**. The Government of the Republic of South Sudan intends to apply a part of the proceeds of this [loan/credit/grant] to payments under the Contract described in the **BDS**.

2.2. Payments will be made directly by the PE (or by financing institution specified in the **BDS** upon request of the PE to so pay) and will be subject in all respects to the terms and conditions of the resulting contract placed by the PE.

3. Corrupt and Fraudulent Practices

3.1. The Government of South Sudan requires that PEs (including beneficiaries of Government funded projects and procurement) as well as bidders under Government financed contracts, to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the following shall apply.

- a) for the purpose of this provision, the terms set forth below are defined as follows:-
 - i. “corrupt practice” means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;
 - ii. “coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;
 - iii. “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 Government or a public body and includes collusive practices among Bidders, prior to or after submission designed to establish tender prices at artificial non-

competitive levels and to deprive the Government of the benefits of free and open competition;

- iv. “obstructive practice” means acts intended to materially impede access to required information in exercising a duty under the contract
 - b) Will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt, coercive, fraudulent or obstructive practices in competing for the contract;
 - c) Will declare a firm ineligible for a period of ten years, to be awarded a public-financed contract if it at any time it determines that the firm has engaged in corrupt, coercive, fraudulent or obstructive practices in competing for, or in executing, a public – financed contract.
- 3.2. The Government of South Sudan reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt, coercive, fraudulent or obstructive practices, to declare that such a firm is ineligible, for a period of ten years to be awarded a public financed Contract in the Republic of South Sudan.
- 3.3. The Government of South Sudan will have the right to to inspect Bidder’s accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Government of South Sudan

4. Eligible Bidders

- 4.1. A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified in the **BDS**, there is no limit on the number of members in a JV.
- 4.2. A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or

- (b) receives or has received any direct or indirect subsidy from another Bidder; or
- (c) has the same legal representative as another Bidder; or
- (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the PE regarding this bidding process; or
- (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
- (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
- (g) any of its affiliates has been hired (or is proposed to be hired) by the PE as Engineer for the Contract implementation; or
- (h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
- (i) has a close business or family relationship with a staff of the PE who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable throughout the procurement process and execution of the contract.

4.3. A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.

- 4.4. A Bidder that has been sanctioned by the Republic of South Sudan in accordance with ITB 3.1[Corrupt and Fraudulent Practices], shall be ineligible to be prequalified for, bid for, or be awarded a contract or benefit from a contract, financially or otherwise, during such period as the Government shall have determined. The list of debarred firms and individuals is available as specified in **the BDS**.
- 4.5. Public or Semi-public owned enterprises in the Republic of South Sudan, may participate only if they are legally and financially autonomous, if they operate under commercial law, are registered by the relevant registration board or authorities and if they are not a dependent agency of the Government.
- 4.6. A Bidder shall not be under suspension from bidding by the PE as the result of the operation of a Bid-Securing Declaration.
- 4.7. Firms and individuals may be ineligible if they are from ineligible countries as Specified in Section V of this bidding document.
- 4.8. A Bidder shall provide such evidence of eligibility satisfactory to the PE, as the PE shall reasonably request.

**5. Eligible Materials,
Equipment, and Services**

- 5.1. The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the restrictions specified in Section V [Eligible Countries], and all expenditures under the Contract will not contravene such restrictions. At the PE's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

B. Contents of Bidding Documents

**6. Sections of Bidding
Documents**

- 6.1. The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8[Amendment of Bidding Documents].

PART 1: Bidding Procedures

- Section I: Invitation for Bids (IFB)
- Section II: Instructions to Bidders (ITB)
- Section IV: Bid Data Sheet (BDS)
- Section IV: Evaluation and Qualification Criteria
- Section V: Bidding Forms
- Section VI: Eligible Countries
- Section VII: Corrupt and Fraudulent Practices

PART 2 Works Requirements

- Section VIII: Works Requirements

PART 3 Conditions of Contract and Contract Forms

- Section IX: General Conditions (GC)
- Section X: Special Conditions of Contract (SCC)
- Section XI: Contract Forms

6.2. The Invitation for Bids issued by the PE is not part of the Bidding Documents.

6.3. Unless obtained directly from the PE, the PE is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8[Amendment of Bidding Documents]. In case of any contradiction, documents obtained directly from the PE shall prevail.

6.4. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its bid all information and documentation as is required by the Bidding Documents.

7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting

7.1. A Bidder requiring any clarification of the Bidding Documents shall contact the PE in writing at the PE's address **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The PE will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The PE shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3[Sections of Bidding Document], including a description of the inquiry but without identifying its source. If so specified in **the BDS**, the PE shall also promptly publish its response at the web page identified in **the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the PE shall amend the Bidding Documents following the procedure under ITB 8[Amendment of Bidding Documents] and ITB 22.2[Deadline of Submission of Bids].

7.2. The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

7.3. The Bidder and any of its personnel or agents will be granted permission by the PE to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the PE and its personnel and agents from and against all liability in respect

thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

- 7.4. If so specified in **the BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5. The Bidder is requested to submit any questions in writing, to reach the PE not later than one week before the meeting.
- 7.6. Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3[Sections of Bidding Document]. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the PE exclusively through the issue of an Addendum pursuant to ITB 8[Amendment of Bidding Documents] and not through the minutes of the pre-bid meeting. Non-attendance at the site visit and pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Documents

- 8.1. At any time prior to the deadline for submission of bids, the PE may amend the Bidding Documents by issuing addenda.
- 8.2. Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the PE in accordance with ITB 6.3[Sections of Bidding Document]. The PE shall also promptly publish the addendum on the PE's web page in accordance with ITB 7.1[Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting].
- 8.3. To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the PE should extend the deadline for the submission of bids, pursuant to ITB 22.2[Deadline of Submission of Bids].

C. Preparation of Bids

9. Cost of Bidding

- 9.1. The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the PE shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

- 10. Language of Bid**
- 10.1. The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the PE, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.
- 11. Documents Comprising the Bid**
- 11.1. The Bid shall comprise the following:
- (a) Letter of Bid and Appendix to Bid, in accordance with ITB 12[Letter of Bid and Schedules];
 - (b) completed schedules as required, including priced Bill of Quantities, in accordance with ITB 12[Letter of Bid and Schedules] and ITB 14[Bid Prices and Discounts];
 - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
 - (d) alternative bids, if permissible, in accordance with ITB 13[Alternative Bids];
 - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
 - (f) documentary evidence in accordance with ITB 17[Documents Establishing the Qualifications of the Bidder] establishing the Bidder's continued qualified status or, if post-qualification applies, as specified in accordance with ITB 4.8[Eligible Bidders], the Bidder's qualifications to perform the contract if its Bid is accepted;
 - (g) Technical Proposal in accordance with ITB 16[Documents Comprising the Technical Proposal];
 - (h) any other document required in **the BDS**.
- 11.2. In addition to the requirements under ITB 11.1[Documents Comprising the Bid], bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.
- 11.3. The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

- 11.4. The Bidder shall furnish in the Letter of Bid the names of three potential DARB members and attach their curriculum vitae.
- 12. Letter of Bid and Schedules**
- 12.1. The Letter of Bid and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section V, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2[Format and Signing of Bid]. All blank spaces shall be filled in with the information requested.
- 13. Alternative Bids**
- 13.1. Unless otherwise specified in **the BDS**, alternative bids shall not be considered.
- 13.2. When alternative times for completion are explicitly invited, a statement to that effect will be included in **the BDS**, as will the method of evaluating different times for completion.
- 13.3. Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the PE's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the PE, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the PE.
- 13.4. When specified in **the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in **the BDS**, as will the method for their evaluating, and described in Section VIII, Works Requirements.
- 14. Bid Prices and Discounts**
- 14.1. The prices and discounts (including any price reduction) quoted by the Bidder in the Letter of Bid and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the PE. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive bidders will be added to the

bid price and the equivalent total cost of the bid so determined will be used for price comparison.

- 14.3. The price to be quoted in the Letter of Bid, in accordance with ITB 12.1[Letter of Bid and Schedules], shall be the total price of the Bid, excluding any discounts offered.
- 14.4. The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1[Letter of Bid and Schedules].
- 14.5. Unless otherwise specified in **the BDS** and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the PE may require the Bidder to justify its proposed indices and weightings.
- 14.6. If so specified in ITB 1.1[Scope of Bid], bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4[Bid Prices and Discounts], provided the bids for all lots (contracts) are opened at the same time.
- 14.7. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

15. Currencies of Bid and Payment

- 15.1. The currency(ies) of the bid and the currency(ies) of payments shall be as specified in **the BDS**.
- 15.2. Bidders may be required by the PE to justify, to the PE's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

- | | |
|---|--|
| <p>16. Documents Comprising the Technical Proposal</p> | <p>16.1. The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section V [Bidding Forms], in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the work requirements and the completion time.</p> |
| <p>17. Documents Establishing the Qualifications of the Bidder</p> | <p>17.1. In accordance with Section IV[Evaluation and Qualification Criteria], to establish that the Bidder continues to meet the criteria used at the time of prequalification, the Bidder shall provide in the corresponding information sheets included in Section V[Bidding Forms], updated information on any assessed aspect that changed from that time, or if post-qualification applies as specified in ITB 4.8[Eligible Bidder], the Bidder shall provide the information requested in the corresponding information sheets included in Section V[Bidding Forms].</p> <p>17.2. If a margin of preference applies as specified in accordance with ITB 33.1[Margin of Preference], domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1[Margin of Preference].</p> <p>17.3. Any change in the structure or formation of a Bidder after being prequalified and invited to Bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the PE prior to the deadline for submission of Bids. Such approval shall be denied if (i) a Bidder proposes to associate with a disqualified Bidder or in case of a disqualified joint venture, any of its members; (ii) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in Section IV[Qualification Criteria and Requirements]; or (iii) in the opinion of the PE, the change may result in a substantial reduction in competition. Any such change should be submitted to the PE not later than fourteen (14) days after the date of the Invitation for Bids.</p> |
| <p>18. Period of Validity of Bids</p> | <p>18.1. Bids shall remain valid until the date specified in the BDS or any extended date if amended by the PE in accordance with ITB 8[Amendment of Bidding Documents]. A bid that is not valid until the date specified in the BDS, or any extended date if amended by the PE in accordance with ITB 8[Amendment of Bidding Documents], shall be rejected by the PE as nonresponsive.</p> <p>18.2. In exceptional circumstances, prior to the date of expiration of the bid validity, the PE may request Bidders to extend the period of validity of their bids. The request and the responses shall be</p> |

made in writing. If a bid Security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the extended date for bid validity. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.

- 18.3. If the award is delayed by a period exceeding fifty-six (56) days beyond the date of expiry of the bid validity specified in accordance with ITB 18.1, the Contract price shall be determined as follows:
- (a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor specified in **the BDS**.
 - (b) In the case of adjustable price contracts, no adjustment shall be made.
 - (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19. Bid Security

- 19.1. The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security as specified in **the BDS**, in original form and, in the case of a bid security, in the amount and currency specified in **the BDS**.
- 19.2. A Bid-Securing Declaration shall use the form included in Section V, Bidding Forms.
- 19.3. If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:
- (a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);
 - (b) an irrevocable letter of credit;
 - (c) a cashier's or certified check; or
 - (d) another security specified in **the BDS**,

In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section V, Bidding Forms, or in another substantially similar format approved by the PE prior to bid submission. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2[Period of Validity of Bids].

- 19.4. If a bid security or Bid Securing Declaration is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the PE as non responsive.
- 19.5. If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the performance security and if required in **the BDS**, the Environmental and Social (ES) Performance Security pursuant to ITB 42[Performance Security].
- 19.6. The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security, and if required in **the BDS**, the Environmental and Social, (ES) Performance Security.
- 19.7. The bid security may be forfeited:
- (a) if a Bidder withdraws its bid prior to the expiry date of the bid validity specified by the Bidder on the Letter of Bid, or any extended date provided by the Bidder; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 41[Signing of Contract]; or
 - (ii) furnish a performance security and if required in **the BDS**, the Environmental and Social(ES) Performance Security in accordance with ITB 42[Performance Security].
- 19.8. The bid security or the Bid-Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1[Eligible Bidders] and ITB 11.2[.].
- 19.9. If a bid security is not required in **the BDS** pursuant to ITB 19.1, and
- (a) if a Bidder withdraws its bid prior to the expiry date of the bid validity specified by the Bidder on the Letter of Bid or any extended date provided by the Bidder, or
 - (b) if the successful Bidder fails to sign the Contract in accordance with ITB 41[Signing of Contract]; or furnish a performance security and if required in **the BDS**, the

Environmental and Social (ES) Performance Security in accordance with ITB 42[Performance Security];

the PE may, if provided for in **the BDS**, declare the Bidder ineligible to be awarded a contract by the PE for a period of time as stated in **the BDS**.

20. Format and Signing of Bid

- 20.1. The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11[Documents Comprising the Bid] and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13[Alternative Bids], shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the bid, in the number specified in **the BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2. The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in **the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
- 20.3. In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.4. Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1. The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13[Alternative Bids], in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 21.2. The inner and outer envelopes shall:
- (a) bear the name and address of the Bidder;
 - (b) be addressed to the PE in accordance with ITB 22.1[Deadline of Submission of Bids];

- (c) bear the specific identification of this bidding process specified in **the BDS** 1.1[Scope of Bid]; and
 - (d) bear a warning not to open before the time and date for bid opening.
- 21.3. If all envelopes are not sealed and marked as required, the PE will assume no responsibility for the misplacement or premature opening of the bid.
- 22. Deadline for Submission of Bids**
 - 22.1. Bids must be received by the PE at the address and no later than the date and time specified in **the BDS**. When so specified in **the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in **the BDS**.
 - 22.2. The PE may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8[Amendment of Bidding Documents], in which case all rights and obligations of the PE and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.
- 23. Late Bids**
 - 23.1. The PE shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22[Deadline for Submission of Bids]. Any bid received by the PE after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.
- 24. Withdrawal, Substitution, and Modification of Bids**
 - 24.1. A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2[Format and Signing of Bid], (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
 - (a) prepared and submitted in accordance with ITB 20[Format and Signing of Bid] and ITB 21[Sealing and Marking of Bids] (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
 - (b) received by the PE prior to the deadline prescribed for submission of bids, in accordance with ITB 22[Deadline for Submission of Bids].

- 24.2. Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.
- 24.3. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

- 25.1. Except in the cases specified in ITB 23[Late Bids] and ITB 24[Withdrawal, Substitution, and Modification of Bids], the PE shall publicly open and read out in accordance with ITB 25.3 all bids received by the deadline, at the date, time and place specified in **the BDS**, in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1[Deadline for Submission of Bids], shall be as specified in **the BDS**.
- 25.2. First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding Bid will be opened. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.
- 25.3. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening
- 25.4. Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening.
- 25.5. Finally, all other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid

security, if required; and any other details as the PE may consider appropriate.

- 25.6. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid and the Bill of Quantities are to be initialed by representatives of the PE attending bid opening in the manner specified in **the BDS**.
- 25.7. The PE shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1[Late Bids]).
- 25.8. The PE shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

26. Confidentiality

- 26.1. Information relating to the evaluation of bids and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until the Notice of Intention to Award the Contract is communicated to all Bidders in accordance with ITB 41[Notification of Intention to Award].
- 26.2. Any attempt by a Bidder to influence the PE in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 26.3. Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the PE on any matter related to the bidding process, it shall do so in writing.

27. Clarification of Bids

- 27.1. To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the PE may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the PE shall not be considered. The PE's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of

arithmetic errors discovered by the PE in the evaluation of the bids, in accordance with ITB 31[Correction of Arithmetic Errors].

- 27.2. If a Bidder does not provide clarifications of its bid by the date and time set in the PE's request for clarification, its bid may be rejected.

**28. Deviations,
Reservations, and
Omissions**

- 28.1. During the evaluation of bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
 - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
 - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

**29. Determination of
Responsiveness**

- 29.1. The PE's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11 [Documents Comprising the Bid].
- 29.2. A substantially responsive bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
 - (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the PE's rights or the Bidder's obligations under the proposed Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 29.3. The PE shall examine the technical aspects of the bid submitted in accordance with ITB 16[Documents Comprising the Technical Proposal], in particular, to confirm that all requirements of Section VI[Works Requirements] have been met without any material deviation, reservation or omission.
- 29.4. If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the PE and may not

subsequently be made responsive by correction of the material deviation, reservation, or omission.

**30. Nonmaterial
Nonconformities**

- 30.1. Provided that a bid is substantially responsive, the PE may waive any nonconformities in the Bid.
- 30.2. Provided that a bid is substantially responsive, the PE may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 30.3. Provided that a bid is substantially responsive, the PE shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component, by adding the average price of the item or component quoted by substantially responsive Bidders. If the price of the item or component cannot be derived from the price of other substantially responsive Bids, the PE shall use its best estimate.

**31. Correction of
Arithmetical Errors**

- 31.1. Provided that the bid is substantially responsive, the PE shall correct arithmetical errors on the following basis:
- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the PE there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
 - (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 31.2. Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1, shall result in the rejection of the Bid.

- | | |
|--|---|
| 32. Conversion to Single Currency | 32.1. For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the BDS . |
| 33. Margin of Preference | 33.1. Unless otherwise specified in the BDS , a margin of preference for domestic bidders ¹⁰ shall not apply. |
| 34. Subcontractors | <p>34.1. Unless otherwise stated in the BDS, the PE does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the PE.</p> <p>34.2. In case of Prequalification, the Bidder's Bid shall name the same specialized subcontractor as submitted in the prequalification application and approved by the PE.</p> <p>34.3. In case of Postqualification, the PE may permit subcontracting for certain specialized works as indicated in Section IV 4.2. When subcontracting is permitted by the PE, the specialized subcontractor's experience shall be considered for evaluation. Section IV describes the qualification criteria for sub-contractors.</p> <p>34.4. Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the BDS.</p> |
| 35. Evaluation of Bids | <p>35.1. The PE shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.</p> <p>35.2. To evaluate a bid, the PE shall consider the following:</p> <ul style="list-style-type: none"> (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively; (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1[Correction of Arithmetic Errors]; (c) price adjustment due to discounts offered in accordance with ITB 14.4[Bid Prices and Discounts].; (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32[Conversion to Single Currency]; |

¹⁰ An individual firm is considered a domestic bidder for purposes of the margin of preference if it is registered in the Republic of South Sudan, has more than 50 percent ownership by nationals of the Republic of South Sudan, and if it does not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign contractors. And JVs are considered as domestic bidders and eligible for domestic preference only if the individual member firms are registered in the Republic of South Sudan or have more than 50 percent ownership by nationals of the Republic of South Sudan, and the JV shall be registered in the Republic of South Sudan. The JV shall not subcontract more than 10 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference.

- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3[Non-material, Non-Conformities];
- (f) the additional evaluation factors are specified in Section IV [Evaluation and Qualification Criteria]

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

35.4. If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section IV[Evaluation and Qualification Criteria].

35.5. If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the PE, the PE may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the PE may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the PE against financial loss in the event of default of the successful Bidder under the Contract.

36. Comparison of Bids

36.1. The PE shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2[Evaluation of Bids] to determine the lowest evaluated bid.

37. Abnormally Low Bids

37.1. An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the Bidder to perform the Contract for the offered Bid price.

37.2. In the event of identification of a potentially Abnormally Low Bid, the PE shall seek written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the bidding document.

37.3. After evaluation of the price analyses, in the event that the PE determines that the Bidder has failed to demonstrate its

capability to perform the Contract for the offered Bid Price, the PE shall reject the Bid.

38. Qualification of the Bidder

- 38.1. The PE shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if postqualification applies) the qualifying criteria specified in Section IV[Evaluation and Qualification Criteria].
- 38.2. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1[Documents Establishing the Qualifications of the Bidder].
- 38.3. An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the PE shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

39. PE's Right to Accept Any Bid, and to Reject Any or All Bids

- 39.1. The PE reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

40. Standstill Period

- 40.1. The Contract shall not be awarded earlier than the expiry of the Standstill Period. The Standstill Period shall be ten (10) Working days unless extended in accordance with ITB 44. The Standstill Period commences the day after the date the PE has transmitted to each Bidder the Notification of Intention to Award the Contract. Where only one Bid is submitted, or if this contract is in response to an emergency situation, the Standstill Period shall not apply

41. Notification of Intention to Award

- 41.1. The PE shall send to each Bidder, the Notification of Intention to Award the Contract to the successful Bidder. The Notification of Intention to Award shall contain, at a minimum, the following information:
- (a) the name and address of the Bidder submitting the successful Bid;
 - (b) the Contract price of the successful Bid;
 - (c) the names of all Bidders who submitted Bids, and their Bid prices as readout and as evaluated;

- (d) a statement of the reason(s) the Bid (of the unsuccessful Bidder to whom the notification is addressed) was unsuccessful;
- (e) the expiry date of the Standstill Period; and
- (f) instructions on how to request a debriefing or submit a complaint during the standstill period.

F. Award of Contract

42. Award Criteria

- 42.1. Subject to ITB 38.1[PE's Right to Accept Any Bid, and to Reject Any or All Bids], the PE shall award the Contract to the Bidder who has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

43. Notification of Award

- 43.1. Prior to the expiration of the period of bid validity, the PE shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the PE will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the PE shall also notify all other Bidders of the results of the bidding and shall publish the results identifying the bid and lot (contract) numbers and the following information:
- (i) name of each Bidder who submitted a Bid;
 - (ii) bid prices as read out at Bid Opening;
 - (iii) name and evaluated prices of each Bid that was evaluated;
 - (iv) name of bidders whose bids were rejected and the reasons for their rejection; and
 - (v) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 43.2. Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 43.3. The PE shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB

40.1, requests in writing the grounds on which its bid was not selected.

