



REPUBLIC OF GHANA

# **Tender Documents**

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## **Procurement of Works**

### **Medium Contracts (LUMP SUM CONTRACTS)**

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**Public Procurement Board**

**Accra, Ghana**

**October 2003**



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## Introduction

This Tender Document is intended as a model for lump sum types of Contract. Lump sum contracts are used in particular for buildings and other forms of construction where the Works are well defined and are unlikely to change in quantity or specification, and where encountering difficult or unforeseen site conditions (for example, hidden foundation problems) is unlikely. Lump sum contracts should be used for Works that can be defined in their full physical and qualitative characteristics before Tenders are called, or where the risks of substantial design variations are minimal—usually construction of buildings, pipelaying, power transmission towers, and series of small structures, such as bus shelters or school ablution units. In lump sum contracts, the concept of priced “activity schedules” has been introduced, to enable payments to be made as “activities” are completed. Payments can also be made on the basis of percentage completion of each activity.

The Tender Document has been prepared for use by Procurement Entities in the procurement of works for medium contracts—valued at more than GHC500 million but less than GHC15 billion<sup>1</sup> — by National Competitive Tender (NCT).

Care should be taken to check the relevance of the provisions of the document against the requirements of the specific Works to be procured. The following directions should be observed when using the document:

- (a) All the documents listed in the Table of Contents are normally required for the procurement of Works. However, they should be adapted as necessary to the circumstances of the particular Project.
- (b) Details to be provided by the Employer prior to release of the Tender documents are limited to the Invitation for Tenders, Tender Data, and Contract Data (Section 4), in addition to Sections 5-7, which deal with Specifications, Drawings, and Schedule of Activities, respectively. **Specific details** should be furnished in the spaces indicated by italicized notes inside brackets. Those details not filled in by the Employer are the responsibility of the Tenderer.
- (c) This Tender document is intended to serve on a repetitive basis. Modifications for specific Project or Contract needs should be provided only in the Contract Data as amendments to Conditions of Contract. If modifications must be made to Tender procedures, they can be presented in the Tender Data.
- (f) The document has been prepared for Tender where either prequalification or postqualification applies. The process of prequalification of Tenderers is not covered in this standard document. Refer to *Prequalification Documents, Procurement of Works* issued by the public Procurement Board.

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<sup>1</sup> Or the equivalent threshold level as revised in accordance with the Public Procurement Act, 2003(Act 663).

## **Invitation for Tenders**

## Invitation for Tenders (IFT)

Date: *[of issue of invitation]* \_\_\_\_\_

Contract Name: \_\_\_\_\_

Contract N<sup>o</sup>: \_\_\_\_\_

1. The \_\_\_\_\_ of the Republic of Ghana has been allocated funds as part of its budgetary allocation to cover the cost of \_\_\_\_\_ and intends to apply part of this funds to cover eligible payments under the Contract for \_\_\_\_\_ Tender is open to all Tenderers from eligible source countries as defined in the Guidelines of the Public procurement Board of the Republic of Ghana.
2. The \_\_\_\_\_ invites sealed Tenders from eligible Tenderers for the construction of \_\_\_\_\_.
3. Tender documents (and additional copies) may be purchased at the address stated below for a nonrefundable fee of GHC \_\_\_\_\_ or its equivalent in a freely-convertible currency, for each set. Interested Tenderers may obtain further information at the same address.
4. Tenders shall be valid for a period of \_\_\_\_\_ after Tender opening and must be accompanied by security of GHC \_\_\_\_\_ or its equivalent in a convertible currency, and shall be delivered to the address specified below on or before \_\_\_\_\_ at \_\_\_\_hrs GMT, at which time they will be opened in the presence of the Tenderers who wish to attend.
5. Qualified domestic contractors may be eligible to receive a margin of preference of not more 10 percent in Tender evaluation.

### **Address for inspecting and purchasing Tender Documents**

Name of Office: \_\_\_\_\_

Street Address: \_\_\_\_\_

Floor/Room Number: \_\_\_\_\_

City: \_\_\_\_\_ Region: \_\_\_\_\_

Country: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

# TENDER DOCUMENT

Issued on: \_\_\_\_\_

for

## Procurement of

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Invitation for Tenders No: \_\_\_\_\_

ICT No: \_\_\_\_\_

Employer: \_\_\_\_\_

Republic of Ghana



## **Section I. Instructions to Tenderers**

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## Section I. Instructions to Tenderers

### A. General

- 1. Scope of Tender**
  - 1.1 The Employer as defined in the Contract Data, invites Tenders for the construction of Works, as described in the Contract Data. The name and identification number of the Contract is provided in the Contract Data.
  - 1.2 The successful Tenderer will be expected to complete the Works by the Intended Completion Date specified in the Contract Data.
- 2. Source of Funds**
  - 2.1 The Procurement Entity (hereinafter called “Employer”) named in the Tender Data Sheet shall fund this procurement from part of its budgetary allocation toward the realization of the project named in the TDS.
  - 2.2 Payments will be made only at the request of the Employer and upon approval by a designated official of the Republic of Ghana in accordance with the terms and conditions of the contract between the Purchaser and the Supplier (hereinafter called the Contract), and will be subject in all respects to the Financial Administration Act, 2003 (Act 654) of the Republic of Ghana. No party other than the Supplier shall derive any rights from the Contract or have any claim to the funds.
- 3. Eligible Tenderers**
  - 3.1 This Invitation for Tenders is open to all Tenderers from eligible countries as defined in the Procurement Guidelines of the Procurement Board of the Republic of Ghana. Any materials, equipment, and services to be used in the performance of the Contract shall have their origin in eligible source countries.
  - 3.2 All Tenderers shall provide in Section 2, Forms of Tender and Qualification Information, a statement that the Tenderer (including all members of a joint venture and subcontractors) is not associated, nor has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to Tender.

