

Section 3
Contract Forms

LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package A: Civil and Building Works

Volume I-A

Section 3 Contract Forms

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Form C1

Contract Agreement

No. _____

THIS AGREEMENT made the _____ day of _____, 200.. between the Comisión Ejecutiva Portuaria Autónoma (hereinafter called "the Employer") of the one part and

of _____ with its registered business office at _____ (hereinafter called "the Contractor") of the other part.

WHEREAS the Employer is desirous that certain Works be executed by the Contractor, viz., Package A: Civil and Building Works for La Unión Port Development Project, and has accepted a Bid by the Contractor for the execution and completion of such Works and the remedying of any defects therein.

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) the Letter of Acceptance;
 - (b) the Bid submitted by the Contractor, dated _____ and comprising:
 - (i) Bid Forms;
 - (ii) Bid Supplementary Documents;
 - (iii) Priced Bill of Quantities;
 - (c) the Conditions of Contract;
 - (d) the Specifications;
 - (e) clarification Addenda, and any other documents submitted by the Contractor during the bidding period;
 - (f) all codes, designations, standards, standard specifications, and other similar requirements which are referred to in the Conditions of Contract, Specifications and Drawings.
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. It is mutually agreed:

- (1) That the total Contract Price, obtained from the prices and the estimated quantities of the work as indicated in the Bill of Quantities is:

US Dollars _____
_____ (amount in words)
(_____) (amount in figures).

- (2) That the implementation of this Agreement shall start upon issuance of the Notice to Proceed to the Contractor as stipulated in Sub-Clause 41.1 of the Conditions of Contract.
- (3) That this Agreement shall extend and be binding upon the parties hereto, executors, successors and permitted assigns, who shall jointly and severally be entitled to the benefits of this Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first before written.

Signed, sealed, and delivered by THE EMPLOYER:

COMISIÓN EJECUTIVA PORTUARIA AUTÓNOMA

Binding Signature and Seal: _____

Name of Signatory:

Title of Signatory:

In the presence of:

Signature of Witness: _____

Name & Title of Witness: _____

Signed, sealed, and delivered by THE CONTRACTOR:

_____ (Name of Contractor)

Binding Signature and Seal: _____

Name of Signatory: _____

Title of Signatory: _____

In the presence of:

Signature of Witness: _____

Name & Title of Witness: _____

Form C2

Performance Security

THIS AGREEMENT is made on the _____ day of _____ 200.. between _____ [name of bank] with its head office at _____ [address of bank] (hereinafter called "the Guarantor") of the one part and the Comisión Ejecutiva Portuaria Autónoma with its head office at Boulevard delos Héroes, Edificio Torre Roble 5th floor, San Salvador, El Salvador (hereinafter called "the Employer") of the other part.

WHEREAS

- (1) this Agreement is supplemental to the contract No. _____ (hereinafter called "the Contract") made between _____ [name of Contractor] of _____ [address of Contractor] (hereinafter called "the Contractor") of the one part and the Employer of the other part whereby the Contractor agreed and undertook to execute the Works of Package A: Civil and Building Works for the La Unión Port Development Project for the Contract Price of:

US

Dollars _____

(amount in words)

(_____) (amount in figures).

- (2) the Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

NOW, THEREFORE, the Guarantor hereby agrees with the Employer as follows:

- (a) If the Contractor will in any respect fail to execute the Contract or commit any breach of his obligations thereunder then the Guarantor will indemnify and pay the Employer the sum of US Dollars _____ (amount of Guarantee in words) (_____) (in figures), representing ten percent (10%) of the total equivalent Contract Price, provided that the Employer or his authorised representative has notified the Guarantor to that effect and has made a claim against the Contractor before the issue of the Defects Liability Certificate.
- (b) The Guarantor shall not be discharged or released from his guarantee by an arrangement between the Contractor and the Employer, with or without the consent of the Guarantor, or by any alteration in the obligations undertaken by the Contractor, or by any forbearance on the part of the Contractor, whether as to the payment, time, performance, or otherwise, and any notice to the Guarantor of any such arrangement, alteration, or forbearance is hereby expressly waived.

This Guarantee shall be valid until either a date 28 days from the date of issue of Defects Liability Certificate for the Works or when the Employer accepts the Contractor's Warranty Security.

Given under our hand on the date first mentioned above.

For and on behalf of THE GUARANTOR

For and on behalf of the EMPLOYER:

Comisión Ejecutiva Portuaria Autónoma

Signature and Seal: _____

Signature and Seal: _____

Name & Title of Signatory:

Name & Title of Signatory:

in the presence of:

in the presence of:

Signature: _____

Signature: _____

Name & Title of Witness:

Name & Title of Witness:

Form C3 Warranty Security

WHEREAS _____

_____ (name and address of Supplier)
(hereinafter referred to as "the Supplier") has entered into a contract with the Comisión Ejecutiva Portuaria Autónoma (hereinafter referred to as "the Purchaser") under the Contract No. _____ dated _____ for execution the Works under Package A: Civil and Building Works for the La Unión Port Development Project, whereby pursuant to Sub-Clause 10.5 of Section 4, Part II: Special Conditions thereof the Supplier shall deposit with the Purchaser a Warranty Security in an amount of US Dollars _____

_____ (guarantee amount in words)
(US\$ _____) (guarantee amount in figures) to guarantee his fulfillment of the contractual obligations specified in Clause 49 of Section 4, Part I: General Conditions during the Defects Liability Period;

NOW THEREFORE, by this Warranty Guarantee, we _____

_____ (name and address of the Warranty issuing Bank) (hereinafter referred to as "the Guarantor") hereby agree to pay the Purchaser up to a sum of US Dollars _____

_____ (guarantee amount in words)¹
(US\$ _____) (amount in figures) if the Supplier refuses or fails to fulfill his obligations for remedying any defect of or damage to the Works as stipulated in Clause 49 of the Conditions of Contract. The conditions of this Warranty are as follows:

1. Payment of whole or part of the above-mentioned sum shall be made to the Purchaser within seven (7) days from receipt of a written request to do so from the Purchaser and without whatsoever right of objection on our part.
2. No change or addition to or other modification of the terms of the Contract or of Works to be performed thereunder or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.
3. This guarantee shall remain valid and in full effect until the date 28 days from the date of expiry of the last Defects Liability Period.