44. Debriefing by the PE

- 44.1. On receipt of the PE's Notification of Intention to Award referred to in ITB 41, an unsuccessful Bidder has three (3) Working days to make a written request to the PE for a debriefing. The PE shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.
- 44.2. Where a request for debriefing is received within the deadline, the PE shall provide a debriefing within five (5) Working days, unless the PE decides, for justifiable reasons, to provide the debriefing outside this timeframe. In that case, the standstill period shall automatically be extended until five (5) Working days after such debriefing is provided. If more than one debriefing is so delayed, the standstill period shall not end earlier than five (5) Working days after the last debriefing takes place. The PE shall promptly inform, by the quickest means available, all Bidders of the extended standstill period.
- 44.3. Where a request for debriefing is received by the PE later than the three (3)-Working day deadline, the PE should provide the debriefing as soon as practicable, and normally no later than fifteen (15) Working days from the date of publication of Public Notice of Award of contract. Requests for debriefing received outside the three (3)-day deadline shall not lead to extension of the standstill period.
- 44.4. Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear their own costs of attending such a debriefing meeting.

45. Signing of Contract

- 45.1. Promptly upon notification, the PE shall send the successful Bidder the Contract Agreement.
- 45.2. Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the PE.

46. Performance Security

- 46.1. Within twenty-eight (28) days of the receipt of notification of award from the PE, the successful Bidder shall furnish the performance security and, if required in **the BDS**, the Environmental and Social (ES) Performance Security in accordance with the General Conditions of Contract, subject to ITB 35.5[Evaluation of Bids], using for that purpose the Performance Security and ES Performance Security Forms included in Section XI, Contract Forms, or another form acceptable to the PE. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued

by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the PE. A foreign institution providing a bond shall have a correspondent financial institution located in the Republic of South Sudan.

- 46.2. Failure of the successful Bidder to submit the above-mentioned Performance Security and, if required in **the BDS**, the Environmental and Social (ES) Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the PE may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the PE to be qualified to perform the Contract satisfactorily.

47. Dispute Avoidance and Resolution Board

- 47.1. The PE proposes the person named in **the BDS** to be appointed as Sole Member of Dispute Avoidance and Resolution Board (DARB) under the Contract. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the PE has not agreed on the appointment of the Sole Member of DARB, the Adjudicator shall be appointed by the Appointing Authority named in **the BDS** and designated in the Special Conditions of Contract at the request of either party

OR

The PE proposes three names shown in **the BDS** and SCC, and whose CVs are Appended, to be members of Dispute Avoidance and Resolution Board. The Tenderer, shall in his Form of Tender, propose three names as well. If the names are not agreed, the Appointing Authority named in **the BDS** shall be consulted to appoint members of Dispute Avoidance and Resolution Board¹¹.

48. Procurement Related Complaint

- 48.1. The bidder have the right to seek for review of procurement decisions pursuant to the Provisions of the Public Procurement and Disposals Act 2018, and the Public Procurement and Disposal of Assets Regulations 2024, and as provided in the Letter of Intention to Award the Contract.

¹¹ For Large Contracts it may be desirable to use Dispute Avoidance and Resolution Board instead of an Adjudicator.

Section III. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is : _____
ITB 1.1	The PE is: _____
ITB 1.1	The identification number of the Bid is: _____ The number and identification of lots (contracts) comprising this Bid is: _____
ITB 2.1	The PE is: _____
ITB 2.1	Loan or Financing Agreement amount: _____
ITB 2.1	The name of the Project is: _____
ITB 4.1	Maximum number of members in the JV shall be: _____.
ITB 4.4	A list of debarred firms and individuals is available on <i>(insert address in which a list can be obtained)</i>
ITB 4.8	This Bidding Process <u> is/is not </u> subject to prequalification.
B. Bidding Documents	
ITB 7.1	For clarification purposes only, the PE's address is: Attention: _____ Street Address: _____ Floor/Room number: _____ City: _____ Country: _____ Telephone: _____ Electronic mail address: _____
ITB 7.1	Web page: _____
ITB 7.4	A Pre-Bid meeting <u> </u> take place at the following date, time and place: Date: _____ Time: _____ Place: _____ A site visit conducted by the PE _____ organized
C. Preparation of Bids	
ITB 10.1	The language of the bid is: <i>[insert language]</i>

ITB 11.1 (h)	<p>The Bidder shall submit the following additional documents in its Bid: <i>[list any additional document not already listed in ITB 11.1 that must be submitted with the Bid. The list of additional documents should include the following:]</i></p> <p>Code of Conduct for Contractor's Personnel (ES)</p> <p>The Bidder shall submit its Code of Conduct that will apply to Contractor's Personnel (as defined in Sub-Clause 1.1.17 of the General Conditions of Contract), to ensure compliance with the Contractor's Environmental and Social (ES) obligations under the Contract. The Bidder shall use for this purpose the Code of Conduct form provided in Section V. No substantial modifications shall be made to this form, except that the Bidder may introduce additional requirements, including as necessary to take into account specific Contract issues/risks.</p> <p>Management Strategies and Implementation Plans (MSIP) to manage the (ES) risks</p> <p>The Bidder shall submit Management Strategies and Implementation Plans (MSIPs) to manage the following key Environmental and Social (ES) risks:</p> <p><i>[Note: insert name of any additional plan and specific risk/s informed by the relevant environmental and social assessment];</i></p> <ul style="list-style-type: none"> • <i>[e.g. Sexual Exploitation and Abuse (SEA) prevention and response action plan]</i> • <i>[e.g. Traffic Management Plan to ensure safety of local communities from construction traffic];</i>
ITB 13.1	Alternative bids _____ permitted.
ITB 13.2	<p>Alternative times for completion _____ permitted.</p> <p>If alternative times for completion are permitted, the evaluation method will be as specified in Section IV, Evaluation and Qualification Criteria.</p>
ITB 13.4	<p>Alternative technical solutions shall be permitted for the following parts of the Works: _____.</p> <p>If alternative technical solutions are permitted, the evaluation method will be as specified in Section IV, Evaluation and Qualification Criteria.</p>
ITB 14.5	The prices quoted by the bidder shall be: _____
ITB 15.1	<p>The currency(ies) of the bid and the payment currency(ies) shall be in accordance with Alternative _____ as described below:</p> <p>Alternative A (Bidders to quote entirely in local currency):</p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in SSP, further referred to as "the local currency". A Bidder expecting to incur expenditures in other currencies for inputs to the Works supplied from outside the Republic of South Sudan (referred to as "the foreign currency requirements") shall indicate in the Appendix to Bid - Table C, the percentage(s) of the Bid Price (excluding Provisional Sums),</p>

	<p>needed by the Bidder for the payment of such foreign currency requirements, limited to no more than three foreign currencies.</p> <p>(b) The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C, and shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.</p> <p>Alternative B (Bidders allowed to quote in local and foreign currencies):</p> <p>(a) The unit rates and prices shall be quoted by the Bidder in the Bill of Quantities separately in the following currencies:</p> <p>(i) for those inputs to the Works that the Bidder expects to supply from within the Republic of South Sudan, in SSP, further referred to as “the local currency”; and</p> <p>(ii) for those inputs to the Works that the Bidder expects to supply from outside the Republic of South Sudan (referred to as “the foreign currency requirements”), in up to any three foreign currencies.</p>
ITB 18.1	The Bid shall be valid until: _____ <i>[insert day, month and year, taking into account reasonable time needed to complete the bid evaluation, obtain necessary approvals]</i> ¹²
ITB 18.3 (a)	The bid price shall be adjusted by the following factor: _____
ITB 19.1	<p>A Bid Security _____ required.</p> <p>A Bid-Securing Declaration _____ required.</p> <p>If a bid security shall be required, the amount and currency of the bid security shall be _____</p>
ITB 19.3 (d)	Other types of acceptable securities: _____
ITB 19.9	If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the PE will declare the Bidder ineligible to be awarded contracts by the PE for a period of _____ years ¹³ .
ITB 20.1	In addition to the original of the bid, the number of copies is: _____
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: _____
D. Submission and Opening of Bids	
ITB 22.1	For bid submission purposes only, the PE’s address is Attention: _____

¹² Up to 120 days from the date of bid opening

¹³ A minimum of six months up to a maximum of two years.

	Street Address: _____ Floor/Room number: _____ City: _____ ZIP Code: _____ Country: _____ The deadline for bid submission is: Date: _____ Time: _____ Bidders_____ have the option of submitting their bids electronically. If bidders have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: _____
ITB 25.1	The bid opening shall take place at: Street Address: _____ Floor/Room number: _____ City : _____ Country: _____ Date: _____ Time: _____ If bidders have the option of submitting their bids electronically, the electronic bid opening procedures shall be: _____
ITB 25.6	The Letter of Bid and Priced Bill of Quantities shall be initialed by _____ representatives of the PE conducting Bid opening: _____
E. Evaluation, and Comparison of Bids	
ITB 32.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: _____ The source of exchange rate shall be: _____ The date for the exchange rate shall be: _____ The currency(ies) of the Bid shall be converted into a single currency in accordance with the procedure under Alternative _____ that follows: Alternative A: Bidders quote entirely in local currency

	<p>For comparison of bids, the Bid Price, corrected pursuant to ITB 31, shall first be broken down into the respective amounts payable in various currencies by using the exchange rates specified by the bidder in accordance with ITB 15.1.</p> <p>In the second step, the PE will convert the amounts in various currencies in which the Bid Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p> <p>OR</p> <p>Alternative B: Bidders quote in local and foreign currencies</p> <p>The PE will convert the amounts in various currencies in which the Bid Price, corrected pursuant to ITB 31, is payable (excluding Provisional Sums but including Daywork where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and on the date stipulated above.</p>
ITB 33.1	<p>A margin of preference _____ apply.</p> <p>If a margin of preference applies, the application methodology shall be defined in Section IV – Evaluation and Qualification Criteria</p>
ITB 34.1	<p>At this time the PE <i>[insert expects or does not expect]</i> to execute certain specific parts of the Works by sub-contractors selected in advance.</p>
ITB 34.4	<p>Option 1:</p> <p>a) In the case of Prequalification:</p> <p>Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: _____% of the total contract amount or _____% of the volume of work _____. (Percentage should be consistent with the one specified in prequalification documents)</p> <p>Option 2:</p> <p>a) In the case of Postqualification:</p> <p>Contractor's proposed subcontracting: Maximum percentage of subcontracting permitted is: _____% of the total contract amount or _____% of the volume of work _____.</p> <p>b) Bidders planning to subcontract more than 10% of total volume of work shall specify, in the Letter of Bid, the activity (ies) or parts of the works to be subcontracted along with complete details of the sub-contractors and their qualification and experience. The qualification and experience of the sub-contractors must meet the minimum criteria for the relevant work to be sub-contracted failing which such sub-contractors will not be permitted to participate.</p>

	c) Sub-contractors' qualification and experience will not be considered for evaluation of the Bidder. The Bidder on its own (without taking into account the qualification and experience of the sub-contractor) should meet the qualification criteria.
ITB 46.1 and 46.2	<p>[Delete the following if not applicable]</p> <p>The successful Bidder shall be required to submit an Environmental and Social (ES) Performance Security.</p> <p><i>[Note: The ES Performance Security shall normally be required where ES risks are high.]</i></p>
ITB 47	<p>The proposed Sole Member of DARB for the project is: <i>[Insert name of the proposed member]</i></p> <p>OR</p> <p>The PE proposes the following to be members of the Dispute Avoidance and Resolution Board</p> <p>1.....</p> <p>2.....</p> <p>3.....</p> <p>The proposed Appointing Authority for the appointment of Dispute Avoidance and Resolution Board is <i>(insert the appointing Authority)</i></p>

Section IV. Evaluation and Qualification Criteria (*Following Prequalification*)

This Section contains all the criteria that the PE shall use to evaluate bids and qualify Bidders. In accordance with ITB 35[Evaluation of Bids] and ITB 38[Qualification of Bidders], no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section V, Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the SSP equivalent using the rate of exchange determined as follows:

-For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

-Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1[Conversion to Single Currency]. Any error in determining the exchange rates in the Bid may be corrected by the PE.

1. Domestic Preference

A margin of preference of 10% (Ten percent) should be grant to domestic contractors, in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the PE, a particular contractor or group of contractors qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.
- (b) After bids have been received and reviewed by the PE, responsive bids shall be classified into the following groups:
 - (i) Group A: bids offered by domestic contractors eligible for the preference.
 - (ii) Group B: bids offered by other contractors.

All evaluated bids in each group shall, as a first evaluation step, be compared to determine the lowest bid, and the lowest evaluated bids in each group shall be further compared with each other. If, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award. If a bid from Group B is the lowest, as a second evaluation step, all bids from Group B shall then be further compared with the lowest evaluated bid from Group A. For the purpose of this further comparison only, an amount equal to 10% (ten percent) of the respective bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each bid from Group B. If the bid from Group A

is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group B based on the first evaluation step shall be selected.

2. Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

2.1 Assessment of adequacy of Technical Proposal with Requirements

2.2 Multiple Contracts, if permitted under ITB 35.4, will be evaluated as follows:

Award Criteria for Multiple Contracts [ITB 35.4]:

Lots

Bidders have the option to Bid for any one or more lots. Bids will be evaluated lot-wise, taking into account discounts offered, if any, for combined lots. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the PE for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots as the case may be for which they were prequalified.

Packages

Bidders have the option to Bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, taking into account discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the PE for combined packages, subject to the selected Bidder(s) meeting the required qualification criteria for combination of packages and or lots as the case may be for which they were prequalified.

2.3 Alternative Completion Times, if permitted under ITB 13.2, will be evaluated as follows:

.....

2.4 Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows:

.....

3. Qualification

3.1 Update of Information

The Bidder shall continue to meet the criteria used at the time of prequalification.

3.2 Specialized Subcontractors

Only the specialized subcontractors as approved by the PE will be considered. The specialized subcontractor shall continue to meet the criteria used at the time of prequalification. The general experience and financial resources of the specialized sub-contractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.

3.3 Financial Resources

Using the relevant Forms No ... and No... in Section V, Bidding Forms, the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

(i) the following cash-flow requirement:

.....

and

(ii) the overall cash flow requirements for this contract and its current Works commitment.

3.4 Contractor's Representative and Key Personnel

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

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

3.5 Equipment

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

[Specify requirements for each lot as applicable]

No.	Equipment Type and Characteristics	Minimum Number required
1		
2		
3		
4		
5		
...		

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section V, Bidding Forms.

Section IV. *Evaluation and Qualification Criteria* (Without Prequalification)

This Section contains all the criteria that the PE shall use to evaluate bids and qualify Bidders. In accordance with ITB 35[Evaluation of Bids] and ITB 38[Qualification of Bidders],, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section V, Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the SSP equivalent using the rate of exchange determined as follows:

- For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

- Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the PE.

1. Domestic Preference

A margin of preference of 10% (Ten percent) shall be granted to domestic contractors, in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the PE, a particular contractor or group of contractors qualifies for a domestic preference. The bidding documents shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of bids to give effect to such preference.
- (b) After bids have been received and reviewed by the PE, responsive bids shall be classified into the following groups:
 - (i) Group A: bids offered by domestic contractors eligible for the preference.
 - (ii) Group B: bids offered by other contractors.

All evaluated bids in each group shall, as a first evaluation step, be compared to determine the lowest bid, and the lowest evaluated bids in each group shall be further compared with each other. If, as a result of this comparison, a bid from Group A is the lowest, it shall be selected for the award. If a bid from Group B is the lowest, as a second evaluation step, all bids from Group B shall then be further compared with the lowest evaluated bid from Group A. For the purpose of this further comparison only, an amount equal to 10% (Ten percent) of the respective bid price corrected for arithmetical errors, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each bid from Group B. If the bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated bid from Group B based on the first evaluation step shall be selected.

2. Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

2.1 Assessment of adequacy of Technical Proposal with Requirements

2.2 Multiple Contracts, if permitted under ITB 35.4, will be evaluated as follows:

Award Criteria for Multiple Contracts [ITB 35.4]:

Lots

Bidders have the option to Bid for any one or more lots. Bids will be evaluated lot-wise, taking into account discounts offered, if any, for combined lots. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the PE for combined lots, subject to the selected Bidder(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

Packages

Bidders have the option to Bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, taking into account discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Bidder or Bidders offering the lowest evaluated cost to the PE for combined packages, subject to the selected Bidder(s) meeting the required qualification criteria for combination of packages and or lots as the case may be.

Qualification Criteria for Multiple Contracts:

Section IV describes criteria for qualification for each lot (contract) for multiple lots (contracts). The criteria for qualification is aggregate minimum requirement for respective lots as specified under items 3.1, 3.2, 4.2(a) and 4.2(b). However, with respect to the specific experience under item 4.2 (a) of Section IV, the PE will select any one or more of the options as identified below:

N is the minimum number of contracts

V is the minimum value of a single contract

(a) For one Contract:

Option 1:

(i) N contracts, each of minimum value V;

Or

Option 2:

- (i) N contracts, each of minimum value V; or
- (ii) Less than or equal to N contracts, each of minimum value V, but with total value of all contracts equal or more than $N \times V$.

(b) For multiple Contracts**Option 1:**

- (i) Minimum requirements for combined contract(s) shall be the aggregate requirements for each contract for which the bidder has submitted bids as follows, and N1, N2, N3, etc. shall be different contracts:

Lot 1: N1 contracts, each of minimum value V1;

Lot 2: N2 contracts, each of minimum value V2;

Lot 3: N3 contracts, each of minimum value V3;

---etc.

or

Option 2:

- (i) Minimum requirements for combined contract(s) shall be the aggregate requirements for each contract for which the bidder has submitted bids as follows, and N1,N2,N3, etc. shall be different contracts:

Lot 1: N1 contracts, each of minimum value V1;

Lot 2: N2 contracts, each of minimum value V2;

Lot 3: N3 contracts, each of minimum value V3;

---etc, **or**

- (ii) Lot 1: N1 contracts, each of minimum value V1; or number of contracts less than or equal to N1, each of minimum value V1, but with total value of all contracts equal or more than $N1 \times V1$.

Lot 2: N2 contracts, each of minimum value V2; or number of contracts less than or equal to N2, each of minimum value V2, but with total value of all contracts equal or more than $N2 \times V2$.

Lot 3: N3 contracts, each of minimum value V3; or number of contracts less than or equal to N3, each of minimum value V3, but with total value of all contracts equal or more than $N3 \times V3$.

---etc.

- 2.3 Alternative Completion Times**, if permitted under ITB 13[Alternative Bids].2, will be evaluated as follows:

.....
.....

- 2.4 Technical alternatives** , if permitted under ITB 13[Alternative Bids].4, will be evaluated as follows:

.....
.....

2.5 Specialized Subcontractors

Only the specific experience of sub-contractors for specialized works permitted by the PE will be considered. The general experience and financial resources of the specialized sub-contractors shall not be added to those of the Bidder for purposes of qualification of the Bidder.

The specialized sub-contractors proposed shall be fully qualified for their work proposed, and meet the following criteria:

3. Qualification

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
1. Eligibility							
1.1	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.2	Conflict of Interest	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.3	Eligibility	Not having been declared ineligible as described in ITB 4.4, 4.5, 4.6 and 4.7	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.4	Government Owned Entity	Meets conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments

Eligibility and Qualification Criteria		Compliance Requirements					Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
2. Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Non-performance of a contract ¹⁴ did not occur as a result of contractor default since 1 st January <i>[Insert year]</i> .	Must meet requirement ¹²	Must meet requirements	Must meet requirement ¹⁵	N/A	Form CON-2
2.2	Suspension based on Execution of Bid Securing Declaration by the PE or withdrawal of the Bid within Bid validity	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.6 or withdrawal of the Bid pursuant ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Bid Submission Form
2.3	Pending Litigation	Bidder’s financial position and prospective long term profitability sound according to criteria established in 3.1 below and assuming that all pending litigation will be resolved against the Bidder	Must meet requirement	N/A	Must meet requirement	N/A	Form CON – 2
2.4	Litigation History	No consistent history of court/arbitral award decisions against the	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

¹⁴ Non performance, as decided by the Employer, shall include all contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

¹⁵ This requirement also applies to contracts executed by the Bidder as JV member.

Eligibility and Qualification Criteria							
Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		Bidder ¹⁶ since 1 st January [insert year]					
2.5	Declaration: Environmental and Social (ES) past performance	Declare any civil work contracts that have been suspended or terminated and/or performance security called by an PE for reasons of breach of environmental, or social (including Sexual Exploitation and Abuse) contractual obligations in the past five years. ¹⁷	Must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Each must make the declaration. Where there are Specialized Sub-contractor/s, the Specialized Sub-contractor/s must also make the declaration.	N/A	Form CON-3 ES Performance Declaration

¹⁶ The Bidder shall provide accurate information on the letter of Bid about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the last five years. A consistent history of court/arbitral awards against the Bidder or any member of a joint venture may result in disqualifying the Bidder.

¹⁷ The Employer may use this information to seek further information or clarifications in carrying out its due diligence.

Eligibility and Qualification Criteria		Compliance Requirements					Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
3. Financial Situation and Performance							
3.1	Financial Capabilities	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as SSP \$ _____ for the subject contract(s) net of the Bidders other commitments	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN – 3.1, with attachments
		(ii) The Bidders shall also demonstrate, to the satisfaction of the PE, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by the laws of the Republic of South Sudan, other financial statements acceptable	Must meet requirement	Must meet requirement	N/A	N/A	

Eligibility and Qualification Criteria							
Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		to the PE, for the last _____ years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and indicate its prospective long-term profitability.	Must meet requirement	N/A	Must meet requirement	N/A	
3.2	Average Annual Construction Turnover	Minimum average annual construction turnover of SSP _____, calculated as total certified payments received for contracts in progress and/or completed within the last _____ years, divided by _____ years	Must meet requirement	Must meet requirement	Must meet _____%, _____ of the requirement	Must meet _____%, _____ of the requirement	Form FIN – 3.2

Eligibility and Qualification Criteria		Compliance Requirements				Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
4. Experience							
4.1 (a)	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last _____ years, starting 1 st January ____.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP – 4.1
4.2 (a)	Specific Construction & Contract Management Experience	(i) A minimum number of similar ¹⁸ contracts specified below that have been satisfactorily and substantially ¹⁹ completed as a prime contractor, joint venture member ²⁰ , management contractor or sub-contractor ²⁰ between 1st January [insert year] and application submission deadline: (i) N contracts, each of minimum value V;	Must meet requirement	Must meet requirement ²¹	N/A	N/A	Form EXP 4.2(a)

¹⁸ The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section III, Work's Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

¹⁹ Substantial completion shall be based on 80% or more works completed under the contract.

