



JAPAN INTERNATIONAL COOPERATION AGENCY (JICA)



MINISTRY OF PUBLIC WORKS
REPUBLIC OF INDONESIA

**DETAILED DESIGN STUDY
OF
NORTH JAVA CORRIDOR FLYOVER PROJECT
IN THE REPUBLIC OF INDONESIA**

BIDDING DOCUMENT

**PACKAGE II
NAGREG FLYOVER
GEBANG FLYOVER**

VOLUME II

SECTION IV GENERAL CONDITIONS OF CONTRACT
PART I – FIDIC 1999, 1ST EDITION

SECTION V CONDITIONS OF CONTRACT
PART II – CONDITIONS OF PARTICULAR APPLICATION

DECEMBER 2006



KATAHIRA & ENGINEERS INTERNATIONAL

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SECTION IV

GENERAL CONDITIONS OF CONTRACT

Part I – FIDIC 1999 1ST Edition

CONDITIONS OF CONTRACT

1.0 COMPONENTS OF THE CONDITIONS OF CONTRACT

The components of the Conditions of Contract for this project consist of two parts, namely:

- (i) Part I – the General Conditions of Contract; and
- (ii) Part II – the Conditions of Particular Application

1.1 Part I – The General Conditions of Contract

The General Conditions of Contract for the Works shall be those comprised within “Part I – General Conditions” of the “Conditions of Contract for Construction” (First Edition, 1999), published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC), Lausanne, Switzerland, and the Contractor shall be deemed to be and to have been fully aware of the contents thereof and to have allowed for all costs associated therewith in the Contract Price.

Copies of the General Conditions of the Contract can be obtained from:

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1.2 Part II – The Conditions of Particular Application

Part II includes the following:

- a) Essential information to the provisions of Conditions of Contract, Part I.
- b) Amendments to and/or supplemental to the provisions of Conditions of Contract, Part I, incorporating pertinent provisions of Indonesian Laws and Regulations and requirements and provisions of the Indonesian Technical Specifications as necessitated by the circumstances of the specified Works.
- c) Additional Clauses/Miscellaneous Conditions necessary for the implementation of the Contract.

The Conditions of Particular Application retains (as much as possible) the same “number” and “designation” of each Section, Clause and Sub-Clause as contained in Part I. Additional Sections, Clauses and Sub-Clauses are however introduced whenever required. They are amendments and/or additions to the General Conditions of Contract and they shall take priority over the General Conditions.

SECTION IV

CONDITIONS OF CONTRACT

(Name of Employer)

(Name of Contract)

PART I: GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract, Part I shall be those forming Part I of the “Conditions of Contract for Construction for Building and Engineering Works designed by the Employer”, First Edition, 1999, prepared by the *Federation Internationale Des Ingenieurs- Conseils (FIDIC)*. These conditions are subject to the variations and additions set out in Part II thereto entitled “Conditions of Particular application.”

APPLICATION:

1. General Provisions
2. The Employer
3. The Engineer
4. The Contractor
5. Nominated Subcontractors
6. Staff and Labour
7. Plant, Material and Workmanship
8. Commencement, Delays and Suspension
9. Tests on Completion
10. Employer's Taking Over
11. Defects Liability
12. Measurement and Evaluation
13. Variations and Adjustments
14. Contract Price and Payment

15. Termination by Employer
16. Suspension and Termination by Contractor
17. Risk and Responsibility
18. Insurance
19. Force Majeure
20. Claims, Disputes and Arbitration

SECTION V

CONDITIONS OF CONTRACT

Part II – Conditions of Particular Application

SECTION V

PART II – CONDITIONS OF PARTICULAR APPLICATION

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CLAUSE 1 GENERAL PROVISIONS

Sub-Clause 1.1.1 The Contract

Add the following paragraph:

1.1.1.1 The “**Contract**” is a Prime Contract as defined in the Procurement Conditions of Special Term for Economic Partnership Loan (Loan Agreement No. IP-528).

Delete Sub-Clauses 1.1.1.2, 1.1.1.5, 1.1.1.6, 1.1.1.8, 1.1.1.9 and 1.1.1.10 and substitute with the following:

1.1.1.2 “**Contract Agreement**” means the written agreement entered into by and between the Employer and the Contractor for the execution and completion of the Works.