¹ The amount is to be inserted by the bank or financial institution representing the amount of guarantee equivalent to 10% of the total Contract Price at the date of Warranty Security.

IN WITNESS WHEREOF, we have caused these presents to be signed by our authorized officer and our corporate seal to be hereunto affixed.

Date: _____, 200..

Name of Bank: _____

Signature and Seal: _____

Name and Title of Signatory: _____

in the presence of:

Signature of Witness: _____

Name and Title of Witness: _____

Form C4

Bank Guarantee for Advance Payment

To: Unidad de Adquisición y Contrataciones Institucional (UACI)
Comisión Ejecutiva Portuaria Autónoma (CEPA)
Edificio Torre Roble, 5th Floor
Boulevard de Los Héroes
San Salvador, El Salvador

Re.: Contract No. _____ dated _____, 200..
La Unión Port Development Project
Package A: Civil and Building Works

Gentlemen:

In accordance with the provisions of the Conditions of Contract, Sub-Clause 60.7 ("Advance Payment") of Contract No. _____ for Package A: Civil and Building Works for La Unión Port Development Project, hereinafter called "the Contract", _____

_____ (name and address of Contractor) (hereinafter called "the Contractor") shall deposit with the Comisión Ejecutiva Portuaria Autónoma, hereinafter called "the Employer", a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of US Dollars

_____ (guarantee amount in words)
(_____) (amount in figures).

We, the _____ (name of the bank or financial institution), as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to the Employer on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding _____ (guarantee amount in words)¹
(_____) (amount in words), such amount to be reduced periodically by the amount recovered by you from the proceeds of the Contract.

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

¹ The amount is to be inserted by the bank or financial institution representing the amount of the Advance Payment, and denominated in the currency of the Advance Payment as specified in the Contract.

This guarantee shall remain valid and in full effect from the date on which the Advance Payment is received by the Contractor under the Contract until the full amount of the Advance Payment has been deducted by the Employer in accordance with the terms and conditions of the Contract.

Yours truly,

Name of Bank or Financial Institution : _____

Signature and Seal : _____

Name of Signatory : _____

Position of Signatory : _____

Address : _____

Date : _____

Section 4

Conditions of Contract

LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package A: Civil and Building Works

Volume I-A

<p>Section 4 Conditions of Contract Part I General Conditions</p>

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Section 4 Conditions of Contract

Part I - General Conditions

The General Conditions of this Contract shall refer to Part I - General Conditions of the "Conditions of Contract for Works of Civil Engineering Construction", 4th edition 1987, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC) and reprinted in 1992 with editorial amendments.

Copies of the above-mentioned FIDIC Conditions of Contract can be obtained from:

FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Facsimile: 41 21 653 5432
Telephone: 41 21 653 5003

The Contractor shall acquire at his own cost a copy of the FIDIC Conditions of Contract - Part I: General Conditions (the Table of Contents of which is attached hereafter for reference) and refer to the clauses therein in conjunction with the Part II: Conditions of Particular Application.

The Part I - General Conditions shall be subject to the variations and additions set out in Part II - Conditions of Particular Application, and Part I and Part II together shall form an integral part of the Contract determining the conditions governing the rights and obligations of the contractual parties.

In case of any inconsistency between the conditions contained in Part I and those in Part II, the conditions contained in Part II shall prevail over.

FEDERATION INTERNATIONALE DES INGENIEURS-CONSEILS

**CONDITIONS OF CONTRACT
FOR WORKS OF CIVIL
ENGINEERING CONSTRUCTION**

**PART I GENERAL CONDITIONS
WITH FORMS OF TENDER AND AGREEMENT**

FOURTH EDITION 1987

Reprinted 1988 with editorial amendments

Reprinted 1992 with further amendments

SECTION 2. PART I GENERAL CONDITIONS

(Only for reference)

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LA UNION PORT DEVELOPMENT PROJECT

Bidding Documents for Package A: Civil and Building Works

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Section 4 Conditions of Contract

Part II - Conditions of Particular Application

This Part II - Conditions of Particular Application amends and supplements Part I - General Conditions of Contract. The clauses of Part II refer to the corresponding clauses of Part I. In case of discrepancy between the conditions stipulated in Part II and those in Part I, the conditions set forth in Part II shall prevail over.

Clauses 1, 2, 4, 5, 7, 8, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 25, 30, 33, 34, 35, 36, 41, 42, 43, 45, 47, 48, 49, 50, 51, 53, 54, 55, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 72 of Part I - General Conditions of Contract are revised and new Clauses 73 to 77 are added in this Part II.

Part II - Conditions of Particular Application

Definitions

- 1.1 (a) (i) The Employer is the Comisión Ejecutiva Portuaria Autónoma (CEPA) of the Government of the Republic of El Salvador.
- (iv) The Engineer is, inclusive of the representatives designated by the Engineer and notified to the Contractor

Add the following words after the word "Conditions":

"or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer, without requiring any approval of the Contractor."

