

**MINISTRY OF HEALTH & WELLNESS**

**GOVT. OF MAURITIUS**

**Tender**

**For**

**Construction of Area Health Centre at Cap Malheureux,  
Mauritius**

**VOLUME-II**

**GENERAL CONDITIONS OF CONTRACT**

**November' 2022**



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**No. HSCC/AHC/ Malheureux /Mauritius/2022**

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## **GENERAL CONDITIONS OF CONTRACT**

### **Definitions and Interpretation**

#### **1.1 Definitions**

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- (a)
  - i. "Employer/Principal Employer" means the persons named as such in Volume - II of these Conditions and the legal successors in title to such person, but not (except with the consent of the Contractor) any assignee of such person.
  - ii. "Consultant" means the HSCC (India) Ltd. known as Managing Director, HSCC (India) Ltd, and his successors in office and assignees acting for and on behalf of the employer.
  - iii. "Engineer" means the person appointed by HSCC to act as Engineer for the purposes of the contract and named as such in Part II of these Conditions.
  - iv. "Engineer's Representative" means a person appointed from time to time by the Engineer under Sub-Clause 2.2.
  - v. "Contractor" means an individual or firms (proprietary or partnership) whether incorporated or not, that has entered into contract (with the employer) and shall include his / its heirs, legal representatives, successors and assigns, successors in interest of individuals or persons. Composing such firms or successors of such firms or the permitted assigns of such individual or firms. Changes in the constitution of the firm, if any shall be immediately notified to the employer, in writing and approval obtained for continued performance of the contract.
  - vi. "Subcontractor" means any person named in the Contract as a Subcontractor for a part of the Works or any person to whom a part of the Works has been subcontracted by the contractor with the consent of the Engineer and the legal successors in title to such person, but not any assignee of any such person.
- (b)
  - i. "Contract" means these conditions (Volume I and II), the Specification, the Drawings, the Bill of Quantities, the Tender, the Letter of Acceptance, the Contract Agreement (if completed) and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).
  - ii. "Specification" means the specification of the Works included in

the Contract and any modification thereof or addition thereto made under Clause 51.1 & 51.2 or submitted by the Contractor and approved by the Engineer.

- iii. "Drawings" means all drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.
  - iv. "Bill of Quantities" means the priced and completed bill of quantities forming part of the Tender.
  - v. "Tender" means the Contractor's priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance. The word Tender is synonymous with "Bid" and the words "Tender Documents" with "Bidding Documents".
  - vi. "Letter of Acceptance" means the formal acceptance by the HSCC of the Tender.
  - vii. "Contract Agreement" means the contract agreement (if any) referred to in Sub-Clause 9.1.
  - viii. "Appendix to Tender" means the appendix comprised in the form of Tender annexed to these Conditions.
- (c)
- i. "Commencement Date" means the date upon which the Contractor receives the notice to commence the works as issued by the Engineer pursuant to Clause 41.1.
  - ii. "Time for Completion" means the time for completing the execution of and passing the Tests on Completion of the Works or any Section or part thereof as stated in the Contract (or as extended under Clause 44.1, 44.2 & 44.3) calculated from the Commencement Date.
- (d)
- i. "Tests on Completion" means the tests specified in the Contract or otherwise agreed by the Engineer and the Contractor which are to be made by the Contractor before the Works or any Section or part thereof are taken over by the employer.
  - ii. "Taking-Over Certificate" means a certificate issued pursuant to Clause 48.1 to 48.4.
- (e)
- i. "Contract Price" means the sum stated in the Letter of Acceptance

as payable to the Contractor for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract.

- ii. "Retention Money" means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 60.1 (h) or 60.5.
- (f)
- i. "Works" means the Permanent Works and the Temporary Works or either of them to be executed in accordance with the contract.
  - ii. "Permanent Works" means the permanent works to be executed (including Plant) in accordance with the Contract.
  - iii. "Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
  - iv. "Plant" means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
  - v. "Contractor's Equipment" means all appliances and things of whatsoever nature (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects therein, but does not include Plant, materials or other things intended to form or forming part of the Permanent Works.
  - vi. "Section" means a part of the Works specifically identified in the Contract as a Section.
  - vii. "Site" means the places provided by the Employer where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the Site.
- (g)
- i. "Cost" means all expenditure properly incurred or to be incurred, whether on or off the Site, including over head and other charges properly allowable there but does not include any allowance for profit.
  - ii. "Day" means calendar day.
  - iii. "Foreign Currency" means a currency of a country other than that in which the Works are to be located.
  - iv. "Writing" means any hand-written, type-written, or printed communication, including telex, cable and facsimile transmission.

## **1.2 Heading and Marginal Notes**

The headings and marginal notes in these Conditions shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof or of the Contract.

### **1.3 Interpretation**

Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

### **1.4 Singular and Plural**

Words importing the singular only also include the plural and vice versa where the context requires.

### **1.5 Notices, Consents, Approvals, Certificates and Determinations.**

Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly.

## **ENGINEER AND ENGINEER'S REPRESENTATIVE**

### **2.1 Engineer's Duties and Authority**

- (a) The Engineer shall carry out the duties specified in the Contract.
- (b) The Engineer may exercise the authority specified in or necessarily to be implied from the Contract, provided, however, that if the Engineer is required, under the terms of his appointment by the Employer, to obtain the specific approval of the Employer before exercising any such authority particulars of such requirement shall be set out in part II of these Conditions. Provided further that any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

### **2.2 Engineer's Representative**

- (a) The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties and exercise such authority as may be delegated to him by the Engineer under Sub-Clause 2.2 (b).

### **Engineer's Authority to Delegate**

- (b) The Engineer may from time-to-time delegate to the Engineer's Representative any of the duties and authorities vested in the Engineer and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy thereof has been delivered to the Contractor.

### **2.3 Communication Given by Engineer's Representative**

Any communication given by the Engineer's Representative to the Contractor in accordance with such delegation shall have the same effect as though it had been given by the Engineer. Provided that :

- (a) any failure of the Engineer's Representative to disapprove any work, materials or Plant shall not prejudice the authority of the Engineer to disapprove such work, materials or Plant and to give instructions for the rectification thereof;
- (b) if the Contractor questions any communications of the Engineer's Representative he may refer the matter to the Engineer who shall confirm, reverse or vary the contents of such communication.

### **2.4 Appointment of Assistants**

The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under Sub-Clause 2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons. Such assistants shall have no authority to issue any instructions to the Contractor save in so far as such instructions may be necessary to enable them to carry out their duties and to secure their acceptance of materials, Plant or workmanship as being in accordance with the Contract, and any instructions given by any of them for those purposes shall be deemed to have been by the Engineer's Representative.

### **2.5 Instructions in Writing**

Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after carrying out of the instruction shall be deemed to be an instruction, within the meaning of this Sub-Clause. Provided further that if the Contractor, within 7 days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within 7 days by the Engineer, it shall be deemed to be an instruction of the Engineer.

The provisions of this Sub-Clause shall equally apply to instructions given by the

Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause 2.4.

## **2.6 Engineer to Act Impartiality**

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

- (a) giving his decision, opinion or consent, or
- (b) expressing his satisfaction or approval, or
- (c) determining value, or
- (d) otherwise taking action which may affect the rights and obligations of the Employer or the Contractor he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause 67.1 to 67.4.

## **ASSIGNMENT AND SUBCONTRACTING**

### **3.1 Assignment of Contract**

The Contractor shall not, without the prior consent of the Consultant (which consent, shall be at the sole discretion of the Consultant), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:

- (a) a charge in favour of the Contractor's bankers of any monies due or to become due under the Contract, or
- (b) assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable. The provision of labour as piece work basis shall not deemed to be subcontracting under this clause.

### **4.1 Sub-Contracting**

The Contractor shall not subcontract the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the Works without the prior consent of the Engineer. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of a Subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects

of the Contractor, his agents, servants or workmen.

Provided that the Contractor shall not be required to obtain such consent for:

- (a) the provision of labour, or
- (b) the purchase of materials which are in accordance with the standards specified in the Contract, or

#### **4.2 Assignment of Sub-Contractors Obligations**

In the event of a Subcontractor having undertaken towards the Contractor in respect of the work executed, or the goods, materials, Plant or services supplied by such Subcontractor, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time, after the expiration of such Period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

### **CONTRACT DOCUMENTS**

#### **5.1 Language/s and Law**

- (a) The language in which the Contract documents shall be drawn up, is English.
- (b) The country the law of which shall apply to the Contract and according to which the Contract shall be construed is India.

#### **5.2 Priority of Contract Documents**

The several documents forming the Contract are to be taken as mutually explanatory of one another, but in case of ambiguities or discrepancies the same shall be explained and adjusted by the Engineer who shall thereupon issue to the Contractor instructions thereon and in such event, unless otherwise provided in the Contract, the priority of the documents forming the Contract shall be as follows:

- (1) Requirements/ Description of Schedule of Quantities/BOQ
- (2) Particular Technical specification
- (3) Additional specifications of contract
- (4) Specific condition of contract
- (5) Drawings
- (6) General conditions of contract
- (7) C.P.W.D Specifications
- (8) Indian standard specifications of B.I.S.

#### **6.1 Custody and Supply of Drawings and Documents**

The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract, the Drawings, Specification and other

documents provided by the Employer or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate (Clause 62.1), the Contractor shall return to the Engineer all Drawings, Specifications and other documents provided under the Contract.

The Contractor shall supply to the Engineer four copies of all Drawings, Specifications and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause 7.1 to 7.3, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specification and other documents as the Engineer may request in writing for the use of the Employer, who shall pay the cost thereof.

## **6.2 One Copy of Drawings to be kept on Site**

One copy of the Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorised by the Engineer in writing.

## **6.3 Disruption of Progress**

The Contractor shall give notice to the Engineer, whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within 60 days or such other reasonable time as may be decided by the Engineer. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

## **6.4 Delay and Cost of Delay of Drawings**

If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause 6.3, the Contractor suffers delay then the Engineer shall, after due consultation with the Employer and the Contractor, determine only extension of time to which the Contractor is entitled under Clause 44.1 to 44.3 .

## **6.5 Failure by Contractor to Submit Drawings**

If the failure or inability of the Engineer to issue any drawings or instructions is caused in whole or in part by the failure of the Contractor to submit Drawings, Specification or other documents which he is required to submit under the Contract, the Engineer shall take such failure by the Contractor into account when making his determination pursuant to Sub-Clause 6.4.