- 3.3 Government-owned enterprises in the country may only participate if they are legally and financially autonomous, and operate under commercial law.
- 4. Qualification of the Tenderer**
- 4.1 All Tenderers shall provide in Section 2, Forms of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 4.2 In the event that prequalification of potential Tenderers has been undertaken, only Tenders from prequalified Tenderers will be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally-submitted prequalification information remains essentially correct as of the date of Tender submission. The update or confirmation should be provided in Section 2.
- 4.3 If the Employer has not undertaken prequalification of potential Tenderers, all Tenderers shall include the following information and documents with their Tenders in Section 2, unless otherwise stated in the Tender Data:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the Tender to commit the Tenderer;
  - (b) total monetary value of construction work performed for each of the last five years;
  - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and clients who may be contacted for further information on those contracts;
  - (d) major items of construction equipment proposed to carry out the Contract;
  - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
  - (f) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the past

five years;

- (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
- (h) authority to seek references from the Tenderer's bankers;
- (i) information regarding any litigation, current or during the last five years, in which the Tenderer is involved, the parties concerned, and disputed amount; and
- (j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

4.4 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the Tender Data:

- (a) the Tender shall include all the information listed in Sub-Clause 4.3 above for each joint venture partner;
- (b) the Tender shall be signed so as to be legally binding on all partners;
- (c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- (d) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

4.5 To qualify for award of the Contract, Tenderers shall meet the following minimum qualifying criteria:

- (a) annual volume of construction work of at least the amount specified in the Tender Data;
- (b) experience as prime contractor in the construction of at least two works of a nature and complexity equivalent to

the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);

- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Tender Data;
- (d) a Contract Manager with five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and
- (e) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than the amount specified in the Tender Data.

A consistent history of litigation or arbitration awards against the Applicant or any partner of a Joint Venture may result in disqualification.

4.6 The figures for each of the partners of a joint venture shall be added together to determine the Tenderer's compliance with the minimum qualifying criteria of Sub-Clause 4.5(a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 4.5(a), (b), and (e) for an individual Tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's Tender. Subcontractors' experience and resources will not be taken into account in determining the Tenderer's compliance with the qualifying criteria, unless otherwise stated in the Tender Data.

4.7 Domestic Tenderers and joint ventures of domestic and foreign Tenderers applying for eligibility for a 7½-percent margin of preference in Tender evaluation shall supply all information to satisfy the criteria for eligibility as described in Clause 30 of these Instructions to Tenderers.

## **5. One Tender per Tenderer**

5.1 Each Tenderer shall submit only one Tender, either individually or as a partner in a joint venture. A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the Tenderer's participation to be disqualified.

- 6. Cost of Tender** 6.1 The Tenderer shall bear all costs associated with the preparation and submission of his Tender, and the Employer will in no case be responsible or liable for those costs.
- 7. Site Visit** 7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Tenderer's own expense.

## **B. Tender Documents**

- 8. Content of Tender Documents** 8.1 The set of Tender documents comprises the documents listed in the table below and addenda issued in accordance with Clause 10:
- |         |      |   |
|---------|------|---|
| Section | I    | Instructions to Tenderers                     |
|         | II   | Forms of Tender and Qualification Information |
|         | III  | Conditions of Contract                        |
|         | IV   | Tender Data                                   |
|         | V    | Specifications                                |
|         | VI   | Drawings                                      |
|         | VII  | Schedule of Activities/Activity Schedule      |
|         | VIII | Forms of Securities                           |
- 8.2 Tenderers should complete and return sections II, IV and VII.
- 9. Clarification of Tender Documents** 9.1 A prospective Tenderer requiring any clarification of the Tender documents may notify the Employer in writing or by cable ("cable" includes telex, facsimile and email) at the Employer's address indicated in the invitation to Tender. The Employer will respond to any request for clarification received earlier than 28 days prior to the deadline for submission of Tenders. Copies of the Employer's response will be forwarded to all purchasers of the Tender documents, including a description of the inquiry, but without identifying its source.
- 10. Amendment of Tender Documents** 10.1 Before the deadline for submission of Tenders, the Employer may modify the Tender documents by issuing addenda.
- 10.2 Any addendum thus issued shall be part of the Tender documents and shall be communicated in writing or by cable to all purchasers of the Tender documents. Prospective Tenderers shall



acknowledge receipt of each addendum by cable to the Employer.

- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Employer shall extend, as necessary, the deadline for submission of Tenders, in accordance with Sub-Clause 20.2 below.

### **C. Preparation of Tenders**

#### **11. Language of Tender**

- 11.1 All documents relating to the Tender shall be in the language specified in the Contract Data.

#### **12. Documents Comprising the Tender**

- 12.1 The Tender submitted by the Tenderer shall comprise the following:

- (a) The Tender (in the format indicated in Section 2);
- (b) Tender Security;
- (c) Priced Activity Schedule;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited;

and any other materials required to be completed and submitted by Tenderers, as specified in the Tender Data.

#### **13. Tender Prices**

- 13.1 The Contract shall be for the whole Works, as described in Sub-Clause 1.1, based on the priced Activity Schedule submitted by the Tenderer.

- 13.2 The Tenderer shall fill in rates and prices for all items of the Works described in the drawings and specifications and listed in the Activity Schedule. Items for which no rate or price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed covered by the other rates and prices in the Schedule of Activities.

- 13.3 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

- 13.4 The lump sum price quoted by the Tenderer shall be subject to adjustment during the performance of the Contract if provided for in the Tender and Contract Data and the provisions of Clause 47 of the Conditions of Contract. The Tenderer shall submit

with the Tender all the information required under the Contract Data and Clause 47 of the Conditions of Contract.

**14. Currencies of Tender and Payment**

14.1 The lump sum price shall be quoted by the Tenderer entirely in the currency of the Employer's country as specified in the Contract Data. Foreign currency requirements shall be indicated as a percentage of the Tender price and shall be payable at the option of the Tenderer in up to three foreign currencies of any eligible country.

14.2 The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in para. 14.1 above shall be the selling rates for similar transactions established by the authority specified in the Contract Data prevailing on the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall apply for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of Clause 28.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.

14.3 Tenderers shall indicate details of their expected foreign currency requirements in the Tender.

14.4 Tenderers may be required by the Employer to clarify their foreign currency requirements and to substantiate that the amounts included in the Lump Sum and in the Contract Data are reasonable and responsive to Sub-Clause 14.1.

**15. Tender Validity**

15.1 Tenders shall remain valid for the period specified in the Tender Data<sup>2</sup>.

15.2 In exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing or by cable. A Tenderer may refuse the request without forfeiting the Tender Security. A Tenderer agreeing to the request will not be required or permitted to otherwise modify the Tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 16 in all respects.

15.3 In the case of contracts in which the Contract Price is fixed (not

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<sup>2</sup> Tender Validity Period shall be 120 days

subject to price adjustment), if the period of Tender validity is extended beyond 60 days, the amounts payable in local and foreign currency to the Tenderer selected for award, shall be increased by applying to both the local and the foreign currency component of the payments, respectively, the factors<sup>3</sup> specified in the Tender Data or in the request for extension, for the period of delay beyond 60 days after the expiry of the initial Tender validity, up to the notification of award. Tender evaluation will be based on the Tender prices without taking the above correction into consideration.