Add the following sub-paragraphs:

- (vi) The "Government" shall mean the Government of the Republic of El Salvador.
- (vii) The "JBIC" or the "Bank" shall mean the Japan Bank for International Cooperation of Japan (former Overseas Economic Cooperation Fund - OECF).
- (b) (v) Add the following words at the end:

The word "Tender" is synonymous with "Bid", the words "Appendix to Tender" with "Appendix to Bid", "Tenderer" with "Bidder", and "Tender Documents" with "Bidding Documents".

Engineer's Duties and Authority

- 2.1 (b) Add the following at the end:

The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified in Part I:

- (i) consenting to the subletting of any part of the Works under Clause 4;
- (ii) certifying additional cost determined under Clause 12;
- (iii) determining an extension of time under Clause 44;
- (iv) issuing a variation under Clause 51, except in an emergency situation, as reasonably determined by the Engineer; and
- (v) fixing rates or prices under Clause 52.

Add the following Subparagraph (d):

- (d) Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and 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 Price, in respect of such instruction, in accordance with Clause 52 and shall notify the Contractor accordingly, with a copy to the Employer.

Subcontracting

4.1

Add the following at the end:

In the event of approved subcontracting the Contractor shall make sure that the total subcontract amount shall be less than forty per cent (40%) of the total contract amount, and that it is not allowed for Subcontractors to further sub-let their subcontracts. The Contractor shall be responsible for keeping a log showing following information of all Subcontractors engaged in the Works;

- Name and address
- Date of subcontract
- Works included in the subcontract
- Commencement date of subcontract
- Completion date of subcontract
- Value of subcontract
- Payments

The Contractor shall supply a copy of this log to the Engineer on a monthly basis or upon request to do so.

The Contractor shall guarantee that the performance of all of his Subcontractors for any part of the Works or Plant shall fully comply with the terms and conditions applicable to such part of Works or Plant under the Contract. The Contractor shall be responsible for supervision/observance of his Subcontractors.

Language and Law

5.1

- (a) The language is as indicated in the Appendix to Bid
(b) The law is that in force in the Republic of El Salvador

Priority of Contract Documents

5.2

Delete the documents listed in (1)-(6) under Sub-Clause 5.2 and substitute:

- (1) the Contract Agreement;
- (2) the Letter of Acceptance and its Acknowledgement;
- (3) the Bid and the Appendix to Bid;

- (4) the Conditions of Particular Application, Part II;
- (5) the General Conditions of Contract, Part I;
- (6) the Specifications;
- (7) the Drawings;
- (8) the priced Bill of Quantities; and
- (9) other documents forming part of the Contract.

Permanent Works Designed by Contractor

7.2 Add the following paragraph at the end:

The drawings to be submitted by the Contractor under this Sub-Clause shall include, but not be limited to, shop drawings, coordination drawings and as-built drawings specified in Section 10400 and 10800 of the Specifications

Contractor's General Responsibilities

8.1 Add the following paragraphs at the end:

Specifically the Contractor shall undertake the detailed design of the installations, facilities and systems specified in Section 1040 of the Specifications. The Contractor shall submit design drawings for these installations, facilities and systems for the Engineer's approval pursuant to Sub-Clause 7.2. The Engineer's approval of such drawings does not imply approval of the Contractor's design and does not relieve the Contractor of his responsibility and liability for his design.

The Contractor shall bear full responsibility for the soundness of design and satisfactory performance of the above installations, facilities and systems in conformity with the Specifications. Notwithstanding the warranty period defined in Sub-Section 10401.3 of the Specifications, the Contractor shall remain liable for the entire project life for any defects or failure determined to be a result of his design.

Contractor's Meetings

8.3 Add the following Sub-Clause 8.3:

At such times as the Engineer may direct, the Contractor shall meet with the Engineer and other contractors to discuss the status of the Works and measures to be taken to further the progress thereof.

The Contractor shall submit to the Engineer immediately upon his request, all available up-to-date information concerning the construction program, schedule of works, condition and progress of his works.

Performance Security

10.1 Delete the text and substitute:

Within 28 days from the date of the Letter of Acceptance, the Contractor shall provide to the Employer a security for the proper performance of his duties under the Contract. The Performance Security shall cover an amount in US Dollar equal to 10% of the total Contract Price in this currency.

The Performance Security shall be established in the form provided in Section 3 (Form C2), and issued as a bank guarantee by a reputable bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador. The Contractor shall notify the Engineer when providing the Performance Security to the Employer.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 20% of the Contract Price, the Contractor, at the Engineer's written request, shall promptly increase the value of the Performance Security by an equal percentage.

The Performance Security of a joint venture shall be in the name of the joint venture.

Period of Validity of Performance Security 10.2

Delete the text and substitute:

The Performance Security shall be valid until a date 28 days from the date of issuance of the Taking-Over Certificate in accordance with Sub-Clause 48.1 and submission of a Warranty Security by the Contractor in accordance with Sub-Clause 10.4.

The security shall be returned to the Contractor within 14 days after its expiration.

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

Warranty Security

10.4 Add Sub-Clause 10.4 as follows:

Upon issuance of the Taking-Over Certificate in accordance with Sub-Clause 48.1, and prior to the expiration of the Performance Security pursuant to Sub-Clause 10.3, the Contractor shall provide a Warranty Security in an amount in US Dollar equivalent to 10% of the total Contract Price at the time of its issuance, to guarantee the fulfillment of his contractual obligations during the Defects Liability Period in accordance with Clause 49. The Contractor shall notify the Engineer when providing the Warranty Security to the Employer.

The Warranty Security shall be established in the form provided in Section 3 (Form C3) as a bank guarantee issued by a reputable bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of the Republic of El Salvador.