²⁰ For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share, by value, shall be considered to meet this requirement.

²¹ In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

Eligibility and Qualification Criteria							
Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		Or (ii) Less than or equal to N contracts, each of minimum value V, but with total value of all contracts equal or more than $N \times V$; [insert values of N & V, delete (ii) above if not applicable]. [In case the Works are to be bid as individual contracts under a slice and package (multiple contract) procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options specified in ITB 35.4.]					
		[Add the following if specialized sub-contractor is permitted and describe nature and characteristics of specialized works:] “(ii) For the following specialized works, the PE permits specialized sub-contractors as per ITB 34.3”	“Must meet requirement for one contract (Requirement can be met through a Specialized Sub-contractor)”	Must meet requirement	N/A	“Must meet requirement (Requirement can be met through a Specialized Sub-contractor)”	
4.2 (b)	Experience in Key Activities	For the above and any other contracts completed and under	Must meet requirements	Must meet requirements	N/A	Must meet the following requirements for	Form EXP – 4.2 (b)

Eligibility and Qualification Criteria			Compliance Requirements			Documentation	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		implementation as prime contractor, joint venture member, management contractor or sub-contractor ²² on or after the first day of the calendar year during the period stipulated in 4.2 (a) above, a minimum construction experience in the following key activities successfully completed ²³ : <i>[list activities indicating volume, number or rate of production as applicable]</i> ²⁴				the key activities listed below ²⁵ <i>[list key activities and the corresponding minimum requirements]</i>	
4.2 (c)	Specific Experience in managing ES aspects	For the contracts in 4.2 (a) above and/or any other contracts [substantially completed and under implementation] as prime contractor, joint venture member, or Subcontractor between 1st January <i>[insert year]</i> and Application	Must meet requirements	Must meet requirement	Must meet the following requirements: <i>[list key requirements to be met by each member otherwise state: "N/A"]</i>	Must meet the following requirements: <i>[list key requirements to be met by one member otherwise state: "N/A"]</i>	Form EXP – 4.2 (c)

²² For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share shall be counted to meet this requirement.

²³ Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

²⁴ The minimum experience requirement for multiple contracts will be the sum of the minimum requirements for respective individual contracts, unless specified otherwise.

²⁵ Requirement can be met through a Specialized Sub-contractor

Eligibility and Qualification Criteria				Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		submission deadline, experience in managing ES risks and impacts in the following aspects: <i>[Based on the ES assessment, specify, as appropriate, specific experience requirements to manage ES aspects.]</i>					

Note: *[For Multiple lots (contracts) specify financial and experience criteria for each lot under 3.1, 3.2, 4.2(a), 4.2(b) and 4.2(c)]*

3.5 Contractor's Representative and Key Personnel

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

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

3.6 Equipment

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

[Specify requirements for each lot as applicable]

No.	Equipment Type and Characteristics	Minimum Number required
1		
2		
3		
4		
5		

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section V, Bidding Forms.

Section V. Bidding Forms

Table of Forms

Letter of Bid.....	59
Appendix to Bid	62
Table B. Foreign Currency (FC)	64
Table C. Summary of Payment Currencies	65
Bill No. 1: General Items.....	67
Bill No. 2: Earthworks	68
Bill No. 3: Culverts and Bridges	68
Daywork Schedule	69
Schedule of Daywork Rates: 1. Labour.....	72
Schedule of Daywork Rates: 2. Materials.....	72
Schedule of Daywork Rates: 3. Contractor's Equipment	73
Daywork Summary	73
Summary of Specified Provisional Sums	74
Grand Summary.....	74
Technical Proposal	75
Site Organization	76
Method Statement	76
Mobilization Schedule	76
Construction Schedule	76
ES Management Strategies and Implementation Plans	77
Code of Conduct for Contractor's Personnel (ES) Form.....	77
Form EQU: Equipment.....	81
Personnel	82
Form PER -1	82
Form PER-2:	84
Form ELI -1.1.....	87
Form ELI -1.2.....	88
Form CON – 2	89
Form CON – 3	90
Form FIN – 3.1	92
Form FIN - 3.2	94
Bidders Qualification without prequalification.....	95
Form ELI -1.1.....	96
Form ELI -1.2.....	97
Form CON – 2	98
Form CON – 3	100
Form FIN – 3.1:	102
Form FIN – 3.2:	104

Form FIN – 3.3:.....	105
Form FIN – 3.4:.....	106
Form EXP - 4.1	107
Form EXP - 4.2 (a).....	108
Form EXP - 4.2 (b)	110
Form EXP - 4.2 (c).....	112
Form of Bid Security.....	113
Form of Bid-Securing Declaration	115
Bill of Quantities	126

Letter of Bid

Date: _____

Invitation for Bid No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) _____;
- (b) We meet the eligibility requirements and have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the PE based on execution of a Bid Securing Declaration in accordance with ITB 4.6.
- (d) We offer to execute in conformity with the Bidding Documents the following Works: _____
_____;
- (e) The total price of our Bid, excluding any discounts offered in item (f) below is:
In case of only one lot, total price of the Bid _____

In case of multiple lots, total price of each lot _____
In case of multiple lots, total price of all lots (sum of all lots) _____;
- (f) The discounts offered and the methodology for their application are:
 - i) The discounts offered are: _____
 - ii) The exact method of calculations to determine the net price after application of discounts is shown below: _____

_____;
- (g) Our Bid shall be valid until *[insert day, month and year in accordance with ITB 18.1]*, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our bid is accepted, we commit to obtain a performance security *[and an Environmental, and Social (ES) Performance Security, Delete if not applicable]* in accordance with the Bidding Documents;
- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;

- (j) Our firm, its affiliates or subsidiaries, including any subcontractors or suppliers for any part of the contract has not been declared ineligible by the Government of South Sudan under South Sudan's laws or any other official regulations.
- (k) We are not a government owned entity/ We are a government owned entity but meet the requirements of ITB 4.5;²⁶
- (l) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

- (m) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (n) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.
- (o) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.
- (k) Potential DARB Members: We hereby propose the following three persons, whose curriculum vitae are attached, as potential DARB members:

Name	Address
1.	
2.	
3.	

Name of the Bidder* _____

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

Title of the person signing the Bid _____

²⁶ Bidder to use as appropriate.

Signature of the person named above _____

Date signed _____ day of _____, _____

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

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

Appendix to Bid

Schedule of Cost Indexation

[Note to PE: It is recommended that the PE is advised by a professional with experience in construction costs and the inflationary effect on construction costs when preparing the contents of the Schedule of Cost Indexation. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved]

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

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

where:

“P_n” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “n”, this period being a month unless otherwise stated in the Contract Data;

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“L_n”, “E_n”, “M_n”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

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

The cost indices or reference prices stated in the Table of Adjustment Data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table).

If the currency in which the Contract price is expressed is different from the currency of the country of origin of the indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall be: Z₀ / Z₁, where,

Z₀ = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Base date, and

Z_1 = the number of units of currency of the origin of the indices which equal to one unit of the currency of the Contract Price on the Date of Adjustment.

Schedule of Adjustment Data

[In Tables A, B, and C, below, the Bidder shall (a) indicate its amount of local currency payment, (b) indicate its proposed source and base values of indices for the different foreign currency elements of cost, (c) derive its proposed weightings for local and foreign currency payment, and (d) list the exchange rates used in the currency conversion. In the case of very large and/or complex works contracts, it may be necessary to specify several families of price adjustment formulae corresponding to the different works involved.]

Table A. Local Currency

Index code	Index description	Source of index	Base value and date	Bidder's related currency amount	Range of weighting Proposed by the Procuring Entity	Bidder's proposed weighting
	Non-adjustable	—	—	—	a: _____* b: ----- to -----* c: ----- to -----* d: ----- to -----* e: ----- to -----* etc.	a: _____* b: _____ c: _____ d: _____ e: _____ etc.
Total						1.00

[* To be entered by the PE. Whereas "a" should a fixed percentage, b, c, d and e should specify a range of values and the Bidder will be required to specify a value within the range such that the total weighting = 1.00]

Table B. Foreign Currency (FC)

State type: [If the Bidder is allowed to receive payment in foreign currencies this table shall be used. If Bidder wishes to quote in more than one foreign currency (up to three currencies permitted) then this table should be repeated for each foreign currency.]

Index code	Index description	Source of index	Base value and date	Bidder's related source currency in type/amount	Equivalent in Foreign Currency 1	Range of weighting Proposed by the Procuring Entity	Bidder's proposed weighting
	Non-adjustable	—	—	—		a: _____* b: ----- to -----* c: ----- to -----* d: ----- to -----* e: ----- to -----* etc.	a: _____* b: _____ c: _____ d: _____ e: _____ etc.

[* To be entered by the PE. Whereas "a" should a fixed percentage, b, c, d and e should specify a range of values and the Bidder will be required to specify a value within the range such that the total weighting = 1.00]

Table C. Summary of Payment Currencies

Table: Alternative A

For[insert name of Section of the Works]

Name of payment currency	A Amount of currency	B Rate of exchange (local currency per unit of foreign)	C Local currency equivalent $C = A \times B$	D Percentage of Total Bid Price (TBP) $\frac{100 \times C}{TBP}$
Local currency _____		1.00		
Foreign currency #1 _____				
Foreign currency #2 _____				
Foreign currency # _____				
Total Bid Price				100.00
Provisional sums expressed in local currency	[To be entered by the PE]		[To be entered by the PE]	
TOTAL BID PRICE (including provisional sum)				

Table: Alternative B

To be used only with Alternative B Prices directly quoted in the currencies of payment. (Clause ITB 15.1)

Summary of currencies of the bid for _____ *[insert name of Section of the Works]*

<i>Name of currency</i>	<i>Amounts payable</i>
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency _____	[To be entered by the PE]

Bill No. 2: Earthworks

[illegible]

Bill No. 3: Culverts and Bridges

[illegible]

Daywork Schedule

[Note to the PE:

- (i) *A “Daywork Schedule” is commonly found in contracts where the likely incidence of unforeseen work cannot be covered by definitive descriptions and approximate quantities in the Bill of Quantities. The preferred alternative is to value the additional work in accordance with the Conditions of Contract. A Daywork Schedule normally has the disadvantage of not being competitive among bidders, who may therefore load the rates assigned to some or all the items. If a Daywork Schedule is to be included at all in the bidding documents, it is preferable to include nominal quantities against the items most likely to be used, and to carry the sum of the extended amounts forward into the Bid Summary in order to make the basic Schedule of Daywork Rates competitive.*
- (ii) *The total amount assigned to such competitive daywork is normally 3–5 percent of the estimated base Contract Price and is regarded as a Provisional Sum for contingencies to be expended under the direction and at the discretion of the Engineer.]*

General

1. Reference should be made to Sub-Clause 13.5 of the General Conditions. Work shall not be executed on a daywork basis except by written order of the Engineer. Bidders shall enter basic rates for daywork items in the Schedules, which rates shall apply to any quantity of daywork ordered by the Engineer. Nominal quantities have been indicated against each item of daywork, and the extended total for Daywork shall be carried forward as a Provisional Sum to the Summary Total Bid Amount. Unless otherwise adjusted, payments for daywork shall be subject to price adjustment in accordance with the provisions in the Conditions of Contract.

Daywork Labour

2. In calculating payments due to the Contractor for the execution of daywork, the hours for labour will be reckoned from the time of arrival of the labour at the job site to execute the particular item of daywork to the time of return to the original place of departure, but excluding meal breaks and rest periods. Only the time of classes of labour directly doing work ordered by the Engineer and for which they are competent to perform will be measured. The time of gangers (charge hands) actually doing work with the gangs will also be measured but not the time of foremen or other supervisory personnel.
3. The Contractor shall be entitled to payment in respect of the total time that labour is employed on daywork, calculated at the basic rates entered by the Contractor in the **Schedule of Daywork Rates: 1. Labour**, together with an additional percentage payment on basic rates representing the Contractor's profit, overheads, etc., as described below:
 - (a) The basic rates for labour shall cover all direct costs to the Contractor, including (but not limited to) the amount of wages paid to such labour, transportation time, overtime, subsistence allowances, and any sums paid to or on behalf of such labour for social benefits in accordance with the law. The basic rates will be payable in local currency only.

- (b) The additional percentage payment to be quoted by the bidder and applied to costs incurred under (a) above shall be deemed to cover the Contractor's profit, overheads, superintendence, liabilities, and insurances and allowances to labour, timekeeping, and clerical and office work, the use of consumable stores, water, lighting, and power; the use and repair of stagings, scaffolding, workshops, and stores, portable power tools, manual plant, and tools; supervision by the Contractor's staff, foremen, and other supervisory personnel; and charges incidental to the foregoing. Payments under this item shall be made in the following currency proportions:
 - (i) foreign: ____ percent (to be stated by bidder).²⁷
 - (ii) local: ____ percent (to be stated by bidder).

[Note to the PE:

This method of indicating profit and overheads separately facilitates the addition of further items of daywork, if needed, the basic costs of which can then be checked more easily. An alternative is to make Daywork rates all-inclusive of the Contractor's overhead and profit, etc., in which case this paragraph and the relevant Daywork Schedule should be modified accordingly.]

Daywork Materials

4. The Contractor shall be entitled to payment in respect of materials used for daywork (except for materials for which the cost is included in the percentage addition to labour costs as detailed heretofore), at the basic rates entered by the Contractor in the **Schedule of Daywork Rates: 2. Materials**, together with an additional percentage payment on the basic rates to cover overhead charges and profit, as follows:
 - (a) the basic rates for materials shall be calculated on the basis of the invoiced price, freight, insurance, handling expenses, damage, losses, etc., and shall provide for delivery to store for stockpiling at the Site. The basic rates shall be stated in local currency, but payment will be made in the currency or currencies expended upon presentation of supporting documentation.
 - (b) the additional percentage payment shall be quoted by the bidder and applied to the equivalent local currency payments made under (a) above. Payments under this item will be made in the following currency proportions:
 - (i) foreign: ____ percent (to be stated by the bidder);²⁸
 - (ii) local: ____ percent (to be stated by the bidder);
 - (c) the cost of hauling materials for use on work ordered to be carried out as daywork from the store or stockpile on the Site to the place where it is to be used will be paid in accordance with the terms for Labour and Construction in this schedule.

²⁷ The bidder shall state the percentage in a common foreign currency equivalent required for payment and the exchange rates and official sources used.

²⁸ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

Daywork Contractor's Equipment

5. The Contractor shall be entitled to payments in respect of Contractor's Equipment already on Site and employed on daywork at the basic rental rates entered by the Contractor in the **Schedule of Daywork Rates: 3. Contractor's Equipment**. Said rates shall be deemed to include due and complete allowance for depreciation, interest, indemnity, and insurance, repairs, maintenance, supplies, fuel, lubricants, and other consumables, and all overhead, profit, and administrative costs related to the use of such equipment. *[Note to the PE: This is an example of wording to include overhead and profit, etc., in the daywork rates. A separate percentage addition could be used as for labour and materials.]* The cost of drivers, operators, and assistants will be paid for separately as described under the section on Daywork Labour. *[Note to the PE: An alternative, sometimes adopted for administrative convenience, is to include the cost of drivers, operators, and assistants in the basic rates for Contractor's Equipment. The last sentence of this paragraph 5 should then be modified accordingly.]*
6. In calculating the payment due to the Contractor for Contractor's Equipment employed on daywork, only the actual number of working hours will be eligible for payment, except that where applicable and agreed with the Engineer, the travelling time from the part of the Site where the Contractor's Equipment was located when ordered by the Engineer to be employed on daywork and the time for return journey thereto shall be included for payment.
7. The basic rental rates for Contractor's Equipment employed on daywork shall be stated in local currency, but payments to the Contractor will be made in currency proportions, as follows:
 - (a) foreign: _____ percent (to be stated by the bidder).²⁹
 - (b) local: _____ percent (to be stated by the bidder).

²⁹ The bidder shall state the percentage in a single foreign currency equivalent and the exchange rates and official sources used.

Schedule of Daywork Rates: 1. Labour

[illegible]

a. To be entered by the bidder.

Schedule of Daywork Rates: 2. Materials

[illegible]

a. To be entered by the bidder.

Summary of Specified Provisional Sums

<i>Bill no.</i>	<i>Item no.</i>	<i>Description</i>	<i>Amount</i>
1			
2			
4			
		[To be entered by the PE; Delete if not applicable:] provisional sums for additional ES outcomes.	
		[To be entered by the PE] provisional sums for the PE's portion of DARB costs	
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary (B), p. _____)			

Grand Summary

Contract Name:

Contract No.:

<i>General Summary</i>	<i>Page</i>	<i>Amount</i>
Bill No. 1:		
Bill No. 2:		
Bill No. 3:		
—etc.—		
<i>Subtotal of Bills</i>	(A)	
<i>Total for Daywork (Provisional Sum)*</i>	(B)	
<i>Specified Provisional Sums included in subtotal of billsⁱⁱ</i>	(C)	[sum]
<i>Total of Bills Plus Provisional Sums (A + B + C)ⁱ</i>	(D)	
<i>Add Provisional Sum for Contingency Allowance (if any)ⁱⁱ</i>	(E)	[sum]
<i>Bid Price (D + E) (Carried forward to Letter of Bid)</i>	(F)	

i) All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clauses 13.4 and 13.5 of the General Conditions except with respect to DARB Fees and Expenses for which Sub-Clause 13.4 of the Special Conditions of Contract – Part B shall apply.

ii) To be entered by the PE.

* For evaluation purposes, Provisional Sum, other than Daywork will be excluded

Technical Proposal

- **Site Organization**
- **Method Statement**
- **Mobilization Schedule**
- **Construction Schedule**
- **Environmental and Social Management Strategies and Implementation Plans**
- **Code of Conduct (ES)**
- **Equipment**
- **Key Personnel Schedule**
- **Others**

Site Organization

The Bidder shall include hereunder an organizational diagram indicating his proposed project organization, including Head Office management and possible sub-contractors.

The chart shall be sufficiently detailed to enable an assessment of the number of supervisory staff and foremen available on site to the extent that CVs requested under Personnel, such candidate shall be identifiable on the attached organization diagram

Method Statement

The Bidder is expected hereunder to detail clearly how he intends to execute the works and complete the entire work in accordance with the proposed programme

Mobilization Schedule

In accordance with the Special Conditions of Contract, Sub-Clause 4.1, the Contractor shall not carry out mobilization to Site unless the Engineer gives consent that appropriate measures are in place to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor's Personnel, submitted as part of the Bid and agreed as part of the Contract

Construction Schedule

The construction schedule shall include the following key milestones:

- *No-objection to the Contractor MSIPs, which collectively form the C-ESMP, in accordance with the Special Conditions of Contract - Special provisions Sub-Clause 4.1.*
- *Constitution of the DARB*

ES Management Strategies and Implementation Plans (ES-MSIP)

The Bidder shall submit comprehensive and concise Environmental and Social Management Strategies and Implementation Plans (ES-MSIP) as required by ITB 11.1 (h) of the Bid Data Sheet. These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Contractor, and its subcontractors.

In developing these strategies and plans, the Bidder shall have regard to the ES provisions of the contract including those as may be more fully described in the Works Requirements described in Section VIII.

Code of Conduct for Contractor's Personnel (ES) Form

Note to the Employer:

The following minimum requirements shall not be modified. The Employer may add additional requirements to address identified issues, informed by relevant environmental and social assessment.

The types of issues identified could include risks associated with: labor influx, spread of communicable diseases, Sexual Exploitation and Abuse (SEA), Sexual Harassment (SH) etc

Delete this Box prior to issuance of the bidding documents.

Note to the Bidder:

The minimum content of the Code of Conduct form as set out by the Employer shall not be substantially modified. However, the Bidder may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Bidder shall initial and submit the Code of Conduct form as part of its bid.

CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We are the Contractor, [enter name of Contractor]. We have signed a contract with [enter name of PE] for [enter description of the Works]. These Works will be carried out at [enter the Site and other locations where the Works will be carried out]. Our contract requires us to implement measures to address environmental and social risks related to the Works, including the risks of sexual exploitation, sexual abuse and sexual harassment.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the Works. It applies to all our staff, labourers and other employees at the Works Site or other places where the Works are being carried out. It also applies to the personnel of each subcontractor and

any other personnel assisting us in the execution of the Works. All such persons are referred to as **“Contractor’s Personnel”** and are subject to this Code of Conduct.

This Code of Conduct identifies the behavior that we require from all Contractor’s Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behavior will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

REQUIRED CONDUCT

Contractor’s Personnel shall:

1. carry out his/her duties competently and diligently;
2. comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor’s Personnel and any other person;
3. maintain a safe working environment including by:
 - a. ensuring that workplaces, machinery, equipment and processes under each person’s control are safe and without risk to health;
 - b. wearing required personal protective equipment;
 - c. using appropriate measures relating to chemical, physical and biological substances and agents; and
 - d. following applicable emergency operating procedures.
4. report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;
5. treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. not engage in Sexual Harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with other Contractor’s or PE’s Personnel;
7. not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;
8. not engage in Sexual Abuse, which means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;
9. not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;
10. complete relevant training courses that will be provided related to the environmental and social aspects of the Contract, including on health and safety matters, Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH);

11. report violations of this Code of Conduct; and
12. not retaliate against any person who reports violations of this Code of Conduct, whether to us or the PE, or who makes use of the grievance mechanism for Contractor's Personnel or the project's Grievance Redress Mechanism.

