

JAPAN INTERNATIONAL COOPERATION AGENCY

THE GOVERNMENT OF
THE HASHEMITE KINGDOM OF JORDAN
THE MINISTRY OF TOURISM AND ANTIQUITIES
THE MINISTRY OF PLANNING

DRAFT
TENDER DOCUMENTS
FOR
CONSTRUCTION
OF
DEAD SEA PARKWAY SUB-PROJECT
THE TOURISM SECTOR DEVELOPMENT PROJECT

VOLUME V
CONDITIONS OF CONTRACT

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CONDITIONS OF CONTRACT FOR CONSTRUCTION WORKS

PART (I) - GENERAL CONDITIONS

PART (II) - SPECIAL CONDITIONS

PART (I)

GENERAL CONDITIONS

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PART (I) - GENERAL CONDITIONS

DEFINITIONS AND INTERPRETATION

CLAUSE -1:

1.1 Definitions

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

"KINGDOM" - The Hashemite Kingdom of Jordan.

"GOVERNMENT"- The Government of the Hashemite Kingdom of Jordan.

"DEPARTMENT" - Any Ministry, Government Department, Public Council, Authority, Corporation and any other Governmental corporation body.

(a)

- (i) "Employer" - The party named in the Contract as the "FIRST PARTY" who will enter into contract with the Contractor for the execution of the Works covered by the Contract, or any other party authorised by the Employer to exercise the powers and obligations of the First Party, provided that the Contractor will be informed accordingly in writing.**
- (ii) "Contractor"- The person, company or joint venture named as Second Party in the Contract whose Tender has been accepted by the Employer and with whom the Employer has entered into Contract, and includes the Contractor's personal agents and his legal successors.**
- (iii) "Subcontractor"- Any person to whom a part of the Works has been subcontracted by the Contractor with the consent of the Engineer and the legal successors in title to such person. If this subcontractor meets the definition stated in Clause-59, the subcontractor will be identified as a "Nominated Subcontractor".**
- (iv) "Engineer"- The Consulting office, or Engineering office or Engineer or any other technical body appointed from time to time by the Employer to exercise in whole or in part the powers of the Engineer in accordance with the Conditions of the Contract, provided that the Contractor shall be accordingly notified in writing.**

- (v) **"Engineers Representative"- Any resident engineer, or clerk of works appointed by the Engineer from time to time under Sub-Clause-2.2.**
- (b)
- (i) **"Contract" - The documents constituting these Conditions (Parts I and II), the Specification, the Drawings, the Bill of Quantities, the Tender, the Letter of Acceptance, the Contract Agreement, and such further documents as may be expressly incorporated in the Letter of Acceptance or Contract Agreement (if completed).**
- (ii) **"Specifications" The Technical Specifications of the works included in the Contract and any modification thereof or addition thereto made under Clause-51 or submitted by the Contractor and approved by the Engineer. The Technical Specifications issued by the ministry of Public Works and Housing as being in force for the time being shall be applied. They comprise two separate sets, viz.:**
- **General Technical Specifications for Buildings.**
 - **Standard Specifications for the Construction of Roads and Bridges.**
- (iii) **"Drawings" - All drawings, calculations and technical information of a like nature provided by the Engineer to the Contractor under the Contract at the time of entering into the Contract or during execution, and all drawings, calculations, samples, patterns, models, operation and maintenance manuals and other technical information of a like nature submitted by the Contractor and approved by the Engineer.**
- (iv) **"Bill of Quantities"- The priced and completed bill of quantities submitted by the tendered and forming part of the Tender.**
- (v) **"Tender"- The Contractor's priced offer to the Employer for the execution and completion of the works and the remedying of any defects therein in accordance with the provisions of Contract, as accepted by the Letter of Acceptance.**
- (vi) **"Letter of Acceptance"- The formal acceptance by the Employer of the Tender.**
- (vii) **"Contract Agreement"- The contract agreement (if any) referred to in Sub-Clause-9.1.**
- (viii) **"Appendix to Tender"- The appendix comprised in the form of Tender annexed to these Conditions.**

- (c)
- (i) **"Commencement Date" - The date upon which the Contractor receives the notice to commence issued by the Engineer pursuant to Clause-41.**
 - (ii) **"Time for Completion"- The time for completing the execution of and passing the Tests on Completion of the Works or any section or part thereof as stated in the Contract (or as extended under Clause-44 calculated from the Commencement Date.**
- (d) **"Tests on Completion" - The tests specified in the Contract which are to be made by the Contractor before the Works or any Section or part thereof are taken over by the Employer.**
- (e) **"Writing" - Means any hand - written, type - written, or printed communication, including telex, cable and facsimile transmission.**

1.2 Headings and Marginal Notes:

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

1.3 Interpretation:

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

1.4 Singular and Plural:

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

1.5 Notices, Consent, Approvals, Certificates and Determinations:

Wherever in the Contract provision is made for the giving or issue of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words "notify", "certify" or "determine" shall be construed accordingly. Any such consent, approval, certificate or determination shall not unreasonably be withheld or delayed.

ENGINEER AND ENGINEER'S REPRESENTATIVE

CLAUSE -2:

2.1 Engineer's Duties and Authority

- (a) The Engineer shall carry out the duties specified in the Contract.**
- (b) The Engineer shall exercise the authority specified in or necessarily to be implied from the Contract, provided, that the engineer shall obtain the specific approval of the Employer, in compliance with the terms of his appointment, and after submitting his recommendations to the Employer in writing, in the following matters:**
 - (i) "issuing variation orders";**
 - (ii) "deciding on the extension of Time for Completion and applying the Liquidated Damages Clause";**
 - (iii) "approving the appointment of Subcontractors";**
 - (iv) "notifying the Contractor on suspension of works";**

(and any other matters as may be set out in Part II of these conditions).
- (c) Except as expressly stated in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract.**

2.2 Engineer's Representative:

The Engineer's Representative shall be appointed by and be responsible to the Engineer and shall carry out such duties of watching and supervising the execution and workmanship of the works and to test and examine any materials to be used or workmanship employed in connection with the Works. He shall exercise such authority as may be delegated to him by the Engineer under Sub-Clause-2.3.

2.3 Engineer's Authority to Delegate:

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

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

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

2.4 Appointment of Assistants:

The Engineer or the Engineer's Representative may appoint any number of persons to assist the Engineer's Representative in the carrying out of his duties under Sub-Clause-2.2. He shall notify to the Contractor the names, duties and scope of authority of such persons.

2.5 Instructions in Writing:

Instructions given by the Engineer shall be in writing, provided that if for any reason the Engineer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Engineer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Sub-Clause.

Provided further that if the Contractor, within seven (7) days, confirms in writing to the Engineer any oral instruction of the Engineer and such confirmation is not contradicted in writing within seven (7) days by the Engineer, it shall be deemed to be an instruction of the Engineer.

The provisions of this Sub-Clause shall equally apply to instructions given by the Engineer's Representative and any assistants of the Engineer or the Engineer's Representative appointed pursuant to Sub-Clause-2.4.

2.6 Engineer to Act Impartially:

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

- (a) giving his decision, opinion or consent, or**
- (b) expressing his satisfaction or approval, or**

(c) **determining value, or**

(d) **otherwise taking action which may affect the rights and obligations of the Employer or the Contractor**

he shall exercise such discretion impartially within the terms of the Contract and having regard to all the circumstances. Any such decision, opinion, consent, expression of satisfaction, or approval, determination of value or action may be opened up, reviewed or revised as provided in Clause-67.

ASSIGNMENT AND SUBCONTRACTING

CLAUSE-3:

3.1 Assignment of Contract:

The Contractor shall not, without the prior consent of the Employer (which consent, notwithstanding the provisions of Sub-Clause-1.5, shall be at the sole discretion of the Employer), assign the Contract or any part thereof, or any benefit or interest therein or thereunder, otherwise than by:

- (a) **a charge in favour of the Contractor's bankers of any monies due or to become due under the Contract, or**
- (b) **assignment to the Contractor's insurers of the Contractor's right to obtain relief against any other party liable.**

CLAUSE-4:

4.1 Subcontracting:

The Contractor shall not subcontract the whole of the works.

Except where otherwise provided by the Contract, the Contractor shall not subcontract any part of the works without the prior consent of the Engineer, (subject to approval required by Sub-clause-2.1. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any Sub-contractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen

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

- (a) the provision of labour, or**
- (b) the subcontracting of any part of the works for which the Subcontractor is named in the Contract.**

4.2 Assignment of Subcontractor's Obligations:

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

CONTRACT DOCUMENTS

CLAUSE-5:

5.1 Language and Law :

- (a) The Arabic language shall be the ruling language, of the Contract Documents unless stated otherwise in Part (II) of these conditions, and consequently all correspondence, payment statements, and take-over certificates shall be drawn up in this language. Nevertheless, the Specifications, Drawings and technical reports may be drawn up in the English language.**
- (b) The law to which the Contract is subject and according to which it shall be construed shall be the current laws in force in the Kingdom.**

5.2 Priority of Contract Documents:

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

- (1) The Contract Agreement (if completed);**
- (2) The Letter of Acceptance;**
- (3) The Tender;**
- (4) Part II of these Conditions;**
- (5) Part I of these Conditions; and**
- (6) Any other document forming part of the Contract.**

CLAUSE-6:

6.1 Custody and Supply of Drawings and Documents:

The Drawings shall remain in the sole custody of the Engineer, but two copies thereof shall be provided to the Contractor free of charge. The Contractor shall make at his own cost any further copies required by him. Unless it is strictly necessary for the purposes of the Contract the Drawings, Specification and other documents provided by the Employer or the Engineer shall not, without the consent of the Engineer, be used or communicated to a third party by the Contractor. Upon issue of the Defects Liability Certificate the Contractor shall return to the Engineer all Drawings, Specification and other documents provided under the Contract.

The Contractor shall supply to the Engineer four (4) copies of all Drawings, Specification and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause-7, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition the Contractor shall supply such further copies of such Drawings, Specification and other documents as the Engineer may request in writing for the use of the Employer, who shall pay the cost thereof.

6.2 One Copy of Drawings to be Kept on Site:

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

6.3 Disruption of Progress:

The Contractor shall give notice to the Engineer, with a copy to the Employer whenever planning or execution of the Works is likely to be delayed or disrupted unless any further drawing or instruction is issued by the Engineer within a reasonable time. The notice shall include details of the drawing or instruction required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

6.4 Delays and Cost of Delay of Drawings:

If, by reason of any failure or inability of Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-Clause-6.3, the Contractor suffers delay and/or incurs costs, then, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause-44, and
- (b) the amount of such costs, which shall be added to the Contract Sum, and shall notify the Contractor accordingly, with a copy to the Employer.

6.5 Failure by Contractor to Submit Drawings:

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

CLAUSE-7:

7.1 Supplementary Drawings and Instructions:

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

7.2 Permanent Works Designed by Contractor:

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

- (a) such drawings, specifications, calculations and other information as shall be necessary to satisfy the Engineer as to the suitability and adequacy of that design, and
- (b) operation and maintenance manuals together with drawings of the Permanent Works as completed, in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating that design.

The Works shall not be considered to be completed for the purposes of taking over in accordance with Clause-48 until such operation and maintenance manuals, together with drawings on completion, have been submitted to and approved by the Engineer.

7.3 Responsibility Unaffected by Approval:

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

GENERAL OBLIGATIONS

CLAUSE-8:

8.1 Contractor's General Responsibilities:

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the works and remedy any defects therein in accordance with the provisions of the Contract.

The Contractor shall provide all superintendence, labour, materials, plant, Contractor's Equipment and all other things, whether of a temporary or permanent nature required in and for such design, execution, completion and remedying of any defects so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

8.2 Site Operations and Methods of Construction:

- (a) The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction (provided that the Contractor shall not be responsible except as stated here-under or as may be otherwise agreed) for the design or specification of Permanent Works, or for the designed or specification of any Temporary Works not prepared by the Contractor. Where the Contract expressly provides that part of the Permanent Works shall be designed by the Contractor, he shall be fully responsible for that part of such Works, notwithstanding any approval by the Engineer.**
- (b) The Contractor is required to notify the Engineer in writing about any mistake he may discern or discover in the design before or during the execution of the works, particularly in respect of the safety of the structures.**

- (c) **The Contractor shall take care not to load any structure with loads exceeding the design loads, and shall not pile up materials or loads in any manner that may endanger the safety of the structures.**
- (d) **The Contractor is bound to maintain and repair the Temporary Works in a proper manner.**

CLAUSE-9:

9.1 Contract Agreement:

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

CLAUSE-10:

10.1 Performance Security:

The Contractor, upon receiving the Letter of Acceptance, shall obtain and provide to the Employer before signing the Contract, the Performance Security in the value of ten percent (10%) of the Contract Sum, as a Security of the proper execution of the works in accordance with the Contract. This Security shall be issued by a licensed bank or financial institution acceptable to the Employer. The Security shall be prepared in the form included in Part II of these conditions.

The obtaining of such Security shall in all respects be at the expense of the Contractor.

10.2 Time Allotted for Submission:

The Contractor shall submit the aforesaid security within two (2) weeks from being notified to do so and, in the event of failure to produce the Security, he shall be deemed to have abandoned his Tender and the Employer shall be entitled to confiscate the Tender Security already provided by the Contractor. The value of the said Tender Security shall become the full right of the Employer.

10.3 Claims under Performance Security:

Prior to making a claim under the performance security the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

CLAUSE-11:

11.1 Inspection of Site:

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

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

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

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

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

CLAUSE-12:

12.1 Sufficiency of Tender:

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Tender and of the rates and prices stated in the Bill of Quantities, all of which shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract (including those in respect of the supply of goods, materials, plant or services or of contingencies for which there is a Provisional Sum) and all matters and things necessary for the proper execution and completion of the works and the remedying of any defects therein.

12.2 Adverse Physical Obstructions or Conditions:

If, however, during the execution of the works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer.

On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause-44, and
- (b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract um,

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

CLAUSE-13:

13.1 Work to be in Accordance with Contract:

Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract to the satisfaction of the Engineer.

The Contractor shall comply with and adhere strictly to the Engineer's instructions on any matter, whether mentioned in the Contract or not, touching or concerning the Works. The Contractor shall take instructions only from the Engineer or, subject to the provisions of Clause-2, from the Engineer's Representative.

CLAUSE-14:

14.1 Programme to be Submitted:

The Contractor shall, within fourteen (14) days from the Commencement Date, submit to the Engineer for his consent a programme, in such form and detail, as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works.

14.2 Revised Programme:

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

14.3 Cash Flow Estimate to be Submitted:

The Contractor shall, within fourteen (14) days from the Commencement Date, provide to the Engineer for his information a detailed cash flow estimate, in quarterly periods, of all payments to which the Contractor will be entitled under the Contract and the Contractor shall subsequently supply revised cash flow estimates at quarterly intervals, if required to do so by the Engineer.

14.4 Contractor not Relieved of Duties or Responsibilities:

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

CLAUSE-15:

15.1 Contractor's Superintendence:

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor or a competent and authorised representative approved by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorised representative shall receive, on behalf of the Contractor, instructions from the Engineer or, subject to the provisions of Clause-2 the Engineer's Representative.

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

CLAUSE-16:

16.1 Contractor's Employees:

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

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

16.2 Engineer at Liberty to Object:

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who in the opinion of the Engineer,

misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the works shall be replaced as soon as possible.

CLAUSE-17:

17.1 Setting-out:

The Contractor shall be responsible for:

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

If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer, unless such error is based on incorrect data supplied in writing by the Engineer, in which case the Engineer shall determine an addition to the Contract Sum in accordance with Clause-52 and shall notify the Contractor accordingly, with a copy to the Employer.

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

CLAUSE-18:

18.1 Boreholes and Exploratory Excavation:

If, at any time during the execution of the Works, the Engineer requires the Contractor to make boreholes or to carry out exploratory excavation, such requirement shall be the subject of an instruction in accordance with Clause-51, unless an item or a Provisional Sum in respect of such work is included in the Bill of Quantities.

The Engineer shall be empowered to engage any appropriate body to make the necessary boreholes or to carry out the relevant exploratory excavations, and the Employer shall bear the expenses incurred if they fall outside the responsibilities of the Contractor, in accordance with the Contract.

CLAUSE-19:

19.1 Safety, Security and Protection of the Environment:

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

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

19.2 Employer's Responsibilities:

If under Clause-31 the Employer shall carry out work on the Site with his own workmen he shall, in respect of such work:

- (a) have full regard to the safety of all persons entitled to be upon the Site, and**
- (b) keep the Site in an orderly state, appropriate to the avoidance of danger to such persons.**

If under Clause-31 the Employer shall employ other contractors on the Site he shall require them to have the same regard for safety and avoidance of danger.