## **7.1 Supplementary Drawings and Instructions**

The Engineer shall have authority to issue to the Contractor, from time to time, such supplementary Drawings and instructions as shall be necessary for the purpose of the proper and adequate execution and completion of the Works and the remedying of any defects therein. The Contractor shall carry out and be bound by the same.

## **7.2 Permanent Works Designed by Contractor**

Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall submit to the Engineer, for approval:

- (a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and
- (b) operation and maintenance manuals together with drawings of the relevant part of the Permanent Works as completed, in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design. The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause 48.1 to 48.5 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.

## **7.3 Responsibility Unaffected by Approval**

Approval by the Engineer, in accordance with Sub-Clause 7.2, shall not relieve the Contractor of any of his responsibilities under the Contract.

## **GENERAL OBLIGATIONS**

### **8.1 Contractor's General Responsibilities**

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, Plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. The contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any other defect in the design of or specifications for the works which he discovers when reviewing the contract documents or in the process of execution of the works.

## **8.2 Site Operations and Methods of Construction**

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction. Provided that the Contractor shall not be responsible (except as stated hereunder or as may be otherwise agreed) for the design or specification of Permanent Works, or for the design or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.

## **9.1 Contract Agreement**

The Contractor shall, if called upon so to do, enter into and execute the Contract Agreement, to be prepared and completed at the cost of the Contractor, in the form annexed to these Conditions with such modification as may be necessary.

## **10.1 Performance Security**

The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance. The performance security shall be in the form of bank guarantee. The amount of the bank guarantee shall be 5 percent of the Contract Price. It shall be issued by a Nationalised bank of India. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the Contract Price, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security by an equal percentage.

Failure of the successful bidder to lodge the required bank guarantee shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the Engineer may make the award to the next lowest evaluated bidder or, if there are no other bidders, call for new bids.

## **10.2 Period of Validity of Performance Security**

The performance security shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. No claim shall be made against such security after the issue of the Defects Liability Certificate in accordance with Sub-Clause 62.1 and such security shall be returned to the Contractor within 14 days of the issue of the said Defects Liability Certificate.

### **10.3 Costs of Securities**

The cost of complying with the requirements of this clause shall be borne by the Contractor.

### **11.1 Inspection of Site**

The Consultant shall have made available to the Contractor, before the submission by the Contractor of the Tender, such data on hydrological and sub-surface conditions as have been obtained by or on behalf of the Employer from investigations undertaken relevant to the Works but the Contractor shall be responsible for his own interpretation thereof.

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and information available in connection therewith and to have satisfied himself (so far as is practicable, having regard to considerations of cost and time) before submitting his Tender, as to:

- (a) the form and nature thereof, including the sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of work and materials necessary for the execution and completion of the Works and the remedying of any defects therein, and
- (d) the means of access to the Site and the accommodation he may require.

And in general, shall be deemed to have obtained all necessary information, subject as above mentioned, as to risks, contingencies and all other circumstances which may influence or affect his Tender.

Data made available by the Employer in accordance with sub-clause 11.1 above shall be deemed to include data listed elsewhere in the contract as open for inspection at the office of the Hospital Services Consultancy Corporation, Plot no. 6A, Block - E, Sector -1, Noida (U.P.)-201 301.

### **12.1 Sufficiency of Tender**

The Contractor shall be deemed to have based his Tender on the data made available by the Consultant and on his own inspection and examination, all as aforementioned.

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect

of the supply of goods, materials, Plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the Works and the remedying of any defects therein.

## **12.2 Adverse Physical Obstructions or Conditions**

If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his reasonable opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3 and
- (b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price.

And shall notify the Contractor accordingly. Such determinations shall take account of any instruction which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer which the Contractor may take in the absence of specific instructions from the Engineer.

## **13.1 Work to be in Accordance with Contract**

Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer. The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer or subject to the provisions of Clause 2.1 to 2.6, from the Engineer's Representative.

## **14.1 Programme to be Submitted**

The Contractor shall, within 28 days after the date of the Letter of Acceptance, submit to the Engineer for his consent a programme, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

## **14.2 Revised Programme**

If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 14.1 the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

## **14.3 Cash Flow Estimate to be Submitted**

The Contractor shall, within 28 days after the date of the Letter of Acceptance, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.

## **14.4 Contractor not Relieved of Duties or Responsibilities**

The submission to and consent by the Engineer to such programs or the provision of such general descriptions or cash flow estimates shall not relieve the Contractor of any of his duties or responsibilities under the Contract.

## **15.1 Contractor's Superintendence**

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent and authorised representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer or, subject to the provisions of Clause 2.1 to 2.6, the Engineer's Representative.

If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not thereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

If the Contractor's authorised representative is not in the opinion of the Engineer fluent in English, the contractor shall have available at site at all times an interpreter competent to ensure the proper transmission of instructions and information.

## **16.1 Contractor's Employees**

The Contractor shall provide on the Site in connection with the execution and completion of the Works and the remedying of any defects therein :

- (a) only such technical assistants as are skilled and experienced in their respective callings and such foremen and leading hands as are competent to give proper superintendence of the Works, and
- (b) such skilled, semi-skilled and un-skilled labour as is necessary for the proper and timely fulfilling of the Contractor's obligations under the Contract.

## **16.2 Engineer at Liberty to Object**

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of English or the contractor shall have available at site at all times a sufficient number of competent interpreters to ensure a proper transmission of instructions and information.

The contractor is encouraged to the extent practicable and reasonable to employ staff and labourers from sources within India.

## **17.1 Setting-out**

The Contractor shall be responsible for :

- (a) the accurate setting-out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing,
- (b) the correctness, subject as above mentioned, of the position, levels dimensions and alignment of all parts of the Works, and
- (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities.

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required to do so by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in

which case the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly.

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting-out the Works.

**The Contractor shall give to the Engineer not less than 72(seventy-two) hours notice of his intention to set out or give levels for any part of the Works so that timely arrangement may be made for checking or issuing instructions. He shall indicate therein by which date the information, if any is required by him.**

### **18.1 Boreholes and Exploratory Excavation**

If, at any time during the execution of the works the Engineer requires the contractor to make bore-holes or to carry out exploratory excavations in excess of the requirements specified elsewhere in the contract, such requirement shall be the subject of an instruction in accordance with clause 51.1 & 51.2, unless an item or a provisional sum in respect of such work is included in the Bill of Quantities.

### **19.1 Safety, Security and Protection of the Environment**

The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Site (so far as the same is under his control) and the Works (so far as the same are not completed or occupied by the Employer) in an orderly state appropriate to the avoidance of danger to such persons, and
- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others, and
- (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods or operation.
- (d) Screen all lights provided by the Contractor so as not to interfere with any signal light on the railways or with any traffic or signal lights of any local authority.

## **20.1 Care of Works**

The Contractor shall take full responsibility for the care of the Works and materials and Plant for incorporation therein from the Commencement Date until the date of issue of the Taking-Over Certificate for the whole of the Works, when the responsibility for the said care shall subject to clause 20.1(b) pass to the Employer, Provided that:

- (a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the care of any outstanding Works and materials and Plant for incorporation therein which he undertakes to or is otherwise required to finish during the Defects Liability Period until such outstanding Works have been completed pursuant to Clause 49.1 to 49.4.

## **20.2 Responsibility to Rectify Loss of Damage**

If any loss or damage happens to the Works, or any part thereof, or materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in Sub-Clause 20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 49.1 to 49.4 and 50.1.

## **20.3 Loss or Damage Due to Employer's Risk**

In the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4, or in combination with other risks, the Contractor shall, if and to the extent required by the Engineer, rectify the loss or damage and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly. In the case of combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

## **20.4 Employer's Risks**

**The Employer's risks are :**

- (a) (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

- (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war,
  - (iii) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
  - (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed,
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract,
  - (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible, and
  - (d) any operation of the forces of nature (insofar as it occurs on the site) which an experienced contractor:
    - (i) could not have reasonably foreseen, or
    - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
      - (A) prevent loss or damage to physical property from occurring by taking appropriate measures, or
      - (B) insure against.

## **21.1 Insurance of Works and Contractor's Equipment**

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20.1 to 20.4, insure:

- (a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost and it being understood that such insurance shall provide for compensation to be payable to rectify the loss or damage incurred.
- (b) an additional sum of 15 percent of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature, and it being understood that

such insurance shall provide for compensation to be payable to rectify the loss or damage incurred.

- (c) the Contractor's Equipment and other things brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

The insurance under clause 21.1 shall be issued by an insurance company which has been determined by the contractor to be acceptable to the Consultant.

## **21.2 Scope of Cover**

The insurance in paragraphs (a) and (b) of Sub-Clause 21.1 shall be in the joint names of the Contractor and the Employer and shall cover:

- (a) the Employer and the Contractor against all loss or damage from whatsoever cause arising (including natural calamities, earthquake, subsidence, landslide, rock slide, flood, storm, cyclone, fire, theft, burglary, strike, riot, sabotage, terrorism), other than as provided in Sub-Clause 21.4, from the commencement date until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- (b) the Contractor for his liability:
  - (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, and
  - (ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses 49.1 to 49.4 and 50.1.

It shall be the responsibility of contractor to notify the Insurance Company of any change in the nature and extent of the works and to ensure the adequacy of the Insurance cover at all times during the period of contract.

## **21.3 Responsibility for Amounts not Recovered**

Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause 20.1 to 20.4.

## **21.4 Exclusions**

There shall be no obligation for the insurance in Sub-Clause 21.1 to include loss or damage caused by the risks listed under sub clause 20.4 para a (i) to (iv).

If the Contractor receives instructions from the Employer to insure against War Risk, such insurance if normally available shall be effected, at the cost of the Employer, with an Insurance Company acceptable to the Consultant and shall be

in the joint names of the contractor and the Employer.

## **22.1 Damage to Persons and Property**

The Contractor shall, except if and so far as the Contract provides otherwise, indemnify the Employer against all losses and claims in respect of:

- (a) death of or injury to any person, or
- (b) loss or damage to any property (other than the Works) :

Which may arise out of or in consequence of the execution and completion of the Works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause-22.2.