RAISING CONCERNS

If any person observes behavior that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact *[enter name of the Contractor's Social Expert with relevant experience in handling sexual exploitation, sexual abuse and sexual harassment cases, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters]* in writing at this address [] or by telephone at [] or in person at []; or
2. Call [] to reach the Contractor's hotline *(if any)* and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

Any violation of this Code of Conduct by Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact *[enter name of Contractor's contact person(s) with relevant experience]* requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Contractor:

Signature: _____

Date: (day month year): _____

ATTACHMENT 1: Behaviors constituting Sexual Exploitation and Abuse (SEA) and behaviors constituting Sexual Harassment (SH)

ATTACHMENT 1 TO THE CODE OF CONDUCT FORM**BEHAVIORS CONSTITUTING SEXUAL EXPLOITATION AND ABUSE (SEA) AND BEHAVIORS
CONSTITUTING SEXUAL HARASSMENT (SH)**

The following non-exhaustive list is intended to illustrate types of prohibited behaviors

(1) Examples of sexual exploitation and abuse include, but are not limited to:

- A Contractor's Personnel tells a member of the community that he/she can get them jobs related to the work site (e.g. cooking and cleaning) in exchange for sex.
- A Contractor's Personnel that is connecting electricity input to households says that he can connect women headed households to the grid in exchange for sex.
- A Contractor's Personnel rapes, or otherwise sexually assaults a member of the community.
- A Contractor's Personnel denies a person access to the Site unless he/she performs a sexual favor.
- A Contractor's Personnel tells a person applying for employment under the Contract that he/she will only hire him/her if he/she has sex with him/her.

(2) Examples of sexual harassment in a work context

- Contractor's Personnel comment on the appearance of another Contractor's Personnel (either positive or negative) and sexual desirability.
- When a Contractor's Personnel complains about comments made by another Contractor's Personnel on his/her appearance, the other Contractor's Personnel comment that he/she is "asking for it" because of how he/she dresses.
- Unwelcome touching of a Contractor's or PE's Personnel by another Contractor's Personnel.

A Contractor's Personnel tells another Contractor's Personnel that he/she will get him/her a salary raise, or promotion if he/she sends him/her naked photographs of himself/herself

Form EQU: Equipment

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

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

Omit the following information for equipment owned by the Bidder.

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

Personnel

Form PER -1

Contractor's Representative and Key Personnel Schedule

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

Contractor' Representative and Key Personnel

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

	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
4.	Title of position: <i>[Social Specialist]</i>	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
5.	Title of position: Sexual Exploitation, Abuse and Harassment Expert <i>[Where a Project SEA risks are assessed to be substantial or high, Key Personnel shall include an expert with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases]</i>	
	Name of candidate	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
6.	Title of position: <i>[insert title]</i>	
	Name of candidate	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

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

Name of Bidder

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

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

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

Declaration

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

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

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

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

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

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

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Bidder:

Signature: _____

Date: (day month year): _____

Bidders Qualification following Prequalification

The Bidder shall update the information given during the corresponding prequalification exercise to demonstrate that he continues to meet the criteria used at the time of prequalification regarding

- (a) Eligibility
- (b) Pending Litigation
- (c) Environmental and Social Performance Declaration
- (d) Financial Situation

For this purpose, the Bidder shall use the relevant forms included in this Section.

Form ELI -1.1

Bidder Information Form

Date: _____

ICB No. and title: _____

Page _____ of _____ pages

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> In case of Government-owned enterprise or institution, in accordance with ITB 4.5 documents establishing: <ul style="list-style-type: none"> • Legal and financial autonomy • Operation under commercial law • Establishing that the Bidder is not dependent agency of the PE
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI -1.2

Bidder's JV Information Form

(to be completed for each member of Bidder's JV)

Date: _____

ICB No. and title: _____

Page _____ of _____ pages

Bidder's JV name:

JV member's name:

JV member's country of registration:

JV member's year of constitution:

JV member's legal address in country of constitution:

JV member's authorized representative information

Name: _____

Address: _____

Telephone/Fax numbers: _____

E-mail address: _____

1. Attached are copies of original documents of

- ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3.
- ☐ In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5.

2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form CON – 2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Bidder's Name: _____

Date: _____

JV Member Name _____

ICB No. and title: _____

Page _____ of _____ pages

Non-Performed Contracts in accordance with Section IV, Evaluation Criteria and Qualifications			
<input type="checkbox"/> Contract non-performance did not occur since 1 st January <i>[insert year]</i> specified in Section IV, Evaluation Criteria and Qualifications, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 st January <i>[insert year]</i> specified in Section IV, Evaluation Criteria and Qualifications, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
		Contract Identification: Name of PE: Address of PE: Reason(s) for nonperformance:	
Pending Litigation, in accordance with Section IV, Evaluation Criteria and Qualifications			
<input type="checkbox"/> No pending litigation in accordance with Section IV, Evaluation Criteria and Qualifications, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section IV, Evaluation Criteria and Qualifications, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount
		Contract Identification: _____ Name of PE: _____ Address of PE: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	

Form CON – 3

Environmental and Social (ES) Performance Declaration

[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractors]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Specialized Subcontractor's Name: *[insert full name]*

ICB No. and title: *[insert ICB number and title]*

Page *[insert page number]* of *[insert total number]* pages

Environmental and Social (ES) Performance Declaration in accordance with Section IV, Qualification Criteria, and Requirements of the Prequalification document			
<input type="checkbox"/> No suspension or termination of contract: A PE has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental and Social (ES) performance since the date specified in Section IV, Qualification Criteria, and Requirements, Sub-Factor 2.5.			
<input type="checkbox"/> Declaration of suspension or termination of contract: The following contract(s) has/have been suspended or terminated and/or Performance Security called by a PE(s) for reasons related to Environmental and Social (ES) performance since the date specified in Section IV, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s) e.g. gender-based violence; sexual exploitation or sexual abuse breaches]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

...	...	<i>[list all applicable contracts]</i>	...
Performance Security called by a PE(s) for reasons related to ES performance			
Year	Contract Identification		Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[e.g. gender-based violence; sexual exploitation or sexual abuse breaches]</i>		<i>[insert amount]</i>

Form FIN – 3.1**Financial Situation and Performance**

Bidder's Name: _____

Date: _____

JV Member Name _____

ICB No. and title: _____

Page _____ of _____ pages

1. Financial data

Type of Financial information in (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate, SSP equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

2. Sources of Finance

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

No.	Source of finance	Amount (SSP equivalent)
1		
2		
3		

2. Financial documents

The Bidder and its parties shall provide copies of financial statements for _____ years pursuant Section IV, Evaluation and Qualifications Criteria, Sub-factor 3.2. The financial statements shall:

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

☐ Attached are copies of financial statements³⁰ for the _____ years required above; and complying with the requirements

³⁰ If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

Form FIN - 3.2

Average Annual Construction Turnover

Bidder's Name: _____
 Date: _____
 JV Member Name _____
 ICB No. and title: _____
 Page _____ of _____ pages

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

* See Section IV, Evaluation and Qualification Criteria, Sub-Factor 3.2.

Bidders Qualification without prequalification

To establish its qualifications to perform the contract in accordance with Section IV (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

Form ELI -1.1**Bidder Information Form**

Date: _____

ICB No. and title: _____

Page _____ of _____ pages

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1. <input type="checkbox"/> In case of Government-owned enterprise or institution, in accordance with ITB 4.5 documents establishing: <ul style="list-style-type: none"> • Legal and financial autonomy • Operation under commercial law • Establishing that the Bidder is not dependent agency of the PE
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI -1.2**Bidder's JV Information Form**
(to be completed for each member of Bidder's JV)

Date: _____
ICB No. and title: _____
Page _____ of _____ pages

Bidder's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 4.3. <input type="checkbox"/> In case of a Government-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and absence of dependent status, in accordance with ITB 4.5. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form CON – 2**Historical Contract Non-Performance, Pending Litigation
and Litigation History**

Bidder's Name: _____

Date: _____

JV Member's Name _____

ICB No. and title: _____

Page _____ of _____ pages

Non-Performed Contracts in accordance with Section IV, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 st January <i>[insert year]</i> specified in Section IV, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 st January <i>[insert year]</i> specified in Section IV, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending Litigation, in accordance with Section IV, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section IV, Qualification Criteria and Requirements, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section IV, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), SSP Equivalent (exchange rate)
		Contract Identification: _____ Name of PE: _____ Address of PE: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
<input type="checkbox"/> No pending litigation in accordance with Section IV, Evaluation and Qualification Criteria, Sub-Factor 2.3. <input type="checkbox"/> Pending litigation in accordance with Section IV, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), SSP Equivalent (exchange rate)
		Contract Identification: Name of PE: Address of PE: Matter in dispute: Party who initiated the dispute: Status of dispute:	

Form CON – 3

Environmental and Social (ES) Performance Declaration

[The following table shall be filled in for the Bidder, each member of a Joint Venture and each Specialized Subcontractor]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's or Specialized Subcontractor's Name: *[insert full name]*

ICB No. and title: *[insert ICB number and title]*

Page *[insert page number]* **of** *[insert total number]* **pages**

Environmental and Social (ES) Performance Declaration in accordance with Section IV, Qualification Criteria, and Requirements			
<input type="checkbox"/> No suspension or termination of contract: A PE has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental and Social (ES) performance since the date specified in Section IV, Qualification Criteria, and Requirements, Sub-Factor 2.5.			
<input type="checkbox"/> Declaration of suspension or termination of contract: The following contract(s) has/have been suspended or terminated and/or Performance Security called by a PE(s) for reasons related to Environmental and Social (ES) performance since the date specified in Section IV, Qualification Criteria, and Requirements, Sub-Factor 2.5. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

...	...	<i>[list all applicable contracts]</i>	...
Performance Security called by a PE(s) for reasons related to ES performance			
Year	Contract Identification		Total Contract Amount (current value, currency, exchange rate and SSP equivalent)
<i>[insert year]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of PE: <i>[insert full name]</i> Address of PE: <i>[insert street/city/country]</i> Reason(s) for calling of performance security: <i>[indicate main reason(s)]</i>		<i>[insert amount]</i>

Form FIN – 3.1:

Financial Situation and Performance

Bidder's Name: _____
 Date: _____
 JV Member's Name _____
 ICB No. and title: _____
 Page _____ of _____ pages

1. Financial data

Type of Financial information in (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, SSP equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITB 15 for the exchange rate

2. Sources of Finance

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

No.	Source of finance	Amount (SSP equivalent)
1		
2		
3		

2. Financial documents

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

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

☐ Attached are copies of financial statements³¹ for the _____ years required above; and complying with the requirements

³¹ If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

Form FIN – 3.2:**Average Annual Construction Turnover**

Bidder's Name: _____

Date: _____

JV Member's Name _____

ICB No. and title: _____

Page _____ of _____ pages

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

* See Section IV, Evaluation and Qualification Criteria, Sub-Factor 3.2.

Form FIN – 3.3:**Financial Resources**

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

Financial Resources		
No.	Source of financing	Amount (SSP equivalent)
1		
2		
3		

Form FIN – 3.4:**Current Contract Commitments / Works in Progress**

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

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

Form EXP - 4.1**General Construction Experience**

Bidder's Name: _____

Date: _____

JV Member's Name _____

ICB No. and title: _____

Page _____ of _____ pages

Starting Year	Ending Year	Contract Identification	Role of Bidder
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Bidder: _____ Amount of contract: _____ Name of Employer: _____ Address: _____	

Form EXP - 4.2(a)**Specific Construction and Contract Management Experience**

Bidder's Name: _____

Date: _____

JV Member's Name _____

ICB No. and title: _____

Page _____ of _____ pages

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount			SSP	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Employer's Name:				
Address:				
Telephone/fax number				
E-mail:				

Form EXP - 4.2(a) (cont.)
Specific Construction and Contract Management Experience
(cont.)

Similar Contract No.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section IV:	
1. Amount	
2. Physical size of required works items	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	

Form EXP - 4.2(b)**Construction Experience in Key Activities**

Bidder's Name: _____

Date: _____

Bidder's JV Member Name: _____

Sub-contractor's Name³² (as per ITB 34.2 and 34.3): _____

ICB No. and title: _____

Page _____ of _____ pages

All Sub-contractors for key activities must complete the information in this form as per ITB 34.2 and 34.3 and Section IV, Qualification Criteria and Requirements, Sub-Factor 4.2.

1. Key Activity No One: _____

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount			SSP	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				

³² If applicable

	Information
Employer's Name:	
Address:	
Telephone/fax number	
E-mail:	

2. Activity No. Two

3.

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section IV:	

Form EXP - 4.2 (c)**Specific Experience in Managing ES aspects**

[The following table shall be filled in for contracts performed by the Bidder, and each member of a Joint Venture]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

ICB No. and title: *[insert ICB number and title]*

Page *[insert page number]* of *[insert total number]* pages

1. Key Requirement no 1 in accordance with 4.2 (c): _____

Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Subcontractor <input type="checkbox"/>
Total Contract Amount			SSP	
Details of relevant experience				

2. Key Requirement no 2 in accordance with 4.2 (c): _____

3. Key Requirement no 3 in accordance with 4.2 (c): _____

4. ...

Form of Bid Security

(Demand Guarantee)

Beneficiary: _____

Invitation for Bids No: _____

Date: _____

BID GUARANTEE No.: _____

Guarantor: _____

We have been informed that _____ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

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

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

- (a) has withdrawn its Bid prior to the Bid validity expiry date set forth in the Applicant's Letter of Bid, or any extended date provided by the Applicant; or
- (b) having been notified of the acceptance of its Bid by the Beneficiary prior to the expiry date of the Bid Validity or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security and, if required, the Environmental and Social(ES) Performance Security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee will expire: (a) if the Applicant is the successful bidder, upon our receipt of copies of the contract agreement signed by the Applicant and the performance security and, if required, the Environmental and Social(ES) Performance Security, issued to the Beneficiary in relation to such contract agreement; or (b) if the Applicant is not the successful bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the bidding process; or (ii) twenty-eight days after the expiry date of the Bid Validity.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

[signature(s)]

Form of Bid-Securing Declaration

Date: _____

Bid No.: _____

Alternative No.: _____

To:

We, the undersigned, declare that:

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

We accept that we will automatically be suspended from being eligible for bidding in any contract with the entity that invited Bids for the period of time of _____ starting on _____, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid prior to the expiry date of the bid validity specified in the Letter of Bid or any extended date provided by us; or
- (b) having been notified of the acceptance of our Bid by the PE prior to the expiry date the bid validity in the Letter of Bid or any extended date provided by us, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security and, if required, the Environmental and Social(ES) Performance Security, in accordance with the ITB.

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

Name of the Bidder* _____

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

Title of the person signing the Bid _____

Signature of the person named above _____

Date signed _____ day of _____, _____

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

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

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

Section V. Eligible Countries

Eligibility for the Provision of Goods, Works and Non Consulting Services

In reference to ITB 4.7 and 5.1, for the information of the Bidders, at the present time firms, goods and services from the following countries are excluded from this bidding process:

Under ITB 4.7(a) and 5.1: *[insert a list of the countries to apply the restriction or state "none"]*

Under ITB 4.7(b) and 5.1: *[insert a list of the countries to apply the restriction or state "none"]*

Section VI. Corrupt and Fraudulent Practices

UNDERTAKING BY BIDDER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

Each Bidder must submit a statement, as part of the bid documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the tendering company and, where relevant, of its subsidiary in the Republic of South Sudan. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

MEMORANDUM (Format 1)

This company _____ *[name of company]* places importance on competitive tendering taking place on a basis that is free, fair, competitive and not open to abuse. It is pleased to confirm that it will not offer or facilitate, directly or indirectly, any improper inducement or reward to any public officer their relatives or business associates, in connection with its bid, or in the subsequent performance of the contract if it is successful.

This company has an Anti-Bribery Policy/Code of Conduct and a Compliance Program which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects, or contract including agents, consultants, consortium partners, sub- contractors and suppliers. Copies of our Anti-Bribery Policy/Code of Conduct and Compliance Program are attached³³.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Address: _____

³³Signing of this memorandum is not sufficient if it is not accompanied by the Anti-bribery Policy/Code of Conduct and Compliance programme of the Bidder. For bids submitted by the JVCA each member must submit its Anti-bribery Policy/Code of Conduct and Compliance programme

MEMORANDUM (Format 2)

This company _____ *[name of company]* has issued, for the purposes of this tender, a Compliance Program copy attached³⁴ - which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

³⁴*Signing of this memorandum is not sufficient if it is not accompanied by the Anti-bribery Policy/Code of Conduct and Compliance programme of the Bidder. For bids submitted by the JVCA each member must submit its Anti-bribery Policy/Code of Conduct and Compliance programme*

PART 2 –WORKS REQUIREMENTS

Section VIII. Works Requirements

Contents

Scope of Works	122
Specification	122
Environmental and Social (ES) requirements.....	123
Drawings	126
Supplementary Information	131

Scope of Works

The PE should in this section give a precise description what is the scope of the works to be executed, important milestones like sectional completion. In addition, if applicable it should give subcontracting requirements for portions of works. PE should also give the background to the assignment and estimated quantities of major works.

However detailed the scope of work, it is important that it is written in a clear and unambiguous way to avoid misinterpretation and potential disputes further down the line. It should not duplicate information set out elsewhere in the contract documentation(such as specifications or drawings) as this can create confusing discrepancies.

Specification

A set of precise and clear Specifications is a prerequisite for Bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their tenders. In the context of international competitive Bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done shall the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of tenders be ensured, and the subsequent task of Tender evaluation facilitated. The Specifications should require that all goods and materials to be incorporated in the Works be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of Specifications from previous similar projects in the same country are useful in to prepare Specifications. The use of metric units is encouraged by the World Bank. Most Specifications are normally written specially by the Employer or Project Manager to suit the Contract Works in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in these documents.

There are considerable advantages in standardizing General Specifications for repetitive Works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular Works Contract. Deletions or addendums should then adapt the General Specifications to apply them to the particular Works.

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the Specifications of standards for goods, materials, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of the Borrower's country or other standards, the Specifications should state that goods, materials, and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, shall also be acceptable. To that effect, the following sample clause may be inserted in the Special Conditions or Specifications.

“Equivalency of Standards and Codes

Wherever reference is made in the Contract to specific standards and codes to be met by the goods and materials to be furnished, and work performed or tested, the provisions of the latest current edition or revision of the relevant standards and codes in effect shall apply, unless otherwise expressly stated in the Contract. Where such standards and codes are national, or relate to a particular country or region, other authoritative standards that ensure a substantially equal or higher quality than the standards and codes specified shall be accepted subject to the Project Manager’s prior review and written consent. Differences between the standards specified and the proposed alternative standards shall be fully described in writing by the Contractor and submitted to the Project Manager at least 28 days prior to the date when the Contractor desires the Project Manager’s consent. In the event the Project Manager determines that such proposed deviations do not ensure substantially equal or higher quality, the Contractor shall comply with the standards specified in the documents.”

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

Environmental and Social (ES) requirements

[The PE’s team preparing the ES requirements should include a suitably qualified Environmental and Social specialist/s.

The PE should attach or refer to the PE’s environmental and social policies that will apply to the project. If these are not available, the PE should use the following guidance in drafting an appropriate policy for the Works.

SUGGESTED CONTENT FOR AN ENVIRONMENTAL AND SOCIAL POLICY (STATEMENT)

The Works’ policy goal, as a minimum, should be stated to integrate environmental protection, occupational and community health and safety, gender, equality, child protection, vulnerable people (including those with disabilities), Sexual Harassment (SH), gender-based violence, Sexual Exploitation and Abuse (SEA), HIV/AIDS awareness and prevention and wide stakeholder engagement in the planning processes, programs, and activities of the parties involved in the execution of the Works. The issues to be included may also address: climate adaptation, land acquisition and resettlement, indigenous people, etc. The policy should set the frame for monitoring, continuously improving processes and activities and for reporting on the compliance with the policy.

The policy shall include a statement that, for the purpose of the policy and/or code of conduct, the term “child” / “children” means any person(s) under the age of 18 years.

The policy should, as far as possible, be brief but specific and explicit, and measurable, to enable reporting of compliance with the policy in accordance with the Special Conditions of Contract- Special Provisions- Sub-Clause 4.20.

As a minimum, the policy is set out to the commitments to:

- 1. apply good international industry practice to protect and conserve the natural environment and to minimize unavoidable impacts;*
- 2. provide and maintain a healthy and safe work environment and safe systems of work;*

3. *protect the health and safety of local communities and users, with particular concern for those who are disabled, elderly, or otherwise vulnerable;*
4. *be intolerant of, and enforce disciplinary measures for illegal activities. To be intolerant of, and enforce disciplinary measures for gender-based violence, inhumane treatment, sexual exploitation, rape, sexual abuse, sexual activity with children, and sexual harassment;*
5. *incorporate a gender perspective and provide an enabling environment where women and men have equal opportunity to participate in, and benefit from, planning and development of the Works;*
6. *work co-operatively, including with end users of the Works, relevant authorities, contractors and local communities;*
7. *engage with and listen to affected persons and organizations and be responsive to their concerns, with special regard for vulnerable, disabled, and elderly people;*
8. *provide an environment that fosters the exchange of information, views, and ideas that is free of any fear of retaliation, and protects whistleblowers;*
9. *minimize the risk of communicable diseases and to mitigate the effects of communicable diseases associated with the execution of the Works.*

The policy should be signed by the senior manager of the PE. This is to signal the intent that it will be applied rigorously.

MINIMUM CONTENT OF ES REQUIREMENTS

In preparing detailed specifications for ES requirements, the specialists should refer to and consider:

- *project reports e.g. ESIA/ESMP*
- *consent/permit conditions*
- *relevant international conventions or treaties etc., national legal and/or regulatory requirements and standards.*
- *relevant international standards e.g. WHO Guidelines for Safe Use of Pesticides*
- *grievance redress mechanism including types of grievances to be recorded and how to protect confidentiality e.g. of those reporting allegations of SEA.*
- *SEA prevention and management.*

The detail specification for ES should, to the extent possible, describe the intended outcome rather than the method of working.