CLAUSE-20:

20.1 Care of Works:

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

- (a) if the Engineer issues a Taking-Over Certificate for any Section or part of the Permanent Works the Contractor shall cease to be liable for the care of that Section or part from the date of issue of the Taking-Over Certificate, when the responsibility for the care of that Section or part shall pass to the Employer, and
- (b) the Contractor shall take full responsibility for the care of any outstanding works and materials and Plant for incorporation therein which he undertakes to finish during the Defects Liability Period until such outstanding works have been completed pursuant to Clause-49.

20.2 Responsibility to Rectify Loss or Damage:

If any loss or damage happens to the Works, or any part thereof or materials or plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, other than the risks defined in Sub-Clause-20.4, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Engineer.

The Contractor shall also be liable for any loss or damage to the works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses-49 and 50.

20.3 Loss or Damage Due to Employer's Risks:.

In the event of any such loss or damage happening from any of the risks defined in Sub-Clause-20.4 or in combination with other risks, the Contractor shall if and to the extent required by the Engineer rectify the loss or damage and the Engineer shall determine an addition to the Contract sum in accordance with Clause-52 and shall notify the Contractor accordingly, with a copy to the Employer. In the case of a combination of risks causing loss or damage any such determination shall take into account the proportional responsibility of the Contractor and the Employer.

20.4 Employer's Risks:

The Employer's risks are:

- (a) war, Hostilities (whether war be declared or not), invasion, act of foreign enemies,**
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,**
- (c) ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,**
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,**
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors and arising from the conduct of the Works,**
- (f) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract,**
- (g) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible,**
- (h) any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take precautions.**

CLAUSE-21:

21.1 Insurance of Works and Contractor's Equipment:

The Contractor shall, without limiting his or the Employer' obligations and responsibilities under Clause-20, insure:

- (a) the Works, together with materials and Plant for incorporation therein, to the full replacement cost**
- (b) an additional sum of fifteen percent (15%) of such replacement cost, or as may be specified in Part II of these Conditions, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature**

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

21.2 Scope of Cover:

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

- (a) the Employer and the Contractor against all loss or damage from whatsoever cause arising, other than as provided in Sub-Clause-21.4, from the start of work at the Site until the date of issue of the relevant Taking-Over Certificate in respect of the Works or any Section or part thereof as the case may be, and
- (b) the Contractor for his liability:
- (i) during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period, and
 - ii) for loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clauses-49 and-50.

21.3 Responsibility for Amounts not Recovered.,

Any amounts not insured or not recovered from the insurers shall be borne by the Employer or the Contractor in accordance with their responsibilities under Clause-20.

21.4 Exclusions:

There shall be no obligations for the insurances in Sub-Clause-21.1, to include loss or damage caused by

- (a) war, hostilities (where war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war,
- (c) ionising radiations, or contamination by, radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof,
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

CLAUSE-22:

22.1 Damage to Persons and Property:

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

- (a) death of or injury to any person, or**
- (b) loss of or damage to any property (other than the Works), which may arise out of or in consequence of the execution and completion of the works and the remedying of any defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, subject to the exceptions defined in Sub-Clause-22.2.**

22.2 Exceptions:

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

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

22.3 Indemnity by Employer:

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

CLAUSE-23:

23.1 Third Party Insurance (including Employer's Property):

The Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause-22, insure, in the joint names of the Contractor and the Employer, against liabilities for death of or injury of any person, including the Employer's and the Engineer's employees and supervising team, other than as provided in Clause-24, or loss of or damage to any property (other than the Works) arising out of the performance of the Contract, other than the exceptions defined in paragraphs (a),(b) and (c) of Sub-Clause-22.2.

23.2 Minimum Amount of Insurance:

Such insurance shall be for at least the amount stated in the Appendix to Tender. The amount stated in the Appendix to Tender shall be per incidence, with the number of incidences unlimited.

23.3 Cross Liabilities:

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

CLAUSE-24:

24.1 Accident or Injury to Workmen :

The Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any Subcontractor, other than death or injury resulting from any act or default of the Employer, his agents or servants.

The Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, other than those for which the Employer is liable as aforesaid and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

24.2 Insurance Against Accident to Workmen:

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

CLAUSE-25:

25.1 Evidence and Terms of Insurances:

The Contractor shall provide evidence to the Employer prior to the start of work at the Site that the insurances required under the Contract have been effected and shall, within twenty-eight (28) days of the Commencement Date, provide the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of so doing. Such insurance policies shall be consistent with the general terms agreed prior to the issue of the Letter of Acceptance. The Contractor shall effect all insurances for which he is responsible with local licensed insurance companies acceptable to the Employer and in terms approved by him.

25.2 Adequacy of Insurances:

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

25.3 Remedy on Contractor's Failure to Insure:

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

25.4 Compliance with Policy Conditions:

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

CLAUSE-26:

26.1 Compliance with Statutes, Regulations:

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

- (a) any National or State Statute, Ordinance, or other Law, or any regulation, or bye-law of any local or other duly constituted authority in relation to the execution and completion of the works and the remedying of any defects therein and**
- (b) the rules and regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works, and the Contractor shall keep the Employer indemnified against all penalties and liability of every kind for breach of any such provisions. Provided always that the Employer shall be responsible for obtaining any planning, zoning or other similar permission required for the Works to proceed and shall indemnify the Contractor in accordance with Sub-Clause-22.3.**

CLAUSE-27:

27.1 Fossils:

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

- (a) any extension of time to which the Contractor is entitled under Clause-44, and
- (b) the amount of such costs, which shall be added to the Contract sum, and shall notify the Contractor accordingly, with a copy to the Employer.

CLAUSE-28:

28.1 Patent Rights:

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

28.2 Royalties:

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

CLAUSE-29:

29.1 Interference with Traffic and Adjoining Properties:

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

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

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

CLAUSE-30:

30.1 Avoidance of Damage to Roads.

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

30.2 Transport of Contractor's Equipment or Temporary Works:

Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's Equipment or Temporary works, and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

30.3 Transport of Materials or Plant:

If, notwithstanding Sub-Clause-30.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the haulier of such materials or Plant is required to indemnify the road authority against damage the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement of and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and, in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto.

Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-Clause-30.1, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure shall be recoverable from the Contractor by the Employer and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Provided also that the Employer shall notify the Contractor whenever a settlement is to be negotiated and, where any amount may be due from the Contractor, the Employer, shall consult with the Contractor before such settlement is agreed.

30.4 Waterborne Traffic:

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

CLAUSE-31:

31.1 Opportunities for Other Contractors:

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

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

31.2 Facilities for Other Contractors:

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

- (a) make available to any such other contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, or**
- (b) permit the use, by any such, of Temporary Works or Contractor's Equipment on the Site, or**

- (c) provide any other service of whatsoever nature for any such, the Engineer shall determine an addition to the Contract Sum in accordance with Clause-52 and shall notify the Contractor accordingly, with a copy to the Employer.

CLAUSE-32

32.1 Contractor to Keep site clear:

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

CLAUSE 33:

33.1 Clearance of Site on Completion:

Upon completion of the Works and before the issue of any Taking-Over Certificate, the Contractor shall clear away and remove from that part of the Site to which such Taking-Over Certificate relates all Contractor's Equipment surplus material, rubbish and Temporary Works of every kind and leave such part of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

Provided that the Contractor shall be entitled to retain on Site until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

LABOUR

CLAUSE-34

34.1 Engagement of Labour:

The Contractor shall make his own arrangements for the engagement of all staff and labour such as is necessary for the works, and shall be bound by laws, regulations and rules prescribed by the local competent authorities, and shall provide his staff and labour with all

that is required of him, including wages, transport, due salaries and other obligations thereof.

34.2 Supply of Water:

The Contractor shall provide on the Site, to the satisfaction of the Engineer, an adequate supply of drinking water and other water for the use of the Contractor's staff and labour, as well as for the staff of the Employer and the Engineer.

34.3 Observance by Sub-Contractors:

The Contractor shall be responsible towards the Employer for the strict observance by his Sub-Contractors engaged by him in accordance with the provisions of these conditions whether they are included in the General or Special Conditions.

CLAUSE-35:

35.1 Returns of Labour and Contractor's Equipment:

The Contractor shall, if required by the Engineer, deliver to the Engineer a return in detail, in such form and at such intervals as the Engineer may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information with respect to Contractor's Equipment as the Engineer may require.

MATERIALS, PLANT AND WORKMANSHIP

CLAUSE-36:

36.1 Quality of Materials, Plant and Workmanship:

All materials, Plant and workmanship shall be

- (a) of the respective kinds described in the Contract and in accordance with the Engineer's instructions, and

- (b) **subjected from time to time to such tests as the Engineer may require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.**

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

36.2 Cost of Samples:

All samples shall be supplied by the Contractor at his own cost unless prescribed otherwise in the Contract.

36.3 Cost of Test:

The cost of making any test shall be borne by the Contractor if such test is clearly intended by or to be construed from the provisions of the Contract, and also the cost of making any test under load or of a test to ascertain whether any work finished or partially finished is appropriate to the purposes which it was intended to fulfil; provided that such test is particularised in the Contract in sufficient detail to enable the Contractor to price or allow for the same in his Tender.

36.4 Cost of Tests not Provided for:

If any test is not provided for in the Contract, or is not of a normally recognised nature, then the cost of such test shall be borne by the Contractor if the test shows the material or workmanship so tested not to be in accordance with the Contract or the Engineer's instructions, but otherwise by the Employer.

36.5 Engineer's Determination where Tests not Provided for:

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

- (a) **any extension of time to which the Contractor is entitled under Clause-44, and**
- (b) **the amount of such costs, which shall be added to the Contract sum, and shall notify the Contractor accordingly, with a copy to the Employer.**

CLAUSE-37

37.1 Inspection of Operations:

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

37.2 Inspection and Testing:

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

37.3 Date for Inspection and Testing:

The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any materials or Plant as provided in the Contract. The Engineer shall give the Contractor not less than twenty-four (24) hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his duly authorised representative, does not attend on the date agreed, the Contractor may, unless otherwise instructed by the Engineer, proceed with the tests, which shall be deemed to have been made in the presence of the Engineer. The Contractor shall forthwith forward to the Engineer duly certified copies of the test readings. If the Engineer has not attended the tests he shall accept the said readings as accurate.

37.4 Rejection:

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

the Contractor by the Employer and may be deducted from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

37.5 Independent Inspection:

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

CLAUSE-38:

38.1 Examination of Work before Covering up

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

38.2 Uncovering and Making Openings:

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

CLAUSE-39:

39.1 Removal of Improper Work, Materials or Plant:

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

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

39.2 Default of Contractor in Compliance

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

SUSPENSION

CLAUSE-40:

40.1 Suspension of Work:

The Contractor shall, on the instructions of the Engineer, suspend the progress of the Works or any part thereof for such time and in such manner as the Engineer may consider

necessary and shall, during such suspension, properly protect and secure the Works or such part thereof so far as is necessary in the opinion of the Engineer. Unless such suspension is

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of some default of or breach of contract by the Contractor or for which he is responsible, or
- (c) necessary by reason of climatic conditions on the Site, or
- (d) necessary for the proper execution of the Works or for the safety of the Works on any part thereof (save to the extent that such necessity arises from any act or default by the Engineer or the employer or from any of the risks defined in Sub-Clause-20.4),
- (e) by mutual agreement in writing by both parties to the Contract, provided that the Employer shall not suffer the expenses resulting from such suspension. Provided always that the Contractor shall not be entitled to recover any such extra expenses unless he gives to the Engineer written notice of his intention to claim within twenty-eight (28) days of the Engineers order.

Sub-Clause-40.2 shall apply.

40.2 Engineer's Determination Following Suspension:

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

- (a) any extension of time to which the Contractor is entitled under Clause-44, and
- (b) the amount, which shall be added to the Contract sum, in respect of the cost incurred by the Contractor by reason of such suspension, and shall notify the Contractor accordingly, with a copy to the Employer.

40.3 Suspension Lasting more than 84 Days:

If the progress of the Works or any part thereof is suspended on the written instructions of the Engineer and if permission to resume work is not given by the Engineer within a period of eighty-four (84) days from the date of suspension then, unless such suspension is within paragraphs (a), (b), (c) or(d)of Sub-Clause-40.1, the Contractor may give notice to the Engineer requiring permission , within twenty-eight (28) days from the receipt thereof, to proceed with the Works or that part thereof in regard to which progress is suspended. If, within the said time, such permission is not granted, the Contractor may, but is not bound to, elect to treat the suspension, where it affects part only of the works, as an omission of such part under Clause-51 by giving a further notice to the Engineer to that effect, or, where

it affects the whole of the Works, treat the suspension as an event of default by the Employer and terminate his employment under the Contract in accordance with the provisions of Sub-Clause-69.1, whereupon the provisions of Sub-Clauses-69.2 and 69.3 shall apply.

COMMENCEMENT AND DELAYS

CLAUSE-41:

41.1 Commencement of Works:

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

CLAUSE-42:

42.1 Possession of Site and Access Thereto:

Save insofar as the Contract may prescribe:

- (a) the extent of portions of the Site of which the Contractor is to be given possession from time to time, and
- (b) the order in which such portions shall be made available to the Contractor

and subject to any requirement in the Contract as to the order in which the works shall be executed, the Employer will, with the Engineer's notice to commence the works, give to the contractor possession of

- (c) so much of the Site, and
- (d) such access, as in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the works in accordance with the programme referred to in Clause-14, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall by notice to the Engineer with a copy to the Employer make.
The Employer will, from time to time as the works proceed, give to the Contractor possession of such further portions of the Site as may be required to enable the

Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.

- (e) **The delivery of the site shall be set in an official memorandum and duly signed by the Employer, Contractor and the Engineer.**

42.2 Failure to Give Possession:

If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause-42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) **any extension of time to which the Contractor is entitled under Clause-44, and**
- (b) **the amount of such costs, which shall be added to the Contract sum, and shall notify the Contractor accordingly, with a copy to the Employer.**

42.3 Wayleaves and Facilities:

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

CLAUSE-43:

43.1 Time for Completion:

The whole of the Works and, if applicable, any Section required to be completed within a particular time as stated in the Appendix to Tender, shall be completed, in accordance with the provisions of Clause-48, within the time stated in the Appendix to Tender for the whole of the Works or the Section (as the case may be), calculated from the Commencement Date, or such extended time as may be allowed under Clause-44.

No mobilisation period will be allowed for as an extension of the Completion Time, as such period is considered to be included in it.

CLAUSE-44:

44.1 Extension of Time for Completion:

In the event of

- (a) the amount or nature of extra or additional work, or
- (b) any cause of delay referred to in these Conditions, or
- (c) exceptionally adverse climatic condition (but no extension of time shall be granted for the anticipated climatic changes), or
- (d) any delay, impediment or prevention by the Employer, or
- (e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible, being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension.

44.2 Contractor to Provide Notification and Detailed Particulars:

Provided that the Engineer is not bound to make any determination unless the Contractor has:

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

44.3 Interim Determination of Extension:

Provided also that where an event has a continuing effect such that it is not practicable for the Contractor to submit detailed particulars within the period of twenty-eight (28) days referred to in Sub-Clause-44.2, (b), he shall nevertheless be entitled to an extension of time provided that he has submitted to the Engineer interim particulars at intervals of not more than twenty-eight (28) days and final particulars within twenty-eight (28) days of the end of the effects resulting from the event. On receipt of such interim particulars, the Engineer shall without undue delay, make an interim determination of extension of time and, on

receipt of the final particulars the Engineer shall review all the circumstances and shall determine an overall extension of time in regard to the event. In both such cases the Engineer shall notify the Contractor accordingly, with a copy to the Employer. No final review shall result in a decrease of any extension of time already determined by the Engineer.

CLAUSE-45:

45.1 Restriction on Working Hours:

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

CLAUSE-46

46.1 Rate of Progress:

If for any reason, which does not entitle the Contractor to an extension of time, the rate of progress of the works or any Section is at any time, in the opinion of the Engineer, too slow to comply with the Time for Completion, the Engineer shall so notify the Contractor who shall thereupon take such steps as are necessary, subject to the consent of the Engineer, to expedite progress so as to comply with the Time for Completion. The Contractor shall not be entitled to any additional payment for taking such steps.

If, as a result of any notice given by the Engineer under this Clause, the Contractor considers that it is necessary to do any work at night or on locally recognised days of rest, he shall be entitled to seek the consent of the Engineer so to do. Provided that if any steps, taken by the Contractor in meeting his obligations under this Clause, involve the Employer in additional supervision costs, such costs shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or to become due to the Contractor and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

CLAUSE-47:

47.1 Liquidated Damages for Delay:

- (a) If the Contractor fails to comply with the Time for Completion in accordance with Clause-48, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause-43, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract.