## **22.2 Exceptions**

The "exceptions" referred to in Sub-Clause 22.1 are:

- (a) the permanent use or occupation of land by the Works, or any part thereof,
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land,
- (c) damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any defects therein, in accordance with the Contract.
- (d) death of or injury to persons or loss of or damage to property resulting from any action or neglect of the Employer, his agents, servants or other contractors, not being employed by the Contractor, or in respect of any claims, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto or, where the injury or damage was contributed to by the Contractor, his servants or agents, such part of the said injury or damage as may be just and equitable having regard to the extent of the responsibility of the Employer, his servants or agents or other contractors for the injury or damage.

## **22.3 Indemnity by Employer**

The Employer shall indemnify the Contractor against all claims, proceedings, damages, costs, charges and expenses in respect of the matters referred to in the exceptions defined in Sub-Clause 22.2.

## **23.1 Third Party Insurance (Including Employer's Property)**

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 22.1 to 22.3, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury to any person (other than as provided in Clause 24.1 to 24.2 or loss of or damage to any property (other than the Works) arising out of the performance of the Contract other than the exceptions defined in paragraphs (a), (b) and (c) of Sub-Clause 22.2.

**23.2 Minimum Amount of Insurance**

Such insurance shall be for at least the amount stated in Appendix to Tender.

**23.3 Cross Liabilities**

The insurance policy shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separate insured.

**24.1 Accident or Injury to Workmen**

The Employer shall not be liable for or in respect of any damages or compensation payable to any workman other than for death or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid, and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

**24.2 Insurance Against Accident to Workmen**

The Contractor shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on the Works. Provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy, but the Contractor shall require such Subcontractor to produce to the Consultant, when required, such policy of insurance and the receipt for the payment for current premium.

**25.1 Evidence and Terms of Insurance**

The Contractor shall provide evidence to the Consultant as soon as practicable after the respective insurance have been taken out but in any case prior to the start of work at the Site that insurance required under the Contract have been effected and shall, within 84 days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the

Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurance for which he is responsible with insurers and in terms approved by the Consultant.

## **25.2 Adequacy of Insurance**

The Contractor shall notify the insurers of changes in the nature, extent or programme for the execution of the Works and ensure the adequacy of the insurance at all times in accordance with the terms of the Contract and shall, when required, produce to the Consultant the insurance policies in force and the receipts for payment of the current premiums.

## **25.3 Remedy on Contractor's Failure to Insure**

If the Contractor fails to effect and keep in force any of the insurance required under the Contract, or fails to provide the policies to Consultant within the period required by Sub-Clause 25.1, then and in any such case the Employer may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Contractor, or recover the same as a debt due from the Contractor.

## **25.4 Compliance with Policy Conditions**

In the event that the Contractor or the Employer fails to comply with conditions imposed by the insurance policies effected pursuant to the Contract, each shall indemnify the other against all losses and claims arising from such failure.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21.1 to 21.4, 23.1 to 23.3 and 24.1 to 24.2) with insurers from India.

## **26.1 Compliance with Statutes Regulations**

The Contractor shall conform in all respects, including by the giving of all notices and the paying of all fees, with the provision of :

- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution and completion of the Works and the remedying of any defects therein, and
- (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provision.

Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause 22.3.

## **27.1 Fossils**

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be deemed to be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall, immediately upon discovery thereof and before removal, acquaint the Engineer of such discovery and carry out the Engineer's instructions for dealing with the same. If, by reason of such instructions, the Contractor suffers delay and/or incurs costs then the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

## **28.1 Patent Rights**

The Contractor shall save harmless and indemnify the Employer from and against all claims and proceeding for or on account of infringement of any patent right, design trademark or name or other protected rights in respect of any Contractor's Equipment, materials or Plant used for or in connection with or for incorporation in the Works and from and against all damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.

## **28.2 Royalties**

Except where otherwise stated, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works.

## **29.1 Interference with Traffic and Adjoining Properties**

All operation necessary for the execution and completion of the Works and the remedying of any defects therein shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private road, railway and any other right of way and footpaths to or of properties whether in the possession of the Employer or of any other person.

The Contractor shall save harmless and indemnify the Employer in respect of all claims, proceedings, arising out of, or in relation to any such matters insofar as the Contractor is responsible therefor.

If any plant (floating or otherwise) belonging to or hired by the Contractor or any sub-contractor or any person employed by the Contractor or by any sub-contractor or any materials or things therein or there from sink from any cause whatsoever, it shall immediately be reported by the Contractor to the competent authorities and the Engineer's Representative, and Contractor shall forthwith, at his cost raise and remove any such plant, materials or things or otherwise deal with the same as the Engineer may direct.

The fact that such sunken plant, materials or things are insured or have been declared a total loss or do not represent any further value shall not absolve the Contractor from his obligations under this Clause to raise and remove the same. Until such sunken plant or materials or things have been raised and removed, the Contractor shall set such buoys and display at night such lights and do all such things for the safety as may be required by the competent authorities or by the Engineer's Representative.

In the event of the Contractor not carrying out the obligations imposed on him by this Clause, the Employer may cause to set buoy and display at night light on such plant and raise and remove the same without prejudice to the right of the Employer to hold the Contractor liable and all expenses and consequences thereon and incidental thereto shall be borne by the Contractor and shall be recoverable from him as a debt by the Employer or may be deducted by the Employer from any moneys due or which may become due to the Contractor.

### **30.1 Avoidance of Damage to Roads**

The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Plant, Contractor's Equipment or Temporary Works from and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such roads and bridges.

### **30.2 Transport of Contractor's Equipment or Temporary Works**

Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate

the movement of Contractor's Equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising out of such damage.

If it is found necessary for the Contractor to move one or more loads of heavy constructional plant and equipment, materials or preconstructed units or parts of units of work over roads, highways, bridges on which such oversized and overweight items are not normally allowed to be moved, the Contractor shall obtain prior permission from the concerned authorities. Payments for complying with the requirements, if any, for protection of or strengthening of the roads, highways or bridges shall be made by the Contractor and such expenses shall be deemed to be included in his contract price.

### **30.3 Transport of Materials or Plant**

If, notwithstanding Sub-Clause 30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the hauler of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause 30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly. Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

### **30.4 Waterborne Traffic**

Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the foregoing provisions of this Clause shall be construed as through "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

### **31.1 Opportunities for other Contractors**

The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable opportunities for carrying out their work to:

- (a) any other contractors employed by the employer and their workmen,
- (b) the workmen of Employer, and
- (c) the workmen of any duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the employer may enter into in connection with or ancillary to the Works.

### **31.2 Facilities for other Contractors**

If, however, pursuant to Sub-Clause 31.1 the Contractor shall, on the written request of the Engineer:

- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or
- (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site,
- (c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly.

### **32.1 Contractor to keep Site Clear**

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

### **33.1 Clearance of Site on Completion**

Before the issue of any Taking-Over Certificate the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment, surplus material rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

## 34.1

### **Labour**

The contractor shall make his own local or other arrangement for the engagement of all labour local or other.

The Contractor and his sub contractors shall abide by the local laws and regulations governing labour applicable from time to time.

#### Engagement of Labour

The Contractor shall make his own arrangements for the engagement of all labour, local or otherwise, and, save insofar as the Contract otherwise provides, for the transport, housing, feeding and payment thereof.

#### Supply of Water

The contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Engineer's Representative, an adequate supply of drinking and clear water for the use of the Contractor's and the Engineer's staff and work people, Sub-Contractors and site visitors.

#### Alcoholic Liquor or Drugs

The Contractor shall not import, sell, give, barter or otherwise dispose of any alcoholic liquor, or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

#### Arms and Ammunition

The Contractor shall not give, barter or otherwise dispose off to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

#### Festivals and Religious Customs

The Contractor shall in all dealings with labour in his employment have due regard to all recognised festivals, days of rest and religious or other customs.

#### Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be

made by the Government, or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

Disorderly Conduct, etc.

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his employees and for the preservation of peace and protection of persons and property in the neighbourhood of the works against the same.

Observance of Legislation etc.

The Contractor shall at all times during the continuance of the Contract comply fully with all existing Acts, regulations and bylaws including all statutory amendments and re-enactments and acts that may be passed in future either by the state or the Central Government or local authority, including, Indian Workmen's Compensation Act, Contract Labour (Regulation and Abolition) Act 1970 and Equal remuneration Act 1976. Factories Act, Minimum Wages Act provident fund regulations employees provident Fund Act and schemes made under same Act, Health and Sanitary Arrangements for workmen, Insurance and other benefits and shall keep the Employer indemnified in case any action is commenced for contravention by the contractor. If the Employer is caused to pay or reimburse any amounts for non-observance of the provisions of this clause on the part of the contractor the Engineer shall have the right to deduct from any moneys due to the contractor or recover from the contractor personally any sum required or estimated to be required for making good the loss or damage suffered by the Employer. All registration and station inspection fees if any in respect of his work pursuant to the contract shall be to the account of the contractor.

Fair Wages :

The Contractor shall pay the labours engaged by him on the work not less than a fair wage, which expression shall mean, whether or time or piecework, the respective rates of wages as fixed by the public works department as fair wages for the area payable to the different categories of labourers or those notified under the Minimum wages act for corresponding employees of the Employer whichever may be higher.

The Contractor shall notwithstanding the provisions of any contract to the contrary, cause to be paid a fair wage to the labourers indirectly engaged on the works including any labour engaged by subcontractors in connection with the said works as if the labourer has been immediately employed by him.

Notices :

The Contractor shall before he commences the work display and correctly maintain in a clean and legible condition at a conspicuous place on the Site notices in English and in a local language spoken by the majority of the workers, stating

therein the rate of wages which have been fixed as fair wages and the hours of work for which such wages are earned and send a copy of such notices to the Engineer.

#### Wage Records :

The contractor shall maintain records of wages and other remuneration paid to his employees in such form as may be convenient and to the requirements of the Employer/Engineer and the conciliation officer (Central) Ministry of Labour, Government of India, or such other authorised person appointed by the Central or State Government and the same shall include the following particulars of each worker:

- i) Name, works number and grade
- ii) Rate of daily or monthly wage.
- iii) Nature of work on which employed
- iv) Total number of days worked during each wage period.
- v) Total amount payable for the work during each wage period.
- vi) All deductions made from the wage with details in each case of the ground for which the deduction is made.
- vii) Wage actually paid for each wage period.

The contractor shall provide a wage slip for each worker employed on the works.

The wage record and wage slips shall be preserved for at least 12 months after the last entry.