## **16. Tender Security**

- 16.1 The Tenderer shall furnish, as part of the Tender, a Tender Security in local currency or in a freely convertible currency, in the amount specified in the Tender Data.
- 16.2 The Tender Security shall, at the Tenderer's option, be in the form of a certified check, bank draft, letter of credit, or a bank guarantee from a reputable bank located in the country of the Employer or abroad. The format of the Tender Security should be in accordance with the form of Tender Security included in Section 8 or another form acceptable to the Employer. Tender Security shall be valid for 28 days beyond the validity of the Tender.
- 16.3 Any Tender not accompanied by an acceptable Tender Security shall be rejected by the Employer. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of " \_\_\_\_\_," " \_\_\_\_\_," and " \_\_\_\_\_".
- 16.4 The Tender Security of unsuccessful Tenderers will be returned within 28 days of the end of the Tender validity period specified in Sub-Clause 15.1.
- 16.5 The Tender Security of the successful Tenderer will be discharged when the Tenderer has signed the Agreement and furnished the required Performance Security.
- 16.6 The Tender Security may be forfeited
- (a) if the Tenderer withdraws the Tender after Tender opening during the period of Tender validity;

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<sup>3</sup> Adjustment of Tender Prices shall be in accordance with data provided by either the Ministry of Roads & Transport or Ministry of Works & Housing or Ghana Statistical Services

- (b) if the Tenderer does not accept the correction of the Tender price, pursuant to Clause 27; or
- (c) in the case of a successful Tenderer, if the Tenderer fails within the specified time limit to
  - (i) sign the Agreement; or
  - (ii) furnish the required Performance Security.

**17. Alternative Proposals by Tenderers**

17.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, including the basic technical design as indicated in the drawings and specifications. Alternatives will not be considered, unless specifically allowed in the Tender Data. If so allowed, Sub-Clause 17.2 shall govern.

17.2 If so allowed in the Tender Data, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the basic technical design as indicated in the drawings and specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Employer.

**18. Format and Signing of Tender**

18.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in Clause 12 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked "ORIGINAL." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the Tender Data, and clearly marked as "COPIES." In the event of discrepancy between them, the original shall prevail.

18.2 The original of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer, pursuant to Sub-Clauses 4.3(a) or 4.4(b), as the case may be. All pages of the Tender where entries or amendments have been made shall be initialled by the person

or persons signing the Tender.

- 18.3 The Tender shall contain no alterations or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.

## D. Submission of Tenders

### 19. Sealing and Marking of Tenders

19.1 The Tenderer shall seal the original and all copies of the Tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “ORIGINAL” and “COPIES”.

19.2 The inner and outer envelopes shall

- (a) be addressed to the Employer at the address provided in the Tender Data;
- (b) bear the name and identification number of the Contract as defined in the Tender and Contract Data; and
- (c) provide a warning not to open before the specified time and date for Tender opening as defined in the Tender Data.

19.3 In addition to the identification required in Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared late, pursuant to Clause 21.

19.4 If the outer envelope is not sealed and marked as above, the Employer will assume no responsibility for the misplacement or premature opening of the Tender.

### 20. Deadline for Sub-mission of Tenders

20.1 Tenders shall be delivered to the Employer at the address specified above no later than the time and date specified in the Tender Data.

20.2 The Employer may extend the deadline for submission of Tenders by issuing an amendment in accordance with Clause 10, in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

### 21. Late Tenders

21.1 Any Tender received by the Employer after the deadline prescribed in Clause 20 will be returned unopened to the Tenderer.

### 22. Modification and Withdrawal of Tenders

22.1 Tenderers may modify or withdraw their Tenders by giving notice in writing before the deadline prescribed in Clause 20.

22.2 Each Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with

Clauses 18 and 19, with the outer and inner envelopes additionally marked “MODIFICATION” or “WITHDRAWAL,” as appropriate.

- 22.3 No Tender may be modified after the deadline for submission of Tenders.
- 22.4 Withdrawal of a Tender between the deadline for submission of Tenders and the expiration of the period of Tender validity specified in the Tender Data or as extended pursuant to Sub-Clause 15.2 may result in the forfeiture of the Tender Security pursuant to Clause 16.
- 22.5 Tenderers may only offer discounts to, or otherwise modify the prices of their Tenders by submitting Tender modifications in accordance with this clause, or included in the original Tender submission.

## **E. Tender Opening and Evaluation**

### **23. Tender Opening**

- 23.1 The Employer will open the Tenders, including modifications made pursuant to Clause 22, in the presence of the Tenderers’ representatives who choose to attend at the time and in the place specified in the Tender Data.
- 23.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.3 The Tenderers’ names, the Tender prices, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, Tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening.
- 23.4 The Employer will prepare minutes of the Tender opening, including the information disclosed to those present in accordance with Sub-Clause 23.3.

### **24. Process to Be Confidential**

- 24.1 Information relating to the examination, clarification, evaluation, and comparison of Tenders and recommendations for the award of a contract shall not be disclosed to Tenderers or any other

persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's processing of Tenders or award decisions may result in the rejection of his Tender.

- 25. Clarification of Tenders** 25.1 To assist in the examination, evaluation, and comparison of Tenders, the Employer may, at the Employer's discretion, ask any Tenderer for clarification of the Tenderer's Tender, including breakdowns of the prices in the Activity Schedule. The request for clarification and the response shall be in writing or by cable, telex, facsimile, or email but no change in the price or substance of the Tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Tenders in accordance with Clause 27.
- 26. Examination of Tenders and Determination of Responsiveness** 26.1 Prior to the detailed evaluation of Tenders, the Employer will determine whether each Tender (a) meets the eligibility criteria defined in Clause 3; (b) has been properly signed; (c) is accompanied by the required securities; and (d) is substantially responsive to the requirements of the Tender documents.
- 26.2 A substantially responsive Tender is one, which conforms to all the terms, conditions, and specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality, or performance of the Works; (b) which limits in any substantial way, inconsistent with the Tender documents, the Employer's rights or the Tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.
- 26.3 If a Tender is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 27. Correction of Errors** 27.1 Tenders determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer as follows:
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.



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

**28. Currency for Tender Evaluation**

28.1 Tenders will be evaluated as quoted in the currency of the Employer's country as defined in the Contract Data in accordance with Sub-Clause 14.1, unless a Tenderer has used different exchange rates than those prescribed in Sub-Clause 14.2, in which case the Tender will be first converted into the amounts payable in different currencies using the rates quoted in the Tender and then reconverted to the Employer's currency using the exchange rates prescribed in Sub-Clause 14.2.