- (b) The rate of liquidated damages stated in the Appendix to Tender is exclusive of any additional supervision costs in respect of the unjustified time lapse in completing the works, and the Contractor shall bear such costs.

47.2 Reduction of Liquidated Damages:

If, before the Time for Completion of the whole of the Works or, if applicable, any Section, a Taking-Over Certificate has been issued for any part of Works or of a Section, the liquidated damages for delay in completion of the remainder of the Works or of that Section shall, for any period of delay after the date stated in such Taking-Over Certificate, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works or Section, as applicable.

The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

CLAUSE-48:

48.1 Taking-Over Certificate:

- (a) When the whole of the Works have been substantially completed and have satisfactorily passed any Tests on Completion prescribed by the Contract, the

Contractor may give a notice to that effect to the Engineer, with a copy to the Employer, accompanied by a written undertaking to finish with due expedition any outstanding work during the Defects Liability Period.

Such notice and undertaking shall be deemed to be a request by the Contractor for the Engineer to issue a Taking-Over Certificate in respect of the Works.

- (b) The Engineer shall conduct an inspection of the Works and report his findings to the Employer with a copy to the Contractor. The Engineer may either certify that the Works have been properly completed and are ready for acceptance, or give instructions in writing to the Contractor specifying the works which, in the opinion of the Engineer, require to be done by the Contractor before acceptance and to the Engineer's satisfaction, within a prescribed period of time.**
If the Contractor considers the Engineer's report to be incorrect, he may give a notice to that effect to the Employer, who shall, in the manner he deems suitable either investigate the situation to ascertain the validity of the Engineer's report or form a committee for the Taking-Over of the Works.
- (c) The Employer shall, within ten (10) days from receipt of the Engineer's report, form a "Taking-Over committee", including the Engineer as one of its members, and notify the Contractor of the time and date fixed for carrying out an inspection of the Works. The Engineer and the Contractor shall, in the meanwhile, prepare all necessary schedules, data, bills and drawings as are necessary to facilitate the said committee's work.**
- (d) The committee shall, within ten (10) days from the date of being formed, conduct in the presence of the Contractor or his authorised agent an inspection of the works, and having done so, shall set a memorandum of certification of the Works which shall be signed by the committee members as well as by the Contractor or his authorised agent. Copies of the same shall be given to the Employer and the Contractor.**
- (e) The Engineer shall within seven (7) days of the date of delivery of the memorandum of the "Taking-Over" committee to the Contractor issue a Taking-Over Certificate in respect of the Works the date on which, in his opinion, the Works are considered to be substantially completed in accordance with the Contract and the date of commencement of the Defects Liability Period. The Engineer shall enumerate in the Taking-Over Certificate all defects and faults to be remedied by the Contractor within a prescribed time starting from the start of the Defect Liability Period.**
- (f) The Contractor is entitled to comment or object to the memorandum of the " Taking-over committee" in writing to the Engineer, provided he does so within seven (7) days from the date of signing the memorandum. The Engineer, in such a case, shall study the objection and submit his findings to the Employer.**

48.2 Taking-Over of Sections or Parts:

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

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

48.3 Substantial Completion of Parts:

In accordance with the procedure set out in Sub-Clause-48.1, if any part of the Permanent Works has been substantially completed and has satisfactorily passed any Tests on Completion prescribed by the Contractor, the Engineer may issue a Taking-over Certificate in respect of that part of the Permanent Works before completion of the whole of the Works and, upon the issue of such Certificate, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work in that part of the Permanent Works during the Defects Liability Period.

48.4 Surfaces Requiring Reinstatement:

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

DEFECTS LIABILITY

CLAUSE-49:

49.1 Defects Liability Period:

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

- (a) the date of substantial completion of the Works certified by the Engineer in accordance with Clause-48, or
- (b) in the event of more than one certificate having been issued by the Engineer under Clause-48, the respective dates so certified, and in relation to the Defects Liability Period the expression "the Works" shall be construed accordingly.

49.2 Completion of Outstanding Work and Remedying-Defects:

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

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

49.3 Cost of Remedying Defects:

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

- (a) the use of materials, Plant or workmanship not in accordance with the Contract, or
- (b) where the Contractor is responsible for the design of part of the Permanent Works, any fault in such design, or

- (c) **the neglect or failure on the part of the Contractor to comply with any obligation, expressed or implied on the Contractor's part under the Contract.**

If, in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an addition to the Contract Sum in accordance with Clause-52 and shall notify the Contractor accordingly, with a copy to the Employer.

49.4 Contractor's Failure to Carry Out Instructions:

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

CLAUSE-50:

50.1 Contractor to Search:

If any defect, shrinkage or other fault in the works appears at any time prior to the end of the Defects Liability Period, the Engineer may instruct the Contractor, with a copy to the Employer to search under the directions of the Engineer for the cause thereof. Unless such defect, shrinkage or other fault is one for which the Contractor is liable under the Contract, the Engineer shall after due consultation with the Employer and the Contractor determine the amount in respect of the costs of such search incurred by the Contractor, which shall be added to the Contract sum and shall notify the Contractor accordingly, with a copy to the Employer. If such defect, shrinkage or other fault is one for which the Contractor is liable, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and he shall in such case remedy such defect, shrinkage or other fault at his own cost in accordance with the provisions of Clause-49.

ALTERATIONS, ADDITIONS AND OMISSIONS

CLAUSE-51:

51.1 Variations:

If, by reason of circumstances of the Works and its requirements, or by necessity to carry out certain works for the purpose of completing the Works, variations in the form, quality or quantity of the Works or any part thereof, shall, in the opinion of the Engineer, be necessary or appropriate for any other reason, he shall have the authority (after obtaining the approval of the Employer) to instruct the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work included in the Contract,
- (b) omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor),
- (c) change the character or quality or kind of any such work,
- (d) change the levels, lines, position and dimensions of any part of the Works,
- (e) execute additional work of any kind necessary for the completion of the Works,
- (f) change any specified sequence or timing of construction of any part of the works.;

No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause-52.

Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.

51.2 Instructions for Variations:

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

CLAUSE-52:

52.1 Valuation of Variations:

All variations referred to in Clause-51 and any additions to the Contract Price which are required to be determined in accordance with Clause-52 (for the purposes of this Clause referred to as "varied work"), shall be valued at the rates and prices set out in the Contract if, in the opinion of the Engineer, the same shall be applicable.

If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which, after due consultation by the Engineer with the Employer and Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor.

In the event of disagreement the Engineer shall fix such rates or prices as are, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer.

Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause-60.

52.2 Power of Engineer to Fix Rates:

Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is, by reason of such varied work, rendered inappropriate or inapplicable, then, after due consultation by the Engineer with the Employer and the Contractor, a suitable rate or price shall be agreed upon between the Engineer and the Contractor.

In the event of disagreement the Engineer shall fix such other rate or price as is, in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer.

Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause-60.

Provided also that no varied work instructed to be done by the Engineer pursuant to Clause-51 shall be valued under Sub-Clause-52.1 or under this Sub-Clause unless, within fourteen (14) days of the date of such instruction and, other than in the case of omitted work, before the commencement of the varied work, notice shall have been, given either:

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

52.3 Variations Exceeding Twenty percent (20%):

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

- (a) all varied work valued under Sub-Clauses-51 and 52.2, and**
- (b) all adjustments upon measurement of the estimated quantities set out in the Bill of Quantities, excluding Provisional Sums, day-works and adjustments of price made under Clause-70,**

but not from any other cause there have been additions to or deductions from the Contract sum which taken together are in excess of twenty percent (20%) of the "Effective Contract sum" (which for the purposes of this Sub-Clause shall mean the Contract sum, excluding Provisional Sums and allowance for day-works, if any) then and in such event (subject to any action already taken under any other Sub-Clause of this Clause), after due consultation by the Engineer with the Employer and the Contractor, there shall be added to or deducted from the Contract sum such further sum as may be agreed between the Contractor and the Engineer or, failing agreement, determined by the Engineer having regard to the Contractor's Site and general overhead costs of the Contract. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer. Such sum shall be based only on the amount by which such additions or deductions shall be in excess of twenty percent (20%) of the Effective Contract price.

52.4 Daywork:

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

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

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

At the end of each month the Contractor shall deliver to the Engineer a priced statement of the labour, materials and Contractor's Equipment, except as aforesaid, used and the Contractor shall not be entitled to any payment unless such lists and statements have been fully and punctually rendered.

Provided always that if the Engineer considers that for any reason the sending of such lists or statements by the Contractor, in accordance with the foregoing provision, was impracticable he shall nevertheless be entitled to authorise payment for such work, either as Day-work, on being satisfied as to the time employed and the labour, materials and Contractor's Equipment used on such work, or at such value thereof as shall, in his opinion, be fair and reasonable.

PROCEDURE FOR CLAIMS

CLAUSE-53:

53.1 Notice of Claims:

Notwithstanding any other provision of the Contract, if the Contractor intends to claim any additional payment pursuant to any Clause of these Conditions or otherwise, he shall give notice of his intention to the Engineer, with a copy to the Employer, within twenty-eight (28) days after the event giving rise to the claim has first arisen.

53.2 Contemporary Records:

Upon the happening of the event referred to in Sub-Clause-53.1, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make.

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

53.3 Substantiation of Claims:

Within twenty-eight (28) days, or such other reasonable time as may be agreed by the Engineer, of giving notice under Sub-Clause-53.1, the Contractor shall send to the Engineer an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based.

Where the event giving rise to the claim has a continuing effect such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the Engineer the Contractor shall send a final account within twenty-eight (28) days of the end of the effects resulting from the event The Contractor shall, if required by the Engineer so to do, copy to the Employer all accounts sent to the Engineer pursuant to this Sub-Clause.

53.4 Failure to Comply:

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

53.5 Payment of Claims:

The Contractor shall be entitled to have included in any interim payment certified by the Engineer pursuant to Clause-60 such amount in respect of any claim as the Engineer, after due consultation with the Employer and the Contractor, may consider due to the Contractor provided that the Contractor, has supplied sufficient particulars to enable the Engineer to determine the amount due. If such particulars are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment in respect of such part of the claim as such particulars may substantiate to the satisfaction of the Engineer. The Engineer shall notify the Contractor of any determination made under this Sub-Clause, with a copy to the Employer.

CONTRACTOR'S EQUIPMENT, TEMPORARY WORKS AND MATERIALS

CLAUSE-54:

54.1 Contractor's Equipment, Temporary Works and Materials; Exclusive Use for the Works:

All Contractor's Equipment, Temporary Works and materials provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part thereof except for the

purpose of moving it from one part of the Site to another, without the consent of the Engineer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment, Temporary Works, Plant or materials to or from the Site.

54.2 Employer not Liable for Damage:

The Employer shall not at any time be liable, save as mentioned in Clauses-20 and 65, for the loss of or damage to any of the said Contractor's Equipment, Temporary Works or materials.

54.3 Customs Clearance:

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

54.4 Re-export of Contractor's Equipment:

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

54.5 Conditions of Hire of Contractor's Equipment:

With a view to securing, in the event of termination under Clause-63, the continued availability, for the purpose of executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner thereof will, on request in writing made by the Employer within seven (7) days after the date on which any termination has become effective, and on the Employer undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use thereof by any other contractor employed by him for the purpose of executing and completing the Works and remedying any defects therein, under the terms of the said Clause-63.

54.6 Costs for the Purpose of Clause 63:

In the event of the Employer entering into any agreement for the hire of Contractor's Equipment pursuant to Sub-Clause-54.5, all sums properly paid by the Employer under the provisions of any such agreement and all costs incurred by him (including stamp duties) in entering into such agreement shall be deemed, for the purpose of Clause-63, to be part of the cost of executing and completing the Works and the remedying of any defects therein.

54.7 Incorporation of Clause in Subcontracts:

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

54.8 Approval of Materials not Implied:

The operation of this Clause shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer, under the terms of the Contract.

MEASUREMENT

CLAUSE-55:

55.1 Quantities:

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

CLAUSE-56:

56.1 Works to be Measured:

The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that

value in accordance with Clause-60. The Engineer shall, when he requires any part of the Works to be measured, give reasonable notice to the Contractor's authorised agent, who shall:

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

Should the Contractor not attend, or neglect or omit to send such representative, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Engineer shall prepare records and drawings as the work proceeds and the Contractor as and when called upon to do so in writing, shall, within fourteen (14) days, attend to examine and agree such records and drawings with the Engineer and shall sign the same when so agreed. If the Contractor does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such drawings and records, the Contractor does not agree the same or does not sign the same as agreed, they shall never-the-less be taken to be correct, unless the Contractor, within fourteen (14) days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

CLAUSE-57:

57.1 Method of Measurement:

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

57.2 Breakdown of Lump Sum Items:

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

PROVISIONAL SUMS

CLAUSE-58:

58.1 Definition of "Provisional Sum":

"Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any part of the Works or for the supply of goods, materials, Plant or services, or for contingencies which sum may be used, in whole or in part, or not at all on the instructions of the Engineer.

The Contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Engineer shall determine in accordance with this Clause. The Engineer shall notify the Contractor of any determination made under this Sub-Clause with a copy to the Employer.

58.2 Use of Provisional Sums:

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

- (a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause-52,
- (b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor thereof shall be determined and, paid in accordance with Sub-Clause-59.4.

58.3 Production of Vouchers:

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

NOMINATED SUBCONTRACTORS

Clause (59):

59.1 Definition of "Nominated Subcontractors":

All specialists, merchants tradesmen and others executing any work or supplying any goods materials, Plant or services for which Provisional Sums are included in the Contract, who may have been or be nominated or selected or approved by the Employer or the Engineer, and all persons to whom by virtue of the provisions of the Contract the Contractor is required to subcontract shall, in the execution of such work or the supply of such goods, materials, plant or services, be deemed to be subcontractors to the Contractor and are referred to in this Contract as "nominated Subcontractors".

59.2 Nominated Subcontractors; Objection to Nomination:

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

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

59.3 Design Requirements-to be Expressly Stated:

If in connection with any Provisional Sum the services to be provided include any matter of design or specification of any part of the Permanent Works or of any plant to be incorporated therein, such requirement shall be expressly stated in the Contract and shall be included in any nominated Subcontract. The nominated Subcontract shall specify that the

nominated Subcontractor providing such services will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities.

59.4 Payments to Nominated Subcontractors:

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

- (a) The actual price paid or due to be paid by the Contractor, on the instructions of the Engineer, and in accordance with the subcontract;
- (b) in respect of labour supplied by the Contractor, the sum, if any, entered in the Bill of Quantities or, if instructed by the Engineer pursuant to paragraph (a) of Sub-Clause (58.2), as may be determined in accordance with Clause-52;
- (c) in respect of all other charges and profit, a sum being a percentage rate of the actual price paid or due to be paid calculated, where provision has been made in the Bill of Quantities for a rate to be set against the relevant Provisional Sum, at the rate inserted by the Contractor against that item or, where no such provision has been made, at the rate inserted in the Appendix to Tender.

59.5 Certification of Payments to Nominated Subcontractors:

Before issuing, under Clause-60, any certificate, which includes any payment in respect of work done or goods, materials Plant or services supplied by any nominated Subcontractor the Engineer shall be entitled to demand from the Contractor reasonable proof that all payments, less retentions, included in previous certificates in respect of the work or goods, materials Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If the Contractor fails to supply such proof then, unless the Contractor

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

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

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

CERTIFICATES AND PAYMENT

CLAUSE-60:

60.1 Monthly Statements:

The Contractor shall submit to the Engineer after the end of each month six copies, each signed by the Contractor's representative approved by the Engineer in accordance with Sub-Clause-15.1, of a statement, in such form as the Engineer may from time to time prescribe, showing the amounts to which the Contractor considers himself to be entitled up to the end of the month in respect of

- (a) the value of the Permanent Works executed**
- (b) any other items in the Bill of Quantities including those for Contractor's Equipment, Temporary Works, dayworks and the like**
- (c) eighty percent (80%) of the invoice value of materials and Plant delivered by the Contractor on the Site for incorporation in the Permanent Works but not yet incorporated in such Works, provided that**
 - (i) The quantities of such materials and plant do not exceed the quantities required for the execution of the Works in accordance with the Contract.**
 - (ii) All such material and plant are new, according to Specification, and suitable for incorporation in the Works, subject to Clause-54 hereof as regards acceptance or rejection at the time of incorporation or use in the Permanent Works.**
 - (iii) The valuation of materials and plant is compatible with the current mark prices, or is determined by the Engineer for the component of material or plant in the relevant item of the Bill of Quantities, whichever is the lower.**
- (d) adjustments under Clause-70, and**
- (e) any other sum to which the Contractor may be entitled under the Contract.**

60.2 Monthly Payments:

The Engineer shall, within ten (10) days of receiving such statement, check and certify to the Employer the amount of payment to the Contractor which he considers due and payable in respect thereof, subject:

- (a) firstly, to the retention of the amount calculated by applying the Percentage of Retention stated in the Appendix to Tender, to the amount to which the Contractor is entitled under paragraphs (a), (b), (c) and (e) of Sub-Clause-60.1 until the amount so retained reaches the Limit of Retention money stated in the Appendix to Tender, and**
- (b) secondly, to the deduction, other than pursuant to Clause-47, of any sums which may have become due and payable by the Contractor to the Employer.**
- (c) thirdly, to the deductions in respect of instalments due on advance payment.**

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions (as stated in (a) and (b) above), would be less than the “Minimum Amount of Interim Certificates” stated in the Appendix to Tender.