#### Inspection of Wage Records

The Contractor shall allow inspection of the aforesaid wage records and wage slip to the Engineer and to any of his workers or to his agent at a convenient time and place after due notice is received, or to the Employer or any other person authorised by him on his behalf.

The Employer and the Engineer or any other person authorised by them on their behalf shall have power to make enquiries with a view to ascertaining and enforcing due and proper observance of the Fair Wages Clause. He shall also have the power to investigate into any complaint regarding any default made by the Contractor or sub-contractor in regard to such provision.

The Employer shall have the right to deduct from the moneys due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non payment of the aforesaid fair wage, except on account of any deductions that may be permissible under any law for the time being in force.

### Representation of Parties

- (i) A workman shall be entitled to be represented in any investigation or enquiry under this Clause by :-
  - (a) An officer of a registered trade union of which he is a member.
  - (b) An officer of a federation of trade Union to which the Trade Union referred to in pervious Sub-clause is affiliated.
  - (c) Where the Worker is not a member of any registered Trade Union, by an officer of a registered Trade Union connected with or by any other workman employed in the industry in which the workers is employed.
- (ii) The contractor or sub-contractor shall be entitled to be represented in any investigations or enquiry under this clause by an officer of an Association of Employers of which he is a member.
- (iii) No party shall be represented by a legal practitioner in any investigation or enquiry under this clause, unless all parties agree.

### Safety Provisions

The Contractor shall comply with all the precautions as required for the safety of the workman by the I.L.O Convention (NO.62) as far as they are applicable to the Contract. The Contractor shall provide all necessary safety appliances, gears like goggles, helmets, masks, etc. to the workmen and the staff.

The Contractor shall be responsible for observance by his sub-Contractors of the foregoing provisions.

### Footwear

The Contractor shall at his own expense provide footwear for all labour engaged on concrete mixing work and all other type of work involving the use of tar, cement, etc. to the satisfaction of the Engineer or his Representative, and on his failure to do so the Employer shall be entitled to provide the same and recover the cost from the Contractor.

The Contractor shall deliver to the Engineer's Representative at his office on the Site a return in detail in such form and at such intervals as the Employer / Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed on the Site.

## **35.1 Returns of Labour, etc.**

The Contractor shall, if required by the Engineer, deliver to the Engineer's Representative, or at his office, a return in detail in such form and at such intervals as the Engineer may prescribe showing the supervisory staff and the number of the

several classes of labour from time to time employed by the Contractor on the site and such information respecting constructional plant as the Engineer's Representative may require.

The Contractor shall file all labour returns in detail to the respective authorities / statutory bodies as prescribed under law applicable at the work site and inform the Employer / Engineer with copies of such returns directly filed.

## **MATERIALS, PLANTS AND WORKMANSHIP**

### **36.1 Quality of Materials, Plant and Workmanship**

All materials Plant and workmanship shall be

- (a) of the Respective kinds described in the Contract and in accordance with the Engineer's instructions, and
- (b) subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.

The Contractor shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Engineer.

The contractor is encouraged to the extent practicable and reasonable, to use plant and material from sources within India.

### **36.2 Cost of Samples**

All samples shall be supplied by the Contractor at his own cost if the supply thereof is clearly intended by or provided for in the Contract.

### **36.3 Cost of Test**

The cost of making any test shall be borne by the Contractor if such test is

- (a) clearly intended by or provided for in the Contract, or
- (b) particularised in the Contract (in cases only of a test under load or of a test to ascertain whether the design of any finished or partially finished work is appropriate for the purposes which it was intended to fulfil) in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

### **36.4 Costs of Tests not provided for**

If any test required by the Engineer which is

- (a) not so intended by or provided for, or
- (b) (in the cases above mentioned) not so particularised, or
- (c) though so intended or provided for, required by the Engineer to be carried out at any place other than the Site local test house or the place of manufacture, fabrication or preparation of the materials or Plant tested.

Shows the materials, Plant or workmanship not to be in accordance with the provision of the Contract to the satisfaction of the Engineer, then the cost of such test shall be borne by the Contractor, but in any other case Sub- Clause 36.5 shall apply.

### **36.5 Engineer's Determination Where Tests not provided for**

Where, pursuant to Sub-Clause 36.4, this Sub-Clause applies the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and shall notify the Contractor accordingly.

### **37.1 Inspection of Operations**

The Engineer, and any person authorised by him, shall at all reasonable times have access to the Site and to all workshops and places where materials or Plant are being manufactured, fabricated or prepared for the Works and the Contractor shall afford every facility for and every assistance in obtaining the right to such access.

### **37.2 Inspection and Testing**

The Engineer shall be entitled, during manufacture, fabrication or preparation to inspect and test the materials and Plant to be supplied under the Contract. If materials or Plant are being manufactured, fabricated or prepared in workshops or places other than those of the Contractor, the Contractor shall obtain permission for the Engineer to carry out such inspection and testing in those workshops or places. Such inspection or testing shall not release the Contractor from any obligation under the Contract.

### **37.3 Dates for Inspection and Testing**

The Contractor shall agree with the Engineer on the time and place for inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall

give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests, he shall accept the said readings as accurate or instruct the tests to be repeated at the Employer's cost to enable him to decide.

#### **37.4 Rejection**

If at the time and place agreed in accordance with Sub-Clause 37.3, the materials or Plant are not ready for inspection or testing or if, as result of the inspection or testing referred to in this Clause, the Engineer determines that the materials or Plant are defective or otherwise not in accordance with the Contract, he may reject the materials or Plant and shall notify the Contractor thereof immediately. The notice shall state the Engineer's objections with reasons. The Contractor shall then promptly make good the defect or ensure that rejected materials or Plant comply with the Contract. If the engineer so request, the test of rejected materials or Plant shall be made or repeated under the same terms and conditions. All costs incurred by the Employer by the repetition of the tests shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employee and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

#### **37.5 Independent Inspection**

The Engineer may delegate inspection and testing of materials or Plant to an independent inspector. Any such delegation shall be effected in accordance with Sub- Clause 2.4 and for this purpose such independent inspector shall be considered as an assistant of the Engineer. Notice of such appointment (not being less than 14 days) shall be given by the Engineer to the Contractor.

#### **38.1 Examination of Work before Covering up**

No part of the Work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any such part of the Works which is about to be covered up or put out of view and to examine foundations before any part of the work is placed thereon. The Contractor shall give notice to the Engineer whenever any such part of the Works or foundations is or are ready or about to be ready for examination and the engineer shall unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such part of the Works or of examining such foundations.

## **38.2 Uncovering and Making Opening**

The Contractor shall uncover any part of the Works or make opening in or through the same as the Engineer may from time to time instruct and shall reinstate and make good such part. If any such part has been covered up or put out of view after compliance with the requirement of Sub-Clause 38.1 and is found to be executed in accordance with the Contract, the Engineer shall, after due consultation with the Contractor, determine the amount of reinstating and making good the same, which shall be added to the Contract Price, and shall notify the Contractor accordingly. In any other case all costs shall be borne by the Contractor.

## **39.1 Removal of Improper Work, Materials or Plant**

The Engineer shall have authority to issue instructions from time to time, for:

- (a) The removal from the Site, within such time or times as may be specified in the instruction, of any materials or Plant which, in the opinion of the Engineer, are not accordance with the Contract,
- (b) The substitution of proper and suitable materials or Plant, and
- (c) The removal and proper re-execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of
  - (i) materials, Plant or workmanship, or
  - (ii) design by the Contractor or for which he is responsible, is not, in the opinion of the Engineer, in accordance with the Contract.

## **39.2 Default of Contractor in Compliance**

In case of default on the Contractor in carrying out such instruction within the time specified therein or, if none, within a reasonable time, the Employer shall be entitled to employ and pay other persons to carry out the same and all costs consequent thereon or incidental thereto shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly.

## **SUSPENSION**

### **40.1 Suspension of Work**

The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the

Engineer. Unless such suspension is

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or
- (c) necessary by reason of extra-ordinary climatic conditions on the Site, or
- (d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the Employer or from any of the risks defined in Sub-Clause 20.4), Sub- Clause 40.2 shall apply.

#### **40.2 Engineer's Determination following Suspension**

Where, pursuant to Sub-Clause 40.1, this Sub- Clause applies the Engineer shall, after due consultation with the Contractor determine

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and
- (b) the amount, which shall be added to the Contract Price, in respect of the cost incurred by the Contractor by reason of such suspension.

And shall notify the Contractor accordingly.

#### **40.3 Suspension lasting more than 84 Days**

If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of 84 days from the date of suspension then, unless such suspension is within paragraph (a), (b), (c) or (d) of Sub-Clause 40.1, the Contractor may give notice to the Engineer requesting permission, within 28 days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the Works, as an omission of such part under Clause 51.1 to 51.2 by giving a further notice to the Engineer to that effect, or, where it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub- Clause 69.1, whereupon the provisions of Sub-Clause 69.2 and 69.3 shall apply.

### **COMMENCEMENT AND DELAYS**

#### **41.1 Commencement of Works**

The Contractor shall commence the Works as soon as is reasonably possible after the receipt by him of a notice to this effect from the Engineer, which notice shall be issued within the time stated in the Appendix to Tender after the date of the Letter of Acceptance. Thereafter, the Contractor shall proceed with the works with due expedition and without delay.

#### **42.1 Possession of Site and Access Thereto**

Save insofar as the Contract may prescribe:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time, and
- (b) the order in which such portions shall be made available to the Contractor and subject to any requirement in the Contract as to the order in which the Works shall be executed,

The Employer will, with the Engineer's notice to commence the Works, give to the Contractor possession of

- (c) so much of the Site, and
- (d) such access as, in accordance with the Contract, is to be provided by the Employer,

as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 14.1 to 14.4, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer make. The Employer will, from time to time as the Works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.

- (e) All water including rain water which may accumulate on the site during the progress of the works or in trenches or excavations, shall be removed promptly from the site to the satisfaction of engineer and at the cost of contractor.

#### **42.2 Failure to Give Possession**

If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, on the request of the contractor and submission of the details and

documentary proof, determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44.1 to 44.3, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly.

### **42.3 Wayleaves and Facilities**

The Contractor shall bear all costs and charges for special or temporary wayleaves required by him in connection with access to Site. The Contractor shall also provide at his own cost any additional facilities outside the Site required by him for the purposes of the Works.