**29. Evaluation and Comparison of Tenders**

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

29.2 In evaluating the Tenders, the Employer will determine for each Tender the evaluated Tender price by adjusting the Tender price as follows:

- (a) making any correction for errors pursuant to Clause 27;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Activity Schedule but including Daywork, where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with Clause 17; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with Sub-Clause 22.5.

29.3 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors, which are in excess of the requirements of the Tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into

account in Tender evaluation.

29.4 The estimated effect of any price adjustment conditions under Clause 47 of the Conditions of Contract, during the period of implementation of the Contract, will not be taken into account in Tender evaluation.

**30. Preference for Domestic Tenderers**

30.1 If so indicated in the Tender Data, domestic contractors may receive a margin of preference in Tender evaluation, for which this clause shall apply.

30.2 Domestic Tenderers shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a 7½-percent margin of preference in the comparison of their Tenders with those of Tenderers who do not qualify for the preference. They should

- (a) be registered within the country of the Employer;
- (b) have majority ownership by nationals of the country of the Employer;
- (c) not subcontract more than 50 percent of the Works measured in terms of value to foreign contractors; and
- (d) satisfy any other criteria specified for the purpose of domestic preference eligibility, as specified in the Tender Data.

30.3 Joint ventures between domestic and foreign firms may be eligible for the margin of preference provided the domestic partner or partners

- (a) individually satisfy the above criteria of eligibility for the preference;
- (b) demonstrate a beneficiary interest of no less than 50 percent in the joint venture, as demonstrated by the profit and loss sharing provisions of the joint venture agreement;
- (c) will, under the arrangements proposed, carry out at least 50 percent of the Works, measured in terms of value, which shall exclude any materials or plant which are to be directly imported by the domestic partner(s) (always provided that

the domestic partner or partners are qualified to carry out that amount of work, in accordance with the criteria of Sub-Clause 4.3); and

- (d) satisfy any other criteria specified for the purpose of domestic preference eligibility, as specified in the Tender Data.

30.4 The following procedure will be used to apply the margin of preference:

- (a) Responsive Tenders will be classified into the following groups:
  - (i) Group A: Tenders offered by domestic Tenderers and joint ventures meeting the respective criteria of Sub-Clauses 30.2 and 30.3 above; and
  - (ii) Group B: all other Tenders.
- (b) For the purpose of further evaluation and comparison of Tenders only, an amount equal to 7½ percent of the evaluated Tender prices determined in accordance with Clause 29.2(a), (b), and (d), will be added to all Tenders classified in Group B.

## F. Award of Contract

### 31. Award Criteria

31.1 Subject to Clause 32, the Employer will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest evaluated Tender price, provided that such Tenderer has been determined to be (a) eligible in accordance with the provisions of Clause 3, and (b) qualified in accordance with the provisions of Clause 4.

### 32. Employer's Right to Accept any Tender and to Reject any or all Tenders

32.1 Notwithstanding Clause 31, the Employer reserves the right to accept or reject any Tender, and to cancel the Tender process and reject all Tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer's action.

### 33. Notification of Award and

33.1 The Tenderer whose Tender has been accepted will be notified of the award by the Employer prior to expiration of the Tender

**Signing of Agreement**

validity period by cable, telex, email or facsimile confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the “Letter of Acceptance”) will state the sum that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the “Contract Price”).

33.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security in accordance with Clause 34 and signing the Agreement in accordance with Sub-Clause 33.3.

33.3 The Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 28 days following the notification of award along with the Letter of Acceptance. Within 21 days of receipt, the successful Tenderer will sign the Agreement and deliver it to the Employer.

33.4 Upon the furnishing by the successful Tenderer of the Performance Security, the Employer will promptly notify the other Tenderers that their Tenders have been unsuccessful.

**34. Performance Security**

34.1 Within 28 days after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Contract Data and in the form (Bank Guarantee and/or Bond) stipulated in the Tender Data, denominated in the type and proportions of currencies in the Letter of Acceptance and in Accordance with the Conditions of Contract.

34.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee, it shall be issued either (a) at the Tenderer’s option, by a bank located in the country of the Employer or a foreign bank through a correspondent bank located in the country of the Employer, or (b) with the agreement of the Employer directly by a foreign bank acceptable to the Employer.

34.3 If the Performance Security is to be provided by the successful Tenderer in the form of a Bond, it shall be issued by a surety which the Tenderer has determined to be acceptable to the Employer.

- 34.4 Failure of the successful Tenderer to comply with the requirements of Sub-Clause 34.1 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 35. Advance Payment and Security**
- 35.1 The Employer will provide an Advance Payment on the Contract Price as stipulated in the Conditions of Contract, subject to a maximum amount, as stated in the Tender Data.
- 36. Adjudicator**
- 36.1 The Employer proposes the person named in the Tender Data to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Employer has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data at the request of either party.
- 37. Corrupt or Fraudulent Practices**
- 37.1 The Government of Ghana (GOG) requires that all Procurement Entities as well as Tenderers, Suppliers, Contractors and Consultants participating in contracts financed from the public funds of the Republic of Ghana, adhere to the highest ethical standards, both during the tendering process and throughout the execution of such contracts. The list of definitions set forth below involves the most common types of corrupt practices, but is not exhaustive. For this reason, the Public Procurement Board will also consider claims of similar nature involving alleged acts of corruption, in accordance with the established procedure.
- (a). “Bribery” means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, selecting consultants, or executing contracts.
  - (b). “Extortion” or “Coercion” means the act attempting to influence the process of procuring goods or services, selecting consultants, or executing contracts by means of threats of injury to person, property or reputation.
  - (c). “Fraud” means the misrepresentation of information or facts for the purpose of influencing the process of procuring goods or services, selecting consultants, or executing contracts, to the detriment of the Procurement Entity/Purchaser or other participants.

- (d). “Collusion” is an agreement between tenderers designed to result in tenders at artificial prices that are not competitive.

37.2 If, in accordance with the administrative procedures of the Public Procurement Board, it is demonstrated that a government/public official, or anyone acting on his or her behalf, and/or a Tenderer in a procurement process or supplier/contractor during the execution of the contract carried out in connection with a project financed from the public funds of the Republic of Ghana has committed corrupt practices, the Public Procurement Board or the appropriate Tender review Board will:

- (a). reject a proposal to award a contract in connection with the respective procurement process; and/or
- (b). declare a firm and/or its personnel directly involved in corrupt practices, temporarily or permanently ineligible to be awarded future contracts financed from the public funds of the Republic of Ghana.