The ES requirements should be prepared in manner that does not conflict with the relevant General Conditions of Contract (and the corresponding Special Conditions of Contract if any) and other parts of the specifications.

PAYMENT FOR ES REQUIREMENTS

The PE's ES and procurement specialists should consider how the Contractor will cost the delivery of the ES requirements. In the majority of cases, the payment for the delivery of ES requirements shall be a subsidiary obligation of the Contractor covered under the prices quoted for other Bill of Quantity items. For example, normally the cost of implementing work place safe systems of work, including the

measures necessary for ensuring traffic and road safety, shall be covered by the Bidder's rates for the relevant works. Alternatively, provisional sums could be set aside for discrete activities for example for HIV counselling service, and, SEA and SH awareness and sensitization or to encourage the contractor to deliver additional ES outcomes beyond the requirement of the Contract.

Contractor's Representative and Key Personnel

[Note: Insert in the following table, the minimum key specialists required to execute the contract, taking into account the nature, scope, complexity and risks of the contract.]

[Where a Project SEA risks are assessed to be substantial or high, the PE shall include a Sexual Exploitation, Abuse and Harassment expert(s).]

Contractor's Representative and Key Personnel

Item No.	Position/specialization	Relevant academic qualifications	Minimum years of relevant work experience
1	Contractor's Representative		
2	<i>[Environmental]</i>	<i>[e.g. degree in relevant environmental subject]</i>	<i>[e.g. [years] working on road contracts in similar work environments]</i>
3	<i>[Health and Safety]</i>		
4	<i>[Social]</i>		
5	Sexual Exploitation, Abuse and Harassment <i>[Where a Project SEA risks are assessed to be substantial or high, Key Personnel shall include an expert(s) with relevant experience in addressing sexual exploitation, sexual abuse and sexual harassment cases]</i>		<i>[e.g. 5 years of monitoring and managing risks related to gender-based violence, out of which 3 years of relevant experience in addressing issues related to sexual exploitation, sexual abuse and sexual harassment]</i>
6	<i>modify as appropriate</i>		

Drawings

Insert here a list of Drawings. The actual Drawings, including site plans, should be attached to this section or annexed in a separate folder.

Drawings should be properly numbered and named to make them easier to understand by the bidders.

Bill of Quantities

Notes for Preparing a Bill of Quantities

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

Objectives

The objectives of the Bill of Quantities are

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

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

Content

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

- (a) Preamble;*
- (b) Work Items (grouped into parts);*
- (c) Daywork Schedule; and*
- (d) Summary.*

Preamble

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

Rock

Where excavation, boring, or driving is included in the Works, a comprehensive definition of rock (always a contentious topic in contract administration), should be provided in the Technical Specification and this definition should be used for the purposes of measurement and payment.

Work Items

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

Quantities

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage, or waste. Quantities should be rounded up or down where appropriate and spurious accuracy should be avoided.

Units of Measurement

The following units of measurement and abbreviations are recommended for use.

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

Ground and Excavation Levels

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

Daywork Schedule

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the PE of the realism of rates quoted by the bidders, the Daywork Schedule should normally comprise:

- (a) *a list of the various classes of labour, materials, and Contractor's Equipment for which basic Daywork rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the Contractor will be paid for work executed on a Daywork basis; and*
- (b) *a percentage to be entered by the bidder against each basic Daywork Subtotal amount for labour, materials, and Plant representing the Contractor's profit, overheads, supervision, and other charges.*

Provisional Quantities and Sums

Provision for quantity contingencies in any particular item or class of work with a high expectation of quantity overrun should be made by entering specific "Provisional Quantities" or "Provisional Items" in the Bill of Quantities, and not by increasing the quantities for that item or class of work beyond those of the work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a "Provisional Sum" in the Summary of the Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a "Provisional Sum" in the Summary of the Bill of Quantities. The inclusion of such Provisional Sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

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

The provisional sums shall also include an estimated amount to cover the PE's portion (50%) of DARB's fees and expenses.

Summary

The Summary should contain a tabulation of the separate parts of the Bill of Quantities carried forward, with provisional sums for Daywork, for physical (quantity) contingencies, and for price contingencies (upward price adjustment) where applicable, including DARB fees and expenses.

Sample Bill of Quantities

A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid in the priced Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional Plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.
5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.
7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clauses 13.4 and 13.5 of the General Conditions except with respect to DARB Fees and Expenses for which no instruction will be required from the Engineer.
8. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used]*.³⁵

B. Work Items

1. The Bill of Quantities usually contains the following part Bills, which have been grouped according to the nature or timing of the work:

Bill No. 1—General Items;

³⁵ The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the *Standard Method of Measurement* of the U.K. Institution of Civil Engineers.

Bill No. 2—Earthworks;
Bill No. 3—Culverts and Bridges;
Bill No. 4—etc., as required;
Daywork Schedule; and
Summary Bill of Quantities.

2. If BDS-ITB 15.1 (a) applies, Bidders shall price the Bill of Quantities in local currency only and shall indicate in the Appendix to Bid the percentage expected for payment in foreign currency or currencies. If BDS-ITB 15.1 (b) applies Bidders shall price the Bill of Quantities in the applicable currency or currencies.

[Note to the PE: The tables in BOQ must be prepared in accordance with the currency alternative retained in BDS – ITB 15.1.]

Supplementary Information

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section IX. General Conditions of Contract (GCC)

TABLE OF CONTENTS

1.	General Provisions	137
1.1	Definitions.....	137
1.2	Interpretation	141
1.3	Communications	141
1.4	Law and Language.....	142
1.5	Priority of Documents.....	142
1.6	Contract Agreement	142
1.7	Conditions Precedent to contract effectiveness.....	142
1.8	Assignment	143
1.9	Care and Supply of Documents.....	143
1.10	Delayed Drawings or Instructions.....	143
1.11	Employer's Use of Contractor's Documents.....	144
1.12	Contractor's Use of Employer's Documents.....	144
1.13	Confidential Details.....	145
1.14	Compliance with Laws	145
1.15	Joint and Several Liability.....	145
1.16	Instructions, Inspections and Audits.....	145
2.	The Employer	146
2.1	Right of Access to the Site	146
2.2	Permits, Licenses or Approvals	146
2.3	Employer's Personnel	147
2.4	Employer's Claims.....	147
3.	The Project Manager	148
3.1	Project Manager's Duties and Authority	148
3.2.	The Project Manager's.....	149
3.3	Delegation by the Project Manager.....	149
3.4	Instructions of the Project Manager.....	150
3.5	Replacement of the Project Manager.....	151
3.6	Determinations	151
4.	The Contractor.....	151
4.1	Contractor's General Obligations	151
4.2	Performance Security and ES Performance Security.....	153
4.3	Contractor's Representative.....	154
4.4	Subcon-tractors.....	155
4.5	Assignment of Benefit of Subcontract.....	155
4.6	Co-operation	155
4.7	Setting Out	156
4.8	Safety Procedures	156
4.9	Quality Assurance	157
4.10	Site Data.....	157
4.11	Sufficiency of the Accepted Contract Amount	158
4.12	Unforeseeable Physical Conditions.....	158
4.13	Rights of Way and Facilities	159
4.14	Avoidance of Interference	159
4.15	Access Route	160
4.16	Transport of Goods.....	160
4.17	Contractor's Equipment.....	160
4.18	Protection of the Environ-ment.....	161

4.19	Electricity, Water and Gas	161
4.20	Employer's Equipment and Free-Issue Materials	161
4.21	Progress Reports	162
4.22	Security of the Site	164
4.23	Contractor's Operations on Site	164
4.24	Fossils	165
5.	Nominated Subcontractors	165
5.1	Definition of "nominated Subcon-tractor"	165
5.2	Objection to Nomination	165
5.3	Payments to nominated Subcon-tractors	166
5.4	Evidence of Payments	166
6.	Staff and Labour	167
6.1	Engagement of Staff and Labour	167
6.2	Rates of Wages and Conditions of Labour	167
6.3	Persons in the Service of Employer	167
6.4	Labour Laws	167
6.5	Working Hours	167
6.6	Facilities for Staff and Labour	168
6.7	Health and Safety	168
6.8	Contractor's Superintendence	170
6.9	Contractor's Personnel	170
6.10	Records of Contractor's Personnel and Equipment	171
6.11	Disorderly Conduct	171
6.12	Key Personnel	171
6.13	Foreign Personnel	172
6.14	Supply of Foodstuffs and Water	172
6.15	Measures against Insect and Pest Nuisance	172
6.16	Alcoholic Liquor or Drugs	172
6.17	Arms and Ammunition	173
6.18	Festivals and Religious Customs	173
6.19	Funeral Arrangements	173
6.20	Prohibition of Forced or Compulsory Labour	173
6.21	Prohibition of Harmful Child Labour	173
6.22	Employment Records of Workers	174
6.23	Workers' Organisations	174
6.24	Non-Discrimination and Equal Opportunity	174
6.25	Contractor's Personnel Grievance Mechanism	175
6.26	Training of Contractor's Personnel	175
7.	Plant, Materials and Workmanship	175
7.1	Manner of Execution	176
7.2	Samples	176
7.3	Inspection	176
7.4	Testing	176
7.5	Rejection	177
7.6	Remedial Work	178
7.7	Ownership of Plant and Materials	178
7.8	Royalties	178
8.	Commencement, Delays and Suspension	179
8.1	Commencement of Works	179
8.2	Time for Completion	179
8.3	Programme	179
8.4	Extension of Time for Completion	180
8.5	Delays Caused by Authorities	181
8.6	Rate of Progress	181
8.7	Delay Damages	182

8.8	Suspension of Work	182
8.9	Consequences of Suspension	182
8.10	Payment for Plant and Materials in Event of Suspension.....	183
8.11	Prolonged Suspension.....	183
8.12	Resumption of Work.....	183
9.	Tests on Completion	183
9.1	Contractor's Obligations	183
9.2	Delayed Tests.....	184
9.3	Retesting	184
9.4	Failure to Pass Tests on Completion	184
10.	Employer's Taking Over	185
10.1	Taking Over of the Works and Sections.....	185
10.2	Taking Over of Parts of the Works.....	185
10.3	Interference with Tests on Completion	186
10.4	Surfaces Requiring Reinstatement	187
11.	Defects Liability.....	187
11.1	Completion of Outstanding Work and Remedying Defects.....	187
11.2	Cost of Remedying Defects	187
11.3	Extension of Defects Notification Period	188
11.4	Failure to Remedy Defects.....	188
11.5	Removal of Defective Work	189
11.6	Further Tests	189
11.7	Right of Access after Taking Over	189
11.8	Contractor to Search.....	189
11.9	Performance Certificate.....	189
11.10	Unfulfilled Obligations	189
11.11	Clearance of Site	190
12.	Measurement and Evaluation	190
12.1	Works to be Measured	190
12.2	Method of Measurement	191
12.3	Evaluation	191
12.4	Omissions.....	192
13.	Variations and Adjustments.....	192
13.1	Right to Vary	192
13.2	Value Engineering	193
13.3	Variation Procedure.....	194
13.4	Payment in Applicable Currencies	194
13.5	Provisional Sums	194
13.6	Daywork	195
13.7	Adjustments for Changes in Legislation.....	196
13.8	Adjustments for Changes in Cost.....	196
14.	Contract Price and Payment	198
14.1	The Contract Price.....	198
14.2	Advance Payment	198
14.3	Application for Interim Payment Certificates	200
14.4	Schedule of Payments.....	200
14.5	Plant and Materials intended for the Works	201
14.6	Issue of Interim Payment Certificates.....	202
14.7	Payment.....	204
14.8	Delayed Payment.....	204
14.9	Payment of Retention Money.....	205
14.10	Statement at Completion	206
14.11	Application for Final Payment Certificate.....	206
14.12	Discharge	207
14.13	Issue of Final Payment Certificate	207

14.14	Cessation of Employer's Liability	207
14.15	Currencies of Payment.....	208
15.	Termination by Employer	208
15.1	Notice to Correct.....	208
15.2	Termination by Employer	209
15.3	Valuation at Date of Termination	210
15.4	Payment after Termination	210
15.5	Employer's Entitlement to Termination for Convenience	211
15.6	Corrupt or Fraudulent Practices	211
16.	Suspension and Termination by Contractor	211
16.1	Contractor's Entitlement to Suspend Work.....	211
16.2	Termination by Contractor	212
16.3	Cessation of Work and Removal of Contractor's Equipment	213
16.4	Payment on Termination	213
17.	Risk and Responsibility.....	214
17.1	Indemnities	214
17.2	Contractor's Care of the Works	214
17.3	Employer's Risks	215
17.4	Consequences of Employer's Risks.....	215
17.5	Intellectual and Industrial Property Rights	216
17.6	Limitation of Liability	217
17.7	Use of Employer's Accommodation/Facilities	217
18.	Insurance.....	217
18.1	General Requirements for Insurances	217
18.2	Insurance for Works and Contractor's Equipment	219
18.3	Insurance against Injury to Persons and Damage to Property	220
18.4	Insurance for Contractor's Personnel	221
19.	Force Majeure.....	221
19.1	Definition of Force Majeure.....	222
19.2	Notice of Force Majeure	222
19.3	Duty to Minimise Delay	222
19.4	Consequences of Force Majeure	223
19.5	Force Majeure Affecting Subcontractor	223
19.6	Optional Termination, Payment and Release	223
19.7	Release from Performance	224
20.	Claims, Disputes and Arbitration	224
20.1	Contractor's Claims.....	224
20.2	Appointment of the Dispute Avoidance and Resolution Board	226
20.3	Failure to Agree on the Composition of the DARB Board.....	227
20.4	Obtaining Dispute Avoidance and Resolution Board's Decision	227
20.5	Amicable Settlement	228
20.6	Arbitration.....	228
20.7	Failure to Comply with DARB's Decision.....	229
20.8	Expiry of Dispute Avoidance and Resolution Board's Appointment	229

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Special Conditions of Contract and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

“Arbitrator” is the person appointed by the Appointing Authority specified in the Special Conditions of Contract (SCC) to resolve contractual disputes, and as provided for in **Sub-Clause 20.6** hereunder.

“Contract” means the Contract Agreement, the Letter of Acceptance, the **Form of Tender**, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

“Form of Agreement” means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

“Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

“Form of Tender” means the document entitled Form of Tender which was completed by the Contractor and includes the signed offer to the Employer for the Works.

“Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

“Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

“Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the **Form of Tender**, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

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

“Bill of Quantities” and **“Daywork Schedule”** and **“Schedule of Payment Currencies”** mean the documents so named (if any) which are comprised in the Schedules.

1.1.2 Parties and Persons

“Party” means the Employer or the Contractor, as the context requires.

“Employer” means the person named as employer in the **SCC** and the legal successors in title to this person.

“Contractor” means the person(s) named as contractor in the **Form of Tender** accepted by the Employer and the legal successors in title to this person(s).

“Project Manager” means the person appointed by the Employer to act as the Project Manager for the purposes of the Contract and named in the **SCC**, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.5.

“Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3, who acts on behalf of the Contractor.

“Employer’s Personnel” means the Project Manager, the assistants referred to in Sub-Clause 3.2 and all other staff, labour and other employees of the Project Manager and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Project Manager, as Employer’s Personnel.

“Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

“Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

“DARB” one or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Avoidance and Resolution Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Avoidance and Resolution Board]

1.1.3 Dates, Tests, Periods and Completion

“Base Date” means the date 28 days prior to the latest date for submission of the Tender.

“Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works].

“Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the **SCC** (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

“Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.

“Taking-Over Certificate” means a certificate issued under Clause 10 [Employer’s Taking Over].

“Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Employer.

“Defects Notification Period” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over twelve months except if otherwise stated in the **SCC** (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].

“Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

“day” means a calendar day and **“year”** means 365 days

1.1.4 Money and Payments **“Accepted Contract Amount”** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

“Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.

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

“Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

“Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].

“Foreign Currency” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

“Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.

“Local Currency” means the currency of the Country.

“Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].

“Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

“Retention Money” means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

“Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate

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

Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

"Goods" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

"Materials" means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

"Permanent Works" means the permanent works to be executed by the Contractor under the Contract.

"Plant" means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.

"Section" means a part of the Works specified in the **SCC** as a Section (if any).

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

"Works" mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6 Other Definitions

"Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

"Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

"Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

"Force Majeure" is defined in Clause 19 [Force Majeure].

"Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

"Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

"Site" means the places where the Permanent Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

"Unforeseeable" means not reasonably foreseeable by an experienced contractor by the Base Date.

"Variation" means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

“ES” means Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)). **“ES”** means Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH)).

“Sexual Exploitation and Abuse” “(SEA)” stands for the following:

Sexual Exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another;

Sexual Abuse is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions; and

“Sexual Harassment” “(SH)” is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Employer’s Personnel.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree,” “agreed” or “agreement” require the agreement to be record in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
- (e) the word “bid” is synonymous with “Tender”, and “bidder” with “Tenderer” and the words “Bid documents” with “Tendering documents”

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

1.3 Communications

1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

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

		1.3.2	Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Project Manager, a copy shall be sent to the Project Manager or the other Party, as the case may be.
1.4	Law and Language	1.4.1	The Contract shall be governed by the law of South Sudan or other jurisdiction stated in the SCC .
		1.4.2	The ruling language of the Contract shall be that stated in the SCC .
		1.4.3	The language for communications shall be that stated in the SCC . If no language is stated there, the language for communications shall be the ruling language of the Contract.
1.5	Priority of Documents	1.5.1	The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence: <ul style="list-style-type: none"> (a) Form of Agreement, (b) Letter of Acceptance, (c) Minutes of Negotiations (d) Form of Tender, (e) Special Conditions of Contract, (f) General Conditions of Contract (g) Specification, (h) Drawings, (i) Bills of Quantities, and (j) Schedules and any other documents forming part of the Contract.
		1.5.2	If an ambiguity or discrepancy is found in the documents, the Project Manager shall issue any necessary clarification or instruction.
1.6	Contract Agreement	1.6.1	The Contract Agreement shall be based upon the form annexed to the SCC. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.
		1.6.2	If the Contractor comprises a JV, the authorised representative of the JV shall sign the Contract Agreement in accordance with Sub-Clause 1.15 (Joint and Several Liability)."
1.7	Conditions Precedent to contract effectiveness	1.7.1	The Contract shall come into effect after the Contractor fulfilling the conditions precedent stated in the SCC.
		1.7.2	If the Conditions precedent stipulated on Sub-Clause 1.7.1 is not met by the date specified in the SCC this contract shall not come into effect;

- 1.7.3 If the Employer is satisfied that each of the conditions precedent in this contract has been satisfied (except to the extent waved by him, but subject to such conditions as he shall impose in respect of such waiver) he shall promptly issue to the contractor a certificate of Contract commencement, which shall confirm the start date
- 1.8 Assignment**
- 1.8.1 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:
- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
 - (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.
- 1.9 Care and Supply of Documents**
- 1.9.1 The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
- 1.9.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Project Manager six copies of each of the Contractor's Documents.
- 1.9.3 The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
- 1.9.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.
- 1.10 Delayed Drawings or Instructions**
- 1.10.1 The Contractor shall give notice to the Project Manager whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.
- 1.10.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Project Manager to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a

further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [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.

1.10.3 After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.

1.10.4 However, if and to the extent that the Project Manager's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit

1.11 Employer's Use of Contractor's Documents

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

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

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

1.12 Contractor's Use of Employer's Documents

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

Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

- | | | |
|--|--------|--|
| 1.13 Confidential Details | 1.13.1 | The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation. |
| | 1.13.2 | Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects. |
| 1.14 Compliance with Laws | 1.14.1 | <p>The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the SCC:</p> <ul style="list-style-type: none"> (a) the Employer shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence. |
| 1.15 Joint and Several Liability | 1.15.1 | <p>If the Contractor constitutes (under applicable Laws) a joint venture or other unincorporated grouping of two or more persons:</p> <ul style="list-style-type: none"> (a) these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract; (b) these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and (c) the Contractor shall not alter its composition or legal status without the prior consent of the Employer. |
| 1.16 Instructions, Inspections and Audits | 1.16.1 | The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the site is located. |

- 1.16.2 The Contractor shall permit the Government of the United Republic of South Sudan to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by auditors appointed by the Government of United Republic of South Sudan if so required by the Government of the Republic of South Sudan

2. The Employer

- | | | | |
|-----|---------------------------------------|-------|--|
| 2.1 | Right of Access to the Site | 2.1.1 | The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the SCC . The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. |
| | | 2.1.2 | If no such time is stated in the SCC , the Employer shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme]. |
| | | 2.1.3 | If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to: <ul style="list-style-type: none"> (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 profit, which shall be included in the Contract Price. |
| | | 2.1.4 | After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters. |
| | | 2.1.5 | However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit. |
| 2.2 | Permits, Licenses or Approvals | 2.2.1 | The Employer shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly: <ul style="list-style-type: none"> (a) copies of the Laws South Sudan which are relevant to the Contract but are not readily available, and (b) any permits, licences or approvals required by the Laws of South Sudan: |

- (i) which the Contractor is required to obtain under Sub-Clause 1.14 [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

- 2.3 Employer's Personnel**

2.3.1 The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

 - (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
 - (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

- 2.4 Employer's Claims**

2.4.1 If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Project Manager shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material], or for other services requested by the Contractor.