### **43.1 Time for Completion**

The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause 48.1 to 48.4, within the time stated in the Appendix to Tender for completion of the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause 44.1 to 44.3.

### **44.1 Extension of Time for Completion**

In the event of

- (a) the amount or nature of extra or additional work, or
- (b) any cause of delay referred to in these Conditions by reference to clause 44.1 to 44.3, or
- (c) exceptionally adverse climatic conditions, or
- (d) any delay, impediment or prevention by the Employer, or
- (e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,

being such as fairly to entitle the contractor to extension of time for completion of the works or any section or part thereof, the Engineer shall after due consultation with the contractor, and subject to clause 44.2 determine the amount of such extension and shall notify the contractor accordingly.

### **44.2 Contractor to Provide Notification and Detailed/ Particulars**

The Engineer is not bound to make any determination under clause 44.1 unless the Contractor has

- (a) within 28 days after such event has arisen notified the Engineer, and
- (b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time.

#### **44.3 Interim Determination of Extension**

Provided also that where an event has continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of 28 days referred to in Sub-Clause 44.2 (a), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than 28 days and final particulars within 28 days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall, without undue delay, make an interim determination of extension of time and on receipt of the final particulars the Engineer shall review the circumstances and shall determine an overall extension of time in regard to the event in consultation with the Contractor and shall notify the Contractor of the determination. No final review shall result in a decrease of any extension of time already determined by the Engineer.

#### **45.1 Restriction Working Hours**

Subject to any provision to the contrary contained in the Contract, none of the Works shall save as hereinafter provided, be carried on during the night or on locally recognised days of rest without the consent of the Engineer, except when work is unavoidable or absolutely necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer. Provided that the provisions of this Clause shall not be applicable in the case of any work which it is customary to carry out by multiple shift.

#### **46.1 Rate of Progress**

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any Section is at any time, in the opinion of the Engineer, too slow to enable the contractor to complete the execution of and passing the tests on completion of the Works or such section by the time for completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as complete the execution of and passing the tests on completion of the Works or such section by the time for completion. The Contractor shall not be entitled to any additional payment for taking such steps. If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall

be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the employer in additional supervision costs, such costs shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become to the Contractor and the Engineer shall notify the Contractor accordingly.

#### **47.1 Liquidated Damages for Delay**

If the Contractor fails to complete the execution of and passing the test on completion of the works or any section by the time for completion, in accordance with Clause 48.1 to 48.4, within the relevant time prescribed by Clause 43.1, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender (Appendix - B) as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default) for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender (Annexure - B). The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the contract.

#### **47.2 Reduction of Liquidated Damages**

If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of the Works or of a Section, the liquidated damages for delay in completion of the reminder of the Works or of that Section shall, for any period of delay after date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable. The Provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

#### **48.1 Taking-Over Certificate**

When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works. The Engineer shall, within 21 days of the date of delivery of such notice, either issue to the Contractor, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract, or give instructions in writing to the Contractor

specifying all the work which in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the Works specified therein. The Contractor shall be entitled to receive such Taking-Over Certificate within 21 days of completion, to the satisfaction of the Engineer, of the Works so specified and remedying any defects so notified.

#### **48.2 Taking-Over of Sections or Parts**

Similarly, in accordance with the procedure set out in Sub-Clause 48.1, the Contractor may request and the Engineer shall issue a Taking-Over Certificate in respect of :

- (a) any Section in respect of which a separate Time for Completion is provided in the Appendix to Tender, or
- (b) any substantial part of the Permanent Works which has been both completed to the satisfaction of the Engineer and, otherwise than as provided for in the Contract, occupied or used by the Employer, or
- (c) any part of the Permanent Works which the Employer has elected to occupy or use prior to completion (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor as a temporary measure).

#### **48.3 Substantial Completion of Parts**

If any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contract, the engineer may issue a Taking-Over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and , upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the permanent Works during the Defects Liability Period.

#### **48.4 Surfaces Requiring Reinstatement**

Provided that a Taking-Over Certificate given in respect of any Section or part of the Permanent Works before completion of the whole of the Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement, unless such Taking- Over certificate shall expressly so state.

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the employer or the Engineer or other contractors employed by the Employer are responsible, the employer shall subject to clause 7.2 (b) be deemed to have taken over the Works on the date when the Tests on Completion

would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

If the Works are taken over under this Sub-Clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days notice.

Any additional costs to which the Contractor may be put, in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

## **DEFECTS LIABILITY**

### **49.1 Defects Liability Period**

In these Conditions the expression "Defects Liability Period" shall mean the defects liability period named in the Appendix to Tender, calculated from:

- (a) the date of completion of the Works certified by the Engineer in accordance with Clause 48.1 to 48.4 or clause 63.1; or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause 48.1 to 48.4, the respective dates so certified.

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

To the intent that the Works shall, at or as soon as practicable after the expiration of the Defects Liability Period, be delivered to the Employer in the condition required by the Contract, fair wear and tear excepted, to the satisfaction of the Engineer, the Contractor shall:

- (a) complete the work, if any, outstanding on the date stated in Taking-Over Certificate as soon as practicable after such date and
- (b) execute all such work of amendment, reconstruction, and remedying defects, shrinkages or other faults as the Engineer may, during the Defects Liability Period or within 14 days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to its expiration, instruct the Contractor to execute.

### **49.3 Cost of Remedying Defects**

All work referred to in Sub-Clause 49.2 (b) shall be executed by the Contractor at his own cost if the necessity thereof is, in the opinion of the engineer, due to:

- (a) the use of materials, Plant or workmanship not in accordance with the Contract, or
- (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or
- (c) the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied, on the Contractor's part under the Contract.

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 and shall notify the Contractor accordingly, with a copy to the Consultant.

#### **49.4 Contractor's Failure to Carry out Instructions**

In case of default on the part of the Contractor in carrying out such instruction within a reasonable time, the consultant shall be entitled to employ and pay other persons to carry out the same and if such work, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the Contract, then all costs consequent thereon or incidental thereto shall, after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly.

The Provisions of this Clause shall apply to all replacements or renewals of Plant carried out by the Contractor to remedy defects and damages as if the replacements and renewals had been taken over on the date they were completed.

The Defects Liability Period for the Works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the Defects Liability Period shall be extended only for that part. In neither case shall the Defects Liability Period extend beyond 2 years from the date of taking over.

When the progress in respect of Plant has been suspended under clause 40.1 to 40.3, the Contractor's obligations under this Clause shall not apply to any defects occurring more than one year after the Time for Completion established on the date of the Letter of Acceptance.

#### **50.1 Contractor to Search**

If any defects, shrinkage or other fault in the Works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall, after due consultation with the Contractor, determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract Price and shall notify the Contractor

accordingly. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause 49.1 to 49.4.

## **ALTERATIONS, ADDITIONS AND OMISSIONS**

### **51.1 Variations**

The Engineer shall make any variation of the form, or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) change the character or quality or kind of any such work.
- (c) change the levels, lines, position and dimensions of any part of the Works,
- (d) execute additional work of any kind necessary for the completion of the Works
- (e) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52.1 to 52.4. Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the contractor.

### **51.2 Instructions for Variations**

The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities as per approved drawings issued for construction.

### **52.1 Valuation of Variations**

All variations referred to in Clause 51.1 to 51.2 and any additions to the Contract Price which are required to be determined in accordance with Clause 52.1 to 52.4 (for the purposes of this Clause referred to as "varied works"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable. If the contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate based on CPWD norms and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.1 to 60.14.

## **52.2 Power of Engineer to Fix Rates**

Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then after due consultation by the Engineer with the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.1 to 60.14.

The quoted rates for all the items shall be firm, fixed and binding on the contractor irrespective of any variation of quantities stated in the contract upto  $\pm 50\%$  variation of the contract value as a whole. In case the contract value varies beyond  $\pm 50\%$ , the item rates of only those items whose individual quantities vary beyond  $\pm 50\%$  of the quantities mentioned in the contract shall be considered for change in rates. The rates of such items shall be worked out on the basis of market rate analysis and only applicable to the quantities beyond  $\pm 50\%$ . In the event of disagreement between the Engineer and the Contractor on these rates, the Engineer shall fix such rates and prices as are in his opinion appropriate and shall notify the Contractor accordingly. Provided also that no varied work instructed to be done by the Engineer pursuant to Clause 51.1 to 51.2 shall be valued under Sub-Clause 52.1, or under this Sub-Clause unless, within 14 days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been given either:

- (a) by the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price, or
- (b) by the Engineer to the Contractor of his intention to vary a rate or price.

### **52.3 Variations Exceeding 50 percent**

If, on the issue of the Taking-Over Certificate for the whole of the Works, it is found that as a result of:

- (a) all varied work valued under Sub-Clause 52.1 and 52.2, and
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums, dayworks and adjustments of price made under Clause 70.1 to 70.3,

but not from any other cause, there have been additions to or deductions from the Contract Price which taken together are in excess of 50 percent of the "Effective Contract Price" (which for the purposes of this Sub-Clause shall mean the Contract Price, excluding Provisional Sums and allowance for day works, if any) then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to or deducted from the Contract Price such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer as being fair and reasonable having regard to the Contractor's Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of 50 per cent of the Effective Contract Price.

### **52.4 Daywork**

The Engineer may, if in his opinion it is necessary or desirable, issue an instruction that any varied work shall be executed on a daywork basis. The Contractor shall then be paid for such varied work under the terms set out in the daywork schedule included in the Contract and at the rates and prices affixed thereto by him in the Tender.

The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the amounts paid and, before ordering materials, shall submit to the Engineer quotations for the same for his approval.

In respect of such of the Works executed on a daywork basis, the Contractor shall, during the continuance of such work, deliver each day to the Engineer an exact list in duplicate of the names, occupation and time of all workmen employed on such work and a statement, also in duplicate, showing the description and quantity of all materials and Contractor's Equipment used thereon or therefor other than Contractor's Equipment which is included in the percentage addition in accordance with such daywork schedule. One copy of each list and statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor.

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered. Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as daywork, or being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value therefor as shall, in his opinion, be fair and reasonable.

## **PROCEDURE FOR CLAIMS**

### **53.1 Notice of Claims**

Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, within 28 days after the event giving rise to the claim has first arisen.