37.3 The Tenderer shall disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the tendering process or execution of the contract. The information disclosed must include at the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee. The information must be included in the Tender Submission Sheet.

37.4 Any communications between the Tenderer and the Purchaser related to matters of alleged fraud or corruption must be made in writing

### G. Tender Data

#### Instructions to Tenderers Clause Reference

(2.1) The Employer is \_\_\_\_\_

(2.1) The Project is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4.3) The information required from Tenderers in Sub-Clause 4.3 is modified \_\_\_\_\_ as \_\_\_\_\_ follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4.4) The qualification data required from Tenderers in Sub-Clause 4.4 are modified as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(4.5) The qualification criteria in Sub-Clause 4.5 are modified as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4.5a) The minimum required annual volume of construction work for the successful Tenderer in any of the last five years shall be \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(4.5c) The essential equipment to be made available for the Contract by the successful \_\_\_\_\_ Tenderer \_\_\_\_\_ shall \_\_\_\_\_ be

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4.5e) The minimum amount of liquid assets and/or credit facilities net of other contractual commitments of the successful Tenderer shall be \_\_\_\_\_

\_\_\_\_\_

- (8.2) The number of copies of the Tender to be completed and returned shall be \_\_\_\_\_
- (13.4) The Contract \_\_\_\_\_ subject to price adjustment in accordance with Clause 47 of the Conditions of Contract.
- (14.1) The specified international trading currency shall be \_\_\_\_\_.
- (14.2) The date of the exchange rate is \_\_\_\_\_
- The authority for establishing the rates of exchange shall be \_\_\_\_\_
- \_\_\_\_\_
- (15.1) The period<sup>4</sup> of Tender validity shall be \_\_\_\_\_ days after the deadline for Tender submission specified in the Tender Data.
- (15.3) The adjustment of Tender Price in accordance with Clause 15.3 shall be calculated on the basis<sup>5</sup> of an annual increase for foreign costs of \_\_\_\_\_ percent and an annual increase for local costs of \_\_\_\_\_ percent.
- (16.1) The amount of Tender Security shall be \_\_\_\_\_ or an equivalent amount in a freely convertible currency.
- (17.0) Alternative proposals to the requirements of the Tender documents \_\_\_\_\_ be permitted with respect to \_\_\_\_\_.
- (19.2) The Employer's address for the purpose of Tender submission is:
- Attention: \_\_\_\_\_
- Street Address: \_\_\_\_\_
- Floor/Room Number: \_\_\_\_\_
- City/Town: \_\_\_\_\_
- Region: \_\_\_\_\_
- Country: \_\_\_\_\_

---

<sup>4</sup> Tender Validity Period shall be 102 days

<sup>5</sup> Adjustment of Tender Prices shall be in accordance with data provided by the Ministry of Roads & Transport or Ministry of Works & Housing or Ghana Statistical Services



**(20.1)** The deadline for submission of Tenders shall be:

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

Time: \_\_\_\_\_

**(30.0)** Domestic contractors [insert “may” or “will not,” as appropriate] receive a margin of preference in Tender evaluation.

**(34.0)** The Standard Form of Performance Security acceptable to the Employer shall be \_\_\_\_\_.

**(35.0)** The Advance Payment shall be limited to \_\_\_\_\_ percent of the Contract Price.

**(36.1)** The Adjudicator proposed by the Employer is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The hourly fee for this proposed Adjudicator shall be: \_\_\_\_\_

\_\_\_\_\_.

The biographical data of the proposed Adjudicator is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Section II. Forms of Tender, Qualification Information, Letter of Acceptance, and Agreement**

## **Contractor's Tender**

### TENDER FORM

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

To: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

We offer to execute the \_\_\_\_\_ in accordance with the Conditions of Contract accompanying this Tender for the Contract Price of \_\_\_\_\_

The Contract shall be paid in the following currencies:

Currency	Percentage payable in currency	Rate of exchange: one foreign equals GHC _____	Inputs for which foreign currency is required
(a)			
(b)			

The advance payment required is:

Amount	Currency
(a)	
(b)	

We accept the appointment of \_\_\_\_\_ as the Adjudicator.

**Or**

We do not accept the appointment of \_\_\_\_\_ as the Adjudicator, and propose instead that \_\_\_\_\_ be appointed as Adjudicator, whose daily fees and biographical data are attached.

This Tender and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Tender you receive.

Commissions or gratuities, if any, paid or to be by us to agents relating to this Tender, and to contract execution if we are awarded the contract, are listed below:

---

Name & Address of Agent	Amount & Currency	Purpose of Commission or Gratuity
-------------------------	-------------------	--------------------------------------

---

We hereby confirm that this Tender complies with the Tender Validity and Tender Security required by the Tender documents and specified in the Tender Data.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Tenderer: \_\_\_\_\_

Address: \_\_\_\_\_

### **ATTACHMENTS TO THE TENDER**

- Attach. 1      Power of Attorney
- Attach. 2      Tender Security
- Attach. 3      Price Schedules
- Attach. 4      Documentary Evidence of Tenderer's Qualifications
- Attach. 5      Others:
- Work Programmeme and Schedule
  - List of Subcontractors
  - Design Drawings and Calculations
  - Technical Alternatives
  - Contract Data

## **Qualification Information**

### Qualification Information

**1. Individual Tenderers or Individual Members of Joint Ventures**

1.1 Constitution or legal status of Tenderer: \_\_\_\_\_ [attach copy]

Place of registration: \_\_\_\_\_

Principal place of business: \_\_\_\_\_

Power of attorney of signatory of Tender: [attach]

1.2 Total annual volume of construction work performed in five years, in the internationally traded currency specified in the Tender Data: \_\_\_\_\_

1.3 Work performed as prime Contractor on works of a similar nature and volume over the last five years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of client and contact person	Type of work performed and year of completion	Value of contract
(a)			
(b)			

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below. Refer also to Sub-Clause 4.3(c) of the Instructions to Tenderers.

Item of equipment	Description, make, and age (years)	Condition (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
(a)			
(b)			

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data. Refer also to Sub-Clause 4.3(e) of the Instructions to Tenderers and Sub-Clause 9.1 of the Conditions of Contract.