The Warranty Security shall be valid until a date 28 days from the date of issuance of the Defects Liability Certificate for the Works. The Warranty Security shall be returned to the Contractor within 14 days of expiration.

The Warranty Security of a joint venture shall be in the name of the joint venture

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

Access to Data **11.2** Add the following Sub-Clause 11.2:

Data made available by the Employer in accordance with Sub-Clause 11.1 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the address stipulated in the Appendix to Bid.

Program to be Submitted **14.1** Add the following at the end:

The Contractor shall submit three (3) copies of the program of works (work schedule) within the time stipulated in the Appendix to Bid. The work program shall indicate all the activities of the Contract in their correct order, which shows the GANTT, Critical Path Method (CPM) charts or the Program Evaluation and Review Technique (PERT) or a similar type of construction schedule. This program shall be the basis for monitoring the progress or otherwise of the Works.

The work program shall be prepared keeping the following in view:

- (i) undue scattering of works is not done;
- (ii) the Works shall not be affected by meteorological conditions with regard to the safety of the Works and performance of the Works intended in the Contract; and
- (iii) no damage hazards shall occur due to time lag in the construction sequences.

Cash Flow Estimate to be Submitted **14.3** The time within which the detailed cash flow estimate shall be submitted shall be the number of days specified in the Appendix to Bid.

Monthly Progress Reports **14.5** Add the following Sub-Clause 14.5:

Within the first week of every month from the 2nd month of execution of the Works, the Contractor shall submit to the Engineer a monthly report on the progress of the Works. The monthly reports shall be submitted in the number of copies and in such form and details as the Engineer will reasonably prescribe.

Contractor's Superintendence **15.1** Delete the text and substitute:

Throughout the execution of the Works, and as long thereafter as the Engineer may reasonably consider necessary to fulfill the Contractor's obligations, the Contractor shall provide all necessary superintendence

to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be assured by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 5.1) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

**Language Ability
of Contractor's
Representative**

15.2 Add the following Sub-Clause 15.2:

If the Contractor's authorized representative is not, in the opinion of the Engineer, fluent in English, the Contractor shall have available on site at all times a competent interpreter to ensure the proper transmission of instructions and information. English fluency in this context means having a TOEIC Certificate with a minimum score of 650.

**Language Ability
of Superintending
Staff**

16.3 Add the following Sub-Clause 16.3:

A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the Spanish 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.

**Employment of
Local Personnel**

16.4 Add the following Sub-Clause 16.4:

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the country of the Employer stipulated in the Appendix to Bid.

Setting-out

17.1 Add the following after the last paragraph:

The Contractor shall inform the Engineer sufficiently in advance, not less than 48 hours in any case, of his intention to set out or give levels for any part of the Works so that timely arrangements may be made for checking or issuing instructions.

The drawings, lines, levels and profiles in the original Bidding Documents shall be treated as baseline information and the Contractor shall, without any additional cost and time be responsible for verifications, surveys, preparation of revised drawings and obtaining approval of the Engineer before he starts the works.

The Contractor shall also be responsible for the verification of the survey control points, benchmarks and such other information provided to him, and any errors or delays in the Works caused by the Contractor's failure to verify the accuracy for such data will not be acceptable cause for extension of time and additional cost to the

- Employer.
- Safety, Security and Protection of the Environment** **19.1** Delete the text and substitute:
- The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:
- (a) comply with all applicable safety regulations,
 - (b) take care for the safety of all persons entitled to be on the Site,
 - (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
 - (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clauses 48 and 49 of Part I - General Conditions of Contract,
 - (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land, and
 - (f) 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.
- Employer's Risks** **20.4** Delete the text and substitute:
- 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), invasion, act of foreign enemies;
 - (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war;
 - (iii) ionizing radiations, 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 traveling at sonic or supersonic speeds;
 - (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his 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 forces of nature (insofar as it occurs on the site) which an experienced contractor:
 - (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures:
 - (1) prevent loss or damage to physical property from occurring by taking appropriate measures, or
 - (2) insure against such loss or damage.

Insurance of Works and Contractor's Equipment

21.1 Add the following words at the end of subparagraph (a):

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

Scope of Cover

21.2 Delete the words “from the start of work at the Site” in the 3^d line of subparagraph (a) and replace with “from the first working day after the commencement date”.

Add the following subparagraph (c):

- (c) It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract.

Exclusions

21.4 Delete the text and substitute:

There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4 subparagraphs (a) (i) to (iv) of the Conditions of Particular Application.

Indemnity by Employer

22.3 Delete Sub-Clause 22.3.

Evidence and Terms of

25.1 Delete the text and substitute:

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 completed and shall, within the period indicated in the Appendix to Bid, provide a copy of the insurance policies to the Employer. When providing such evidence and such policies to the Employer, the Contractor shall notify the Engineer of doing so. Such insurance policies shall be consistent with the general terms agreed prior the issue of the Letter of Acceptance. The Contractor shall complete all insurances for which he is responsible with insurers and in terms approved by the Employer.

If the Contractor does not fulfill the above requirement to provide a copy of the insurance policies to the Employer, a penalty of 0.01% of the Contract Price will be applied for each day of delay by the Employer and such amount will be deducted by the Employer from any money due or to become due to the Contractor.

Source of Insurance

25.5 Add the following Sub-Clause 25.5:

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to, the insurance referred to in Clauses 21, 23 and 24 with insurers from any eligible source country as defined in the Loan Agreement between the country of the Employer and the JBIC.