### **53.2 Contemporary Records**

Upon the happening of the event referred to in Sub-Clause 53.1, the Contractor shall keep such contemporary records as may reasonable be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Engineer shall, on receipt of a notice under Sub-Clause 53.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records as are reasonable and may be material to the claim of which notice has been given. The Contractor shall permit the Engineer to inspect all records kept pursuant to this Sub-Clause and shall supply him with copies thereof as and when the Engineer so instructs.

### **53.3 Substantiation of Claims**

Within 28 days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause 53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonable require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effect resulting from the event. The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub- Clause.

#### **53.4 Failure to Comply**

If the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clause 53.2 and 53.3).

#### **53.5 Payment of Claims**

The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause 60.1 to 60.14 such amount in respect of any claim as the Engineer, after due consultation with the Contractor, may consider due to the Contractor provide that the Contractor has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient particulars to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor for any determination made under this Sub-Clause.

### **CONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS**

#### **54.1 Contractor's Equipment, Temporary Works and Materials, Exclusive use for the Works**

All Contractor's Equipment Temporary Works and materials by the Contractor shall when brought on to the site, be deemed to be exclusively intended for the execution of the works and the contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Site to another, without the consent of the Engineer. provided that consent shall not be required for vehicles engaged in transporting any staff labour, contractor's equipment, temporary works, plant or materials to or from the site.

#### **54.2 Employer Not Liable for Damage**

The Employer shall not at any time be liable, save as mentioned in Clauses 20.1 to 20.4 and 65.1 to 65.8, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.

#### **54.3 Customs Clearance**

The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

#### **54.4 Re-export of Contractor's Equipment**

In respect of any Contractor's Equipment which the Contractor has imported for the purposes of the Works, the Employer will use his best endeavours to assist the Contractor, where required, in procuring any necessary Government consent to the re-export of such Contractor's Equipment by the Contractor upon the removal thereof pursuant to the terms of the Contract.

#### **54.5 Conditions of Hire Contractor's Equipment**

With a view to securing, in the event of termination under Clause 63.1 to 63.4, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within 7 days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of execution and completion the Works and remedying any defects therein, under the terms of the said Clause 63.1 to 63.4 .

#### **54.6 Costs for the Purpose of Clause - 63.1 to 63.4**

In the event of the employer entering into any agreement for the hire of contractor's equipment pursuant to Sub-Clause 54.5, all sums properly paid by the employer under the provisions of any such agreement and all costs incurred by him (Including stamps duties) in entering into such agreement shall be deemed, for the purpose of clause 63.1 to 63.4, to be part of the cost of executing and completing the works and the remedying of any defects therein.

#### **54.7 Incorporation of Clause in Sub-contracts**

The contractor shall, where entering into any subcontract for execution of any part of the works, incorporate in such subcontract (by reference or other wise) the provisions of this Clause in relation to Contractor's Equipment, Temporary Works or Materials brought on to the Site by the Subcontractor.

#### **54.8 Approval of Material not Implied**

The operation of this clause shall not be deemed to imply any approval by the engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any materials at any time by the Engineer.

## **MEASUREMENT**

### **55.1 Quantities**

The quantities set out in the Bill of Quantities are the estimated quantities for the Works, and they are not to be taken as the actual and correct quantities of the Works to be executed by the Contractor in fulfilment of his obligations under the Contract.

### **56.1 Works to be Measured**

The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the works in accordance with the Contract and the Contractor shall be paid that value in accordance with clause 60.1 to 60.14. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's agent, who shall:

- (a) forthwith attend or send a qualified representative to assist the Engineer in making such measurement, and
- (b) supply all particulars required by the Engineer

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor, as and when called upon to do so in writing, shall, within 14 days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine such records and drawings and the Contractor does not agree such records and drawings, they shall be taken to be Correct. If, after examination of such records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

### **57.1 Method of Measurement**

The Works shall be measured net, notwithstanding any general or local custom, except where otherwise provided for in the Contract.

### **57.2 Breakdown of Lumpsum Items**

For the purposes of statements submitted in accordance with Sub-Clause 60.1, the Contractor shall submit to the Engineer, within 28 days after the receipt of the Letter of Acceptance, a breakdown for each of the lump sum items contained in the Tender. Such breakdowns shall subject to the approval of the Engineer.

## **PROVISIONAL SUMS**

### **58.1 Definition of "Provisional Sum"**

"Provisional Sums" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instruction of the Engineer. The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with the Clause. The Engineer shall notify the Contractor of any determination made under this Sub-clause.

### **58.2 Use of Provisional Sums**

In respect of every Provisional Sum the Engineer shall have authority to issue instructions for the execution of works or for the supply of goods, materials, Plant or services by :

- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52.1 to 52.4.
- (b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefor shall be determined and paid in accordance with Sub-Clause 59.4

### **58.3 Production of Vouchers**

The Contractor shall produce to the Engineer all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of Provisional Sums, except where work is valued in accordance with rates or prices set out in the Tender.

## **NOMINATED SUBCONTRACTORS**

### **59.1 Definition of "Nominated Subcontractors"**

All specialists, merchants, tradesmen and others executing any work or supplying any goods, materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the

Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, Plant or services, be deemed to be subcontractors to the Contractor and are referred to in the Contract as "nominated Subcontractors".

## **59.2 Nominated Subcontractors; Objection to Nomination**

The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection, or who declines to enter into a subcontract with the Contractor containing provision:

- (a) that in respect of work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities towards the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith, or arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities; and
- (b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the Purpose of the Contract and from all claims as aforesaid; and
- (c) approved by the Engineer.

## **59.3 Design Requirements to be Expressly Stated**

If in connection with any Provisional Sums the services to be provided include any matter of design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

## **59.4 Payments to Nominated Subcontractors**

For all work executed or goods, material, Plant or services supplied by any nominated Subcontractor, the contractor shall be entitled to :

- (a) the actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the Subcontract;
- (b) in respect of labour supplied by the Contractor, the sum if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-clause 58.2, as may be determined in accordance with Clause 52.1 to 52.4;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provisions has been made in the Bill of Qualities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted by the Contractor in the Appendix to Tender and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

#### **59.5 Certificates of Payments to Nominated Subcontractors**

Before issuing, under Clause 60.1 to 60.14, any certificate, which includes any payment in respect of work done or goods, materials, Plants or services supplied by any nominated Subcontractor, the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor :

- (a) satisfies the Engineer in writing that he has reasonable cause for withholding or refusing to make such payments and
- (b) produces to the Engineer reasonable proof that he has so informed such nominated Subcontractor in writing,

the Employer shall be entitled to pay to such nominated Subcontractor direct, upon the certificate of the Engineer, all payments, less retentions, provided for in the nominated Subcontractor and to deduct by way of set-off the amount so paid by the Employer from any sums due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid direct as aforesaid, the Engineer shall, in issuing any further certificate in favour of the Contractor, deduct from the amount so paid, direct as aforesaid, but shall not withhold or delay the issue of the certificate itself when due to be issued under the terms of the Contract.

#### **CERTIFICATES AND PAYMENTS**

## 60.1 Monthly Statements

The Contractor shall submit a statement in 3 copies to the Engineer by 7th day of each month for the work executed upto the end of previous month in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. the statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) The estimated contract value of the Temporary and Permanent Works executed up to the end of the month in question, at base unit rates and prices.
- (b) The actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at base unit rates and prices.
- (c) The estimated contract value at base unit rates and prices of the Temporary and Permanent Works for the month in question, obtained by deducting (b) from (a);
- (d) The value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, pursuant to Clause 52.1 to 52.4;
- (e) Amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate determined from the Day work Schedule of the Bill of Quantities.
- (f) Amounts reflecting changes in cost and legislation, pursuant to Clause 70.1 to 70.3.
- (g) Any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, under the conditions set forth in Sub-Clause 60.3;
- (h) Any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts due under paragraphs 60.1(c), (e), (f) and (g);
- (i) Any amounts to be deducted as repayment of the Advance under the provisions of sub-Clause 60.7; and
- (j) Any other sum, to which the Contractor may be entitled under the contract.
- (k) 75% of the value of materials delivered to the site for permanent works on signing of the Indenture for secured advance format of which is enclosed at Annexure - A.

- (l) The amount to be deducted towards the advance income tax shall be at the rate of two percent and the advance works contract tax at the rate of nil percent or as per the statutory requirements in this regard.

## **60.2 Monthly Payments**

The said statement shall be approved / amended by the Engineer in such a way that, in his opinion, it reflects the amounts due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47.1 to 47.2, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within the 7th day of the month following the receipt of the monthly statement referred to in Sub-Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall issue to the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due to the contractor.

Notwithstanding the terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment until the performance security has been provided by the Contractor and approved by the consultant.

## **60.3 Materials and Plant for the Permanent Works**

With respect to materials and Plant brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (i) receive a credit in the month in which these materials and Plant are brought to the site and (ii) be charged a debit in the month in which they are incorporated in the Permanent Works, both such credit and debit to be determined by the engineer in accordance with the following provisions:

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:
  - i) the materials and Plant are in accordance with specifications for the Works;
  - ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;
  - iii) the Contractor's records of the requirements, order, receipts and use of materials and Plant are kept in a form approved by the engineer, and such records are available for inspection by the Engineer.
  - iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the site, together with such documents as may be required for the purpose of evidencing such cost; and

- (b) the amount to be credited to the Contractor shall be equivalent of 75 percent of the Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a) (iv) above, as determined by the Engineer;
- (c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the contractor for such materials and Plant pursuant to Sub-Clause(b) above, as determined by the Engineer.

#### **60.4 Place of Payments**

Payments to the Contractor by the Employer/consultant shall be made into a bank account or accounts nominated by the Contractor or by account payee cheque

#### **60.5 Retention Money**

A retention amounting to 10 (Ten) percent of the amounts, determined in accordance with the procedure set out in Sub-Clause 60.1 (h) shall be made by the Engineer in the first and following Interim Payment Certificates, until the amount so retained reaches a limit of retention money (5% of Contract Price) as stated in the Appendix to Tender (Annexure - B).

#### **60.6 Payment of Retention Money**

- (a) Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.
- (b) upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor. Provided that, in the event of different Defects Liability Periods having become applicable to different Sections or parts of the Permanent Works pursuant to Clause 48.1 to 48.4, the expression "expiration of the Defects Liability period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods. Provided also that if at such time, there shall remain to be executed by the Contractor any work ordered, pursuant to Clauses 49.1 to 49.4. and 50.1, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

**60.7 Advance Payment**

- (a) Deleted
- (b) Deleted
- ( c ) Deleted

**60.8 Time of Payment**

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47.1 to 47.2, be paid by the Employer to the Contractor within 30 days after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 60.13, within 120 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification.