2.4.2 The notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

2.4.3 The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Project Manager shall then proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

2.4.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3. The Project Manager

3.1 Project Manager's Duties and Authority

- 3.1.1 The Employer shall appoint the Project Manager who shall carry out the duties assigned to him in the Contract. The Project Manager's staff shall include suitably qualified architects, engineers, quantity surveyors and other professionals who are competent to carry out these duties.
- 3.1.2 The Project Manager shall have no authority to amend the Contract.
- 3.1.3 The Project Manager may exercise the authority attributable to the Project Manager as specified in or necessarily to be implied from the Contract. If the Project Manager is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the **SCC**. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Project Manager.
- 3.1.4 However, whenever the Project Manager 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.
- 3.1.5 Except as otherwise stated in these Conditions:
- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Project Manager shall be deemed to act for the Employer;
 - (b) the Project Manager has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract; and
 - (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Project Manager (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.
 - (d) Any act by the Project Manager in response to a Contractor's request except otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.
- 3.1.6 The Project Manager shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:
- (a) Sub-Clause 4.12: Agreeing or determining an extension of time and/or additional cost.

- (b) Sub-Clause 13.1: Instructing a Variation, except in an emergency situation as determined by the Project Manager.
- (c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies
- (e) Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Project Manager, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Project Manager, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Project Manager. The Project Manager shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

**3.2.The Project
Manager's
Representative**

- 3.2.1 The Project Manager may appoint a Project Manager's Representative and delegate to him/her in accordance with Sub-Clause 3.3 [Delegation by the Project Manager] the authority necessary to act on the Project Manager's behalf at the Site, except to replace the Project Manager's Representative.
- 3.2.2 The Project Manager's Representative (if appointed) shall comply with sub-paragraphs (a) and (b) of Sub-Clause 3.1 [Project Manager's Appointment, Duties and Authority] and shall be based at the Site for the whole time that the Works are being executed at the Site. If the Project Managers' Representative is to be temporarily absent from the Site during the execution of the Works, an equivalently qualified, experienced and competent replacement shall be appointed by the Project Manager, and the Contractor shall be given a Notice of such replacement
- 3.2.3 The Project Manager shall obtain the consent of the Employer before appointing or replacing an Project Managers' Representative

**3.3 Delegation by
the Project
Manager**

- 3.3.1 The Project Manager 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 Project Manager, 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.

3.3.2 However, unless otherwise agreed by both Parties, the Project Manager shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.6 [Determinations].

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

3.3.4 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 Project Manager. However:

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Manager 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 Project Manager, who shall promptly confirm, reverse or vary the determination or instruction.

3.4 Instructions of the Project Manager

3.4.1 The Project Manager may issue to the Contractor (at any time) instructions and additional or modified Drawings 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 Project Manager, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

3.4.2 The Contractor shall comply with the instructions given by the Project Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Project Manager or a delegated assistant:

- (a) gives an oral instruction,
- (b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Project Manager or delegated assistant (as the case may be).

- | | | |
|---|-------|---|
| 3.5 Replacement of the Project Manager | 3.5.1 | Notwithstanding Sub-Clause 3.1, if the Employer intends to replace the Project Manager, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Project Manager. If the Contractor considers the intended replacement Project Manager to be unsuitable, he has the right to raise reasonable objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection. |
| 3.6 Determinations | 3.6.1 | Whenever these Conditions provide that the Project Manager shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Project Manager shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Project Manager shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances. |
| | 3.6.2 | The Project Manager shall give notice to both Parties of each agreement or determination, with supporting particulars within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration]. |
| 4. The Contractor | | |
| 4.1 Contractor's General Obligations | 4.1.1 | The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Project Manager's instructions, and shall remedy any defects in the Works. |
| | 4.1.2 | The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. |
| | 4.1.3 | All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible country. |
| | 4.1.4 | 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. |

- 4.1.5 The Contractor shall, whenever required by the Project Manager, 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 Project Manager.
- 4.1.6 The Contractor shall not carry out mobilization to Site (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits) unless the Project Manager gives a Notice of No-objection to the Contractor, a Notice that shall not be unreasonably delayed, to the measures the Contractor proposes to manage the environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor's Personnel submitted as part of the Tender and agreed as part of the Contract.
- 4.1.7 The Contractor shall submit, to the Project Manager for Review and approval, any additional MSIPs as are necessary to manage the ES risks and impacts of ongoing Works (e.g. excavation, earth works, bridge and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). These MSIPs collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Project Manager for Review
- 4.1.8 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the **SCC**:
- (a) the Contractor shall submit to the Project Manager 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 Project Manager 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 Project Manager the “as-built” documents and, if applicable, 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 to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Project Manager

4.2 Performance Security and ES Performance Security

- 4.2.1 The Contractor shall obtain (at its cost) a Performance Security for proper performance and, if applicable, an Environmental and Social (ES) Performance Security for compliance with the Contractor’s ES obligations, in the amounts stated in the SCC and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer. If amounts are not stated in the SCC, this Sub-Clause shall not apply.”
- 4.2.2 The Contractor shall deliver the Performance Security and, if applicable, an ES Performance Security to the Employer within 28 days after receiving the Letter of Acceptance and shall send a copy to the Project Manager. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to **the SCC**, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer. The ES Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to **the SCC**, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer
- 4.2.3 The Contractor shall ensure that the Performance Security and, if applicable, an ES 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 and, if applicable, an ES 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 and, if applicable, an ES Performance Security until the Works have been completed and any defects have been remedied.
- 4.2.4 The Employer shall not make a claim under the Performance Security and, if applicable, an ES Performance Security, except for amounts to which the Employer is entitled under the Contract. The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security and, if applicable, an ES Performance Security to the extent to which the Employer was not entitled to make the claim.

- 4.2.5 The Employer shall return the Performance Security and, if applicable, an ES Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.
- 4.2.6 Without limitation to the provisions of the rest of this Sub-Clause, whenever the Project Manager determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation or as a result of cumulative Variations amounting to more than 10 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Project Manager's request promptly increase, or may decrease, as the case may be, the value of the Performance Security and, if applicable, an ES Performance Security in that currency by an equal percentage.
- 4.3 Contractor's Representative**
- 4.3.1 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.
- 4.3.2 Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Project Manager 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 in terms of Sub-Clause 6.9 [Contractor's Personnel], 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.
- 4.3.3 The Contractor shall not, without the prior consent of the Project Manager, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 4.3.4 The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Project Manager's prior consent, and the Project Manager shall be notified accordingly.
- 4.3.5 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 [Instructions of the Project Manager].
- 4.3.6 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Project Manager has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

- 4.3.7 The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Project Manager.
- 4.4 Subcon-tractors**
- 4.4.1 The Contractor shall not subcontract the whole of the Works.
- 4.4.2 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 **SCC**:
- (a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
 - (b) the prior consent of the Project Manager shall be obtained to other proposed Subcontractors;
 - (c) the Contractor shall give the Project Manager 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; and
 - (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].
- 4.4.3 The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.13 [Confidential Details] apply equally to each Subcontractor.
- 4.4.4 Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.
- 4.5 Assignment of Benefit of Subcontract**
- 4.5.1 If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Project Manager, 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**
- 4.6.1 The Contractor shall, as specified in the Contract or as instructed by the Project Manager, 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.
- 4.6.2 Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.
- 4.6.3 If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Project Manager in the time and manner stated in the Specification.
- 4.7 Setting Out**
- 4.7.1 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 Project Manager. 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.
- 4.7.2 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.
- 4.7.3 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 Project Manager and shall be entitled subject to Sub-Clause 20.1 [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 profit, which shall be included in the Contract Price.
- 4.7.4 After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [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**
- 4.8.1 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 [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 Quality Assurance**
- 4.9.1 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 Project Manager shall be entitled to audit any aspect of the system.
- 4.9.2 Details of all procedures and compliance documents shall be submitted to the Project Manager for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Project Manager, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.
- 4.9.3 Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.
- 4.10 Site Data**
- 4.10.1 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.
- 4.10.2 To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):
- (a) the form and nature of the Site, including sub-surface conditions,

- (b) the hydrological and climatic conditions,
 - (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
 - (d) the Laws, procedures and labour practices of the Country, and
 - (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services
- 4.11 Sufficiency of the Accepted Contract Amount**
- 4.11.1 The Contractor shall be deemed to:
- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
 - (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].
- 4.11.2 Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the 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.
- 4.12 Unforeseeable Physical Conditions**
- 4.12.1 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.
- 4.12.2 If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Project Manager as soon as practicable.
- This notice shall describe the physical conditions, so that they can be inspected by the Project Manager, 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 Project Manager may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.
- 4.12.3 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 notice under Sub-Clause 20.1 [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.
- 4.12.4 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.
- 4.12.5 However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Project Manager 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 Tender. If and to the extent that these more favourable conditions were encountered, the Project Manager may proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.
- 4.12.6 The Project Manager shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence
- 4.13 Rights of Way and Facilities**
 - 4.13.1 Unless otherwise specified in the Contract, the Employer shall provide access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Work
- 4.14 Avoidance of Interference**
 - 4.14.1 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.
 - 4.14.2 The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and

expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

- | | | |
|------------------------------------|--------|---|
| 4.15 Access Route | 4.15.1 | The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. 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. |
| | 4.15.2 | <p>Except as otherwise stated in these Conditions:</p> <ul style="list-style-type: none"> (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 |
| 4.16 Transport of Goods | 4.16.1 | <p>Unless otherwise stated in the SCC:</p> <ul style="list-style-type: none"> (a) the Contractor shall give the Project Manager not less than 21 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. |
| 4.17 Contractor's Equipment | 4.17.1 | The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from |

the Site any major items of Contractor's Equipment without the consent of the Project Manager. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.18 Protection of the Environ-ment

- 4.18.1 The Contractor shall take all necessary measures to:
- (a) protect the environment (both on and off the Site); and
 - (b) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/ or activities.

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

- 4.18.2 In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor's operations, the Contractor shall agree with the Project Manager the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Project Manager.

4.19 Electricity, Water and Gas

- 4.19.1 The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.

- 4.19.2 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

- 4.19.3 The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Project Manager in accordance with Sub-Clause 2.4 [Employer's Claims] and Sub-Clause 3.6 [Determinations]. The Contractor shall pay these amounts to the Employer.

4.20 Employer's Equipment and Free-Issue Materials

- 4.20.1 The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

- (a) the Employer shall be responsible for the Employer's Equipment, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

- 4.20.2 The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Project Manager in accordance with Sub-Clause 2.4 [Employer's Claims] and Sub-Clause 3.6 [Determinations]. The Contractor shall pay these amounts to the Employer.
- 4.20.3 The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Project Manager of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.
- 4.20.4 After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection
- 4.21 Progress Reports**
- 4.21.1 Unless otherwise stated in the **SCC**, monthly progress reports shall be prepared by the Contractor and submitted to the Project Manager in six 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.
- 4.21.2 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.
- 4.21.3 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 [Nominated Subcontractors]),
 - (b) photographs showing the status of manufacture and of progress on the Site;
 - (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,

- (ii) Contractor's inspections,
- (iii) tests, and
- (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [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 20.1 [Contractor's Claims];
- (g) the Environmental and Social (ES) metrics set out in **Appendix A**; 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.

4.21.4 In addition to the reporting requirement of sub-paragraph (g) of Sub-Clause 4.21.3 the Contractor shall inform the Project Manager immediately of any allegation, incident or accident, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel or Contractor's Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident should be included in the information.

4.21.5 The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Project Manager of any such incident or accident on the Subcontractors' or suppliers' premises relating to the Works which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel or Contractor's, its Subcontractors' and suppliers' personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Project Manager within the timeframe agreed with the Project Manager.

The Contractor shall require its Subcontractors and suppliers (other than Subcontractors) to immediately notify the Contractor of any incidents or accidents referred to in this Sub-Clause

- | | | |
|---|---------------|--|
| 4.22 Security of the Site | 4.22.1 | <p>The Contractor shall be responsible for the security of the Site, and:</p> <ul style="list-style-type: none"> (a) for keeping unauthorized persons off the Site; (b) authorized persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and to any other personnel identified as authorized personnel (including the Employer's other contractors on the Site), by a Notice from the Employer or the Engineer to the Contractor. |
| | 4.22.2 | <p>Subject to Sub-Clause 4.1 [Contractor's General Obligations], the Contractor shall submit for the Project Manager's No-objection a security management plan that sets out the security arrangements for the Site.</p> |
| | 4.22.3 | <p>The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor's Personnel, Employer's Personnel and affected communities; and (iii) require the security personnel to act within the applicable Laws and any requirements set out in the Specification.</p> |
| | 4.22.4 | <p>The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.</p> |
| | 4.22.5 | <p>In making security arrangements, the Contractor shall also comply with any additional requirements stated in the Specification."</p> |
| 4.23 Contractor's Operations on Site | 4.23.1 | <p>The Contractor shall confine his operations to the Site, and to any additional areas as which may be obtained by the Contractor and agreed by the Project Manager as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.</p> |
| | 4.23.2 | <p>During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.</p> |
| | 4.23.3 | <p>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</p> |

- Goods as are required for the Contractor to fulfil obligations under the Contract.
- 4.24 Fossils**
- 4.24.1 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.
- 4.24.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Project Manager, 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 Project Manager and shall be entitled subject to Sub-Clause 20.1 [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.
- 4.24.3 After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.
- 5. Nominated Subcontractors**
- 5.1 Definition of "nominated Subcontractor"**
- 5.1.1 In the Contract, "nominated Subcontractor" means a Subcontractor:
- (a) who is stated in the Contract as being a nominated Subcontractor, or
 - (b) whom the Project Manager, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].
- 5.2 Objection to Nomination**
- 5.2.1 The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Project Manager as soon as practicable, with supporting particulars.
- 5.2.2 An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing 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 nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence

or misuse of Goods by the nominated Subcontractor, his agents and employees; or

- (c) the nominated Subcontractor does not accept to enter into a subcontract which specifies 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;
 - (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; and
 - (iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

5.3.1 The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Project Manager certifies to be due in accordance with the subcontract.

5.3.2 These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

5.4 Evidence of Payments

5.4.1 Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Project Manager 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.

5.4.2 Unless the Contractor:

- (a) submits this reasonable evidence to the Project Manager, or
- (b) satisfies the Project Manager in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and submits to the Project Manager 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. Staff and Labour

6.1 Engagement of Staff and Labour	6.1.1	Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing.
	6.1.2	The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within South Sudan.
6.2 Rates of Wages and Conditions of Labour	6.2.1	The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
	6.2.2	The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances, and any benefits as are subject to taxes under the Laws of South Sudan for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.
6.3 Persons in the Service of Employer	6.3.1	The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.
6.4 Labour Laws	6.4.1	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.
	6.4.2	The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.
6.5 Working Hours	6.5.1	No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the SCC , unless:
	(a)	otherwise stated in the Contract,
	(b)	the Project Manager 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 Project Manager.

- | | | |
|--|-------|---|
| | 6.5.2 | The Contractor shall provide the Contractor's Personnel annual holiday and sick, maternity and family leave, as required by applicable Laws or as stated in the Specification. |
| 6.6 Facilities for Staff and Labour | 6.6.1 | Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification |
| | 6.6.2 | 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. |
| 6.7 Health and Safety | 6.7.1 | 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 medical staff, first aid facilities, sick bay and ambulance service 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. |
| | 6.7.2 | Subject to Sub-Clause 6.7.1, the Contractor shall submit to the Project Manager for Review a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works |
| | 6.7.3 | <p>The health and safety manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws. The health and safety manual shall set out all the health and safety requirements under the Contract, which shall include at a minimum:</p> <ul style="list-style-type: none"> a) the procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents; b) details of the training to be provided, records to be kept; c) the procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed |

to prevent their occurrence, extreme weather or lack of early warning);

- d) the measures to be taken to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases,
- e) the measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (SBDS), such as HIV virus) and non-communicable diseases associated with the execution of the Works, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labour;
- f) the policies and procedures on the management and quality of accommodation and welfare facilities if such accommodation and welfare facilities are provided by the Contractor in accordance with Sub-Clause 6.6.1; and
- g) any other requirements stated in the Specification.

6.7.4 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and

6.7.5 The Contractor shall send, to the Project Manager, 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 Project Manager may reasonably require.

6.7.6 The Contractor shall conduct a COVID-19 and an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the COVID-19 and HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

6.7.7 The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Sub-Contractors and Consultants' employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the

- immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labour.
- 6.7.8 The Contractor shall include in the program to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation program for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose
- 6.8 Contractor's Superintendence**
- 6.8.1 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.
- 6.8.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.
- 6.9 Contractor's Personnel**
- 6.9.1 The Contractor's Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations.
- 6.9.2 The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative and Key Personnel (if any), who:
- (a) persists in any misconduct or lack of care;
 - (b) carries out duties incompetently or negligently;
 - (c) fails to comply with any provision of the Contract;
 - (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;

- (e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works;
 - (f) has been recruited from the Employer's Personnel in breach of Sub-Clause 6.3 [Persons in the Service of Employer];
 - (g) undertakes behavior which breaches the Code of Conduct for Contractor's Personnel (ES).
- 6.9.3** If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience. In the case of replacement of the Contractor's Representative, Sub-Clause 4.3 [Contractor's Representative] shall apply. In the case of replacement of Key Personnel (if any), Sub-Clause 6.12 [Key Personnel] shall apply.
- Subject to the requirements in Sub-Clause 4.3 [Contractor's Representative] and 6.12 [Key Personnel], and notwithstanding any requirement from the Engineer to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Works are being carried out, any Contractor's Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above."
- 6.10 Records of Contractor's Personnel and Equipment**
- 6.10.1** The Contractor shall submit, to the Project Manager, 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 Project Manager, 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.
- 6.11 Disorderly Conduct**
- 6.11.1** 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.
- 6.12 Key Personnel**
- 6.12.1** The Contractor shall, if specified in the Employer's Requirements, appoint the natural persons named in the Tender to the positions of Key Personnel, If not so named, or if an appointed person fails to act in the relevant position of Key Personnel, the Contractor shall submit to the Project Manager for consent the name and particulars of another person the Contractor proposes to appoint to such position. If consent is withheld or If the Project Manager does not respond within 14 days after receiving any such submission, by giving a Notice stating his/her objection to the appointment of such person (or replacement) with reasons, the Project Manager shall be deemed to have given his/her consent.
- 6.12.2** The Contractor shall not, without the Project Manager's prior consent, revoke the appointment of any of the Key Personnel or appoint a replacement (unless the person is unable to act as

			a result of death, illness, disability or resignation, in which case the appointment shall be deemed to have been revoked with immediate effect and the appointment of a replacement shall be treated as a temporary appointment until the Project Manager gives his/her consent to this replacement, or another replacement is appointed, under this Sub-Clause).
		6.12.3	All Key Personnel shall be based at the Site (or, where Works are being executed off the Site, at the location of the Works) for the whole time that the Works are being executed. If any of the Key Personnel is to be temporarily absent during execution of the Works, a suitable replacement shall be temporarily appointed, subject to the Project Manager's prior consent.
		6.12.4	All Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If any of the Key Personnel are not fluent in this language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Project Manager.
6.13	Foreign Personnel	6.13.1	The Contractor may bring in to the country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor's personnel.
		6.13.2	The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in South Sudan of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.
6.14	Supply of Foodstuffs and Water	6.14.1	The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.
		6.14.2	The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.
6.15	Measures against Insect and Pest Nuisance	6.15.1	The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.
6.16	Alcoholic Liquor or Drugs	6.16.1	The Contractor shall not, otherwise than in accordance with the Laws of South Sudan, import, sell, give barter or otherwise

			dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal thereto by Contractor's Personnel.
6.17	Arms and Ammunition	6.17.1	The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
6.18	Festivals and Religious Customs	6.18.1	The Contractor shall respect South Sudan's recognized festivals, days of rest and religious or other customs.
6.19	Funeral Arrangements	6.19.1	The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.
6.20	Prohibition of Forced or Compulsory Labour	6.20.1	The Contractor, including its Subcontractors, shall not employ or engage forced labour. Forced labour consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.
		6.20.2	No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.
6.21	Prohibition of Harmful Child Labour	6.21.1	The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the Laws of South Sudan specifies a higher age (the minimum age). The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
		6.21.2	The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Project Manager's consent. The Contractor shall be subject to regular monitoring by the Project Manager that includes monitoring of health, working conditions and hours of work.
		6.21.3	Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work: <ul style="list-style-type: none"> (a) with exposure to physical, psychological or sexual abuse;

			<ul style="list-style-type: none"> (b) underground, underwater, working at heights or in confined spaces; (c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads; (d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or (e) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.
6.22 Employment Records of Workers	6.22.1		The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Project Manager, and these records shall be available for inspection by Auditors during normal working hours. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].
6.23 Workers' Organisations	6.23.1		In accordance with South Sudan's labour laws which recognise workers' rights to form and to join workers' organisations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner.
	6.23.2		Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and collective bargaining or alternative mechanisms. Workers' organisations are expected to fairly represent the workers in the workforce
6.24 Non-Discrimination and Equal Opportunity	6.24.1		The Contractor shall not make decisions relating to the employment or treatment of Contractor's Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor's Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

- 6.24.2 Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with GCC 6.21).
- 6.25 Contractor's Personnel Grievance Mechanism**
- 6.25.1 The Contractor shall have a grievance mechanism for Contractor's Personnel, and where relevant the workers' organizations stated in GCC 6.23, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.
- 6.25.2 The Contractor's Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor's Personnel.
- 6.25.3 The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.
- 6.25.4 The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.
- 6.26 Training of Contractor's Personnel**
- 6.26.1 The Contractor shall provide appropriate training to relevant Contractor's Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA and SH, and health and safety training.
- As stated in the Specification or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor's Personnel to be trained on ES aspects of the Contract by the Employer's Personnel.
- The Contractor shall provide training on SEA and SH, including its prevention, to any of its personnel who has a role to supervise other Contractor's Personnel.