Position	Name	Years of experience (general)	Years of experience in proposed position
(a)			
(b)			



1.6 Proposed subcontracts and firms involved. Refer to Clause 7 of Conditions of Contract.

Sections of the Works	Value of subcontract	Subcontractor (name and address)	Experience in similar work
(a)			
(b)			

1.7 Financial reports for the last five years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.

1.8 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents.

1.9 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Employer.

1.10 Information on current litigation in which the Tenderer is involved.

Other party(ies)	Cause of dispute	Amount involved
(a)		
(b)		

1.11 Statement of compliance with the requirements of Sub-Clause 3.2 of the Instructions to Tenderers.

1.12 Proposed Programme (work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tender documents.

**2. Joint Ventures**

2.1 The information listed in 1.1 - 1.11 above shall be provided for each partner of the joint venture.

2.2 The information in 1.12 above shall be provided for the joint venture.

2.3 Attach the power of attorney of the signatory(ies) of the Tender authorizing signature of the Tender on behalf of the joint venture.

- 2.4 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that
- (a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
  - (b) one of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and
  - (c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**3. Additional Requirements**

- 3.1 Tenderers should provide any additional information required in the Tender Data or to fulfill the requirements of Sub-Clause 4.1 and Clause 30 of the Instructions to Tenderers, if applicable.

## **Letter of Acceptance**

## LETTER OF ACCEPTANCE

Date \_\_\_\_\_

To: \_\_\_\_\_

This is to notify you that your Tender dated \_\_\_\_\_ for execution of the \_\_\_\_\_ for the Contract Price of the equivalent of \_\_\_\_\_, \_\_\_\_\_, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us.

We accept that \_\_\_\_\_ be appointed as the Adjudicator.

### Or

We do not accept that \_\_\_\_\_ be appointed as adjudicator, and by sending a copy of this letter of acceptance to \_\_\_\_\_, we are hereby requesting \_\_\_\_\_, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 36.1 of the Instructions to Tenderers.

You are hereby required to:

- (a) submit the Performance Security stipulated in the Tender Documents within 21 days after receipt of this Letter of Acceptance;
- (b) sign and return the attached Contract Agreement as provided in the Tender Documents;
- (c) commence performance of the said contract in accordance with the Contract Documents.

Authorized Signature \_\_\_\_\_

Name and Title of Signatory \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Attachment: Agreement

## **Agreement**

**Agreement**

**This Agreement**, made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between  
\_\_\_\_\_  
\_\_\_\_\_  
(hereinafter called “the Employer”) and  
\_\_\_\_\_  
\_\_\_\_\_  
(hereinafter called “the Contractor”) of the other part.

Whereas the Employer is desirous that the Contractor execute \_\_\_\_\_  
(hereinafter called “the Works”) and the Employer has accepted the Tender by the Contractor  
for the execution and completion of such Works and the remedying of any defects therein.

Now this Agreement witnesseth as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Agreement.
2. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
3. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects wherein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

In Witness whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The Common Seal of \_\_\_\_\_  
was hereunto affixed in the presence of: \_\_\_\_\_

Signed, Sealed, and Delivered by the said \_\_\_\_\_  
in the presence of: \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

### **Section III. Conditions of Contract**

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## Conditions of Contract

### A. General

#### 1. Definitions

1.1 Boldface type is used to identify defined terms.

The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Clauses 24 and 25 hereunder.

**Schedule of Activities** means the priced and completed Schedule of Activities forming part of the Tender.

**Compensation Events** are those defined in Clause 44 hereunder.

The **Completion Certificate** is the certificate issued by Project Manager after the Defects Liability Period and upon correction of all defects by the Contractor.

The **Completion Date** is the date of taking-over of the Works as certified by the Project Manager, in accordance with Sub-Clause 55.1.

The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Clause 2.3 below.

The **Contractor** is a person or corporate body whose Tender to carry out the Works has been accepted by the Employer.

The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.

The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

**Days** are calendar days; months are calendar months.

**Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

A **Defect** is any part of the Works not completed in accordance with the Contract.

The **Defects Liability Period** is the period named in the Contract Data and calculated from the Taking-Over Date.

**Drawings** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

The **Employer** is the party who employs the Contractor to carry out the Works.

**Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.

The **Intended Completion Date** is the date on which it is intended that the Contractor shall substantially complete the Works. The Intended Completion Date is specified in the Contract Data. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

**Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.

**Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

The **Project Manager** is the person named in the Contract Data (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.

The **Site** is the area defined as such in the Contract Data.

**Site Investigation Reports** are those that were included in the Tender documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.

**Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

The **Start Date** is given in the Contract Data. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.

**Taking-Over Certificate** is a certificate issued by the Project Manager when the works are substantially completed in accordance with sub-clause 55.1

**Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

A **Variation** is an instruction given by the Project Manager which varies the Works.

The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.

- 2. Interpretation**
- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
- (1) Agreement,
  - (2) Letter of Acceptance,

- (3) Contractor's Tender,
  - (4) Contract Data,
  - (5) Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,
  - (8) Activity Schedule and
  - (9) Any other document listed in the Contract Data as forming part of the Contract.
- 3. Language and Law** 3.1 The Contract and the law governing the Contract shall be in English
- 4. Project Manager's Decisions** 4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation** 5.1 The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9. Personnel** 9.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.

9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

**10. Employer's  
and  
Contractor's  
Risks**

10.1 The Employer carries the risks, which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

**11. Employer's  
Risks**

11.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:

(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to

(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or

(ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.

(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

(a) a Defect which existed on the Completion Date,

(b) an event occurring before the Completion Date, which was not itself an Employer's risk, or

- (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Correction Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Investigation**
- 14.1 The Contractor, in preparing the Tender, shall rely on any Site Investigation Reports referred to in the Contract Data,

- Reports** supplemented by any information available to the Tenderer.
- 15. Queries about the Contract Data** 15.1 The Project Manager will clarify queries on the Contract Data.
- 16. Contractor to Construct the Works** 16.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 17. The Works to Be Completed by the Intended Completion Date** 17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 18. Approval by the Project Manager** 18.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 18.2 The Contractor shall be responsible for design of Temporary Works.
- 18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 19. Safety** 19.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 20. Discoveries** 20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.



- 21. Possession of the Site** 21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.
- 22. Access to the Site** 22.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 23. Instructions** 23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 24. Disputes** 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 25. Procedure for Disputes** 25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 25.2 The Adjudicator shall be paid by the hour at the rate specified in the Tender Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 25.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Contract Data.
- 26. Replacement of Adjudicator** 26.1 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be

designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

## **B. Time Control**

### **27. Programme**

27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Programme showing the general methods, arrangements, order, and timing for all the activities in the Works.