**60.9 Correction of Certificates**

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim payment Certificate which has been issued by him, and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

**60.10 Statement of Completion**

Not later than 84 days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement of Completion with supporting documents showing in detail, in the form approved by the Engineer.

- (a) the final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate;
- (b) any further sums which the Contractor considers to be due; and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2 as if the statement of completion were a statement submitted by the contractor under clause 60.1.

**60.11 Final Statement**

Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer.

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

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

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the engineer shall issue an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67.1 to 67.4. The Final Statement shall be agreed upon settlement of the dispute.

#### **60.12 Discharge**

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause 60.13 has been made and the performance security referred to in Sub- Clause 10.1 has been returned to the Contractor.

#### **60.13 Final Certificate**

Within 28 days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the employer (with a copy to the Contractor) a Final Certificate stating:

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract, 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 under the Contract, other than Clause 47.1 to 47.2, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

#### **60.14 Cessation of Employer's Liability**

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters of things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the Statement at Completion referred to in Sub- Clause 60.10.

#### **61.1 Defects Liability Certificate**

The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete Works and remedy any defects therein to the Engineer's satisfaction. The Defects Liability Certificate shall be given by the Engineer within 28 days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different sections or part of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clause 49.1 to 49.4 and 50.1, have been completed to the satisfaction of the Engineer. Provided that the issue of the Defects Liability Certificate shall not be condition precedent to payment to the Contractor of the second portion of the Retention Money in accordance with the conditions set out in Sub-Clause 60.3.

#### **62.1 Unfulfilled Obligations**

Notwithstanding the issue of the Defects Liability Certificate the Contractor and the Employer shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the issue of the Defects Liability Certificate which remains unperformed at the time such Defects Liability Certificate is issued and, for the purpose of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the parties to the Contract.

### **REMEDIES**

#### **63.1 Default of Contractor**

If the Contractor is deemed by law unable to pay his debts as they fall due, or enters in to voluntary or involuntary bankrupt, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or become insolvent, or makes an arrangement with, or assignment in favour of, his creditors or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganisation, arrangement or readjustment of debts proceedings are, commenced against the Contractor or resolution passed in connection with dissolution or

liquidation or, if any, step are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if, any act is done or event occurs with respect to the Contractor or his assets which under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause 3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion the contractor

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
  - (i) to commence the work in accordance with Sub-Clause 41.1, or
  - (ii) to proceed with the Works, or any section thereof, within 28 days after receiving notice to pursuant to Sub-Clause 46.1, or
- (c) has failed to comply with a notice issued pursuant to Sub-Clause 37.4, or an instruction issued pursuant to Sub-Clause 39.1 within 28 days after receiving it, or
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of the obligation under the Contract, or
- (e) has contravened Sub-clause 4.1 :

then for the avoidance of doubt the contractor shall be in default of its obligations under this contract and furthermore the Employer may, after giving fourteen days' notice to the Contractor, enter upon the Site and expel the Contractor there from without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Engineer shall certify such completion so as to give effect to clauses 49.1(a) and 63.3. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Plant, Temporary Works and materials which have been deemed to be reserved exclusively for the execution of the Works, under provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Contractor's Equipment, Temporary Works and unused Plant and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

## **63.2 Valuation at Date of Expulsion**

The Engineer, as soon as may be practicable after any such entry and expulsion

by the Employer, shall fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify :

- (a) what amount (if any) had, at the time of such entry and expulsion, been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, and
- (b) the value of any of the said unused or partially used materials, any Contractor's Equipment and any Temporary Works.

### **63.3 Payments after Expulsion**

If the Employer shall enter upon the site and expel the Contractor therefrom under Clause 63.1, he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of execution completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the Engineer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

### **63.4 Assignment of Benefit of Agreement**

Unless prohibited by law, the Contractor shall, if so instructed by the Engineer within 14 days of such entry and expulsion referred to in Sub-Clause 63.1, assign to the Employer the benefit of any agreement for the supply of any goods or materials or services and/or for the execution of any work for the purpose of the Contract, which the Contractor may have entered into.

### **64.1 Urgent Remedial Works**

If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work is, in the opinion of the Engineer, urgently necessary for the safety or progress of the Works and the Contractor is unable or unwilling at once to do such work, the Employer shall be entitled to employ and pay other person to carry out such work as the Engineer may consider necessary. If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own cost under the contract, then all costs consequent thereon or incidental thereto shall after due consultation with the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Engineer, and may be deducted by the employer from any monies due or to become due to the

Contractor and the Engineer shall notify the Contractor accordingly. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof.

## **SPECIAL RISKS**

### **65.1 No Liability for Special Risks**

The Contractor shall be under no liability whatsoever in consequence of any of the special risks referred to in Sub-Clause 65.2 whether by way of indemnity or otherwise, for or in respect of :

- (a) destruction of or damage to the "Works", save to work condemned under the provisions of Clause 39.1 to 39.2 prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the employer or third parties, or
- (c) injury or loss of life.

### **65.2 Special Risks**

The special risks are :

- (a) the risks defined under paragraphs (a) sub-para (i), (ii), (iii) and (iv) of Sub-Clause 20.4.

### **65.3 Damage to Works by Special Risks**

If the Works or any materials or Plant on or near or in transit to the Site, or any of the Contractor's Equipment, sustain destruction or damage by reason of any of the said special risks, the Contractor shall be entitled to payment in accordance with the Contract for any Permanent Works duly executed and for any materials or Plant so destroyed or damaged and, so far as may be required by the Engineer or as may be necessary for the completion of the Works, to payment for;

- (a) rectifying any such destruction or damage to the Works, and
- (b) replacing or rectifying such materials or contractor's Equipment and the Engineer shall determine an addition to the Contract Price in accordance with Clause 52.1 to 52.4 (which shall be the case of the cost of replacement of Contractor's Equipment include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

### **65.4 Projectile, Missile**

Destruction, damage, injury or loss of life caused by the explosion or impact,

whenever and wherever occurring, or any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

#### **65.5 Increased Costs arising from Special Risks**

Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 39.1 to 39.2 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge, forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Contractor, determine the amount of the contractor's costs in respect thereof which shall be added to the Contract Price and shall notify the Contractor accordingly.

#### **65.6 Outbreak of War**

If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided that the employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause 67.1 to 67.4, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof

#### **65.7 Removal of Contractor's Equipment on Termination**

If the Contract is terminated under the provision of Sub-Clause 65.6, the Contractor shall with all reasonable dispatch, remove from the Site all Contractor's Equipment and shall give similar facilities to his Subcontractors to do so.

#### **65.8 Payment if Contract Terminated**

If the Contract is terminated as aforesaid, the Contractor shall be paid by the Employer insofar as such amounts or items have not already been covered by payments account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the contract and in addition:

- a) The amounts payable in respect of any preliminary items referred to in the Bill of Quantities, so far as the Work or service comprised therein has

been partially carried out or performed.

- b) The cost of materials, plant or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials, Plant or goods becoming the property of the Employer upon such payments being made by him.
- c) A sum being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works insofar as such expenditure has not been covered by any other payments referred to in this Sub-Clause.
- d) Any additional sum payable under the provisions of Sub-Clauses 65.3 and 65.5.
- e) Such proportion of the cost as may be reasonable, taking into account payments made or to be made, for work executed, or removal of contractor's equipment under Sub- Clause 65.7 and, if required by the Contractor, return thereof to the Contract's main plant yard in his country of registration or to other destination, at no greater cost.
- f) The reasonable cost of repatriation of all the Contractor's staff and workmen employed on or in connection with the Works at the time of such termination.

Provided that against any payment due from the Employer under this Sub-Clause, the Employer shall be entitled to be credited with any outstanding balances due from the Contractor for advances in respect of Contractor's Equipment, materials and Plant and any other sums which, at the date of termination, were recoverable by the employer from the Contractor under the terms of the Contract. Any sums payable under this Sub- Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly.

## **RELEASE FROM PERFORMANCE**

### **66.1 Payment in Event of Release from Performance**

If any circumstance outside the control of both parties arises after the issue of the Letter of Acceptance which renders it impossible or unlawful for either party to fulfil his contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65.8 if the Contract had been terminated under the provisions of Clause 65.6.

## **SETTLEMENT OF DISPUTES**

## **67.1 Engineer's Decision**

If a dispute of any kind whatsoever arise between the Employer and the Contractor in connection with , or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. Not later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Work with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided in an amicable settlement or an arbitral award.

If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be give notice to the other party, with a copy for information to the Engineer of his intention to commence arbitration as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.

If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

## **67.2 Conciliation**

Where notice of intention to commence arbitration as to dispute has been given in accordance with Sub Clause 67.1, arbitration of such dispute shall not be commenced unless, the parties have explored the possibility of conciliation as per the provisions of Part-III of the Arbitration and Conciliation Act, 1996. When such conciliation has failed, the parties shall adopt the following procedure for arbitration :-

## **67.3 Arbitration**

**67.3.1**

Any dispute and differences relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof in respect of which :-

- a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub Clause 67.1 and
- b) Conciliation has not been reached as per the provisions of Clause 67.2

Shall be referred to the Sole Arbitration of a person appointed by the Managing Director (MD) of HSCC (I) Ltd./Employer from the panel of Arbitrators approved by Senior Chief Executive, Govt of Mauritius or any authorized person nominated by Employer . Such Arbitrator shall be appointed within 30 days of the receipt of letter of invocation of Arbitration duly satisfying the requirements of this clause.

**67.3.2**

If the Arbitrator so appointed resigns his appointment, is unable or unwilling to act due to any reason whatsoever, or dies, the Managing Director aforesaid or in his absence the person discharging the duties of MD

of HSCC (I) Ltd/ Senior Chief Executive, Govt of Mauritius or any authorized person nominated by Employer may appoint a new Arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new Arbitrator so appointed may proceed from the stage at which it was left by his predecessor.