Insurance Notices

25.6 Add the following Sub-Clause 25.6:

The Contractor shall be responsible of including a provision in each insurance policy taken by the Contractor for the purpose of the Contract so that the insurance company shall have the duty of giving notice in writing to the Contractor and the Employer of the date when a premium becomes payable not more than thirty (30) calendar days before the date and the policy shall remain in force until thirty (30) calendar days after the giving of such notice.

Transport of Contractor's Equipment or Temporary Works

30.2 Substitute the title and text with the following:

Transport of Contractor's Equipment, Plants, Materials or Temporary Works

Unless otherwise specified in the Contract, 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, Plants, Materials 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.

Transport of

30.3 Delete Sub-Clause 30.3.

**Materials and
Plant**

Clearance of Site on Completion **33.1** Delete the text and substitute:

Upon the issue of the Taking-Over Certificate the Contractor shall clear away and remove from the Site all Contractor's equipment, surplus materials, rubbish and Temporary Works of every kind, and leave the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

Labor **34** Add the following Sub-Clauses 34.2, 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 34.10, 34.11, and 34.12.

Health and Safety **34.2** Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labor and, in collaboration with and meeting the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance service are available at the camps, housing, and on the Site at all times throughout the period of the Contract and that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

Labor, Rates of Wages, Hours and Conditions of Labor **34.3** (a) The Contractor shall not employ in connection with the Works any person who has not completed his or hereighteenth year of age.

(b) The Contractor shall in respect of his employees who are employed by him in El Salvador pay rates of wages, observe hours of labor and provide conditions, amenities and facilities no less favorable than the provisions set out by El Salvador and those required by the appropriate wage fixing authority and generally recognized by the other employees in the District whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

Supply of Water **34.4** The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labor.

Alcoholic Liquor or Drugs **34.5** The Contractor shall not otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, gift, barter or disposal by his subcontractors, agents, staff or labor.

Festivals and Religious Customs **34.6** The Contractor shall in all dealings with his staff and labor have due regard to all recognized festivals, days of rest and religious or other customs.

Disorderly **34.7** The Contractor shall at all times take all reasonable precautions to

- Conduct** prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labor and for the preservation of peace and protection of persons and property in the neighborhood of the Works against the same.
- Official Permission for the Contractor's Staff** 34.8 The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to the obtaining of all necessary permits, documents or other official permission for the movement of staff or labor from place to place as may be necessary in connection with the execution and maintenance of the Contract.
- Employment of Persons in the Service of Others** 34.9 The Contractor shall not recruit or attempt to recruit his staff and labor from among persons in the service of the Employer or the Engineer.
- Contractor's Camp** 34.10 The location of the Contractor's camp shall be on land as agreed by the local authorities unless they are obtained on lease from the private parties and shall always be subject to the approval of the Engineer. The required land for this camp or camps shall be at the Contractor's expense.
- Sanitation on Site** 34.11 The Contractor shall provide and maintain efficient sanitary latrine accommodations wherever required on the Site all at his own expense.
- First Aid Facilities** 34.12 The Contractor shall provide and maintain adequate and easily available first aid facilities on the Site subject to the approval of the Engineer. The Contractor shall employ a person qualified in first aid whose services will be available during working hours for staff and labor of the Contractor and the Engineer.
- In addition, an adequate number of persons permanently on the Site shall be instructed in their use, and the persons so designated shall be made known to all employees by the posting of their names and designations in a prominent location on the Site.
- Safety Control Officer, and Reporting of Accidents** 35.2 Add the following Sub-Clause 35.2.
- The Contractor shall have in his staff on the Site an officer dealing only with question regarding the safety and protection against accidents of all staff and labor. This officer shall be qualified for this work and shall have the authority to issue instructions and shall take protective measures to prevent accidents. The Contractor shall maintain such records and make reports concerning safety, health, and welfare of persons and damage to property as the Engineer may from time to time prescribe.
- The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall in addition, notify the Engineer immediately by the quickest available means.

- Quality of Materials, Plant and Workmanship** **36.1** Add the following paragraph at the end of Sub-Clause 36.1:
- The Contractor is encouraged, to the extent feasible and reasonable, to use materials, Contractor's Equipment, Plant, and supplies from sources within the country of the Employer, as stipulated in the Appendix to Bid.
- Commencement of Works** **41.1** Delete the text and substitute:
- The Contractor shall commence the Works on the date of issuance of the Notice to Proceed by the Engineer, which notice shall be issued within the time stated in the Appendix to Bid. Thereafter, the Contractor shall proceed with the Works with due expedition and without delay.
- Failure to Give Possession** **42.2** Delete Subparagraph (b).
- Time for Completion** **43.1** Add the following at the end:
- If the Contractor does not comply with the completion of the works within the contract period by reasons or causes imputable to the Contractor, the cost of the additional supervision services will be paid by the Employer to the Engineer, and such amount will be deducted by the Employer from amounts due or to be due to the Contractor.
- Restriction on Overtime** **45.1** Delete the text and substitute:
- No work should be done outside the formally applied schedule (from Monday to Friday 8:00 am to 12:00 am and from 1:00 pm to 5:00 pm and Saturday from 8:00 am to 12:00 am or any other schedule that covers 44 hours of real work per week) or in a day recognized as local holiday, without the Engineer's prior approval, except for the case that the work was necessary to save lives or goods or for the security of the works, in which case the Contractor shall notify the Engineer immediately.
- The above mentioned overtime work restriction shall not apply to the dredging work which, by its nature and the work progress requirement, shall be carried out continuously 24 hours a day and 365 days a year by different shifts.
- The Contract between the Employer and the Engineer is based, according to the actual labor laws, in rendering the supervision services during 8 hours per working day from Monday to Friday and 4 hours for Saturday.
- In any circumstance of the development of works by the Contractor, works are performed in non-working hours, as above indicated, the Contractor shall request the previous authorization of the Engineer. Also, if due to requirements of the Contractor's Work Program it is necessary that the supervision personnel work more than the above

stipulated hours, the total cost of the additional hours of supervision will be paid by the Contractor directly to the Engineer upon receiving an evidenced claim therefor from the Engineer.