1.1.1.5 “**Specifications**” means the description in detail of the work to be executed, the character and quality of materials and workmanship and the special responsibilities of the Contractor that are not covered by the Conditions of Contract. It is a compilation of items of work taken from the Indonesian Technical Specifications and which are applicable to the project. It includes Supplemental Specifications and Special Provisions referred in the Contract Documents together with all the written agreements made.

1.1.1.6 “**Drawings**” means the approved plans, profiles, typical cross-sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions and details of the prescribed Works

1.1.1.8 “**Tender**” means the written and priced offer of a Bidder submitted in the prescribed form in response to an Invitation for Bids for the execution and completion of the specified Works in accordance with the Contract.

The word “Tender” is synonymous with “Bid” and the phrase “Tender Documents” with “Bid Documents”.

1.1.1.9 “**Appendix to Tender**” means any of the appendices to the Tender or Bid, consisting of: Appendix to Bid which specifies the requirements on bonds, insurance, liquidated damages, bonus, retention, minimum amount of interim certificates, etc; Appendix 2 - Foreign Currency Requirements wherein the Bidder shall quote his foreign currency requirements; Appendix 3 – Minimum Essential Plant/Equipment Requirements, which specifies the minimum of such, which the Bidder is required to commit for the execution and completion of the Works; Appendix 4-Minimum Materials Testing Equipment Requirements; and Appendix 5- Cost Elements for Price Adjustment Formula for Local Currency Portion (Rupiah); Appendix 6 to Bid-Lump Sum Price Analysis for Mobilization and Demobilization; Appendix 6A to Bid–Analysis of the Lump Sum for Equipment Mobilization; Appendix 7 to Bid–Analysis of Lump Sum Item for the Engineer’s Facilities; Appendix 8 to Bid- Lump Sum Price Analysis for Maintenance & Protection of Traffic; Appendix 9 to Bid - Detailed Cost Analysis for Materials on Site; and Appendix 10 to Bid - List of Works proposed to be subcontracted.

1.1.1.10 "**Bill of Quantities**" means the form on which the pay item number, the item description, unit of measurement and approximate quantities of the Works are included and on which the Contractor enters both his unit and total prices for each and every pay item of Work. It also means the priced and computed Bill of Quantities forming part of the Bid or Tender.

Add the following Sub-Clauses:

1.1.1.11 "**Supplemental Specifications**" means the revisions of and/or additional specifications to the Indonesian Technical Specifications adopted by **Directorate General of Highways (DGH)** subsequent to its publication.

1.1.1.12 "**Special Provisions**" means additions or revisions to the Technical and Supplemental Specifications covering conditions peculiar to an individual project.

**Sub-Clause 1.1.2
Parties and Persons**

Delete the following Sub-Clauses 1.1.2.1, 1.1.2.2, 1.1.2.3, 1.1.2.4, 1.1.2.5 and 1.1.2.8 and substitute with the following:

1.1.2.1 "**Party**" means either the Employer or the Contractor according to the context, and "**Parties**" refers to both the Employer and the Contractor jointly.

1.1.2.2 The "**Employer**" is the Government of the Republic of Indonesia represented by the **Directorate General of Highways (DGH)** acting through its **Director General/Project Manager** including any of his authorized representatives.

1.1.2.3 "**Contractor**" is a "Prime Contractor" which shall be nationals of Japan or juridical persons incorporated and registered in Japan and which have their appropriate facilities for producing or providing the goods and services in Japan and actually conduct their business there. Prime Contractor in case of a joint venture/operation, shall be Japan and/or Republic of Indonesia, with Japan as lead partner and the nationality of other partners is Japan and/or the Republic of Indonesia and the total share of Works of the Japanese partners in the joint venture is more than 50% of the contract amount.

1.1.2.4 "**Engineer**" is (Name of Consultant) or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer. **The Engineer is also called as Engineer's Representative.**

1.1.2.5 "**Contractor's Representative**" means the person named by the Contractor in the contract or appointed from time to time by the Contractor to act on behalf of the Contractor.

1.1.2.8 "**Subcontractor**" shall be nationals of Japan or juridical persons incorporated and registered in Japan, and which have their appropriate facilities for producing or providing the goods and services and actually conduct their business there, or nationals of the Republic of Indonesia or juridical persons incorporated and registered in the Republic of Indonesia and which have their

appropriate facilities for producing or providing the goods and services and actually conduct their business there.