27.2 An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

27.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme has been submitted.

27.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. A revised Programme shall show the effect of Variations and Compensation Events.

### **28. Extension of the Intended Completion Date**

28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.

28.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full

supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

- 29. Acceleration**
- 29.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 29.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 30. Delays Ordered by the Project Manager**
- 30.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 31. Management Meetings**
- 31.1 The Project Manager shall arrange monthly management meetings. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 31.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 32. Early Warning**
- 32.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 32.2 The Contractor shall cooperate with the Project Manager in

making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### **C. Quality Control**

- 33. Identifying Defects** 33.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 34. Tests** 34.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 35. Correction of Defects** 35.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Taking-Over, and is defined in the Contract Data.
- 35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 36. Uncorrected Defects** 36.1 If the Contractor has not corrected a Defect within the Defects Liability Period, the Project Manager will have the defects corrected and the Contractor surcharged with the amount involved.

## D. Cost Control

- 37. Activity Schedule**
- 37.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Programme.
- 37.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.
- 38. Changes in the Activity Schedule**
- 38.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Programme or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
- 39. Variations**
- 39.1 All Variations shall be included in updated Programmes and Activity Schedules produced by the Contractor.
- 40. Payments for Variations**
- 40.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 40.2 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 40.3 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 40.4 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 41. Cash Flow Forecasts**
- 41.1 When the Programme or Activity Schedule is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary

using the Contract exchange rates.

#### **42. Payment Certificates**

- 42.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 42.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 42.3 The value of work executed shall be determined by the Project Manager.
- 42.4 The value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 42.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

#### **43. Payments**

- 43.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 43.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.

43.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

**44. Compensation  
Events**

44.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.

(k) The Project Manager unreasonably delays issuing a Certificate of Completion.

(l) Other Compensation Events described in the Contract or determined by the Project Manager shall apply.

44.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

44.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

44.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### **45. Tax**

45.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Tenders for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 47.

#### **46. Currencies**

46.1 Where payments are made in currencies other than the currency of the Employer's country, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Tender.

#### **47. Price Adjustment**

47.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Data. If so provided, the amounts certified in each payment certificate, after deducting for Advance



Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Imc/Ioc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

$A_c$  and  $B_c$  are coefficients specified in the Contract Data, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c”; and

$Imc$  is the index prevailing at the end of the month being invoiced and  $Ioc$  is the index prevailing 28 days before Tender opening for inputs payable; both in the specific currency “c”.

47.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### **48. Retention**

48.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.

48.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.

48.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” Bank guarantee.

#### **49. Liquidated Damages**

49.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor.

Payment of liquidated damages shall not affect the Contractor's liabilities.

49.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 43.1.

## **50. Bonus**

50.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the Contract Data for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

## **51. Advance Payment**

51.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

51.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

51.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

## **52. Securities**

52.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall

be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

**53. Dayworks**

53.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

53.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

53.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

**54. Cost of Repairs**

54.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defect Liability Period shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

**E. Finishing the Contract****55. Completion**

55.1 The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager will do so upon deciding that the work is completed.

**56. Taking Over**

56.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

**57. Final Account**

57.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract not earlier than 56 days before the end of the Defects Liability Period. The Project Manager shall issue a Completion Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the

scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Final Payment Certificate.

**58. Operating and Maintenance Manuals**

58.1 If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data, or they do not receive the Project Manager’s approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.

**59. Termination**

59.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

59.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager’s certificate;
- (e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
- (f) the Contractor does not maintain a Security, which is required; and
- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract

Data.

59.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.

59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

59.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

**60. Payment upon Termination**

60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

60.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

**61. Property**

61.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

**62. Release from Performance**

62.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## Section IV. Contract Data

The following documents are also part of the Contract:

**Contract**

**Clause**

**58.0**                      Schedule of Operating and Maintenance Manuals

**8.0**                         Schedule of Other Contractors

**9.0**                         The Schedule of Key Personnel

**14.0**                        Site Investigation Reports

**1.1**                        The Employer is:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name of Authorized Representative \_\_\_\_\_

\_\_\_\_\_

The Project Manager is:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name of Authorized Representative \_\_\_\_\_

\_\_\_\_\_

The name and identification number of the Contract is \_\_\_\_\_

\_\_\_\_\_.

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The Works consist of \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The Start Date shall be \_\_\_\_\_.

The Intended Completion Date for the whole of the Works shall be \_\_\_\_\_.

The following documents also form part of the Contract:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**27.0** The Contractor shall submit a revised Programme for the Works within \_\_\_\_\_ days of delivery of the Letter of Acceptance.

**21.0** The Site Possession Date shall be \_\_\_\_\_.

**1.0** The Site is located at \_\_\_\_\_ and is defined in drawings No: \_\_\_\_\_

**35.0** The Defects Liability Period is \_\_\_\_\_ days.

**13.0** The minimum insurance covers shall be:

- (a) The maximum deductible for insurance of the Works and of Plant and Materials is \_\_\_\_\_.
- (b) The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is \_\_\_\_\_.
- (c) The maximum deductible for insurance of Equipment is \_\_\_\_\_.
- (d) The minimum cover for loss or damage to Equipment is \_\_\_\_\_.
- (e) The maximum deductible for insurance of other property is \_\_\_\_\_.





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The coefficients for adjustment of prices are:

- (a) For currency \_\_\_\_\_:
  - (i) \_\_\_\_\_ percent nonadjustable element (coefficient A).
  - (ii) \_\_\_\_\_ percent adjustable element (coefficient B).
  
- (b) For currency \_\_\_\_\_:
  - (i) \_\_\_\_\_ percent nonadjustable element (coefficient A).
  - (ii) \_\_\_\_\_ percent adjustable element (coefficient B).

**48.0** The Index I for local currency will be \_\_\_\_\_.

The Index I for the specified international currency will be \_\_\_\_\_.

The Index I for currencies other than the local currency and the specified international currency will be \_\_\_\_\_.

The proportion of payments retained is \_\_\_\_\_ percent.

**49.0** The liquidated damages for the whole of the Works are \_\_\_\_\_% of the final Contract Price per day.

The maximum amount of liquidated damages for the whole of the Works is \_\_\_\_\_ percent of the final Contract Price.

**50.0** The Bonus for the whole of the Works is \_\_\_\_\_% of final Contract Price per day. The maximum amount of Bonus for the whole of the Works is \_\_\_\_\_ percent of the final Contract Price.