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

60.3 Payment of Retention Money:

- (a) Upon the issue of the “Taking-Over Certificate” with respect to the whole of the Works, one half of the Retention money, or upon the issue of a Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.**
- (b) Upon the expiration of the “Defects Liability Period for the Works” the other half of the Retention money shall be certified by the Engineer for payment to the Contractor.**

Provided that, in the event of different Defects Liability Periods having become applicable to different Sections or parts of the Permanent works pursuant to Clause-48, the expression of expiration of the “Defects Liability Period” shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work ordered, pursuant to Clauses-49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such work of

so much of the balance of the Retention money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

- (c) If, after the issue of the Taking-Over Certificate, in respect of the whole of the works the Contractor provides to the Employer a maintenance Guarantee, for the amount stated in the Appendix to Tender, the other half of the Retention money shall be paid to the Contractor.

60.4 Correction of Certificates:

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

60.5 Statement at Completion:

Not later than sixty (60) days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer,

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

Estimated amount shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause-60.2.

60.6 Final Statement:

Not later than sixty (60) days after the issue of the Defects Liability Certificate pursuant to Sub-Clause-62.1, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

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

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

60.7 Discharge:

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after payment due under the Final Certificate issued pursuant to Sub-Clause-60.8 has been made and the performance security referred to in Sub-Clause-10.1, if any, has been returned to the Contractor.

60.8 Final Certificate:

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

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

60.9 Cessation of Employer' s Liability:

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or execution of the Works, unless the Contractor shall have included a claim in respect thereof in his Final Statement and (except in respect of matters or things arising after the issue of the Taking-Over Certificate in respect of the whole of the Works) in the, Statement at Completion referred to in Sub-Clause-60.5.

60.10 Time for Payment:

- (a) The amount due to the Contractor under any interim certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject

to Clause-47, be paid by the Employer to the Contractor within thirty (30) days after such interim certificate has been delivered to the Employer, or, in the case of the Final Certificate referred to in Sub-Clause-60.8, within sixty (60) days, after such Final Certificate has been delivered to the Employer.

In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest upon all sums unpaid from the last date of the interval by which the same should have been paid. The provisions of this Sub-Clause are without prejudice to the Contractor's entitlement under Clause-69.

- (b) For projects financed by loans, the payment of interim payments shall be paid to the Contractor within forty-five (45) days after delivery of payment certificate.

60.11 Advances on Constructional Equipment, Plant and Materials:

Where an advance payment is to be made by the Employer to the Contractor in respect of contractor's Equipment, Plant, or materials in accordance with the Contract, the conditions of payment and repayment shall be as set out in the Special Conditions, and the Contractor shall furnish to the Employer acceptable proof that the advance payment shall be used for the purposes of the Works under the Contract, otherwise the Employer shall be entitled to recover the advance payment in whatever manner he may deem suitable.

CLAUSE-61:

61.1 Approval only by Defects Liability Certificate:

Only the Defects Liability Certificate, referred to in Clause-62, shall be deemed to constitute approval of the Works.

CLAUSE-62:

62.1 Defects Liability Certificate:

The Contract shall not be considered as completed until a Defects Liability Certificate shall have been signed by the Engineer, and delivered to the Employer, with a copy to the Contractor, stating the date on which the Contractor shall have completed his obligations to execute and complete the Works and remedy any defects therein to the Engineer's satisfaction.

The Defects Liability Certificate shall be given by the Engineer within twenty-eight (28) days after the expiration of the Defects Liability Period, or, if different defects liability periods shall become applicable to different Sections or parts of the Permanent Works, the expiration of the latest such period, or as soon thereafter as any works instructed, pursuant to Clauses-49 and 50, have been completed to the satisfaction of the Engineer.

Provided that the issue of the Defects Liability Certificate shall not be a condition precedent to payment to the Contractor of the second portion of the Retention Money, in accordance with the conditions set out in Sub-Clause-60.3.

62.2 Unfulfilled Obligations:

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

REMEDIES

CLAUSE-63:

63.1 Default of Contractor:

If the Contractor is deemed by law unable to pay his debts as they fall due, or enters into voluntary or involuntary bankruptcy, liquidation or dissolution (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), or becomes insolvent, or makes an arrangement with, or assignment in favour of, his creditors, or agrees to carry out the Contract under a committee of inspection of his creditors, or if a receiver, administrator, trustee or liquidator is appointed over any substantial part of his assets, or if, under any law or regulation relating to reorganisation, arrangement or readjustment of debts, proceedings are commenced against the Contractor or resolutions passed in connection with dissolution or liquidation or if any steps are taken to enforce any security interest over a substantial part of the assets of the Contractor, or if any act is done or event occurs with respect to the Contractor or his assets which, under any applicable law has a substantially similar effect to any of the foregoing acts or events, or if the Contractor has contravened Sub-Clause-3.1, or has an execution levied on his goods, or if the Engineer certifies to the Employer, with a copy to the Contractor, that, in his opinion, the Contractor:

- (a) has repudiated the Contract, or
- (b) without reasonable excuse has failed
 - (i) to commence the Works in accordance with Sub-Clause-41.1 or
 - (ii) to proceed with the Works, or any Section thereof, within twenty-eight (28) days after receiving notice pursuant to Sub-Clause-46.1, or
- (c) has failed to comply with a notice issued pursuant to Sub-clause-37.4 or an instruction issued pursuant to Sub-Clause-3.1 within twenty-eight (28) days after having received it, or
- (d) despite previous warning from the Engineer, in writing, is otherwise persistently or flagrantly neglecting to comply with any of his obligations under the Contract, or
- (e) has contravened Sub-Clause-4.1, then the Employer may, after giving fourteen (14) days notice to the Contractor, enter upon the Site and the Works and terminate the employment of the Contractor without thereby releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and authorities conferred on the Employer or the Engineer by the Contract. The Employer shall be entitled to forfeit the Securities and retentions and to complete the Works or may employ any other contractor complete the Works
The Employer or such other contractor may use such completion so much of the Contractor's Equipment, Temporary Works and materials as he or they may think proper.

63.2 Valuation at Date of Termination:

The Engineer shall, as soon as may be practicable after any such entry and termination by the Employer, fix and determine ex parte, or by or after reference to the parties or after such investigation or enquiries as he may think fit to make or institute, and shall certify:

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

63.3 Payment after Termination:

If the Employer terminates the Contractor's employment under this Clause he shall not be liable to pay to the Contractor any further amount (including damages) in respect of the Contract until the expiration of the Defects Liability Period and thereafter until the costs of

execution, completion and remedying of any defects, damages for delay in completion (if any) and all other expenses incurred by the employer have been, ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount.

If such amount exceeds the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

63.4 Assignment of Benefit of Agreement:

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

CLAUSE-64:

64.1 Urgent Remedial Work:

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

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

SPECIAL RISKS

CLAUSE-65:

65.1 No Liability for Special Risks:

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

- (a) destruction of or damage to the Works, save to work condemned under the provisions of Clause-39 prior to the occurrence of any of the said special risks, or
- (b) destruction of or damage to property, whether of the Employer or third parties, or
- (c) injury or loss of life.

65.2 Special Risks:

The special risks are:

- (a) the risks defined under paragraphs (a), (c) ,(d) and (e) of Sub-Clause-20.4, and
- (b) the risks defined under paragraph (b) of Sub-Clause-20.4 insofar as these relate to the country in which the Works are to be executed.

65.3 Damage to Works by Special Risks:

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

- (a) rectifying any such destruction or damage to the Works , and
- (b) replacing or rectifying such materials or Contractor's Equipment,

and the Engineer shall determine an addition to the Contract sum in accordance with Clause-52 (which shall in the case of the cost of replacement of Contractor's Equipment

include the fair market value thereof as determined by the Engineer) and shall notify the Contractor accordingly, with a copy to the Employer.

65.4 Projectile, Missile:

Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, or other projectile, missile, munition, or explosive of war, shall be deemed to be a consequence of the said special risks.

65.5 Increased Costs arising from Special Risks:

- (a) Save to the extent that the Contractor is entitled to payment under any other provision of the Contract, the Employer shall repay to the Contractor any costs of the execution of the Works (other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause-39 prior to the occurrence of any special risk) which are howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall, as soon as any such cost comes to his knowledge forthwith notify the Engineer thereof. The Engineer shall, after due consultation with the Employer and the Contractor determine the amount of the Contractor's costs in respect thereof which shall be added to the Contract Sum and shall notify the Contractor accordingly, with a copy to the Employer.**
- (b) The Contractor will not be paid any increased cost if he is unjustifiably delayed for a period more than fifteen percent (15 %) of the Time for Completion.**

65.6 Outbreak of War:

If, during the currency of the Contract, there is an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works.

Provided that the Employer shall be entitled, at any time after such outbreak of war, to terminate the Contract by giving notice to the Contractor and, upon such notice being given, the Contract shall, except as to the rights of the parties under this Clause and to the operation of Clause-67, terminate, but without prejudice to the rights of either party in respect of any antecedent breach thereof.

65.7 Removal of Contractor's Equipment on Termination:

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

65.8 Payment if Contract Terminated:

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

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

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

Any sums payable under this Sub-Clause shall, after due consultation with the Employer and the Contractor, be determined by the Engineer who shall notify the Contractor accordingly, with a copy to the Employer.

RELEASE FROM PERFORMANCE

CLAUSE-66:

66.1 Payment in Event of Release from Performance:

If any circumstance outside the control of both parties arises after the date of signing the Contract which renders it impossible or unlawful for either party to fulfil his contractual obligations, or under the law governing the Contract the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the work executed shall be the same as that which would have been payable under Clause 65 if the Contract had been terminated under the provisions of Clause-65.

SETTLEMENT OF DISPUTES

CLAUSE-67:

67.1 Engineer's Decision:

- (a) If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause.

No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause.

Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the

Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or a settlement by litigation or arbitration.

- (b) **If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of eighty-four (84) days expired, as the case may be, give notice to the other party with a copy for information to the Engineer of his intention to commence litigation or arbitration, as hereinafter provided as to the matter in dispute .**

Such notice shall establish the entitlement of the party giving the same to commence litigation or arbitration) as hereinafter provided, as to such dispute and, subject to Sub-Clause-67.4, no litigation or arbitration in respect thereof may be commenced unless such notice is given.

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

67.2 Amicable Settlement:

Where notice of intention to commence litigation or arbitration as to a dispute has been given in accordance with Sub-Clause-67.1, litigation or arbitration of such dispute shall not be commenced unless an attempt has first been made by the parties to settle such dispute amicably. Provided that, unless the parties otherwise agree, litigation or Arbitration may be commenced on or after the fifty-sixth (56) day after the day on which notice of intention to commence litigation or arbitration of such dispute was given, whether or not any attempt at amicable settlement thereof has been made.

67.3 Litigation or Arbitration:

Any dispute in respect of which:

- (a) **the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause-67.1, and**

- (b) amicable settlement has not been reached within the period stated in Sub-Clause-67.2 shall be finally settled by reference to the competent court of law in the Kingdom, unless both parties shall agree that the dispute be referred to arbitration.

If the First Party, being a government department or public corporation or local authority, shall consider settlement of the dispute by arbitration, then, and in such case, the said party shall obtain the prior approval of the Council of Ministers of the Kingdom to proceed with the aforesaid settlement accordingly.

- (c) Upon reference of any dispute to arbitration, the arbitrator(s) shall have power to open, revise and review any decision, certification or evaluation of the Engineer, provided that nothing of the foregoing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter relevant to the dispute referred to the arbitrator(s).
- (d) No reference to litigation or arbitration may be commenced before the completion of the works and the issue of the Taking-Over certificate.

67.4 Failure to Comply with Engineer's Decision:

Where neither the Employer nor the Contractor has given notice of intention to commence litigation or arbitration of a dispute within the period stated in Sub-Clause-67.1 and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to litigation or arbitration in accordance with Sub-Clause-67.3 The provisions of Sub-Clauses-67.1 and 67.2 shall not apply to any such reference.

NOTICES

CLAUSE-68:

68.1 Notice to Contractor:

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

68.2 Notice to Employer and Engineer:

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

68.3 Change of Address:

Either party may change a nominated address to another address in Jordan, by prior notice to the other party, with a copy to the Engineer, and the Engineer may do so by prior notice to both parties.

DEFAULT OF EMPLOYER

CLAUSE-69:

69.1 Default of Employer:

In the event of the Employer

- (a) failing to pay to the Contractor the amount due under any certificate of the Engineer within thirty (30) days after the expiry of the time stated in Sub-Clause-60.10 within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) interfering with or obstructing or refusing any required approval to the issue of any such certificate, or
- (c) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation, or
- (d) giving notice to the Contractor that for unforeseen reasons, due to economic dislocation, it is impossible for him to continue to meet his contractual obligations the Contractor shall be entitled to terminate his employment under the Contract by giving notice to the Employer, with a copy to the Engineer. Such termination shall take effect 14 days after the giving of the notice.

69.2 Removal of Contractor's Equipment:

Upon the expiry of the fourteen (14) days' notice referred to in sub-Clause-69.1, the Contractor shall, notwithstanding the provisions of Sub-Clause-54.1, with all reasonable despatch, remove from the Site all Contractor's Equipment brought by him thereon.

69.3 Payment on Termination:

In the event of such termination the Employer shall be under the same obligations to the Contractor in regard to payment as if the Contract had been terminated under the provisions of Clause-65, but, in addition to the payments specified in Sub-Clause-65.8, the Employer shall pay to the Contractor the amount of any loss or damage to the Contractor arising out of or in connection with or by consequence of such termination.

69.4 Contractor's Entitlement to Suspend Work:

Without prejudice to the Contractor's entitlement to interest under Sub-Clause-60.10 and to terminate under Sub-Clause-69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within twenty-eight (28) days after the expiry of the time intervals stated in Sub-Clause-60.10 as the case may be, and within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving thirty (30) days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

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

- (a) any extension of time to which the Contractor is entitled under Clause-44, and
- (b) the amount of such costs which shall be added to the Contract Sum and shall notify the Contractor accordingly, with a copy to the Employer.

69.5 Resumption of work:

Where the Contractor suspends work or reduces the rate of work, having given notice in accordance with Sub-Clause-69.4 and the Employer subsequently pays the amount due, including interest pursuant to Sub-Clause-60.10, the Contractor's entitlement under Sub-Clause-69. shall, if notice of termination has not been given, lapse and the Contractor shall resume normal working as soon as is reasonably possible.

CHANGES IN COST AND LEGISLATION

CLAUSE-70:

70.1 Increase or Decrease of Costs:

Save for the cases mentioned in Sub-Clauses-70.2, 70.3 hereinafter, no adjustment shall be made in the item rates of the Contract in respect of increases in the wages of labour, materials, plant, transport fares, or any taxes or other fees imposed by any new government law or regulation.

70.2 Subsequent Legislation:

- (a) The Contractor shall be reimbursed such additional sums that he is obliged to pay to the Government Treasury in consequence of increases imposed after the date of submission of tenders in respect of import fees, consumption tax, and customs duties on the principal materials that are used in the Permanent Works or in the residency dues imposed on foreign labour approved to be employed in the Works.
- (b) In case official decreases in any of the taxes or dues mentioned in Sub-Clause (a) above be enacted by legislation after the date of submission of tenders, the Employer shall be empowered to deduct such amounts from the monies due to the Contractor.

70.3 Official changes in prices of Materials and Fuel:

- (a) If an official change is enacted on the prices of principal materials that are used in the Permanent Works after the date of submission of tenders, then the unit rates of the Works concerned shall be revised to allow for the direct increase of prices of materials according to the following formula:

$$M = MO \left(0.15 + 0.85 \frac{MI}{MO} \right)$$

Where

- M = Revised Price
- MI = New price of material
- M' = Original price of material

Provided that this price revision shall not include any changes in prices resulting from applying Sub-clauses-70.2, (a) and 70.3, (b). Decision concerning the overall price revision shall be set out by The Minister of Public Works and Housing.