Payment for overtime work by the Engineer will be calculated according to the following official rates applied by labor regulations of the Republic of El Salvador against the remuneration rates (basic salary plus administration cost) applied in the Contract concluded between the Employer and the Engineer.

Hourly Overtime Payment

	Rate
(1) Weekdays	
- from 5:00 pm to 7:00 pm	BHR x 2.0
- from 7:00 pm to 6:00 am	BHR x 2.5
- from 6:00 am to 8:00 am	BHR x 2.0
(2) Sunday	
- whole day	BHR x 2.5 + compensation of 1 day off next week
(3) Holiday	
- Whole day	BHR x 2.0

 BHR: Basic Hourly Rate = Basic monthly salary / 240 hours

As part of their bids, the Bidders shall detail the number of normal working days when they will work in a shift higher than 8 hours and the number of Sundays and holidays when he is planning to work according to his Work Schedule, and also provides an indication of the main activities planned to be executed in these hours.

Liquidated Damages for Delay	47.1	Add the following paragraph at the end: The deduction of liquidated damages shall be made as stipulated in the Appendix to Bid.
Reduction of Liquidated Damages	47.2	Delete Sub-Clause 47.2.
Taking-Over Certificate	48.1	When the whole of the Works has been completed and has 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. Such notice shall be deemed as a request by the Contractor to issue a Taking-Over Certificate in respect to the Works. The Engineer shall, within 21 calendar days of the date of delivery of such notice, either issue to the Contractor, with a copy to the Employer, a Taking-Over Certificate, stating the date on which, in his opinion, the Works were completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before the issue of such Certificate. The Engineer shall also notify the Contractor of any defects in the works affecting completion that may appear after such instructions and

before completion of the works specified therein. In this case the Contractor shall complete any pending work or repair any damage observed during the inspection of the Engineer, and request another inspection for completion. The Contractor should be entitled to receive such Taking-Over Certificate within 21 calendar days of completion, to satisfaction of the Engineer, of the works so specified and remedying any defects so notified.

Taking Over of Sections or Parts	48.2	Delete Sub-Clause 48.2.
Substantial Completion of Parts	48.3	Delete Sub-Clause 48.3
Surfaces Requiring Reinstatement	48.4	Delete Sub-Clause 48.4
Completion of Outstanding Work and Remedying Defects	49.2	Add Subparagraph (c) as follows: (c) The above provisions shall not apply to the dredging work which, by its particular nature, shall be deemed as finally accepted upon issuance of the Taking-Over Certificate pursuant to Clause 48 and shall not be subject to defects liability.
Cost of Remedying Defects	49.3	Delete the last paragraph of Sub-Clause 49.3.
Contractor to Search	50.1	Delete Sub-Clause 50.1.
Variations	51.1	Delete the first paragraph and substitute: The Engineer, with prior written approval of the Employer except for Subparagraphs (b), (c) and (d), shall make any variation to the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary and for that purpose, or if for any other reason it shall, in his opinion, be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:
Notice of Claims	53.1	Delete the text and substitute: 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 28 calendar days after the event giving rise to the claim has first arisen. If the Contractor does not give notice of his intention to claim according to the period specified above, he will lose any right to

further claim for it.

Failure to Comply 53.4

Delete the text and substitute:

If the Contractor fails to comply with any of the provisions of Sub-Clauses 53.2 and 53.3 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.

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

54.1

Add the following paragraph at the end:

If the Contractor proceeds to remove equipment, temporary works and/or materials provided by him without the approval of the Engineer, a penalty of 0.01% of the Contract Amount will be apply. Such amount will be deducted by the Employer from any amount due or to be due to the Contractor.

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

54.5

Delete Sub-Clause 54.5.

**Omissions of
Quantities**

55.2

Add the following Sub-Clause 55.2

Items of the Works described in the Bill of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

**Certificates and
Payment**

60

Delete Sub-Clauses 60.1 to 60.10 and substitute with the following Sub-Clauses 60.1 to 60.13:

**Monthly
Statements**

60.1

The Contractor shall submit a statement in the number of copies specified in the Appendix to Bid 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 in accordance with Sub-Clause 56.1, at unit rates and prices included in the Contract, in US Dollar;
- (b) the actual value certified for payment for the Temporary and Permanent Works executed up to the end of the previous month, at unit rates and prices included in the Contract, in the various currencies of the Contract Price;
- (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 US Dollar, obtained by deducting (b) from (a);
- (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
 - (e) the amount approved in respect to Dayworks executed up to the end of the month in question, minus the amount for Daywork certified in the previous Interim Payment Certificate, including the amounts of foreign and local currencies as determined from the Daywork Schedule of the Bill of Quantities;
 - (f) any credit or debit for the month in question in respect to 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;
 - (g) any amount to be withheld under the retention provisions of Sub-Clause 60.5, determined by applying the percentages 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);
 - (h) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7; and
 - (i) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise.