- 67.3.3** It is a term of the contract that the party invoking the Arbitration shall specify the dispute/differences or questions to be referred to the arbitrator under this clause together with the amounts claimed in respect of each dispute.
- 67.3.4** The Arbitrator may proceed with the Arbitration ex-parte, if either party, in spite of a notice from the Arbitrator, fails to take part in the proceedings.
- 67.3.5** The work under the contract shall continue, if required, during the Arbitration proceedings.
- 67.3.6** The Arbitrator shall make speaking Award and give reasons for his decision in respect of each dispute/claim alongwith the sums awarded separately on each individual item of dispute or difference or claims. The Arbitrator shall make separate award on each reference made to him.
- 67.3.7** The award of the Arbitrator shall be final, conclusive and binding on both the parties.
- 67.3.8** Subject to the aforesaid, the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the Arbitration proceedings and Arbitrator shall publish his Award accordingly.

**67.4 Failure to Comply With Engineer's Decision**

Where neither the Employer nor the contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-Clause 67.1 and the related decision has become final and binding either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with sub-Clause 67.3 as if the conditions specified in clauses 67.3(a) and (b) had been satisfied with respect to such dispute. The provisions of Sub-Clause 67.1 shall not apply to any such reference.

**NOTICES**

**68.1 Notice to Contractor**

All certificates, notices or instructions to be given to the Contractor by the Employer or the Engineer under the terms of the Contract shall be sent by post, cable, telex or facsimile transmission to or left at the Contractor's principal place of business or such other address as the Contractor shall nominate for the purpose.

## **68.2 Notice to Employer and Engineer**

Any notice to be given to the Employer or to the Engineer under the terms of the Contract shall be sent by post, cable telex or facsimile transmission to or left at the respective addresses nominated for the purpose in part II of these Conditions.

## **68.3 Change of Address**

Either party may change a nominated address to another address in the Country where the Works are being executed by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

## **DEFAULT OF EMPLOYER**

### **69.1 Default of Employer**

In the event of the Employer:

- a) becoming bankrupt or being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- b) giving notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations, or
- c) if the contractor becomes entitled under Sub-Clause 40.3 to terminate his employment under the contract in accordance with the provisions of this Sub-Clause,

the Contractor shall be entitled to terminate his employment under the contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

### **69.2 Removal of Contractor's Equipment**

Upon the expiry of the 14 days notice referred to in Sub-Clause 69.1 the Contractor shall notwithstanding the provisions of Sub-Clause 54.1, with all reasonable despatch, remove from the site all contractor's equipment brought by him thereon.

### **69.3 Payment on Termination**

In the event of such termination the employer shall be under the same obligations to the contractor in regard to payment as if the contract has been terminated under the provisions of clause 65.6, but, in addition to the payments specified in Sub-Clause 65.8 the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

#### **69.4 Contractor's Entitlement to suspend Works**

Without prejudice to the Contractor's entitlement to interest under Sub-Clause 60.8 and to terminate under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 28 days after the expiry of the time stated in Sub- Clause 60.8 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub- Clause and thereby suffers delay or incurs cost the Engineer shall after due consultation with the Contractor, determine

- a) any extension of time to which the contractor is entitled under clause 44.1 to 44.3, and
- b) the amount of such costs, which shall be added to the contract price.

And shall notify the Contractor accordingly.

### **CHANGES IN COST AND LEGISLATION**

#### **70.1 Increase or Decrease of Cost**

It shall be added to or deducted from the Contract price such sums in respect of rise or fall in the cost of labour and/ or materials or any other matters affecting the cost of the execution of the works as may be determined in accordance with these conditions.

#### **70.2 Subsequent Legislation**

If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the works are being or are to be executed changes to any National or State Statute Ordinance Decree or other Law or any regulation or bye -law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or bye-law which causes additional or reduced cost to the contractor other than under sub-clause 70.1 in the execution of the Contract, such additional or reduced cost shall after due consultation with the employer and the Contractor be determined by the Engineer and shall be added to or deducted from the contract price and the engineer shall notify the Contractor accordingly.

#### **70.3 Other Changes in Cost**

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit

rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

#### **71.1 Engineer's Authority to Correct Errors**

The Engineer shall at the request of either or both parties, or at his own initiative, subject to the provisions of this subclause and with retrospective effect from the date of this Contract have authority to make a determination correcting any manifest error (including for the avoidance of doubt and without prejudice to the generality of the Engineer's authority in this regard any error of spelling, grammar or punctuation and any omission, inclusion or misplacement of text) in any provision of this Contract Provided always that:

- (a) The Engineer before making such determination shall by notice to the Employer and the Contractor provide them with a draft thereof and give them a reasonable time in which to comment on the draft.
- (b) The Engineer shall in making such determination take into consideration the presumed intentions of the parties, the wording of any provision of the Conditions of Contract for use in connection with Works of Civil Engineering Construction Fifth Edition (June 1973) (Revised January 1979) ("the ICE Conditions of Contract") or of any other standard form of contract upon which the provision to be corrected has been based, and any comments received by the Employer and/or the Contractor on the draft determination provided to them under subclause (a) of this clause.
- (c) The Engineer shall provide the Employer and the Contractor with a copy of the determination made by him and
- (d) Clause 67.1 to 67.4 shall for the avoidance of doubt apply to any dispute between the Employer and the Contractor in connection with or arising out of the Engineer's determination.

**PROFORMA  
OF  
INDENTURE FOR SECURED ADVANCE OR CREDIT**

THIS INDENTURE made this day of \_\_\_\_\_ between M/s. \_\_\_\_\_ (hereinafter called the Contractor) which expression shall where the Context as admits or implies be deemed to include his executors/ administrators and assigns of the one part and Area Health Centre at Cap Malheureux, Mauritius (hereinafter called the Employer/Engineer) which expression shall where the context so admits or implies be deemed to include its successors and assigns of the other part.

Whereas by an agreement dated \_\_\_\_\_ (hereinafter called the said agreement) the Contractor has agreed to construct \_\_\_\_\_ ( the works or the said works).

And whereas the Contractor has applied to the Engineer that he may be or be given credited for materials brought by him to the site of the works subject to the said agreement for use in construction of the works.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs. \_\_\_\_\_ paid to the Contractor by The Engineer. The receipt where the Contractor hereby acknowledges and of such advance or credited (if any) as may be made to him as aforesaid the Contractor hereby covenants and agrees with The Engineer and declares as follows :-

1. That all sums given as advance or credit by The Engineer to the Contractor as aforesaid shall be employed by the Contractor in or towards the execution of the said works and for no other purpose whatsoever.
2. That the materials for which the advance or credit is given are offered to and accepted by The Engineer as security and are absolutely the Contractor's own property and free from encumbrances of any kind and the Contractor will not make any application for or receive further advance or credit on the security of materials which are not absolutely his own property and free from encumbrances of any kind and the Contractor shall indemnify The Engineer against any claims to any materials in respect of which advance or credit has been made to him as aforesaid.
3. That the said materials and all other materials on the security of which any further advance or advances or credit may be given as aforesaid

(hereinafter called the said materials) shall be used by the Contractor solely in the execution of the said works in accordance with the directions of The Engineer and in terms of said agreement.

4. That the Contractor shall make at his own cost all necessary and adequate arrangements for the proper safe custody and protection against all risks of the said materials and that until used in the construction as aforesaid the materials shall remain at the site of the said works in Contractor's custody and on his own responsibility and shall at all times be open to inspection by The Engineer. In the event of the materials or any part thereof being stolen, destroyed or damaged or becoming deteriorated in greater degree than in due to reasonable use and wear thereof the Contractor will replace the same with other materials of like quality or repair and make good the same as required by The Engineer.
5. That the said materials shall not on any account be removed from the site of the work except with the written permission of The Engineer.
6. That the advance shall be repayable in full when or before Contractor receives payments from The Engineer of the price payable to him for the said works under the terms and provisions of the said agreements. Provided that if any intermediate payments are made to the Contractor on account of work done then on the occasion of each payment The Engineer will be at liberty to make a recovery from the Contractor's bill for such payments by deducting there from the value of the said materials than actually used in the contraction and in respect of which recovery has not been made previously. The value for this purpose being determined in respect of each description of materials at the rates at which the amounts of the advance as made under these presents were calculated.
7. That if the Contractor shall at any time make any default in the performance of observance in respect of any of the terms and provisions of the said agreement or of those provisions the total amount of the advance or advances that may still be owing to The Engineer, shall immediately on the happening of such default be repayable by the Contractor to The Engineer together with interest thereon at 12% per annum from the date or respective dates of such advance or advances to the date of payment and with all costs. Damages and expenses incurred by The Engineer in or for the recovery hereof or the enforcement of the security or otherwise by reasons of default of the Contractor and the Contractor hereby covenants and agrees with The Engineer repay and pay the same respective to him accordingly.

8. That the Contractor hereby charges all the said materials with the repayment to The Engineer of all sums advances or credit as aforesaid and all costs. Charges, damages and expenses payable under these presents PROVIDED ALWAYS it is hereby agreed and declared that notwithstanding anything in the said agreement and without prejudice to the powers contained therein if and whenever the covenant for payment and repayment herein before contained shall become enforceable and the money owing shall not be paid in accordance therewith. The Engineer may at any time thereafter adopt all or any of the following courses as he may deem best:
  - a. Seize and utilise the said materials or any part thereof in the completion of the said works in accordance with the provisions in that behalf contained in the said agreement debiting the Contractor with the actual cost of effecting such completion and the amount due in respect of advance or credit under these presents and crediting the Contractor with the value of work done as if he has carried it out in accordance with the said agreement and the rates thereby provided if the balance is against the Contractor is to pay the same to The Engineer on demand.
  - b. Remove and sell by public auction the seized materials or any part thereof and out of the money arising from the sale repay The Engineer under these presents and pay over the surplus (if any) to the Contractor.
  - c. Deduct all or any part of the moneys owing from any sums due to the Contractor under said agreement.
9. Except in the event of such default on the part of Contractor as aforesaid, interest or the said advance shall not be payable.
10. That in the event of conflict between the provisions of these presents and the said agreements, the provisions of these presents shall prevail and in the event of any dispute or difference arising over the construction or effect of these presents, the settlement of which has not been hereinbefore expressly provided for the same shall so far as is lawful be referred to Managing Director, HSCC (India) Ltd. or to such person as he may appoint whose decision shall be final and the provisions of the Indian Arbitration Act for the time being in force shall apply to such reference.

IN WITNESS whereof the said The Engineer and the Contractor hereunto set their respective hands and seals the day and year first above written.

Signed sealed and delivered by

Contractor

The Engineer

**END OF VOLUME – II  
(LAST PAGE)**