- (b) Principal materials intended in Sub-clause (a) above shall be specified in the Special Conditions of the contract.**
- (c) If payments due to the Contractor are paid in Jordanian currency, and it happens that after the date of submission of tenders, the exchange rate of the Dinar is decreased as announced by the Central Bank of Jordan, then the Contractor shall be compensated for the direct loss he may sustain in buying materials and plant used in the Permanent Works and purchased by foreign currencies, resulting from any official change in the rate of exchange of the Jordanian Dinar.**

For compensation accruing upon application of this Sub-clause the following conditions shall be considered when the Contractor is paid in Jordanian Dinars:

- (i) The decrease in the exchange rate of the Dinar shall be not less than ten percent (10%) of the basic rate on the date of submission of tenders.**
 - (ii) No market fluctuation in the exchange rates shall be allowed for.**
 - (iii) Quantities of materials available on Site shall be calculated, and the contractor shall be compensated for the quantities needed for Completion after the date the exchange rate is affected, with no allowance for wastage or losses in these materials or plant.**
 - (iv) No allowance shall be made for overhead and profit.**
 - (v) No change shall be made in the price of any material concerning any item of the Works whose value is less than two percent (2%) of the Contract Sum.**
- (d) In case foreign components of construction materials that are produced locally or the prices of spare parts or supplies required for the operation of the Contractor's Equipment of (roads and water and sewage projects) are changed by a ratio resulting in an increase exceeding five percent (5%) of the rates of items affected by the change, or JD(5,000), whichever is less, then the Contractor shall be compensated for such changes in accordance with the formula set out by the Minister of Public Works and Housing at the appropriate time.**
 - (e) Sub-clauses (c), (d) shall not be applied if the Contractor is paid any portion of his payments in foreign currency.**
 - (f) In case the cost of fuel needed for operation of the Contractors Equipment in the Works is increased by a margin exceeding ten percent (10%) of the basic cost at the date of submission of tenders, the contractors of roads and water and sewage shall be**

compensated for the differential exceeding the mentioned ten percent (10%) ratio according to the formula set out by the Minister of Public Works and Housing.

- 70.4 No compensation shall be paid to the Contractor who is delayed in the execution of the Works beyond the Time for Completion, as he is supposed to bear any increased cost resulting from such delay.**

CURRENCY AND RATES OF EXCHANGE

CLAUSE-71:

71.1 Currency Restrictions:

If, at the latest date for submission of tenders for the Contract, the Government of Jordan or the Central Bank in Jordan impose currency restrictions and/or transfer of currency restrictions in relation to the currency or currencies in which the Contract Price is to be paid, the Employer shall reimburse any loss or damage to the Contractor arising therefrom without prejudice to the right of the Contractor to exercise any other rights or remedies to which he is entitled in such event.

CLAUSE-72:

72.1 Rates of Exchange:

Where the Contract provides for payment in whole or in part to be made to the Contractor in foreign currency or currencies, such payment shall not be subject to variations in the rate or rates of exchange between such specified foreign currency or currencies and the currency of the Kingdom.

72.2 Currency Proportions:

Where the Employer has required the Tender to be expressed in a single currency but with payment to be made in more than one currency and the Contractor has stated the proportions or amounts of other currency or currencies in which he requires payment to be made, the rate or rates of exchange applicable for calculating the payment of such proportions or amounts shall, unless otherwise stated in Part II of these Conditions, be those

prevailing, as determined by the Central Bank of Jordan on the latest date for the submission of tenders for the Contract.

72.3 Currencies of Payment for Provisional Sums:

Where the Contract provides for payment in more than one currency, the proportions or amounts to be paid in foreign currencies in respect of Provisional Sums shall be determined in accordance with the principles set forth in Sub-Clauses-72.1 and 72.2 as and when these sums are utilised in whole or in part in accordance with the provisions of Clauses-58 and 59.

OTHER PROVISIONS

CLAUSE-73:

73.1 Structural Warranty:

In respect of total or partial collapse of the Works executed by the Contractor, or in respect of any structural defect threatening the safety of the construction, and subject to the provisions of the Jordanian Civil Code, the Contractor's responsibility thereof shall be for a period of ten (10) years after the date of Taking-Over, during which he shall be subject to material and penal liability for any deceit, neglect or default which may result in substantial damage by reason of the Contractor's execution or maintenance of the Works.

CLAUSE-74:

74.1 Use of Explosives:

The Contractor shall, in respect of all matters relating to the use, transport or storage of explosives and other similar things required by him for fulfilling his obligations under the Contract, make all necessary arrangements and take necessary precautions with regard to the foregoing matters, and abide by the relevant orders, statutory laws, rules and regulations in force related to such matters. Provided that all these rules shall be applicable to inflammable materials or any other materials that constitute danger in their use transport or storage.

All permits necessary in respect of such matters, and in so far as necessity requires to communicate with the authorities concerned prior to the occurrence of any explosion, the Contractor shall secure all such permits beforehand, and shall abide by any official orders

issued to him in this connection. Provided the Contractor shall notify the Engineer or the Engineer's Representative of all his arrangements and measures concerning the storage, transport and use of explosives; with the understanding that notification of such arrangements and measures shall not relieve him of any of his liabilities and obligations under the provisions of any statutory laws, regulations and orders related to explosives.

CLAUSE-75:

75.1 Income Tax and Dues:

The Contractor and his Sub-Contractors shall abide by all laws, rules and regulations in force concerning income tax on taxable profits and salaries of their workmen and employees. The Contractor and his Sub-Contractors shall make the necessary monthly deductions from such salaries, and pay such amounts to the Income Tax Department through the period of the execution of the Works.

75.2 No Exemption from Dues, etc.:

In whatever event, the Contractor shall not be exempted from the following dues and fees:

- (i) Stamp dues,
- (ii) University dues,
- (iii) The Engineers Association and the Contractors Association fees.

CLAUSE-76:

76.1 Bribery:

Bribery, in whatever form, whether made by the Contractor or any of his Sub-Contractors or by any of their servants to any member of the Employer's staff or the Engineer's personnel, shall constitute sufficient cause for the annulment of this Contract and any other contract between the Contractor and the Employer. Such annulment shall be in addition to any legal liabilities imposed upon the Contractor. For the purpose of this Clause, any commission paid or gift given to the Employer or to the Engineer or to any of their servants with the objective of obtaining any modification or alteration to the Works, or to the standard of workmanship, or achieving any personal benefit, shall be deemed as a bribe. The Employer shall be entitled to collect any damages due to him in respect of any loss arising from the annulment of the Contract, and to deduct such relevant amounts as

aforesaid either from monies due to the Contractor from the Employer, or from the Securities submitted by the Contractor.

CLAUSE-77:

77.1 Import and Customs Laws and Regulations:

All laws, statutes and regulations related to import, export and customs issued by the Jordanian Government and are in force shall apply to and govern the execution of the Contract and the performance of the Contractor according to its conditions and terms.

CLAUSE-78:

78.1 Privacy of Information:

Participants in the Tender shall, upon purchasing the Tender Documents, and also the Contractor shall, during the execution of the Works, safeguard the secrecy of the information in their possession and shall not disclose any provision of the Documents to commercial or technical publications or any other medium without the prior written consent of the Employer. They shall not use any Contract Document for any other project or purpose.

CLAUSE-79:

79.1 Exemptions and Temporary Entry.

- (a) Unless it is expressly prescribed otherwise in the Special Conditions, the provisions of this Clause shall not be applicable with regard to the exemption of the Contractor from any taxes or dues or importation under temporary entry, of Contractor's Equipment, vehicles or construction materials. Any exemption in this respect shall be subject to the Employer obtaining first the approval of the Council of Ministers of the Kingdom in accordance with the provisions of the Government Works Regulations and of the instructions issued by virtue of such regulations.
- (b) Where the Special Conditions allow importation under temporary entry, the following procedures shall apply:

- (i) **The Employer shall advise the Customs Authorities as regards the obligations of the Contractor, and recommend exemption on temporary entry for the needs of the Works.**
- (ii) **The Customs Authorities shall, upon being given the necessary guarantees as they may determine, allow the Contractor to import under temporary entry rules the Contractor's Equipment required for the execution of the Works and the Temporary Works connected therewith, including dumpers and other vehicles to be used for the transport of water, fuel, cement or asphalt.**
- (iii) **Temporary entry shall not in any case be allowed in respect of the following:**
 - a) **Passenger and saloon vehicles of all kinds;**
 - b) **Spare parts, tyres, batteries, grease, mineral oils and similar materials for motor vehicles.**
- (iv) **Locally purchased materials shall not be exempted from any consumption or customs fees or any other dues.**
- (v) **The Contractor shall not be allowed to use any machinery, plant or vehicles imported into the Kingdom under temporary entry for any purpose other than that purpose for which they have been imported, except with the prior approval of the Customs Authorities.**
- (vi) **The Employer shall, upon the completion of the Works, give written notice (with a copy to the Contractor) to the Customs Authorities informing them accordingly, and the Contractor shall, on being served with such notice, proceed to either re-export the Contractor's Equipment he has imported or, if he desires such things to remain in the Kingdom, to pay the required customs dues on the same.**

CLAUSE-80:

80.1 Termination for Convenience of Employer:

If, before completion of the Works under the Contract, the Employer decides that for reasons beyond the control of both parties, or for the reason that the continuation of the execution of the Contract does not serve the Employer's interest, the Employer shall have the right to notify the Contractor accordingly and terminate the Contract in whole or in part. When the Contractor receives such notice, he shall immediately cease his operations in accordance with the Employer's orders, and, in such event, settlement shall be made in accordance with the provisions of the Contract in respect of the work so far executed by the

Contractor and also in respect of any direct loss incurred by him as a result of the termination thereof.

PART (II)

SPECIAL CONDITIONS

ANNEX "A"

ANNEX "B"

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PART (II) - SPECIAL CONDITIONS

The following conditions shall be recognised as Part (II)-Special Conditions of the Contract. All additions or amendments to the Part (I)-General Conditions contained herein shall take precedence, and shall be considered as explaining, amending or supplementing these Clauses. The same Part (I)-General Conditions Clause numbers are used hereinafter.

CLAUSE-1:

1.1 Definitions:

(Revise Sub-clause (a), (i) as follows:)

- (i) The “Employer” shall mean The Ministry of Public Works and Housing**

(Add Sub-clause (a), (vi) as follows:)

- (vi) The “JBIC” shall mean the Japan Bank for International Cooperation**

(Add Sub-clause (c), (iii) as follows:)

- (iii) “day” mean a Gregorian calendar day and “year” means 365 days.**

(Add Sub-Clause 1.1, (f) as follows:)

(f) Other Definitions

- (i) “Foreign Currency”- means a currency in which part of the Contract Price is payable, but not the Local Currency.**
- (ii) “Local Currency”- means the currency of The Hashemite Kingdom of Jordan.**
- (iii) “Related Works”- means works other than the Works, perform or undertaken by the Employer or by public or private utilities or statutory or other relevant authorities either concurrently with the Works at, on, over adjacent to the Site in connection with or related to the Site and which may be connected to, associated with, ancillary to or otherwise related to or relevant to the Works.**
- (iv) “Contractor’s Equipment”- means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the permanent Works.**

- (v) **“Materials”- means things of all kinds (other than plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.**
- (vi) **“Permanent Works”- means the permanent works to be executed by the Contractor under the Contract.**
- (vii) **“Plant”- means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.**
- (viii) **“Section”- means a part of the Works specified in the Appendix to Tender as a Section (if any).**
- (ix) **“Temporary Works”- means all temporary works of every kind (other than Contractor’s Equipment) required on Site for execution and completion of the Permanent Works and the remedying of any defects.**
- (x) **“Works”- means the Permanent Works and the Temporary Works, or either of them as appropriate.**
- (xi) **“Site”- means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.**

1.3 Interpretation

(Add the following text at the end of Sub-clause 1.3)

“In the Contract, except where the context requires otherwise:

- (i) **Provision including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and**
- (ii) **“written” or “in writing” means hand-written, type-written, printed or electrically made, and resulting in a permanent record. The marginal words and other headings shall not be taken in consideration in the interpretation of these Conditions.”**

CLAUSE-2:

2.1. Engineer's Duties and Authority:

(Add following text at the end of Sub-clause 2.1, (a):)

“The Technical Services Agreement signed between the Employer and the Engineer specifies the duties and the powers assigned to the Engineer, and for the purposes of this Contract: "The Contractor shall be considered as having previous knowledge that the Engineer shall obtain the prior approval of the Employer in the matters specified in Clause 2 of the General Conditions".

(Revise Sub-clause 2.1, (b) as follows:)

“The Engineer shall carry out the duties in issuing decisions, instructions, certificate and orders as are specified in the Contract, provided that he shall obtain specific prior written approval of the Employer in respect of the award of any extension of time, approving subletting of any part of the Works, any cost in connection therewith and any order for variation involving additional cost and also in respect of duties specified in the flowing clauses:

- (i) **Issue of Drawings and Specifications, as defined in Clause-1 hereof.**
- (ii) **Issue if further Drawings and Instructions, as referred to in Sub-clause-7.1 hereof.**
- (iii) **All matters relating Clearance of Site on completion, as referred to in Sub-clause-33.1 hereof.**
- (iv) **All matters relating to the approval of the name of manufactures or supplier.**
- (v) **Instructions and notices relating to Suspension of Works, as referred to in Sub-clause-40.1 hereof.**
- (v) **Issue of the Notice to Proceed, as referred to in Clause-41.1 hereof and possession of the Site in Sub-clause-42.1 hereof.**
- (vi) **All matters relating to the determination and granting of Extension of Time for Completion, as referred to in Sub-clause-43, 44 hereof.**
- (vii) **All matters relating to the issue of the Certificates of Completion as referred to in Clause 48 hereof.**
- (viii) **All matters relating to Urgent Repairs, as referred to in Sub-clause-64.1 hereof.**
- (ix) **Issue of the Defect Liability Certificate as referred to in Sub-clause-62.1 hereof.**
- (x) **Issue of Variation Order and the agreement of rates and prices thereof, as referred to in Clause-51 and Sub-clause-52.2 hereof.**
- (xi) **Expenditure of Provisional Sums, as referred to in Sub-clause-58.2 hereof.**
- (xii) **Issue of the Certification of Monthly Progress Payments, as referred to in Sub-clause-60.1, 60.2 hereof.**
- (xiii) **All matters relating to Termination of the Contract by the Employer, as referred to in Sub-clause-80.1 hereof.**

- (xiv) **Extent of repair in the event of Special Risks, as referred to on Clause-65 hereof and payment in the event of termination due to outbreak of war as referred to in Sub-clause-65.6 hereof.**
- (xv) **Permission of the Engineer to work at Night or on locally recognised days of rest, or on a rotary or double shift basis as referred to in Sub-clause-45.1 hereof.**
- (xvi) **All matters relating to Extraordinary Traffic and Special Loads and Settlement of Extraordinary Traffic Claims, as referred to in Sub-clause 30.1, 30.2 and 30.3 hereof.**
- (xvii) **All matters relating Subsequent Legislation, as referred to in Sub-clause-70.2 hereof.**

(Add Sub-clause 2.1, (d) as follows:)

- (d) **Notwithstanding the obligation, as set out above, to approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, the Engineer may, without relieving the Contractor of any of its duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Sum, in respect of such instruction, in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.**

CLAUSE-4:

4.1 Subcontracting:

(Add Sub-clause 4.1 (c) as following)

- “(c) The greatest share for all Sub-contractors working for the Contractor shall not exceed thirty percent (30%) of the Contract Sum.**

CLAUSE-5

5.1 Language and Law:

(Revise Sub-clause 5.2 (a) as following:)

- (a) **The Contract documents shall be in English Language. The Contract shall be administered in the English Language.**

5.2 Priority of Contract Documents

(Revise the priority of Contract Documents as follows:)

- (1) **the Contract Agreement**
- (2) **the Letter of Acceptance**
- (3) **the Tender and Notice to Tenderer/Appendix**
- (4) **the Conditions of Contract Part (II) – Special Conditions**
- (5) **the Conditions of Contract Part (I) – General Conditions**
- (6) **the Specifications**
- (7) **the Drawings**
- (8) **the Priced Bill of Quantities**

CLAUSE-6

6.1 Custody and Supply of Drawings and Documents

(Revise the First part of the second paragraph “The Contractor shall supply in accordance with Clause-7, “ as follows:)

“The Contractor shall supply to the Engineer ----- (----) copies of all Drawings, Specification and other documents submitted by the Contractor and approved by the Engineer in accordance with Clause-7,”

CLAUSE-7

7.1 Supplementary Drawings and Instructions:

(Add to the following text to the end of Sub-clause-7.1)

"The Engineer shall insert numbers and dates of revisions or additions to drawings, and shall certify additional and detail workshop drawings and his approval of the Contractor's drawings required to be approved by him".