7. Plant, Materials and Workmanship

7.1 Manner of Execution	7.1.1	<p>The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:</p> <ul style="list-style-type: none"> (a) in the manner (if any) specified in the Contract, (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.
7.2 Samples	7.2.1	<p>The Contractor shall submit the following samples of Materials, and relevant information, to the Project Manager for consent prior to using the Materials in or for the Works:</p> <ul style="list-style-type: none"> (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 Project Manager as a Variation. <p>Each sample shall be labelled as to origin and intended use in the Works.</p>
7.3 Inspection	7.3.1	<p>The Employer's Personnel shall at all reasonable times:</p> <ul style="list-style-type: none"> (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.
	7.3.2	<p>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.</p>
	7.3.3	<p>The Contractor shall give notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Project Manager does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Project Manager, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.</p>
7.4 Testing	7.4.1	<p>This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).</p>
	7.4.2	<p>Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other</p>

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 Project Manager, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

7.4.3 The Project Manager may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

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

7.4.6 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 Project Manager and shall be entitled subject to Sub-Clause 20.1 [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 profit, which shall be included in the Contract Price.

7.4.7 After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.

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

7.5 Rejection

7.5.1 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 Project Manager 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.

- | | | |
|---|-------|---|
| | 7.5.2 | If the Project Manager 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. |
| 7.6 Remedial Work | 7.6.1 | <p>Notwithstanding any previous test or certification, the Project Manager may instruct the Contractor to:</p> <ul style="list-style-type: none"> (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. |
| | 7.6.2 | 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 subparagraph (c). |
| | 7.6.3 | 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. |
| 7.7 Ownership of Plant and Materials | 7.7.1 | <p>Except otherwise specified in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of South Sudan, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:</p> <ul style="list-style-type: none"> (a) when it is incorporated in the Works; (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension]. |
| 7.8 Royalties | 7.8.1 | <p>Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:</p> <ul style="list-style-type: none"> (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. Commencement, Delays and Suspension

- | | | |
|----------------------------------|-------|--|
| 8.1 Commencement of Works | 8.1.1 | <p>Except otherwise specified in the SCC, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Project Manager's instruction recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Contractor:</p> <ul style="list-style-type: none"> (a) except if otherwise specified in the SCC, possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.14.1 [Compliance with Laws] as required for the commencement of the Works; and (b) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor. <p>If the above said Project Manager's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].</p> |
| | 8.1.2 | <p>Subject to Sub-Clause 4.1.7 on the Management Strategies and Implementation Plans and the C-ESMP, Sub-Clause 6.7.2 on the health and safety manual and Sub-Clause 4.22.2 on the security management plan, 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</p> |
| 8.2 Time for Completion | 8.2.1 | <p>The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:</p> <ul style="list-style-type: none"> (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 | 8.3.1 | <p>The Contractor shall submit a detailed time programme to the Project Manager within 28 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:</p> <ul style="list-style-type: none"> (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 [Nominated Subcontractors]),
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

8.3.2 Unless the Project Manager, within 21 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.

8.3.3 The Contractor shall promptly give notice to the Project Manager 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 Project Manager 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].

8.3.4 If, at any time, the Project Manager 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 Project Manager in accordance with this Sub-Clause-

8.4 Extension of Time for Completion

8.4.1 The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking-Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,

- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
 - (c) exceptionally adverse climatic conditions,
 - (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
 - (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.
- 8.4.2 If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Project Manager in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Project Manager shall review previous determinations and may increase, but shall not decrease, the total extension of time.
- 8.5 Delays Caused by Authorities** 8.5.1 If the following conditions apply, namely:
- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in South Sudan,
 - (b) these authorities delay or disrupt the Contractor's work, and
 - (c) the delay or disruption was Unforeseeable,
- then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].
- 8.6 Rate of Progress** 8.6.1 If, at any time:
- (a) actual progress is too slow to complete within the Time for Completion, and/or
 - (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],
- other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Project Manager may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.
- 8.6.2 Unless the Project Manager 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 notice under Sub-Clause 2.4 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.
		8.6.3	Additional costs of revised methods, including acceleration measures, instructed by the Project Manager to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.
8.7	Delay Damages	8.7.1	If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall be subject to notice under Sub-Clause 2.4 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the SCC , which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the SCC .
		8.7.2	These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract
8.8	Suspension of Work	8.8.1	The Project Manager 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.
		8.8.2	The Project Manager 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	8.9.1	<p>If the Contractor suffers delay and/or incurs Cost from complying with the Project Manager's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <ul style="list-style-type: none"> (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.

- | | | |
|--|--------|---|
| | 8.9.2 | After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters. |
| | 8.9.3 | 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 | 8.10.1 | <p>The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:</p> <p>(a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and</p> <p>(b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Project Manager's instructions.</p> |
| 8.11 Prolonged Suspension | 8.11.1 | If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Project Manager's permission to proceed. If the Project Manager does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Project Manager, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor]. |
| 8.12 Resumption of Work | 8.12.1 | After the permission or instruction to proceed is given, the Contractor and the Project Manager 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 after receiving from the Project Manager an instruction to this effect under Clause 13 [Variations and Adjustments]. |

9. Tests on Completion

- | | | |
|-------------------------------------|-------|--|
| 9.1 Contractor's Obligations | 9.1.1 | The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations]. |
| | 9.1.2 | The Contractor shall give to the Project Manager 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 Project Manager shall instruct. |
| | 9.1.3 | In considering the results of the Tests on Completion, the Project Manager 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 Project Manager.
9.2	Delayed Tests	9.2.1	If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.
		9.2.2	If the Tests on Completion are being unduly delayed by the Contractor, the Project Manager may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Project Manager.
		9.2.3	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	9.3.1	If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Project Manager 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	9.4.1	<p>If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Project Manager shall be entitled to:</p> <ul style="list-style-type: none"> (a) order further repetition of Tests on Completion under Sub-Clause 9.3; (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or (c) issue a Taking-Over Certificate, if the Employer so requests.
		9.4.2	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 3.6 [Determinations].

10. Employer's Taking Over

10.1 Taking Over of the Works and Sections

- 10.1.1 Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.
- 10.1.2 The Contractor may apply by notice to the Project Manager 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.
- 10.1.3 The Project Manager 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.
- 10.1.4 If the Project Manager fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

- 10.2.1 The Project Manager may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.
- 10.2.2 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 Project Manager 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 Project Manager shall issue a Taking-Over Certificate for this part.

10.2.3 After the Project Manager 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.

10.2.4 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 Project Manager and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine this Cost and profit.

10.2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

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

10.3.2 The Project Manager 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 Project Manager 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.

10.3.3 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 Project Manager and shall be entitled subject to Sub-Clause 20.1 [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 profit, which shall be included in the Contract Price.

10.3.4 After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.

**10.4 Surfaces
Requiring
Reinstatement**

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

11. Defects Liability

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

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

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

11.1.2 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**

11.2.1 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.
	11.2.2	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	11.3.1	The Employer shall be entitled subject to Sub-Clause 2.4 [Employer's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of a damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.
	11.3.2	If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.
11.4 Failure to Remedy Defects	11.4.1	If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
	11.4.2	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): <ul style="list-style-type: none"> (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.4 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage; (b) require the Project Manager to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.6 [Determinations]; or (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and

			the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.
11.5 Removal of Defective Work	11.5.1		If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.
11.6 Further Tests	11.6.1		If the work of remedying of any defect or damage may affect the performance of the Works, the Project Manager 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.
	11.6.2		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 GCC 11.2 [Cost of Remedying Defects], for the cost of the remedial work.
11.7 Right of Access after Taking Over	11.7.1		Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.
11.8 Contractor to Search	11.8.1		The Contractor shall, if required by the Project Manager, search for the cause of any defect, under the direction of the Project Manager. 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 profit shall be agreed or determined by the Project Manager in accordance with Sub-Clause 3.6 [Determinations] and shall be included in the Contract Price.
11.9 Performance Certificate	11.9.1		Performance of the Contractor's obligations shall not be considered to have been completed until the Project Manager has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.
	11.9.2		The Project Manager 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.
	11.9.3		Only the Performance Certificate shall be deemed to constitute acceptance of the Works.
11.10 Unfulfilled Obligations	11.10.1		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.

- 11.11 Clearance of Site**
- 11.11.1 Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- 11.11.2 If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site
- 11.11.3 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. Measurement and Evaluation

- 12.1 Works to be Measured**
- 12.1.1 The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement at Completion], and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.
- Whenever the Project Manager 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 Project Manager in making the measurement, and
 - (b) supply any particulars requested by the Project Manager.
- 12.1.2 If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Project Manager shall be accepted as accurate.
- 12.1.3 Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Project Manager. The Contractor shall, as and when requested, attend to examine and agree the records with the Project Manager, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- 12.1.4 If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Project Manager of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Project Manager shall review the records and either

confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Project Manager within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

12.2.1 Except as otherwise stated in the Contract and notwithstanding local practice:

- (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 in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

12.3.1 Except as otherwise stated in the Contract, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [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.

12.3.2 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, specified for similar work.

12.3.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

12.3.4 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,
- (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,
- (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
- (iv) this item is not specified in the Contract as a “fixed rate item”;

or

(b)

- (i) the work is instructed under Clause 13 [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.

12.3.5 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 profit, taking account of any other relevant matters.

12.3.6 Until such time as an appropriate rate or price is agreed or determined, the Project Manager shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned Works commences.

12.4 Omissions

12.4.1 Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- (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 Project Manager accordingly, with supporting particulars. Upon receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. Variations and Adjustments

13.1 Right to Vary

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

13.1.2 The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Project Manager stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the instruction.

13.1.3 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 work, or
 - (f) changes to the sequence or timing of the execution of the Works.
- 13.1.4 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Project Manager instructs or approves a Variation.
- 13.2 Value Engineering**
- 13.2.1 The Contractor may, at any time, submit to the Project Manager a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.
- 13.2.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].
- 13.2.3 If a proposal, which is approved by the Project Manager, 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 Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [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	13.3.1	<p>If the Project Manager 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:</p> <ul style="list-style-type: none"> (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.
		13.3.2	The Project Manager 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.
		13.3.3	Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Project Manager to the Contractor, who shall acknowledge receipt.
		13.3.4	Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Project Manager instructs or approves otherwise in accordance with this Clause.
13.4	Payment in Applicable Currencies	13.4.1	If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.
13.5	Provisional Sums	13.5.1	<p>Each Provisional Sum shall only be used, in whole or in part, in accordance with the Project Manager'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 Project Manager shall have instructed. For each Provisional Sum, the Project Manager may instruct:</p> <ul style="list-style-type: none"> (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 **SCC** shall be applied.

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

13.5.3 The Provisional Sum shall be used to cover the Employer's share of the DARB members' fees and expenses, in accordance with Clause 20. No prior instruction of the Project Manager shall be required with respect to the work of the DARB. The Contractor shall submit the DARB members' invoices and satisfactory evidence of having paid 100% of such invoices as part of the substantiation of those Statements submitted under Sub-Clause 14.3 [Application for Interim Payment Certificates]

13.6 Daywork

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

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

13.6.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Project Manager 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.

13.6.4 One copy of each statement will, if correct, or when agreed, be signed by the Project Manager and returned to the Contractor.

The Contractor shall then submit priced statements of these resources to the Project Manager, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

13.7 Adjustments for Changes in Legislation

13.7.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of South Sudan (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

13.7.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [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.

13.7.3 After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.

13.7.4 Notwithstanding the foregoing, the Contractor shall not be entitled to such an extension of time if the same shall already have been taken into account in determining an extension and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8.

13.8 Adjustments for Changes in Cost

13.8.1 In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

13.8.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

13.8.3 The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which

the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

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

where:

“P_n” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “n”, this period being a month unless otherwise stated in the **SCC** ;

“a” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“b”, “c”, “d”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“L_n”, “E_n”, “M_n”, ... are the current cost indices or reference prices for period “n”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

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

- 13.8.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Project Manager. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.
- 13.8.5 In cases where the “currency of index” (stated in the table) is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of South Sudan, of this relevant currency on the above date for which the index is required to be applicable.
- 13.8.6 Until such time as each current cost index is available, the Project Manager shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

13.8.7 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.

13.8.8 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. Contract Price and Payment

14.1 The Contract Price

14.1.1 Unless otherwise stated in the **SCC**:

- (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 13.7 [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 [Measurement and Evaluation]; and
- (d) the Contractor shall submit to the Project Manager, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Project Manager may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.
- (e) Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

14.2 Advance Payment

14.2.1 The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, 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), and the applicable currencies and proportions, shall be as stated in the **SCC**.
- 14.2.2 Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the **SCC**, this Sub-Clause shall not apply.
- 14.2.3 The Project Manager shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its 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 and currencies equal to the advance payment. This guarantee shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the **SCC** or in another form approved by the Employer.
- 14.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall 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.
- 14.2.5 Unless stated otherwise in the **SCC**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Project Manager in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:.
- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent of the Accepted Contract Amount less Provisional Sums; and
 - (b) deductions shall be made at the amortisation rate stated in the **SCC** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 per cent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.
- 14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to

termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer] and Sub-Clause 19.6 [Optional Termination, Payment and Release], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

14.3.1

The Contractor shall submit a Statement in six copies to the Project Manager after the end of each month, in a form approved by the Project Manager, 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 4.21 [Progress Reports].

14.3.2

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

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the **SCC** 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 **SCC**;
- (d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its 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 14.5 [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 20 [Claims, Disputes and Arbitration]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

14.4.1

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
- (b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Project Manager may proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

14.4.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

14.5.1 If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

14.5.2 If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the **SCC**, this Sub-Clause shall not apply.

The Project Manager shall determine and certify each addition if the following conditions are satisfied:

- (a) the Contractor has:
 - (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

- (b) the relevant Plant and Materials:
 - (i) are those listed in the Schedules for payment when shipped,

- (ii) have been shipped to South Sudan, en route to the Site, in accordance with the Contract; and
- (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Project Manager together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

- (i) are those listed in the Schedules for payment when delivered to the Site, and
- (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

14.5.3 The additional amount to be certified shall be the equivalent of eighty percent of the Project Manager's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

14.5.4 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificates

14.6.1 No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Project Manager shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Project Manager fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Project Manager on the Statement.

14.6.2 However, prior to issuing the Taking-Over Certificate for the Works, the Project Manager 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 **SCC**. In this event, the Project Manager shall give notice to the Contractor accordingly.

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

- (a) if anything 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 Project Manager, the value of this work or obligation may be withheld until the work or obligation has been performed.
- (c) if the Contractor was, or is, failing to perform any ES obligations or work under the Contract, the value of this work or obligation, as determined by the Engineer, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Project Manager, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:
 - (i) failure to comply with any ES obligations or work described in the Works' Requirements which may include: working outside site boundaries, excessive dust, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archaeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;
 - (ii) failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ES issues, or anticipated risks or impacts;
 - (iii) failure to implement the C-ESMP e.g. failure to provide required training or sensitization;
 - (iv) failing to have appropriate consents/permits prior to undertaking Works or related activities;
 - (v) failure to submit ES report/s, or failure to submit such reports in a timely manner;
 - (vi) failure to implement remediation as instructed by the Project Manager within the specified

timeframe (e.g. remediation addressing non-compliance/s)."

14.6.4 The Project Manager 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 Project Manager's acceptance, approval, consent or satisfaction.

14.7 Payment

14.7.1 The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Project Manager receives the Statement and supporting documents or, at a time when the funds or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor, within 14 days after such statement is submitted. Any discrepancy shall be rectified in the next payment to the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate or, at a time when the Government's fund (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement, within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2.

14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

14.8.2 Unless otherwise stated in the **SCC**, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

- 14.8.3 The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.
- 14.9 Payment of Retention Money**
- 14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Project Manager for payment to the Contractor.
- 14.9.2 If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.
- 14.9.3 Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Project Manager for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.
- 14.9.4 However, if any work remains to be executed under Clause 11 [Defects Liability], the Project Manager shall be entitled to withhold certification of the estimated cost of this work until it has been executed.
- 14.9.5 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].
- 14.9.6 Unless otherwise stated in the **SCC**, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Special Conditions of Contract or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security and, if applicable, an ES Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release after the latest of the expiry dates of the Defects Notification Periods. The Employer shall return the

		guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.
	14.9.7	If the Performance Security and, if applicable, an ES Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under them when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security and, if applicable, an ES Performance Security, when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security and, if applicable, an ES Performance Security
14.10 Statement at Completion	14.10.1	<p>Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Project Manager six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:</p> <ul style="list-style-type: none"> (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works, (b) any further sums which the Contractor considers to be due, and (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.
	14.10.2	The Project Manager shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].
14.11 Application for Final Payment Certificate	14.11.1	<p>Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Project Manager, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Project Manager:</p> <ul style="list-style-type: none"> (a) the value of all work done in accordance with the Contract, and (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.
	14.11.2	If the Project Manager disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Project Manager may reasonably require within 28 days from receipt of the said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Project Manager the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

- 14.11.3 However if, following discussions between the Project Manager and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Project Manager shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Avoidance and Resolution Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Project Manager) a Final Statement.
- 14.12 Discharge** 14.12.1 When submitting the Final Statement, the Contractor shall submit a 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.
- 14.13 Issue of Final Payment Certificate** 14.13.1 Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Project Manager shall deliver to the Employer and to the Contractor, the Final Payment Certificate which shall state:
- (a) the amount which he fairly determines 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.
- 14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Project Manager shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Project Manager shall issue the Final Payment Certificate for such amount as he fairly determines to be due.
- 14.14 Cessation of Employer's Liability** 14.14.1 The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
- (a) in the Final Statement and also
 - (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the

Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

14.14.2 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.

14.15 Currencies of Payment

14.15.1 The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the **SCC**, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of South Sudan.

15. Termination by Employer

15.1 Notice to Correct 15.1.1 If the Contractor fails to carry out any obligation under the Contract, the Project Manager may by notice require the

15.2 Termination by Employer**15.2.1**

Contractor to make good the failure and to remedy it within a specified reasonable time.

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 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or
 - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

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

15.2.2

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.

- | | | |
|--|--------|---|
| | 15.2.3 | The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise. |
| | 15.2.4 | 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 Project Manager. 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. |
| | 15.2.5 | 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. |
| | 15.2.6 | 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 | 15.3.1 | As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [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 | 15.4.1 | <p>After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:</p> <ul style="list-style-type: none"> (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, 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 for Convenience | 15.5.1 | <p>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 or to avoid a termination of the Contract by the Contractor under Clause 16.4 [Payment on Termination].</p> |
| | 15.5.2 | <p>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 19.6 [Optional Termination, Payment and Release].</p> |
| 15.6 Corrupt or Fraudulent Practices | 15.6.1 | <p>If the Employer determines that the Contractor has engaged in corrupt, fraudulent or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such expulsion had been made under Sub-Clause 6.9 [Contractor's Personnel].</p> |
| | 15.6.2 | <p>For the purposes of this Sub-Clause:</p> <ul style="list-style-type: none"> (i) "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution; (ii) "fraudulent practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract; (iii) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract. |

16. Suspension and Termination by Contractor

- | | | |
|--|--------|--|
| 16.1 Contractor's Entitlement to Suspend Work | 16.1.1 | <p>If the Project Manager fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 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.</p> |
| | 16.1.2 | <p>Notwithstanding the above, if the Government has suspended disbursements, which finances in whole or in part the execution of the Works, and no alternative funds are available, the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Employer</p> |

- having received the suspension notification from the Government.
- 16.1.3 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].
- 16.1.4 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.
- 16.1.5 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 Project Manager and shall be entitled subject to Sub-Clause 20.1 [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 profit, which shall be included in the Contract Price.
- 16.1.6 After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.
- 16.2 Termination by Contractor**
- 16.2.1 The Contractor shall be entitled to terminate the Contract if:
- (a) the Project Manager 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 42 days after the expiry of the time stated in Sub-Clause 14.7 [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 such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
 - (d) the Employer fails to comply with Sub-Clause 1.7 [Assignment],
 - (e) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
 - (f) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made

against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

- (g) In the event the Government suspends the funds from which part of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], immediately take one or both of the following actions, namely (i) suspend work or reduce the rate of work, and (ii) terminate his employment under the Contract by giving notice to the Employer, with a copy to the Project Manager, such termination to take effect 14 days after the giving of the notice.
- (h) the Contractor does not receive the Project Manager's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

16.2.2 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 sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

16.2.3 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

16.3.1 After a notice of termination under Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [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 Project Manager 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

16.4.1 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 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

17.1.1

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 of 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 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, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

17.1.2

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor's Care of the Works

17.2.1

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.