**51.0** The Advance Payment will be \_\_\_\_\_ and will be paid to the Contractor no later than \_\_\_\_\_.

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price:

- (a) Bank Guarantee \_\_\_\_\_.
  
- (b) Performance Bond \_\_\_\_\_.

The standard form(s) of Performance Security acceptable to the Employer shall be \_\_\_\_\_ of the type presented in

Section 8 of the Tender Documents.

**58.0**

The date by which operating and maintenance manuals are required is \_\_\_\_\_.

The date by which “as built” drawings are required is \_\_\_\_\_.

The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required is GHC \_\_\_\_\_.

## **Section V. Specifications**

## **Section VI. Drawings**



## **Section VII. Schedule of Activities**

## **Section VIII. Security Forms**

## Annex A Form: Tender Security (Bank Guarantee)

Whereas, *[name of Tenderer]* (hereinafter called “the Tenderer”) has submitted his Tender dated *[date]* for the construction of *[name of Contract]* (hereinafter called “the Tender”).

Know all people by these presents that We *[name of Bank]* of *[name of country]* having our registered office at *[address]* (hereinafter called “the Bank”) are bound unto name of Employer] (hereinafter called “the Employer”) in the sum of *[amount]*<sup>6</sup> for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this *[day]* day of *[month]*, *[year]*.

The conditions of this obligation are:

- (1) If, after Tender opening, the Tenderer withdraws his Tender during the period of Tender validity specified in the Form of Tender; or
- (2) If the Tenderer having been notified of the acceptance of his Tender by the Employer during the period of Tender validity:
  - (a) fails or refuses to execute the Form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) fails or refuses to furnish the Performance Security, in accordance with the Instruction to Tenderers; or
  - (c) does not accept the correction of the Tender Price pursuant to Clause 27,

we undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer’s having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of one or any of the three conditions, specifying the occurred condition or conditions.

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<sup>6</sup> The Tenderer should insert the amount of the Guarantee in words and figures denominated in the currency of the Employer’s country or an equivalent amount in a freely convertible currency. This figure should be the same as shown in Clause 16.1 of the Instructions to Tenderers.



This Guarantee will remain in force up to and including the date [number] days<sup>7</sup> after the deadline for submission of Tenders as such deadline is stated in the Instructions to Tenderers or as it may be extended by the Employer, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

Date \_\_\_\_\_ Signature of the Bank \_\_\_\_\_

Witness \_\_\_\_\_ Seal \_\_\_\_\_

\_\_\_\_\_  
*[signature, name, and address]*

<sup>7</sup> Usually 28 days after the end of the validity period of the Tender. The date should be inserted by the Employer before the Tender documents are issued.

**Annex B Form (Alternative 1): Performance Bank Guarantee (Unconditional)**

To: \_\_\_\_\_ *[name of Employer]*  
 \_\_\_\_\_ *[address of Employer]*  
 \_\_\_\_\_

Whereas

\_\_\_\_\_ *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ *[number]* dated \_\_\_\_\_ *[date]* to execute \_\_\_\_\_ *[name of Contract and brief description of Works]* (hereinafter called “the Contract”);

And whereas it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

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

Now therefore we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of \_\_\_\_\_ *[amount of Guarantee]* \_\_\_\_\_ *[amount in words]*,<sup>8</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of \_\_\_\_\_ *[amount of Guarantee]* as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

<sup>8</sup> An amount is to be inserted by the Guarantor, representing the percentage of the Contract Price specified in the Contract, and denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer.

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

This Guarantee shall be valid until a date 28 days from the date of issue of the Certificate of Completion.

Signature and seal of the Guarantor \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

## Annex B Form (Alternative 2): Performance Bond

By this Bond, \_\_\_\_\_ [*name and address of Contractor*] as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ [*name, legal title, and address of surety, bonding company, or insurance company*] as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ [*name and address of Employer*] as Obligee (hereinafter called “the Employer”) in the amount of \_\_\_\_\_ [*amount of Bond*] [*amount of Bond in words*],<sup>9</sup> for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas the Contractor has entered into a Contract with the Employer dated<sup>10</sup> the \_\_\_\_\_ [*day*] day of \_\_\_\_\_ [*month*], 20\_\_\_\_ [*year*] for [*name of Contract*] in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

Now, therefore, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Tender or Tenders from qualified Tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Tenderer, arrange for a Contract between such Tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the Contract, less the amount properly paid by the Employer to the Contractor; or

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<sup>9</sup> An amount is to be inserted by the Surety, representing the percentage of the Contract Price specified in the Contract Data, and denominated either in the currency(ies) of the Contract or in a freely convertible currency of type and amount acceptable to the Employer.

<sup>10</sup> Date of Letter of Acceptance or Agreement.

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its legal representative, this \_\_\_\_\_ [day] day of \_\_\_\_\_ [month], 20\_\_\_\_ [year].

Signed by \_\_\_\_\_  
 on behalf of \_\_\_\_\_ [name of Surety] in the capacity of \_\_\_\_\_  
 In the presence of \_\_\_\_\_  
 Date \_\_\_\_\_

Signed by \_\_\_\_\_  
 on behalf of [name of Contractor] in the capacity of \_\_\_\_\_  
 In the presence of \_\_\_\_\_  
 Date \_\_\_\_\_

### Annex C Form: Bank Guarantee for Advance Payment

To: \_\_\_\_\_ [name of Employer]  
 \_\_\_\_\_ [address of Employer]  
 \_\_\_\_\_  
 \_\_\_\_\_ [name of Contract]

Dear Sir/Madam

Subject: \_\_\_\_\_

In accordance with the provisions of the Conditions of Contract, Clause 51 (“Advance Payment”) of the above-mentioned Contract, \_\_\_\_\_  
 \_\_\_\_\_ [name and address of Contractor]

(hereinafter called “the Contractor”) shall deposit with [name of Employer] a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of \_\_\_\_\_ [amount of Guarantee] \_\_\_\_\_ [amount in words].<sup>11</sup>

We, the \_\_\_\_\_ [Bank], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_ [name of Employer] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding \_\_\_\_\_ [amount of Guarantee] \_\_\_\_\_ [amount in words].<sup>12</sup>

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

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_ [name of Employer] receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: \_\_\_\_\_

Name of Bank: \_\_\_\_\_

Address: \_\_\_\_\_

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

<sup>11</sup> An amount is to be inserted by the Bank representing the amount of the Advance Payment, and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

<sup>12</sup> An amount is to be inserted by the Bank representing the amount of the Advance Payment, and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.