7.2 Permanent Works Design by Contractor:

(Add to the following text at the end of Sub-clause 7.2)

"The Contractor shall furnish ----- (...) set of operation and maintenance manuals, drawings to the Employer".

CLAUSE-8

8.1 Contractor's General Responsibilities:

(Add Sub-clause 8.1, (a), (b), (c) and (d) as follows:)

- (a) The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or other defect in the design of or Specification for the Works which he discovers when reviewing the Contract or executing the Works.
- (b) The Contractor shall provide offices, furniture, supplies and other facilities for the Engineer's supervision staff and the services needed for their operation and maintenance. If the Contractor fails to provide any of these facilities, then the Employer has the right to provide, maintain and supply the same with all that is needed and the ensuing cost shall be deducted from payments due to the Contractor.
- (c) The Contractor shall provide on the Site at his own expense with water, electricity, telephone and all other equipment required to execute the Works.
Where main supplies are not available on Site, he shall provide a generator with suitable capacity, and water tanks of suitable sizes and with the required petrol, diesel or gas for their operation.

- (d) **The Contractor shall employ an adequate number of Jordanian engineer's in accordance with the laws and regulations issued by any official organisation or the "Jordanian Engineer's Association"**

CLAUSE-10

(Replace all text of Sub-clause 10.1 and 10.2 with the following:)

10.1 Performance Security:

- (a) **The Contractor shall provide security for its proper performance of the Contract to the Employer within fourteen (14) days after the receipt of the Letter of Acceptance. The performance security, in the value of ten percent (10%) of the Contract Sum, shall be in the form of bank guarantee, issued either**
- (i) by a bank located in the country of the Employer or foreign bank acceptable to the Employer, or**
 - (ii) directly by a foreign bank acceptable to the Employer,**

as stipulated by the Employer in the Appendix to Tender. The performance security shall be denominated in the types and proportions of currencies in which the Contract sum is payable. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

- (b) **without limitation to the provision of the preceding Sub-clause, whenever the Engineer determines an addition to the Contract sum as a result of a variation amounting to more than twenty percent (20%) of the Contract sum payable in a specific currency, the Contractor, at the Engineer's written request, shall promptly increase the value of the performance security in that currency by an equal percentage. The performance security of a joint venture/consortium or partnership shall be in the name of the joint venture/consortium or partnership.**

The obtaining of such security shall, in all respect, be at the expense of the Contractor.

10.2 Time Allotted for Submission:

The Contractor shall submit the aforesaid security within twenty-eight (28) days after the receipt of the Letter of Acceptance and, in the event of failure to produce the Security, he shall be deemed to have abandoned his Tender and the Employer shall be entitled to confiscate the Tender Security already provided by the Contractor. The value of the said Tender Security shall become the full right of the Employer.

CLAUSE-12

12.2 Adverse Physical Obstructions or Conditions:

(In confirmation of what is stated in the original text of the Clause)

"Time for Completion shall not be extended because of climatic conditions, and the rainy days shall not be considered as a reason for extension of Time for Completion".

(Add the following text to the end of Sub-clause 12.2)

"The Contractor is obligated to submit any claim concerning this sub-clause within seven (7) days from its occurrence".

CLAUSE-14

14.1 Programme to be Submitted:

(Add the following text to the end of Sub-clause 14.1)

"The Work Programme shall be submitted in the form of bar chart and Critical Path Method, supplemented with number of personnel and equipment, and the dates of procurement of materials and Plant".

14.2 Revised Programme:

(Add the following text to the end of Sub-clause 14.2)

"The Contractor shall take into consideration the Engineer's comments, and amend his programme to a suitable technical standard, and shall submit it within fourteen (14) days from the date of the Notice to Proceed, and shall submit the amended programme within seven (7) days from the date of revision by the Engineer."

14.3 Cash Flow Estimate to be Submitted :

(Revise Sub-clause 14.3 as follows:)

"The Contractor shall have submitted with his Tender as Enclosure No.13 of Instructions to Tenderer a detail monthly cash flow of anticipated payments

under the Contract and the Contractor shall subsequently supply revised cash flows at monthly intervals to the Engineer.”

CLAUSE-15

(Add Sub-clause 15.2 as follows:)

15.2 Language Ability of Contractor’s Representative:

“If the Contractor’s authorized representative is not, in the opinion of the Engineer, fluent in the English language, the Contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information.”

CLAUSE-16

(Add Sub-clause 16.3 as follows:)

16.3 Language Ability of Superintending Staff:

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

CLAUSE-20

20.4 Employer’s Risks:

(Delete the text of this Sub-clause and replace with the following:)

The Employer’s Risks are:

- (a) insofar as they directly affect the execution of the Works in the country where the Permanent Works are to be executed:**
 - (i) war and hostilities (whether war be declared or not), act of foreign enemies;**
 - (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war;**

- (iii) ionising radiation, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iv) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (v) Riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of its Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
 - (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
 - (d) any operation of the force of nature (insofar as it occurs on the Site) which an experienced contractor;
 - (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken appropriate measures to prevent loss or damage to physical property occurring.

CLAUSE 21

21.1 Insurance of the Works and Contractor's Equipment:

(Add the following text to the end of Sub-clause 21.1 (a) and (b):)

“, it being understood that such insurance shall provide for compensation to be payable in currencies required to rectify the loss or damage incurred.”

21.2 Scope of Cover:

(Revise the words in Sub-clause 21.2 (a) paragraph “..... from the start of work at the Site” and by the substitution therefore of the words “..... from the first working day after the Commencement Date”)

21.4 Exclusions:

(Delete the text of Sub-clause and replace with the following:)

“There shall be no obligation for the insurance in Sub-clause 21.1 to include loss or damage caused by the risks listed under Sub-clause 20.4 (a), (i) to (v).”

CLAUSE-24

24.1 Accident or Injury to Workmen:

(Add the following text to the end of Sub-clause 24.1)

"Social Security Insurance" is accepted as part of the insurance for the employees and workers against accidents if the Contractor subscribes in their names with the Social Security Corporation and pays their dues in the specified times. However, the Contractor must insure them to cover his total liability under this clause.

The Contractor shall immediately notify the Engineer in writing about any accident which occurs on site if it results in an injury to any of the labourers or employees or damage to property, and he shall provide him with the details and the affidavits of witnesses. also, the Contractor shall inform the concerned authorities of such accidents when and if the laws and regulations so require.”

CLAUSE-25

25.1 Evidence and Terms of Insurance:

(Sub-clause 25.1 is amended by inserting the words “ as soon as practicable after the respective insurances have been taken out in any case” Before the words “ prior to the start of work at the Site”)

CLAUSE-28

28.2 Royalties:

(Add the following text to the end of Sub-clause 28.2)

“The Contractor shall also be liable for all payments or compensation, if any, levied in relation to the dumping of part or all such materials.”

CLAUSE-34

(Add Sub-clause 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 34.11, 34.12, 34.13, and 34.14 as follows:)

34.4 Foreign Labour

“The Contractor must, in accordance with his conformity with the regulations and special instructions for the employment of local and foreign labour, maintain the current required ratio between the local and foreign labour, and shall carry out, himself, the procedures for obtaining the required permits for work and residency, in addition to bearing the cost of bringing and repatriating the foreign labour”.

34.5 Alcoholic Liquor and Drugs:

The Contractor shall not bring into the Site any alcoholic liquor or drugs, nor permit the use or disposal of the same by his agents, employees, servants or any of his subcontractor’s workmen and servants.

34.6 Arms and Ammunition:

The Contractor shall not bring into the Site, use or dispose of any arms or ammunitions of any kind, or any kind of explosives prohibited by law, and shall not permit his workmen or servants to keep the same on the Site.

34.7 Festivals and Religious Holidays:

The Contractor shall, in all dealings with labour in his employment, have due regard to the working hours prescribed in the Labour law for the time being in force, and shall observe the weekly days of rest, public holidays and recognised religious festivals and customs.

34.8 Epidemics:

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government or the public health authorities or any other official body for the purpose of dealing with and overcoming the same, and shall provide all necessary preventive precautions.

34.9 Disorderly Conduct:

The Contractor shall at all times take all reasonable precautions to prevent any riotous acts or any disorderly conduct by or amongst his workmen and servants on the Site, and for the preservation of order and the protection of properties and persons on the Site and its neighbourhood against such acts or misconduct.

The Contractor shall not prevent the national security forces from entering the Site for the purpose of performing their lawful duties.

34.10 First Aid Centre:

The Contractor shall provide a First Aid Centre on the Site and shall employ a specialist well-trained in first aid operation. This centre shall be located in a place known to labourers and employees, and shall be supplied with adequate first aid provisions.

The Contractor shall have on his staff at the Site an officer dealing with questions of regarding the safety and protection against accidents of all staff and labour. This officer shall have the authority to issue instructions and shall take protective measures to prevent accidents.

34.11 Hygienic Conditions on the Site:

The Contractor shall provide adequate hygienic conditions in respect of garbage collection and sewage disposal on the Site.

34.12 Measures against Insect and Pest Nuisance:

The Contractor shall at all times take necessary precautions to protect all staff and labour employed on the Site from insect nuisance, animals and other pests (including waterborne) and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide his staff and labour with suitable measure required. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. The Contractor shall warn his staff and labour of any local dangers.

34.13 Traffic Signs, Lights and Safety Provisions

The Contractor shall provide signs on the Site, on the approach and out-side of site boundary such signs as may be required by the Engineer for the direction and control of traffic. The signs shall be approved by the Engineer before erection and shall be adequately illuminated at night and kept clean and legible at all times.

Upon completion of the Works all temporally roads, barricades, signs and other equipment shall be completely removed. All expenses for the erection and ultimate removal of all temporary works as well as provision and maintenance of barricades, signs and other equipment shall be borne by the Contractor.

34.14 Observation by Subcontractors:

The Contractor shall be responsible for observance by his Subcontractor of the foregoing provisions.

CLAUSE-36

(Add Sub-clauses 36.6, 36.7 and 36.8 as follows:)

- 36.6 The Contractor will not be exempted from payment of testing costs unless it is expressly stated as such in "Other Special Conditions" or "Special Specifications". The Contractor shall provide and install the laboratories required by the said specifications or by any other Tender Document.**
- 36.7 The Contractor shall abide by all regulations concerning use of locally manufactured products.**
- 36.8 If and when the Contractor proposes an alternative material suitable for its required use, then he shall notify the Engineer in writing of its specifications, before its import, for approval.**

CLAUSE-47

47.1 Liquidated Damages for Delay

(Add the following text to the end of Sub-clause 47.1 (a):)

“The rate of Liquidated Damages for delay shall be equivalent to 1/1,000 (0.1%) of the Contract sum fore each day of delay, up to a maximum deduction of five percent (5%) of the total Contract sum.

CLAUSE-48

48.1 Taking-Over Certificate:

(Add Sub-clause (g) as follows:)

- (g) **The Contractor shall, upon completion of the Works, submit the following:**
- (i) **..... copies of all maintenance manuals and instructions for operation of any machine or mechanical and electrical apparatus, in Arabic and English text.**
 - (ii) **..... copies of A size As-Built Drawings.**
 - (v) **List of Spare Parts for each machine or apparatus, other than those spare parts that he is required to supply in accordance with the Contract, these parts which are supposed to have been supplied by the Contractor prior to the issue of the Taking-Over Certificate.**
 - (vi) **..... Copies of Completion Photographs**

(Add Sub-Clause 48.5 as follows:)

48.5 Prevention from Testing:

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Engineer shall issue a Taking-Over Certificate accordingly. Provided always that the Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.

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

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

CLAUSE-49

49.1 Defect Liability Period:

(Add Sub-clause (c) as follows:)

(c) Defect Liability Period shall be Three Hundred Sixty-five (365) days.

CLAUSE-51

51.1 Variations:

(Add the following text to the end of Sub-clause 51.1)

“Where urgency of decision is required, the Engineer is empowered to issue variation orders, upon obtaining provisional approval from the Employer.”

51.2 Instructions for Variation

(Revise Sub-clause 51.2 as follows:)

“The Contractor shall not make any such variation without instruction of the Engineer.”

CLAUSE-52

52.1 Valuation of Variation

(Add following text to the end of the Sub-clause 52.1)

“Where the Contract provided for the payment of the Contract Sum in more than one currency, and varied work is valued at, or on the basis of, the rates and prices set out in the Contract, payment for such varied work shall be made in the amounts of various currencies specified in the Appendix to Tender for payment of the Contract Sum. Where the Contract provides for payment of the Contract Sum in more than one currency, and new rates or prices are agreed, fixed or determined as stated above, the amount payable in each of the applicable currencies shall be specified when the rates or prices are agreed, fixed or determined, it being understood that in specifying these amounts the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost of the inputs of the varied work without regard to the amount of various currencies specified in the Appendix to Tender for payment of the Contract Sum.”

52.2 Power of Engineer to Fix Rates:

(Add the following text to the end of the Sub-clause 52.2)

“Where the Contract provided for the payment of the Contract Sum in more than one currency, the amount of the payable in each of the applicable currencies shall be specified when the rates and prices are agreed, fixed or determined as stated above, it being understood that in specifying these amounts the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the actual or expected currencies of cost of the inputs of the varied work without regard to the amount of various currencies specified in the Appendix to Tender for payment of the Contract Sum.”

52.3 Variations Exceeding Twenty percent (20%):

(Revise Sub-clause-52.3, (b) as follows:)

“(b) All adjustments upon measurement of the estimated quantities, categorised as “Re-measurable Item”, set out in the Bill of Quantities, excluding Provisional Sum, day-works and adjustment of price made under Clause-70.”

(Add following text to the end of the Sub-clause 52.3)

“Where the Contract provided for the payment of the Contract Sum in more than one currency, the amount of the payable in each of the applicable currencies shall be specified when such further sum is agreed or determined, it being understood that in specifying these amounts the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the currencies in which the Contractor’s Site and general overhead cost of the Contract were incurred without being bound by the mounts of various currencies specified in the Appendix to Tender for payment of the Contract Sum.”

CLAUSE-53

(Add Sub-clause-53.6 as follows:)

“53.6 Observance of Government Works By-Laws:

The provisions of the Government Works By-laws and any Regulations issued by virtue thereof shall be duly observed in regard to the procedures applicable to carrying out of variations, and to obtaining at the proper time or times the necessary approval of the respective concerned Authorities.”

CLAUSE-54

(The Sub-clause-54.9 as follows:)

54.9 Contractor's Equipment, Temporary Works, Plant and materials after Completion of the Works

- “(a) All Contractor's Equipment, Temporary Works, Plant and materials owned by the Contractor, or by any company in which the Contractor has a controlling interest, shall, when on the Site, be deemed to be the property of the Employer.**
- (b) If the Contractor fails to remove equipment, Plant, materials or Temporary Works from the Site within a reasonable period after the Completion of the Works or Termination of Contract, in accordance with the decision of the Engineer, then the Employer may remove them by sale or returning them to their original owners, if hired, at the expense of the Contractor. Then the settlement of account shall be made with the Contractor, and if any amount is due to him, he shall be paid such sum.**

However, if the result of such settlement did not cover the cost of removal, then such amounts shall be due from the Contractor to the Employer.”

CLAUSE-57

57.1 Method of Measurement:

(Add the following text to the end of Sub-clause 57.1)

"A general principle in the method of measurement is that no item shall will be measured under two separate items".

CLAUSE-60

(Delete entire Clause 60 and replace with the following:)

60.1 Monthly Statements

Disbursement procedures of JBIC ODA Loans shall be applied for disbursement of the proceeds of JBIC ODA Loans for eligible payment under this Contract. The Contractor shall submit a statement in ----- () copies to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) the estimated contract value of the Temporary and Permanent Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the various currencies of the Contract Sum in which the contract is payable;**
- (b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the various month, at the unit rates and prices included in the Contract, in the various currencies of the Contract Sum;**
- (c) the estimated contract value at the unit rates and prices included in the Contract of the Temporary and Permanent Works for the month in question, in the various currencies of the Contract Sum, obtained by deducting (b) from (a);**

- (d) the value of any variations executed up to the end of the month in question, less the amounts certified in the previous Interim Payment Certificate, expressed in the relevant amounts of the foreign and local currencies, pursuant to Clause 52;
- (e) amounts approved in respect of Daywork executed up to the end of the month in question, less the amount for Daywork certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities;
- (f) amounts reflecting change in cost and legislation, pursuant to Clause 70, expressed in the relevant amount of the Bill of Quantities;
- (g) any credit or debit for the month in question in respect of materials and Plant for the Permanent Works, in the relevant amounts in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (h) any amount to be withhold under the provision of Sun-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5, to the amounts in foreign and local currencies due under paragraphs 60.1 (c), (d), (e) and (f);
- (i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.8; and
- (j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

60.2 Monthly Payments:

- (a) The said statement shall be approved or amended by the Engineer in such a way that, in the Engineer's opinion, it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within twenty-eight (28) days of receipt of the monthly statement referred to in Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall issue the Employer and the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due to the Contractor.
- (b) Notwithstanding terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment until the Performance Security has been provided by the Contractor and approved by the Employer.