- 17.2.2 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.
- 17.2.3 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.
- 17.2.4 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**
- 17.3.1 The risks referred to in Sub-Clause 17.4 below, insofar as they directly affect the execution of the Works in the Country, are:
- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
 - (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, 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,
 - (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**
- 17.4.1 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 Project Manager and shall rectify this loss or damage to the extent required by the

- 17.4.2 If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Project Manager and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
 - (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.
- 17.4.3 After receiving this further notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.
- 17.5 Intellectual and Industrial Property Rights**
- 17.5.1 In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.
- 17.5.2 Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.
- 17.5.3 The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:
- (a) an unavoidable result of the Contractor's compliance with the Contract, or
 - (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- 17.5.4 The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.
- 17.5.5 If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the

indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

- | | | |
|---|--------|---|
| 17.6 Limitation of Liability | 17.6.1 | Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4 (b) [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights]. |
| | 17.6.2 | The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer's Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the SCC , or (if such multiplier or other sum is not so stated), the Accepted Contract Amount. |
| | 17.6.3 | This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party. |
| 17.7 Use of Employer's Accommodation /Facilities | 17.7.1 | The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works). |
| | 17.7.2 | If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Project Manager. |
| 18. Insurance | | |
| 18.1 General Requirements for Insurances | 18.1.1 | In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause. |
| | 18.1.2 | Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause. |

- 18.1.3 Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.
- 18.1.5 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 18.1.6 The relevant insuring Party shall, within the respective periods stated in the **SCC** (calculated from the Commencement Date), submit to the other Party:
- (a) evidence that the insurances described in this Clause have been effected, and
 - (b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].
- 18.1.7 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Project Manager.
- 18.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- 18.1.9 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 18.1.10 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of

policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

- | | |
|--|---|
| 18.2 Insurance for Works and Contractor's Equipment | 18.1.10 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party |
| | 18.1.11 Payments by one Party to the other Party shall be subject to Sub-Clause 2.4 [Employer's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable. |
| | 18.1.12 The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country. |
| | 18.2.1 The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works. |
| | 18.2.2 The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]). |
| | 18.2.3 The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment. |
| | 18.2.4 Unless otherwise stated in the SCC , insurances under this Sub-Clause:

(a) shall be effected and maintained by the Contractor as insuring Party, |
| | |
| | |
| | |

- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer's Risks],
- (d) shall also cover, to the extent specifically required in the Tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the **SCC** (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
 - (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
 - (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

18.2.5 If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.4 [Employer's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

18.3.1

The insuring Party 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 18.2 [Insurance for Works and Contractor's Equipment]) or to any

- person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.
- 18.3.2 This insurance shall be for a limit per occurrence of not less than the amount stated in the **SCC**, with no limit on the number of occurrences. If an amount is not stated in the **SCC**, this Sub-Clause shall not apply.
- 18.3.3 Unless otherwise stated in the **SCC**, the insurances specified in this Sub-Clause:
- (a) shall be effected and maintained by the Contractor as insuring Party,
 - (b) shall be in the joint names of the Parties,
 - (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
 - (d) may however exclude liability to the extent that it arises from:
 - (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
 - (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
 - (iii) a cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.
- 18.4 Insurance for Contractor's Personnel**
- 18.4.1 The Contractor 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.
- 18.4.2 The insurance shall cover the Employer and the Project Manager 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, 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.
- 18.4.3 The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure	19.1.1	In this Clause, "Force Majeure" means an exceptional event or circumstance:
	(a)	which is beyond a Party's control,
	(b)	which such Party could not reasonably have provided against before entering into the Contract,
	(c)	which, having arisen, such Party could not reasonably have avoided or overcome, and
	(d)	which is not substantially attributable to the other Party.
	19.1.2	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, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
	(iii)	riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
	(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.
19.2 Notice of Force Majeure	19.2.1	If a Party is or will be prevented from performing its substantial 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.
	19.2.2	The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
	19.2.3	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.
19.3 Duty to Minimise Delay	19.3.1	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.
	19.3.2	A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences of Force Majeure	19.4.1	If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [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 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].
	19.4.2	After receiving this notice, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [Determinations] to agree or determine these matters.
19.5 Force Majeure Affecting Subcontractor	19.5.1	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.
19.6 Optional Termination, Payment and Release	19.6.1	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 19.2 [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].
	19.6.2	Upon such termination, the Project Manager 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) other Costs or liabilities which in the circumstances were reasonably and necessarily 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.

19.7 Release from Performance

19.7.1 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 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20. Claims, Disputes and Arbitration

20.1 Contractor's Claims

20.1.1 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 Project Manager, 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.

20.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

- 20.1.3 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.
- 20.1.4 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 Project Manager. Without admitting the Employer's liability, the Project Manager 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 Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
- 20.1.5 Within 42 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 Project Manager, the Contractor shall send to the Project Manager 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 shall be considered as interim;
 - (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager 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 Project Manager.
- 20.1.6 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 Project Manager and approved by the Contractor, the Project Manager 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 the above defined time period.
- 20.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.6 [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.
- 20.1.8 Each Payment Certificate shall include such additional payment 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.

20.1.9 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer it to the Dispute Avoidance and Resolution Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Avoidance and Resolution Board's Decision].

20.1.10 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.

20.2 Appointment of the Dispute Avoidance and Resolution Board

20.2.1 Disputes shall be referred to a DARB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Avoidance and Resolution Board's Decision]. The Parties shall appoint a DARB by the date stated in the **SCC**.

20.2.2 The DARB shall comprise, as stated in the **SCC**, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DARB shall comprise three persons, one of whom shall serve as chairman.

20.2.3 If the Parties have not jointly appointed the DARB 21 days before the date stated in the **SCC** and the DARB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

20.2.4 The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Avoidance and Resolution Board Agreement contained in the **Appendix B** to these General Conditions, with such amendments as are agreed between them.

20.2.5 The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DARB consults, shall be mutually agreed upon

by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

20.2.6 If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

20.2.7 The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DARB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

20.3 Failure to Agree on the Composition of the Dispute Avoidance and Resolution Board

20.3.1 If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the DARB by the date stated in the first paragraph of Sub-Clause 20.2, [Appointment of the Dispute Avoidance and Resolution Board],
- (b) either Party fails to nominate a member (for approval by the other Party) or fails to approve a member nominated by the other Party, of a DARB of three persons by such date,
- (c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DARB by such date, or
- (d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the Appointing Entity or official named in the **SCC** shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DARB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4 Obtaining Dispute Avoidance and Resolution Board's Decision

20.4.1 If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DARB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this Sub-Clause.

	20.4.2	For a DARB of three persons, the DARB shall be deemed to have received such reference on the date when it is received by the chairman of the DARB.
	20.4.3	Both Parties shall promptly make available to the DARB all such additional information, further access to the Site, and appropriate facilities, as the DARB may require for the purposes of making a decision on such dispute. The DARB shall be deemed to be not acting as arbitrator(s).
	20.4.4	Within 84 days after receiving such reference, or within such other period as may be proposed by the DARB and approved by both Parties, the DARB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.
	20.4.5	If either Party is dissatisfied with the DARB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DARB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.
	20.4.6	In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Avoidance and Resolution Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Avoidance and Resolution Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.
	20.4.7	If the DARB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DARB's decision, then the decision shall become final and binding upon both Parties.
20.5 Amicable Settlement	20.5.1	Where notice of dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which a notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.
20.6 Arbitration	20.6.1	Unless indicated otherwise in the SCC , any dispute not settled amicably and in respect of which the DARB's decision (if any) has not become final and binding shall be finally settled by

- arbitration with proceedings conducted in accordance with the laws of the Employer's country.
- 20.6.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, and any decision of the DARB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 20.6.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DARB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DARB shall be admissible in evidence in the arbitration.
- 20.6.4 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DARB shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 20.7 Failure to Comply with Dispute Avoidance and Resolution Board's Decision**
- 20.7.1 In the event that a Party fails to comply with a DARB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.
- 20.8 Expiry of Dispute Avoidance and Resolution Board's Appointment**
- 20.8.1 If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DARB in place, whether by reason of the expiry of the DARB's appointment or otherwise:
- (a) Sub-Clause 20.4 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply, and
 - (b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].

APPENDIX A

Environmental, Social, Health and Safety (ESHS)

Metrics for Progress Reports

[Note to Employer: the following metrics may be amended to reflect the specifics of the Contract. The Employer shall ensure that the metrics provided are appropriate for the Works and impacts/key issues identified in the environmental and social assessment]

Metrics for regular reporting:

- a) environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
- b) health and safety incidents, accidents, injuries that require treatment and all fatalities;
- c) interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d) status of all permits and agreements:
 - i). work permits: number required, number received, actions taken for those not received;
 - ii). status of permits and consents:
 - *list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);*
 - *list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);*
 - *identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);*
 - *for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).*
- e) health and safety supervision:
 - i). safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
 - ii). number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f) worker accommodations:
 - i). number of expats housed in accommodations, number of locals;
 - ii). date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
 - iii). actions taken to recommend/require improved conditions, or to improve conditions.

- g) Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
- h) gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
- i) training:
 - i). number of new workers, number receiving induction training, dates of induction training;
 - ii). number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
 - iii). number and dates of communicable diseases (including SBDS) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
 - iv). number and date of SEA and SH prevention sensitization and/or training events, including number of workers receiving training on Code of Conduct for Contractor's Personnel (in the reporting period and in the past), etc.
- j) environmental and social supervision:
 - i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
 - ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
 - iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k) *Grievances*: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed).
 - i. Worker grievances;
 - ii. Community grievances
- l) Traffic, road safety and vehicles/equipment:
 - i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
 - ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;

- iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m) Environmental mitigations and issues (what has been done):
 - i) dust: number of working bowsters, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/spoil lorries with covers, actions taken for uncovered vehicles;
 - ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
 - iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
 - iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
 - v) spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
 - vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
 - vii) details of tree plantings and other mitigations required undertaken in the reporting period;
 - viii) details of water and swamp protection mitigations required undertaken in the reporting period.
- n) compliance:
 - i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
 - ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - iii) compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - iv) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
 - v) other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

APPENDIX B

A General Conditions of Dispute Avoidance and Resolution Board Agreement

1. Definitions

Each "Dispute Avoidance and Resolution Board Agreement" is a tripartite agreement by and between:

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Avoidance and Resolution Board Agreement as being
 - i). the sole member of "Dispute Avoidance and Resolution Board" and, where this is the case, all references to the "Other Members" do not apply, or
 - ii). one of the three persons who are jointly called the "DARB" (or "Dispute Avoidance and Resolution Board") and, where this is the case, the other two persons are called the "Other Members."

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

2. General Provisions

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

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the DARB Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a Dispute Avoidance and Resolution Board agreement.

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

3. Warranties

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

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

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

4. General Obligations of the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or Project Manager, nor any financial interest in the Contract except for payment under the DARB Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the DARB Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the DARB Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the DARB Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Project Manager, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the DARB Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) treat the details of the Contract and all the DARB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DARB's activities under the Contract and the DARB Agreement. The Employer and the Contractor shall be responsible for

compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

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

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

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

Whenever the Employer or the Contractor refers a dispute to the DARB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the DARB Agreement:

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

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

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

- (b) a daily fee which shall be considered as payment in full for:
 - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's

- home and the site, or another location of a meeting with the Other Members (if any);
- (ii) each working day on Site visits, hearings or preparing decisions; and
- (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the DARB Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the DARB Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the **SCC** shall determine the amount of the fees to be used.

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

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

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the DARB Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DARB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

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

7. Termination

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

If the Member fails to comply with the DARB Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

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

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

8. Default of the Member

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

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

9. Disputes

Any dispute or claim arising out of or in connection with this DARB Agreement, or the breach, termination or invalidity thereof, shall be finally settled by Arbitration.

PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DARB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DARB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each site visit shall be as agreed jointly by the DARB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DARB. The purpose of site visits is to enable the DARB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Project Manager and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DARB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DARB one copy of all documents which the DARB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DARB and the Employer or the Contractor shall be copied to the other Party. If the DARB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DARB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DARB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DARB shall:

- (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DARB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DARB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Project Manager, and to proceed in the absence of any party who the DARB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the DARB, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DARB's own jurisdiction, and as to the scope of any dispute referred to it,
- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and

- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute.

The DARB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DARB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DARB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.

SECTION IX : SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. Except where otherwise indicated, all special Conditions of Contract should be filled in by the Employer prior to issuance of the Tendering Documents. Schedules and reports to be provided by Employer should be annexed. ***The notes in italics are only intended to guide the PE in filling in the Special Conditions of Contract. They should not appear in the Final SCC to be issued to prospective Tenderers.***

Conditions	GCC Sub-Clause	Data
Employer's name and address	1.1.2.	<i>Insert Employer's Name and Address</i>
Project Manager's name and address	1.1.2	<i>Insert Project Manager's Name and Address</i>
Time for Completion	1.1.3	_____ days <i>If Sections are to be used, refer to Table: Summary of Sections below</i>
Defects Notification Period	1.1.3	Normally 365 days, <i>if not insert appropriate period.</i>
Sections	1.1.5	<i>If Sections are to be used, refer to Table: Summary of Sections below</i>
Governing Law	1.4.1	Laws of South Sudan, <i>if not insert any other governing law</i>
Ruling language	1.4.2	English, <i>if not insert any other language</i>
Language for communications	1.4.3	English, <i>if not insert any other language</i>
Conditions Precedent	1.7.1	Conditions Precedent to Contract Effectiveness <i>(List down if any Otherwise State Not Applicable)</i>
Compliance with the Laws	1.14.1	<i>Insert any exception to the provisions of GCC 1.14.1, if any.</i>

Conditions	GCC Sub-Clause	Data
Time for access to the Site	2.1.1	_____ days after Commencement Date
Project Manager's Duties and Authority	3.1.3	The Project Manager Shall Obtain Employers approval to exercise authority on the following 1..... 2..... <i>Insert all aspects/issues for which Employers approval must be given</i>
	3.1.6(b)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of _____% shall require approval of the Employer. <i>If all variations must obtain approval state so.</i>
Contractor's General Obligations	4.1.8	The Contractor shall be responsible for his design work as specified in the contract, except for the following; 1..... 2..... <i>Insert any exceptions to Contractor's obligation under GCC 4.1.8</i>
Performance Security	4.2.1	The performance security will be in the form of a ____ <i>[insert either one of "demand guarantee" or "performance bond"]</i> in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
	4.2.2	Other form of Performance Security..... <i>Indicate any other form of performance security acceptable to the Employer</i>
Subcontractors	4.4.2	Responsibility for the acts of subcontractors shall be borne by the Contractor except for the following acts 1. 2.

Conditions	GCC Sub-Clause	Data
		<i>Insert any exceptions to Contractor's obligation under GCC 4.4.2</i>
Responsibility for Transport of Goods	4.16.1	The Contractor shall be responsible for transport of goods except for the following: 1. 2. <i>Insert any exceptions to Contractor's obligation under GCC 4.16.1</i>
Progress Reports	4.21.1	The Contractor shall submit monthly reports to the Project Manager except under following circumstances 1. 2. <i>Insert any exceptions to Contractor's obligation under GCC 4.21.1</i>
Security of the Site	4.22.1	Responsibility of the Site Shall be vested to <i>(insert the person or firm responsible for security if other than the Contractor)</i>
Normal working hours	6.5.1	<i>State the Normal Working Hours</i>
Commencement of Works	8.1.1	<i>State commencement date if it is other than that stated Sub clause 8.1.1</i>
Delay damages for the Works	8.7.1& 14.15.1(b)	_____ % of the Contract Price per day. <i>If Sections are to be used, refer to Table: Summary of Sections below</i>

Conditions	GCC Sub-Clause	Data
Maximum amount of delay damages	8.7.1	_____ % of the final Contract Price.
Provisional Sums	13.5.1.(b)(ii)	<i>[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]</i> _____ %
Adjustments for Changes in Cost	13.8.1	Period “n” applicable to the adjustment multiplier “Pn”: _____ <i>[Insert the period if different from one (1) month; if period “n” is one (1) month, insert “not applicable”]</i>
The Contract Price	14.1.1	<i>State other factors than those stated Sub clause 14.1.1 contributing/affecting contract price</i>
Total advance payment	14.2.1	% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable <i>[Insert number and timing of instalments if applicable]</i>
Repayment of advance payment	14.2.5	<i>Repayment Schedule of advance payment if different from that shown in GCC Clause 14.2.5</i>
Percentage of Retention	14.3.2	_____ % of Interim Payment Certificate
Limit of Retention Money	14.3.2	_____ % of the Accepted Contract Amount.
Plant and Materials	14.5.2(b)(i)	If Sub-Clause 14.5 applies: Plant and Materials for payment when shipped en route to the Site _____ <i>[list]</i> .

Conditions	GCC Sub-Clause	Data
	14.5.2(c)(i)	Plant and Materials for payment when delivered to the Site _____ <i>[list]</i> .
Minimum Amount of Interim Payment Certificates	14.6.2	_____ % of the Accepted Contract Amount.
Maximum total liability of the Contractor to the Employer	17.6.2	<i>[Select one of the two options below as appropriate]</i> The product of _____ <i>[insert a multiplier less or greater than one]</i> times the Accepted Contract Amount, or _____ <i>[insert amount of the maximum total liability]</i>
Periods for submission of insurance:	18.1.6	<i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]</i>
a. evidence of insurance.		_____ days
b. relevant policies		_____ days
Maximum amount of deductibles for insurance of the Employer's risks	18.2.4(d)	<i>[Insert maximum amount of deductibles]</i>
Minimum amount of third party Insurance	18.3.2	<i>[Insert amount of third party insurance]</i>
	18.3.3	<i>Insert any exception to the provisions of GCC 18.3.3</i>
Date by which the DARB shall be appointed	20.2.1	28 days after the Commencement date <i>otherwise insert other period</i>

Conditions	GCC Sub-Clause	Data
The DARB shall be comprised of	20.2.2	<i>Either: One sole Member or: Three Members</i>
List of proposed members of DARB	20.2.2	<p><i>For DARB comprised of one sole member, list the name of potential sole member and attach his/her CV to the Tendering Document</i></p> <p><i>OR</i></p> <p><i>In case of Three Members DARB give the following information</i></p> <p>DARB Members Proposed by Employer <i>[Attach CVs to the Tendering Document and the Contract]</i></p> <p>1.....</p> <p>2.....</p> <p>3.....</p> <p>DARB Members Proposed by Contractor <i>[Attach CVs to the Contract]</i></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p>
Appointment (if not agreed) to be made by	20.3.1	<i>[Insert name of the appointing entity or official]</i>
Rules of arbitration	20.6	<i>[Insert rules of arbitration]</i>

Section XI. Contract Forms

Table of Forms

Notification of Intention to Award.....	247
Letter of Acceptance	250
Contract Agreement.....	251
Performance Security.....	253
Environmental and Social (ES) Performance Security.....	257
Advance Payment Security	259
Retention Money Security.....	261

Notification of Intention to Award

[This Notification of Intention to Award shall be sent to each Bidder that submitted a Bid.]

[Send this Notification to the Bidder's Authorized Representative named in the Bidder Information Form]

For the attention of Bidder's Authorized Representative

Name: *[insert Authorized Representative's name]*

Address: *[insert Authorized Representative's Address]*

Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*

Email Address: *[insert Authorized Representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to Bidders. The Notification must be sent to all Bidders simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION: This Notification is sent by: *[email/fax]* on *[date]* (local time)

Notification of Intention to Award

Employer: *[insert the name of the Employer]*

Project: *[insert name of project]*

Contract title: *[insert the name of the contract]*

RFB No: *[insert RFB reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) request a debriefing in relation to the evaluation of your Bid, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

1. The successful Bidder

Name:	<i>[insert name of successful Bidder]</i>
Address:	<i>[insert address of the successful Bidder]</i>
Contract price:	<i>[insert contract price of the successful Bid]</i>

2. Other Bidders ***[INSTRUCTIONS: insert names of all Bidders that submitted a Bid. If the Bid's price was evaluated include the evaluated price as well as the Bid price as read out.]***

Name of Bidder	Bid price	Evaluated Bid price (if applicable)
----------------	-----------	--

[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]
[insert name]	[insert Bid price]	[insert evaluated price]

3. Reason/s why your Bid was unsuccessful

[INSTRUCTIONS: State the reason/s why this Bidder's Bid was unsuccessful. Do NOT include: (a) a point by point comparison with another Bidder's Bid or (b) information that is marked confidential by the Bidder in its Bid.]

4. How to request a debriefing

DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Bid. If you decide to request a debriefing your written request must be made within three (3) Working days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Bidder, contact details; and address the request for debriefing as follows:

Attention: [insert full name of person, if applicable]

Title/position: [insert title/position]

Agency: [insert name of Employer]

Email address: [insert email address]

Fax number: [insert fax number] **delete if not used**

If your request for a debriefing is received within the 3 Working days deadline, we will provide the debriefing within five (5) Working days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Working days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Working days from the date of publication of the Contract Award Notice.

5. How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the Bidder, contact details; and address the Procurement-related Complaint as follows:

Attention: *[insert full name of person, if applicable]*

Title/position: *[insert title/position]*

Agency: *[insert name of Employer]*

Email address: *[insert email address]*

Fax number: *[insert fax number]* **delete if not used**

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Bidder who submitted a Bid in this bidding process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations (as described in Annex III).

6. Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).

The Standstill Period lasts ten (10) Working days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

Letter of Acceptance

[letterhead paper of the Employer]

[date]

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

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security and an Environmental and Social (ES) Performance Security ***[Delete ES Performance Security if it is not required under the contract]*** within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms and the ES Performance Security Form, ***[Delete reference to the ES Performance Security Form if it is not required under the contract]*** included in Section XI, Contract Forms, of the Bidding Documents

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter "the Employer"), of the one part, and _____ of _____ (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (i) the Letter of Acceptance;
 - (ii) the Letter of Bid;
 - (iii) the addenda Nos _____ (if any);
 - (iv) the Special Conditions of Contract;
 - (v) the General Conditions;
 - (vi) the Specification;
 - (vii) the Drawings; and
 - (viii) the completed Schedules and any other documents forming part of the contract, including, but not limited to:
 - i. the ES Management Strategies and Implementation Plans; and
 - ii. Code of Conduct for Contractor's Personnel(ES).
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Performance Security

Option 1: (Demand Guarantee)

Beneficiary: _____

Date: _____

PERFORMANCE GUARANTEE No.: _____

Guarantor: _____

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary 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, 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

Option 2: Performance Bond

By this Bond _____ as Principal (hereinafter called "the Contractor") and _____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____] as Obligee (hereinafter called "the Employer") in the amount of _____, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the ____ day of _____, 20_____, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ day of _____ 20_____
_____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

Environmental and Social (ES) Performance Security

ES Demand Guarantee

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of Employer]*

Date: *_ [Insert date of issue]*

ES PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (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 Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its Environmental and/or Social, (ES) obligation(s) under the Contract, without the Beneficiary 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, 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

² Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

[signature(s)]

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

Advance Payment Security

Demand Guarantee

Beneficiary: _____

Date: _____

ADVANCE PAYMENT GUARANTEE No.: _____

Guarantor: _____

We have been informed that _____ (hereinafter called "the Applicant") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ (_____) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) ¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

(a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

(b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number _____ at _____.

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the ____ day of _____, 2____,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date..

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

² Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Retention Money Security

Demand Guarantee

_____ *[Guarantor letterhead or SWIFT identifier code]*

Beneficiary: _____ *[Insert name and Address of Employer]*

Date: _____ *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and, if required, the ES Performance Security]* is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert amount in figures]* () *[amount in words]*¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

¹ *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.*

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number _____ at _____ *[insert name and address of Applicant's bank]*.

This guarantee shall expire no later than the day of, 2...², and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

² Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."