Monthly Payments 60.2

The said statement shall be approved or amended by the Engineer in such a way that, in his 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 28 calendar days of receipt of the monthly statement referred to in Sub-Clause 60.1, the Engineer shall determine the amounts due to the Contractor and shall issue an Interim Payment Certificate to the Employer and the Contractor certifying the amounts due to the Contractor

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the amount thereof would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Bid. However, in such case, the unpaid certified amount will be added to the next interim payment, and the cumulative unpaid certified amount will be compared to the minimum amount of interim payment. In case that the amount is very close, but lower than the minimum established in the Appendix to Bid, no kind of credit will be granted to reach the minimum required, being full responsibility of the

Contractor to take any provision to reach the minimum percentage without involving neither the Engineer or the Employer's representatives.

**Materials for the
Permanent Works**

60.3 With respect to materials brought by the Contractor to the Site for incorporation in the Permanent Works, the Contractor shall (a) receive a credit in the month in which these materials are brought to the Site and (b) 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 are in accordance with the specifications for the Works;
 - (ii) the materials have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;
 - (iii) the Contractor's records of the requirements, orders, receipts and use of materials 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 to the Site, together with such documents as may be required for the purpose of evidencing such cost;
 - (v) the origin of the materials and the currencies of payment therefor are those indicated in the Appendix to Bid; and
 - (vi) the materials are to be used within a reasonable time.
- (b) the amount to be credited to the Contractor shall be the equivalent of 70 percent of the Contractor's reasonable cost of the materials delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a) (iv) above;
- (c) the amount to be debited to the Contractor for any materials incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials pursuant to Sub-Clause (b) above, as determined by the Engineer; and

**Method of
Payment**

60.4 All payments to the Contractor using the proceeds of the Loan shall be made by the Commitment Procedure as set forth in the Loan Agreement between the Government of the Republic of El Salvador and the JBIC. Payments to the Contractor for the local currency portion using the funds of the Government of the Republic of El

Salvador, shall be made in accordance with the procedure to be decided by the Employer in consultation with the financing bank

Retention Money 60.5 A retention amounting to the percentage stipulated in the Appendix to Bid of the amounts due as determined in accordance with the procedure set out in Sub-Clause 60.1 (g) shall be made by the Engineer in the first and following Interim Payment Certificates.

Payment of Retention Money 60.6 Upon approval of the Final Statement in accordance with Sub-Clause 60.10 by the Engineer, with respect to the whole of the Works, the amount of Retention Money shall be certified by the Engineer for payment to the Contractor. No other alternative way for payment of retention money will be allowed.

Payment of the Retention Money shall be made upon provision by the Contractor of the Defects Liability Certificate specified in Sub-Clause 62.1..

Advance Payment 60.7 (a) The Employer will make an interest-free advance payment to the Contractor exclusively for the costs of mobilization and working capital in respect to the Works in an amount named in the Appendix to Bid. The procedure for payment of such advance amount will start after issuing a separate certification by the Engineer, and after:

- (i) approval of the Contract Agreement signed between 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 the Guarantee for Advance Payment in a sum equal to the Advance Payment, to guarantee unconditionally the reimbursement of the Advance Payment.

(b) The Guarantee for Advance Payment shall be established in the form provided in Section 3 (Form C-3), and issued by a bank or a bonding or insurance company authorized by the Financial System Superintendence (Superintendencia del Sistema Financiero) of El Salvador.

The Guarantee for Advance Payment shall remain effective until the Advance Payment has been repaid pursuant to Subparagraph (c) 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 Sub-Clause.

The Guarantee Advance Payment of a joint venture shall be in the name of the joint venture.

- (c) The Advance Payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence from the first Interim Payment Certificate and shall be made at the rate stated in the Appendix to Bid of the amount of all Interim Payment Certificates, until such time as the Advance Payment has been repaid.
- (d) The advance payment shall be used by the Contractor exclusively for mobilization expenditures, including the acquisition of the materials and the Plant, in connection with the Works. Should the Contractor misappropriate any portion of the advance payment, it shall become due and payable immediately and no further advance for the materials for the Permanent Works stipulated in Sub-Clause 60.3 thereof will be made to the Contractor.

Time of Payment and Interest **60.8** 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 56 calendar days after the Engineer has issued the Interim Payment Certificates, only when the documentation submitted by the Contractor is in accordance with the Employer's requirements, or in the case of the Final Payment Certificate pursuant to Sub-Clause 60.12, within 112 calendar days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification. In the event of the Employer's failure to make payment within the time stated, no payment of interest on the overdue amount will be made and no claim in respect of interest or compensation will be considered. The Employer, however, will make every possible effort to make payment within the period stated. The provisions of this Clause are without prejudice to the Contractor's entitlement under Clause 69 or otherwise.

Correction of Certificates **60.9** The Engineer may by any Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate which has been issued by him; and shall have authority, if any work is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

Final Statement **60.10** No later than 56 calendar days after the issue of the Taking-Over Certificate pursuant to Sub-Clause 48.1, the Contractor shall submit to the Engineer for consideration a draft final statement in the number of copies specified in the Appendix to Bid 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 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").

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 the dispute.

Discharge by the Contractor

60.11 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 moneys 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 60.12 has been made and the performance security referred to in Sub-Clause 10.1 has been returned to the Contractor.

Final Payment Certificate

60.12 Within 28 calendar days after receipt of the Final Statement, and the written discharge from the Contractor, 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 under 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.

Cessation of Employer's Liability

60.13 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 had included a claim in respect thereof in his Final Statement.

Defects Liability Certificate

62.1 Delete the text and substitute:

The Contract shall not be considered as completed until a Defects Liability Certificate has 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 fully completed his obligations to remedy any defects of the Works to the Engineer's satisfaction. The Defects Liability Certificate shall be issued by the Engineer within 28 calendar days after the expiration of the Defects Liability Period.