60.3 Materials and Plant for the Permanent Works:

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

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:**
 - (i) the materials and Plant are in accordance with the Specifications for the Works;**
 - (ii) the materials and Plant have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;**
 - (iii) the Contractor's record of the requirements, orders, receipts and use of materials and Plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;**
 - (iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and Plant to the Site, together with such documents as may be required for the purpose of evidencing such cost; and**
 - (v) the origin of the materials and Plant and the currencies of payment therefore are those indicated in the Appendix to Tender;**
- (b) the amount to be credited to the Contractor shall be the equivalent of eighty percent (80%) of the Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a), (iv) above, as determined by the Engineer;**
- (c) the amount to be debited to the Contractor for any materials and Plant incorporated onto the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant pursuant to Sub-Clause (b) above, as determined by the Engineer; and**
- (d) the currencies in which the respective amounts shall be credited or debited as set forth above shall be determined by the Engineer, provided (i) that in the case of a credit, the currencies shall be relevant item of a debit, the currencies shall be those listed in the Appendix to Tender for the relevant items of materials or Plant; and (ii) that in the case of debit, the currencies shall be those in which the credit for the respective item of materials and Plant had been given.**

60.4 Place of Payment:

Payment to the Contractor by the Employer shall be made in the currencies in which the Contract Sum is payable, into a bank account or accounts nominated by the Contractor.

60.5 Retention Money:

A retention amounting to five percent (5%) of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 (i) shall be made by the Engineer in the first and flowing Interim Payment Certificates.

60.6 Payment of Retention Money:

Upon the issue of the Taking-Over Certificate with respect of the whole of the Works, one half (50%) of the Retention Money, or upon the issue of the Taking-Over Certificate with respect to a Section or part of the Permanent Works only such proportion thereof as the Engineer determines having regard to the relative value of such Section or part of the Permanent Works, shall be certified by the Engineer for payment to the Contractor.

At the request by the Contractor, the second half of the Retention Money may also be released at the issue of the Taking-over Certificate provided a bank guarantee is provided by the Contractor for an amount equal to half the Retention Money for the period from issue of the Taking-Over Certificate to the expiry of the Contract period.

Upon the expiration of the Defect Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor.

Provided that, in the event of different Defect Liability Periods being applicable to different Sections or Parts of the Permanent Works pursuant to Clause 48, the expression "Expiration of the Defect Liability Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest such periods.

Provided also that if at such time, there shall remain to be executed by the Contractor any work instructed, pursuant to Clause 49 and 50, in respect of the Works, the Engineer shall be entitled to withhold certification until completion of such works of so much of the balance of the Retention Money as shall, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

60.7 Advance Payment:

- (a) The Employer will make an interest-free advance payment to the Contractor exclusively for the cost of mobilization in respect of the Works in an amount of equivalent to fifteen percent (15%) of the Contract Sum named in the Letter of Acceptance, payable in the proportions of foreign and local currencies of the Contract Sum. Payment of such advance amount will be due under separate certification by the Engineer after (i) execution of the Form of Agreement by the parties hereto; (ii) provision by the Contractor of the performance security in accordance with Sub-Clause 10.1; and (iii) provision by the Contractor of an unconditional bank guarantee in the form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such bank guarantee shall remain effective until the advance payment has been repaid pursuant to paragraph (b) below, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in Interim Payment Certificates issued in accordance with this Clause.
- (b) The advance payment shall be repaid through percentage deduction from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate less Provisional Sums, and shall be made at the rate of twenty percent (20%) of the amount of all Interim Payment Certificates in the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when eighty percent (80%) of the Contract Sum has been certified for payment.

60.8 Time of Payment and Interest:

The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within fifty-six (56) days after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of the Final Certificate pursuant to Sub-Clause 60.13, within eighty-four (84) days after the agreed Final Statement and written discharge have been submitted to the Engineer for Certification. In the event of the failure of the Employer to make pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to Tender upon all sum unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due.

60.9 Correction of Certificate:

The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificates which has been issued

by the Engineer, and shall have authority, if any work is not being carried out to the satisfaction of the Engineer, to omit or reduce the value of such work in any Interim Payment Certificate.

60.10 Statement at Completion:

Not later than eighty-four (84) days after the issue of the Taking-Over Certificate in respect of the whole of the Works, the Contractor shall submit to the Engineer six (6) copies of a Statement at Completion with supporting documents showing in detail, in the form approved by the Engineer,

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

Estimated amounts shall be shown separately in such Statement at Completion. The Engineer shall certify payment in accordance with Sub-Clause 60.2.

60.11 Final Statement:

- (a) Not later than fifty-six (56) days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six (6) copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,
 - (i) the value of all work done in accordance with the Contract; and
 - (ii) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

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

- (c) If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall issue to the Employer an Interim Payment Certificate for those parts of the draft final

statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be agreed upon settlement of dispute.

60.12 Discharge:

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

60.13 Final Payment Certificate:

Within twenty-eight (28) days after receipt of the Final Statement, and the written discharge, the Engineer shall issue to the Employer (with a copy to the Contractor) a Final Payment Certificate stating

- (a) the amount which, in the opinion of the Engineer, is finally due under the Contract or otherwise, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, other than Clause 47, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer as the case may be.

60.14 Cessation of Employer's Liability:

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

CLAUSE-65

65.2 Special Risks:

(Revise Sub-clause 65.2 as follows:)

“The Special Risks are the Risks defined under paragraph (a), subparagraphs (i) to (v) of Sub-Clause 20.4.”

SETTLEMENT OF DISPUTE

CLAUSE-67

(Delete entire Clause 67 and replace with the following)

67.1 Dispute Adjudication Board:

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the dispute shall initially be referred in writing to the Dispute Adjudication Board (“the Board”) for its decision. Such reference shall state that it is made under this Sub-Clause.

Unless the member or members of the Board have been previously mutually agreed by the parties and named in the Contract, the parties shall, within twenty-eight (28) days of the Commencement Date, jointly ensure the appointment of the Board. The Board shall comprise suitably qualified persons as members, and the number of member shall be three (3). Each party shall nominate one (1) member for the approval of the other party, and the parties shall mutually agree upon and appoint the third member (who shall act as chairman).

The terms of appointment of the Board shall:

- (a) incorporate the model terms therefore and procedural rules of the Dispute Adjudication Board published by the International Federation of Consulting Engineer (FIDIC), included in “Annex A” and “Annex B” to Part-(II) Special Conditions, as they may have been amended by the parties,**
- (b) require each member of the Board to be, and to remain throughout his appointment, independent of the parties,**

- (c) **require the Board to act impartially and in accordance with the Contract, and**
- (d) **include undertakings by the parties (to each other and to the Board) that the member of the Board shall in no circumstances be liable for anything done or omitted in the discharge of their functions unless the act or omission is shown to have been in bad faith; the parties shall indemnify the members against such claims.**

The terms of remuneration of each member of the Board, including the remuneration of any expert from whom the Board may seek advice, shall mutually agreed upon by the Employer and Contractor and each member of the Board when agreeing the terms of appointment. In the event of disagreement, the remuneration of each member shall include a daily fee in accordance with the daily fee established from time to time for arbitrators under the administrative and financial regulations of the International Centre for Settlement of Investment Disputes, a retainer fee per calendar month equivalent to three (3) times such daily fee and reimbursement for reasonable expenses. The Employer and the Contractor shall each be responsible for paying one-half (1/2) of the Board's remuneration.

The appointment of any member of the Board may be terminated (other than on a member's own initiative) only by mutual agreement of the Employer and the Contractor. The appointment of each member of the Board shall expire when the discharge referred to in Sub-Clause 60.12 shall have become effective, or such time as the parties may mutually agree.

If at any time the parties so agree, they may appoint a suitably qualified person or persons to replace (or to be available to replace) any or all members of the Board. Unless the parties agree otherwise, the appointment will come into effect if a result of death, disability, resignation or termination of appointment. If any of such circumstances should occur and no such replacement is available, the member shall be replaced in the same manner as such member was nominated or agreed upon.

If any of the following conditions apply, namely:

- (a) **either party fails to nominate a member (acceptable to the other party), for a Board of three (3) members, within twenty-eight (28) days of the Commencement Date,**
- (b) **the parties fail to agree upon the appointment of the third member (to act as the chairman) for a Board of three members within twenty-eight (28) days of the Commencement Date, or**
- (c) **the parties fail to agree upon the appointment of a replacement member of the Board within twenty-eight (28) days of the date on which a member of**

the Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing body or official named in the Appendix to Tender shall, after due consultation with the parties, appoint such member of the Board, and such appointment shall be final and conclusive.

67.2 Procedure for Obtaining the Board's Decision:

When in accordance with Sub-Clause 67.1 a dispute is referred by one party to the Board, a copy of such reference shall be sent by that party to the other party and (for information) to the Engineer. The parties shall promptly make available to the Board all such additional information, further access to the Site, and appropriate facilities, as the Board may require for the purposes of rendering a decision.

The Board shall have full power, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,**
- (b) decide upon the Board's own jurisdiction, and as to the scope of any dispute referred to it,**
- (c) take the initiative ascertaining the facts and matters required for a decision,**
- (d) make use of its own specialist knowledge, if any,**
- (e) decide upon the payment of interest in accordance with the Contract,**
- (f) decide to grant provisional relief such as interim or conservatory measures, and,**
- (g) open up, review and revise any opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute.**

No later than the eighty-fourth (84th) day after the day on which it received such reference, the Board, acting as a panel of expert(s) and not as arbitrator(s), shall give notice of its decision, to the parties and (for information) to the Engineer. Such decision, which shall be reasoned, shall state that it is given under this Sub-Clause.

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

If either party is dissatisfied with the Board's decision, then either party, on or before the twenty-eighth (28th) day after the day on which it received notice of such decision, may notify the other party and (for information) the Engineer of its dissatisfaction. In either event, such notice of dissatisfaction shall state that it is given under this Sub-Clause, and set out the matter in dispute and the reason(s) for dissatisfaction. Subject to Sub-Clause 67.5 and 67.6, no arbitration in respect of such dispute may be commenced unless such notice is given.

If the Board has given notice of its decision as to a matter in dispute to the Employer, the Contractor and the Engineer, and no notice of dissatisfaction has been given by either party on or before the twenty-eight (28th) day after the day on which the parties received the Board's decision, then the Board's decision shall become final and binding upon the Employer and the Contractor.

67.3 Amicable Settlement:

Where notice of dissatisfaction has been given under Sub-Clause 67.2, the parties shall attempt to settle dispute amicably before the commencement of arbitration. Provided that unless the parties agree otherwise, arbitration may be commenced on or after the fifty-sixth (56th) day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

67.4 Arbitration:

Any dispute in respect of which:

- (a) the decision, if any, of the Board has not become final and binding pursuant to Sub-Clause 67.2, and
- (b) amicable settlement has not been reached,

shall be settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator appointed under such Rules. The arbitrator(s) shall have full power to open up, review and revise any decision of the Board, as well as opinion, instruction, determination, certificate or valuation of the Engineer, related to the dispute.

Neither party shall be limited in the proceedings before such arbitrator(s), to the evidence or arguments previously put before the Board to obtain its decision.

Arbitration may be commenced prior to or after completion of the Works. Any decision of the Board shall be admissible in evidence in the arbitration. The obligations of the parties, the Engineer and the Board shall not be altered by reason of the arbitration being conducted during the progress of the Works.

67.5 Failure to Comply with the Board's Decision:

Where neither party has given notice of dissatisfaction within the period in Sub-Clause 67.2 and the Board's related decision, if any, has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other right it may have, refer the failure itself to arbitration under Sub-Clause 67.4. The provision of Sub-Clause 67.2 and 67.3 shall not apply to any such reference.

67.6 Expiry of the Board's Appointment:

Where the appointment of the members of the Board, including any replacements, has either been terminated or expired, any such dispute referred to in Sub-Clause 67.2 shall be finally settled by arbitration pursuant to Sub-Clause 67.4. The provisions of Sub-Clause 67.2 and 67.3 shall not apply to any such reference.

CLAUSE-68

68.2 Notice to Employer and Engineer

(Add the following text to the end of Sub-clause 68.2 as follows:)

"The notice to the Employer and to the Engineer shall be sent to the following address:

- (a) **The Employer: The Ministry of Public Works and Housing
Eighth Circle, albiader Street, Amman**
- (b) **The Engineer:**

DEFAULT OF EMPLOYER

CLAUSE-69

69.1 Default of Employer:

(In Sub-clause 69.1 (a), substitute “fifty-six (56) days” for “thirty (30) days”)

(Delete Sub-Clause 69.1, (d))

69.3 Payment on Termination:

(Delete from “but, in addition to the payments specified” to the end of this Sub-Clause)

CLAUSE-70

(Delete entire Clause 70 and replace with the following)

70.1 Price Adjustment:

The amounts payable to the Contractor and valued at base rates and prices pursuant to Sub-Clause 60.1 (d), (e) and (f) shall be adjusted in respect of the rise or fall in the cost of labor, Contractor’s Equipment, Plant, materials and other inputs to the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in this Clause.

70.2 Other Change in Cost:

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

70.3 Adjustment Formulae:

The amount to be added to or deducted from the Adjustment Interim Payment Certificates in respect of changes in cost and legislation shall be determined from formulae for each of the currencies of payment and each of the types of construction work to be performed and Plant to be supplied. The formulae will be of the following general type:

$$P_n = a + b(L_n/L_o) + c(M_n/M_o) + d(E_n/E_o) + \text{etc.}$$

Where

“ P_n ” is the adjustment factor to be applied to the estimated value of the work carried out in month “ n ”, determined in accordance with Sub-Clause 60.1 (d), (e) and (f);

“ a ” is a fixed coefficient, specified in the Appendix to Tender, representing the nonadjustable portion in contractual payments;

“ b ”, “ c ”, “ d ”, etc., are coefficients representing the estimated proportion of each cost element (labor, materials, etc.) in the Works or sections thereof, net of Provisional Sums, as specified in the Appendix to Tender;

“ L_n ”, “ M_n ”, “ E_n ”, etc., are the current cost indices or reference prices for month “ n ”, determined pursuant to Sub-Clause 70.5, applicable to each cost element; and

L_o , M_o , E_o , etc., are the base cost indices or reference prices corresponding to the above cost elements at the date specified in Sub-Clause 70.5.

70.4 Sources of Indices:

The sources of indices shall be those listed in the Appendix to Tender, as approved by the Engineer.

70.5 Base, Current and Provisional Indices:

The base cost indices or prices shall be those Bases, prevailing on the day twenty-eight (28) days prior to the closing date for submission of tenders. Current indices or prices shall be those prevailing on the day twenty-eight (28) days prior to the last day of the period to which a particular Interim Payment Certificate is related. If at any time the current indices are not available, provisional indices as determined by the Engineer will be used, subject to subsequent correction of the amounts paid to the Contractor when the current indices become available.

70.6 Adjustment after Completion:

If the Contractor fails to complete the whole of the Works within the time for completion prescribed under Clause 43, adjustment of prices thereafter until the date of completion of the Works shall be made using either the indices or prices relating to the prescribed time for completion, or the current indices or prices, whichever is more favorable to the Employer, provided that if an extension of

time is granted pursuant to Clause 44 the above provision shall apply only to adjustments made after the expiry of such extension of time.

70.7 Weightings:

The weightings for each of the factors of cost given in the Appendix to Tender shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or ordered under Clause 51 or for any other reason.

70.8 Subsequent Legislation:

If, after the date twenty-eight (28) days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Sum and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses (1) to (7) of this Clause.”

CLAUSE-72

72.1 Rates of Exchange

(Add the following text to the end of Sub-clause-72.1)

“The rates of foreign currency or currencies stated in from APPENDIX “E” included in the Tender shall be fixed duration of contract period under the Contract.”

72.2 Currency Proportion:

(Delete the words from “...prevailing...” to the end of the sentence, and substitute)

“Selling rates prevailing, as determined by the Central Bank of Jordan or another appropriate source agreed between the Employer and the Contractor, on the date twenty-eight (28) days prior to the deadline for submission of tenders.”

CLAUSE-75

(Add Sub-clause 75.3 and 75.4 as follows:)

75.3 Foreign Taxation:

The prices tender by the Contractor shall include all taxes, duties and other charges imposed outside the Employer’s country on the production, manufacture, sale and transport of the Contractor’s Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

75.4 Local Taxation:

The prices tender by the Contractor shall include all taxes, duties and other charges imposed outside the Employer’s country on the production, manufacture, sale and transport of the Contractor’s Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

CLAUSE-80

(Add Sub-clause 80.2 and 80.3 as following:)

80.2 Jointly and Several Liability

If the Contractor is a consortium or joint venture of two or more persons/companies, all such persons shall be jointly and severally bound to the Employer the fulfilment of the terms of the Contract and shall designate one of such persons to act as leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered.

80.3 Report and Meeting

Progress against these programmes shall be monitored by the Engineer and to this purpose the following shall be done:

(a) Contractor's Monthly Report

The Contractor shall submit monthly, a report showing;

- (i) Actual progress as against anticipated progress.**
- (ii) Anticipated and actual ordering and delivery dates of material and plant.**
- (iii) Information required by the Contractor from the Engineer.**
- (iv) Contractor's Equipment and labour in the Site at the end of the month.**
- (v) Days lost due to any cause including weather.**
- (vi) Progress photographs.**
- (vii) Safety matters, accidents.**
- (viii) Any other information required by the Engineer or Engineer's Representative.**

(b) Monthly meeting

The Engineer or Engineer's Representative shall call regular monthly meeting to examine actual progress as against the agreed programme. Senior site managers of the Contractor shall attend these meeting to discuss and agree, if necessary, the actual progress, delays to the Works and means of overcoming these delays and any other problem(s) arising from the Works.

(c) Other meetings

Other progress/programme meeting shall be called as necessary to examine and discuss particular parts of the Works or other matters.

(d) Weekly Report

The Contractor shall submit, at the end of each week, a summary of the work he proposed to carry out during the following week, including the anticipated dates of arrival of any Plant or material.

CLAUSE-81 MISCELLANEOUS PROVISIONS

(Add Clause-81 as follows:)

The Contractor shall give due regard to the following matters:

81.1 General Obligations

- (a) He shall attempt to decrease noise and environmental pollution as much as possible.**
- (b) He shall not use the Site for purposes other than the execution of the Works.**
- (c) He shall drain flood water and excess water by pumping to prevent damage to any third party.**
- (d) He shall preserve trees, planted fields and fences in a suitable manner, and shall replant to replace those trees that were damaged or removed, and re-erect fences to their original condition, in accordance with the Engineer's instructions.**
- (e) In case of need to erect scaffolding on the property of any neighbour, then the Contractor shall contact the said neighbour and arrange for the proper execution, and for the removal of the scaffolding, and carry out all repairs before the Time for Completion expires.**

81.2 Control of Work Management

- (a) The Contractor shall co-operate with the Engineer in arranging the time and dates of Site meetings, and in the preparation of Minutes of Meetings.**
- (b) He shall co-operate with the Engineer in taking photographs for the presentation of reports about the progress of the Work.**
- (c) He shall keep a special record, registering the climatic conditions of maximum and minimum temperatures, humidity, and the average rainfall in millimetres, and the number of hours of rainfall, for each day.**
- (d) In case of repair work, he shall tabulate the requirements therefor, and inform the Engineer's Representative of his completion of each item, one by one.**
- (e) He shall provide the Site with signs which show the name of the Project, Employer, Engineer, and the Contractor; in the number, size and shape which shall be agreed upon with the Engineer.**

- (f) When he is required to provide the Site with materials laboratory, then he shall staff it with a qualified laboratory technician with the necessary experience to carry out the required duties.
- (g) In case of Engineer's or Engineer's Representatives' rejection of any material or work, the Contractor shall, before starting to rectify such condition, submit his proposals for such rectification to alleviate the repetition of the error.

81.3 Contractor's Professional Conduct and Execution of His Duties in Connection with the Contract.

- (a) **Good Practice**
If a full description of any material, product or workmanship was not specified, then it is nevertheless understood that this material or work shall be suitable subject to approval of the Engineer, for the purposes of the Contract or what may be needed to execute the item in conformity with good practice and whatever is mentioned for the relevant item, in the Bill of Quantities, the General Technical Specifications and the Standard Specifications being used.
- (b) **Standard Specifications**
If Standard Specifications such as A.S.T.M. or B.S. are specified, then the Contractor shall submit a Certificate of Origin certifying that the item purchased is in conformity with such Standard Specification, and submit the same for the Engineer's approval.
- (c) **Specifications Prescribing a Product**
If a single source should be specified for any material or a product, then the Contractor shall be bound by the same, and shall not change the said single source without the written approval of the Engineer, together with the approval of the Employer.
- (d) The Contractor shall place clear signs wherever services are concealed, in order to facilitate relocation of the said services, during testing, maintenance, repair or operation of the same.

CLAUSE 82

(Add Sub-clause 82.1 as follows)

82.1 Restrictions on Eligibility:

- (a) Any Plant or services which will be incorporated in or required for the Works, as well as the Contractor's Equipment and other supplies, shall have its origin in eligible source countries as listed in the Appendix to Tender.**
- (b) For the purposes of this clause, "origin" means the place where the equipment is produced, or manufactured, or from which the services are provided.**
- (c) The origin of Goods and Services is distinct from the nationality of the Supplier.**

ANNEX “A”

**Annex A to Part (II)– Special Conditions of Contract
FIDIC Model Terms of Appointment for a Dispute Adjudication Board
(see Clause 67 of the Part-(II) Special Conditions of Contract)**

Terms of appointment for a board of three members

These terms of appointment of a board member are made between:

1. **THE MINISTRY OF PUBLIC WORKS AND HOUSING** of Eighth Circle, Albiader Street, Amman. (hereinafter called the “ Employer”)
2. ----[name of Contractor]----- of ----- [address of Contractor]-----.
(hereinafter called the “ Contractor”)
3. **Board Member**
 - a) -----[name of Board Member] ----- of ----- [address of Board Member]-----.
(hereinafter called the “ Board Member”)
 - b) -----[name of Board Member] ----- of ----- [address of Board Member]-----.
(hereinafter called the “ Board Member”)
 - c) -----[name of Board Member] ----- of ----- [address of Board Member]-----.
(hereinafter called the “ Board Member”)

Whereas

- A. **The Employer and the Contractor** (hereinafter jointly referred to as the “Parties”) have on day of ----(insert year) ----- entered into a Contract (hereinafter called the “Contract”) for the execution of Tourism Sector Development Project, Dead Sea Parkway Sub-project (hereinafter called the “Project”).
- B. **By Sub-clause 67.1 of the Conditions of Contract** (hereinafter called the “Conditions”) provision is made for the constitution of a Dispute Adjudication Board (hereinafter called the “Board”) which shall comprise three suitably qualified persons.
- C. **The Board Member** has agreed to serve as one of the members of the Board on the terms set out herein.

Now it is hereby agrees as follows:

1. **The board Member:**
 - (a) hereby accepts this appointment to the Board which a personal

appointment and agree to be bound by these Terms of Appointment and Sub-Clauses 67.1 and 67.2 of the Conditions as if they were set out herein; and

(b) shall be entitled notwithstanding such acceptance to resign this appointment on giving reasonable notice to the Parties.

2. These Terms of Appointment when executed by the Parties and Board Member shall take effect when the Parties and the last of the three member of the Board have executed terms of appointment.

3. The Board Member shall be and remain impartial and independent of the Parties and shall be under a continuing duty to disclose in writing to each of them and to the other members of the Board any fact or circumstance which might be such as to call into question his impartiality or independence.

Without prejudice to the generality of the foregoing, the Board Member:

(a) shall have no interest financial or otherwise in either of the Parties or the Engineer as described in the Contract, or financial interest in the Contract except for payment for services on the Board;

(b) shall not previously have been employed as a consultant or otherwise by either of the Parties or the Engineer except in those circumstance which have been disclosed in writing to the Parties prior to this appointment;

(c) shall have disclosed in writing to the Parties and to the other members of the Board, prior to this appointment and to his best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Parties or the Engineer, and any prior involvement in the Project;

(d) shall not while a Board Member be employed as a consultant or otherwise by either of the Parties or the Engineer without the prior written consent of the Parties and the other members of the Board;

(e) shall not give advice to either of the Parties or to the Engineer concerning the conduct of the project other than in accordance with the Procedural Rules in Annex B to Part-(II) Special Conditions Contract (the “ Rules”); and

(f) shall not while a Board Member enter into discussions or make any agreement with either of the Parties or the Engineer regarding employment by any of them whether as a consultant or otherwise after ceasing to be a Board Member.

4. **The Board Member warrants that he is experienced in the type of work involved in the Project and the interpretation of contract documents and is, as well, fluent in the language of the Contract. The Board Member shall:**
- (a) ensure his availability for all site visits and hearings as are necessary and shall observe the provisions of the Rules;**
 - (b) become conversant with the Contract and the progress of the Project by studying all documents received which shall be maintained in a current working file;**
 - (c) treat the details of the Contract and all activities and hearings of the Board as private and confidential and shall not publish or disclose the same without the prior written consent of the Parties;**
 - (d) not assign, delegate or subcontract any of the tasks under these Terms of Appointment or the Rules;**
 - (e) be available to give an opinion in conjunction with other member of the Board on any matter relevant to the Project not being a dispute when requested so to do by the Parties.**
5. **Neither the Employer, the Contractor nor the Engineer shall seek advice from or consultant with the Board member regarding the Project otherwise than in the normal course of the Board's activities under the Contract and the Rules. The only exception to this prohibition shall be where the Parties jointly agree to do so and the other Board Members also agree. The Employer shall be responsible for ensuring the compliance by the Engineer with this Clause.**
6. **The Board Member will be paid as follows:**
- (a) a retainer fee of ---(insert amount and currency) ---- per calendar month, which shall be considered as payment in full for:**
 - i. being available on twenty-eight (28) days' notice, for all site visits and hearing;**
 - ii. becoming and remaining conversant with all Project developments and maintaining relevant files;**
 - iii. all office and overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;**
 - iv. all services performed hereunder except those referred to in Sub-Clause (b) and (c) below.**

Beginning with the month following that in which the Taking-Over Certificate referred to in Sub-Clause 48.1 of the Conditions (or if there is more than one, the one last issued) has been issued, the Board Member shall receive only one half of the monthly retainer fee. Beginning with the next

month after expiry of the Defects Liability Period as defined in the Conditions the Board Member shall no longer receive a monthly retainer fee;

- (b) a daily fee of -----(insert amount and currency)----- which shall be considered as payment in full or:**
- i. each day or part of a day up to a maximum of two days travel time in each direction for the journey between the board Member s home and the site or other location of a Board meeting;**
 - ii. each working day on site visits, hearing or preparing decisions; and**
 - iii. each day spent reading the Parties' submissions in preparation for a hearing.**
- (c) Cost of telephone calls, courier charges, faxes and telexes including in connection with his duties; all reasonable and necessary travel expenses including [less than] first class air fare, subsistence and other direct travel expenses. These costs shall be reimbursed in the same currency as that in which fees are payable. Receipts shall be required for all expenses in excess of ----- percent (-----%) of the daily fee referred to in Sub-Clause (b) above.**
- (d) any taxes properly levied in the country of the site on payments made to the Board Member (unless a national or permanent resident of the country of the site) pursuant to this Clause 6. Such reimbursement will be in the same currency as that in which the fees are payable.**

The retainer and daily fees shall remain fixed for the [initial] period of tenure of the Board Member [of twelvemonths]. [Thereafter they shall be adjusted by agreement between the Parties and the Board Member at each anniversary of the execution of these Teams of Appointment].

Payments to the Board Member shall be shared equally by the Employer and the Contractor. The Board member shall submit invoices for payment of all monthly retainer quarterly in advance. Invoices for daily fees and expenses shall be submitted following the description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay Board Members' invoices within 56 calendar days after receipt of such invoices and shall invoice the Employer (through the monthly statements to be submitted in accordance with Sub-Clause 60.1 of the Conditions) for one-half of the amounts of such invoices. The Employer shall pay such Contractor' sinvoices within the time period specified in the contract for other payments to the Contractor by the Employer.

Failure of either the Employer or the Contractor to make payment in accordance with these Terms of Appointment shall constitute an event of default under the Contract, entitling the non-defaulting party to take the measures set forth, respectively, in Clause 63 or Clause 69.

Notwithstanding such event of default, and without waiver of rights therefrom, in the event that either the Employer or the Contractor fails to make payment in accordance with these Terms of Appointment, the other party may whatever amount may be required to maintain the operation of the Board. The party making such payment, in addition to all other rights arising from such default, shall be entitled to reimbursement of all sums paid in excess of one-half of the amount required to maintain operation of the Board, plus all costs of obtaining such sums and interest thereon.

In the event of non-discharge of Board Members' invoices in accordance with previous paragraphs the Board Member may either suspend his services until the invoices are discharge or resign his appointment.

- 7. The Parties may jointly terminate the Board member' s appointment hereunder by reasonable notice in writing. Such termination shall be without prejudice to any accrued rights of either of the Parties or the Board Member.**

- 8. The Parties may undertake to each and to the Board Member that the Board Member shall in no circumstance.**
 - (a) be appointed as an arbitrator in any arbitration between the Parties in connection with the Contract unless the Parties agree otherwise in writing;**

 - (b) be called as a witness to give evidence concerning any dispute before an arbitrator appointed under the Conditions unless he accepts such assignment in writing addressed to both Parties; or**

 - (c) be liable for any claims for anything done or omitted in the discharge of such Board Member' s functions unless the act or omission is shown to have been in bad faith.**

The Parties hereby jointly and severally indemnify the board Member against all or any such claims.

- 9. If the Board Member shall breach any the provisions of clause 3 he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Employer and the Contractor for any fees and expenses properly paid to him and to any other Board Member of as a consequence of such breach any proceedings or decisions of the Board are rendered void or ineffective.**

- 10. These Terms of Appointment shall be governed by the law of -----[insert name of country]-----.**

11. Any dispute or claim arising out of or in connection with these Terms of Appointment or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by a sole arbitrator appointed in accordance with said Rules.

Signed by
for and on half of the
Employer in the
presence of

Signed by
for and on half of the
Employer in the
presence of

Signed by
for and on half of the
Employer in the
presence of

Witness: _____

Witness: _____

Witness: _____

Name: _____

Name: _____

Name: _____

Address: _____

Address: _____

Address: _____

Date: _____

Date: _____

Date: _____

ANNEX “B”

**Annex B to Part (II)– Special Conditions of Contract
FIDIC Procedural Rules of the Dispute Adjudication Board
(see Clause 67 of the Part(II) - Special Conditions of Contract)**

Procedural rules of the Dispute Adjudication Board of three members

1. **The Board shall visit the site at regular intervals and/or at times of critical construction events at the request of either the Employer or the Contractor, and in any event not less than two (2) times in any twelve month period.**
2. **The timing of and agenda for each site visit shall be agreed jointly by the Board, the Employer and the Contractor, or in the absence of agreement, shall be decided by the Board.**
3. **The purpose of site visits is to enable the Board to become and remain acquainted with the progress of the Project and of any actual or potential problems or claims.**

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services.

At the conclusion of each site visit and before leaving the site the Board shall prepare a report on its activities during the visit and shall send copies to those parties who attended.

4. **The Employer and the Contractor shall furnish to each Board Member one copy of all documents which the Board may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract.**
5. **If any dispute is referred to the Board in accordance with Sub-Clause 67.2 of the Conditions, the Board shall proceed as described therein. The Board may in its discretion, among other things, conduct a hearing on the dispute in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing. Subject to the time imparted to the Board to give notice of a decision and other relevant factors, the Board shall afford to each of the Employer and the Contractor reasonable opportunity to present its case in relation to a dispute referred to the Board for decision.**

The Board shall act as a Board of impartial experts, not arbitrators, and shall have full authority to conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those set out herein.

The Board shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. After a hearing is concluded the Board shall convene in private to formulate its decision.

- 6. The Board shall give notice of its decision in writing to the Employer and the Contractor in accordance with Sub-Clause 67.2 of the Conditions or as otherwise agreed by the Employer and the Contractor in writing.**

The Board shall endeavor to reach decisions unanimously, but if this is impossible decisions shall be by a majority and the minority member may prepare a written report for submission to the Employer, the Engineer and the Contractor.

- 7. All communications between either of the Parties and a Board Member and all hearings shall be in the English language. All such communications shall be copied to the other Party and to other members of the Board.**