Default of Contractor

63.1 Delete the last paragraph and substitute:

“then the Employer may, after giving fourteen (14) calendar days notice to the Contractor, enter upon the Site and expel the Contractor there from without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for completion so much of the Contractor's Equipment, Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper, and the Employer may, at any time, sell any of the said Contractor's Equipment, Temporary Works, and unused Plant and materials, and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.”

Valuation at Date of Termination

63.2 Substitute the title with “ **Valuation at Date of Expulsion** ” and the word “termination” in the 2nd and 5th lines with the word “expulsion”.

Add the following paragraph at the end:

For the purpose of valuation under this Sub-Clause 63.2, the Engineer will inform the Contractor giving 14 calendar days prior notice to be present at the Site to witness the assessment. If the Contractor fails to present himself to the Engineer within the specified date for the purpose of being present at the Site, the Engineer will complete the assessment which will be binding upon the Contractor.

Payment after Termination

63.3 Substitute the title with “**Payment after Expulsion**” and the words “terminates the Contractor's employment” in the 1st line with the words “enters and expels the Contractor”.

Assignment of Benefit of Agreement

63.4 Substitute the word “termination” in the 2^d line with the word “expulsion”.

Urgent Remedial Work

64.1 Delete the text and substitute:

If, by reason of any accident, or failure, or other event occurring to, or in connection with the works, or any part thereof, during the execution of the works, 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 practical, notify the Contractor thereof.

Special Risks

65.2 Delete the text and substitute:

The Special Risks are the risks defined under Subparagraph (a), items. (i) to (v) of Sub-Clause 20.4.

**Payment in Event
of Release from
Performance**

66.1 Delete Sub-Clause 66.1.

**Engineer's
Decision**

67.1 Delete the first paragraph and substitute:

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, only during the execution of the Works, 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.

Arbitration

67.3 Delete the text and substitute:

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 legal arbitrators (Arbitros de Derecho), which Committee will be integrated by three arbitrators as

follows: one will be designated by each party within fifteen (15) working days following the date in which any part communicates the other his decision to submit the controversial matter to arbitration; and the third, who will act as President of the Arbitration Committee, will be designated by the other two arbitrators within fifteen (15) working days following the date of designation of the second arbitrator. If any part does not designate his arbitrator within the period established, the designation will be made by a judge or by the President of the Supreme Court of Justice of El Salvador, or by any person delegated by him. No person having personal interest in the matter of the controversy, including the project financing agency, shall be a member of the Arbitration Committee. Committee resolutions will be taken by simple majority and will not be subject to appeal.

The Arbitration Committee will make its decision known within twenty eight (28) calendar days of the date of designation of the third arbitrator.

Costs related to the arbitration will be covered by the parties in the manner decided by the Committee.

Arbitration process will be governed by the law in force of the Republic of El Salvador. The place for arbitration will be San Salvador City, El Salvador.

Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

Notice to Employer and Engineer

68.2 For the purposes of this Sub-Clause, the addresses are those specified in the Appendix to Bid.

Default of Employer

69.1 Substitute "56 calendar days" for "28 days", and "Sub-Clause 60.8" for "Sub-Clause 60.10" in the 2nd line.

Delete Subparagraph (d).

Payment on Termination

69.3 Delete the sentence "but, in addition to the payments specified of such termination" in the 3^d to 6th lines.

Contractor's Entitlement to Suspend Work

69.4 Substitute "Sub-Clause 60.8" for "Sub-Clause 60.10" in the 2nd and 4th lines, and "56 calendar days" for "28 days" in the 4th line.

Add the following paragraph at the end:

Without prejudice to the Contractor's entitlement to terminate under Sub-Clause 69.1, the Contractor may suspend work or reduce the rate

for the Works are exempted in accordance with Decree No. 43 dated May 18, 1994 of the Central American Uniform Customs Code (CAUCA). Payment or exemption of IVA and other taxes and duties shall be decided during the contract negotiation between the Employer and the successful bidder, and incorporated in the final Contract Price.

Notwithstanding the above provisions, it is the responsibility of the Contractor to inquire himself with Tax authorities about all taxes and duties to which he shall be subjected in the execution of the Works under the Contract. Nothing in the Contract shall relieve the Contractor and his Subcontractors from their responsibility to pay any taxes and duties that may be levied on them in the Republic of El Salvador in respect of the Contract.

Income Tax on Staff 73.3 The Contractor's staff, personnel and labor will be liable to pay personal income taxes in the country of the Employer in respect to their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deduction thereof as may be imposed on him by such laws and regulations.

Illegal Payments 74.1 If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any payment, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favor or disfavor to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and expel the Contractor and the provisions of Clause 63 hereof shall apply as if such entry and expulsion had been made pursuant to that clause.

Termination of Contract for Employer's Convenience 75.1 The Employer shall be entitled to terminate this Contract at any time, due to public utility reasons and general interest, after giving 56 calendar days' prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor

- (a) shall proceed as provided in Sub-Clause 65.7; and
- (b) shall be paid by the Employer as provided in Sub-Clause 65.8.

Joint and Several Liability 76.1 If the Contractor is a joint venture of two or more persons or companies, all such persons or companies shall be joint and severally bound to the Employer for the fulfillment of the terms of the Contract and shall designate one of such persons or companies to act as a leader with authority to bind the joint venture. The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer.

Details to be 77.1 The Contractor shall treat the details of the Contract as private and

Confidential

confidential, as far as may be necessary for the purposes thereof, and shall not publish or disclose the same or any particulars thereof in any trade or technical paper or elsewhere without the previous consent in writing of the Employer or the Engineer. If any dispute arises as to the necessity of any publication or disclosure for the purpose of the Contract the same shall be referred to the Employer whose determination shall be final.