Add the following Sub-Clauses:

- 1.1.2.11 “**JBIC**” means Japan Bank for International Cooperation, which is the lending agency to the Employer.
- 1.1.2.12 “**DGH**” means the Directorate General of Highways.
- 1.1.2.13 “**Joint Venture**” means an entity consisting of more than one partner that, as the Contractor, shall execute the Works in partnership, all partners of which shall be jointly and severally responsible for the Contract. The Joint Venture is also called as **Joint Operation**.

**Sub-Clause 1.1.3
Dates, Tests,
Periods and
Completion**

Delete the following Sub-Clauses, 1.1.3.2, 1.1.3.3 and 1.1.3.5 and substitute with the following:

- 1.1.3.2 “**Commencement Date**” or “Starting Date” means the date set in the Notice to Commence or the Notice to Proceed (NTP) from which date the Contractor shall commence the execution of the Works and from which date contract time shall start.
- 1.1.3.3 “**Time for Completion**” or “Contract Time” means the period of time for completing the execution of the Works as stated in the Contract (or as extended under Clause 8.4) calculated from the commencement date.

Add the following Sub-Clauses:

- 1.1.3.10 “**Extension of Contract Time**” means the period of time allowed by the Employer for any delay suffered by the Contractor due to causes beyond his control.
- 1.1.3.11 “**Provisional Hand-Over Certificate**” means the certificate issued by the Employer to the Contractor when the whole of the Works or any part of the Works have been substantially completed and have satisfactory passed all tests prescribed by the Contract.
- 1.1.3.12 “**Final Handover Certificate**” means the certificate issued by the Employer within 28 days after the latest of the expiry date of the Maintenance Period (Defects Notification Period), or as soon as the Contractor has submitted all the required documents and completed and tested all the Works, including remedying any defects. Final Handover Certificate is also called as “**Performance Certificate**”.

**Sub-Clause 1.1.4
Money and Payments**

Delete the following Sub-Clauses 1.1.4.4, 1.1.4.6, 1.1.4.7, 1.14.8 and 1.1.4.11 and substitute with the following:

1.1.4.4 “**Final Payment Certificate**” means the Certificate for the Payment issued by the Engineer pursuant to Sub-Clause 14.13.

1.1.4.6 “**Foreign Currency**” means payment in Japanese Yen in which part of the contract price is payable but not the local currency.

1.1.4.7 “**Interim Payment Certificate**” also called as “**Monthly Certificate**” means any certificate of payment issued by the Engineer other than the Final Payment Certificate.

1.1.4.8 “**Local Currency**” means payment in Indonesian Rupiah.

1.1.4.11 “**Retention Money**” means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 14.3 and Sub-Clause 14.9.

Add the following Sub-clauses

1.1.4.13 “**Foreign Component**” refers to the cost materials to be procured from Japan and Eligible Local Manufacturing Company(ies).

1.1.4.14 “**Local Component**” refers to the cost of goods and services (Labor and Equipment) to be sourced from Indonesia and other countries other than Japan.

Add the following Sub-Clause:

**Sub-Clause 1.3
Communications**

1.3.1 Addresses for Communications

For the purpose of this Sub-Clause, the respective addresses are:

A) Employer’s Address

Tel. No.: _____

Fax No.: _____

Attention: **The Chairman**
Procurement Committee for Contractor

B) Engineer’s Address

Delete Sub-Clause 1.4 in its entirety and substitute with the following:

**Sub-Clause 1.4
Law and
Language**

a) The Language of the Contract Documents shall be the “**English Language**”.

- b) The Contract shall be subject to the Laws, Decrees, and Regulations of the Republic of Indonesia, including the applicable orders and memoranda issued by the Employer (DGH) and the Loan Agreement between the Government of the Republic of Indonesia and Japan Bank for International Cooperation (JBIC) with respect to the project. If any conflict should arise, the Loan Agreement and JBIC Guidelines shall prevail.

Delete all the Documents listed and substitute with the following:

**Sub-Clause 1.5
Priority of
Documents**

- (1) the Contract Agreement and Addenda (if any);
- (2) the Letter of Acceptance or Letter of Assignment to the Contractor;
- (3) the duly accomplished Bid Form and the Appendix thereto;
- (4) the Addenda (if any)
- (5) the Conditions of Contract Part II – Conditions of Particular Application (Section V – Volume II, Bidding Documents);
- (6) the Conditions of Contract Part I – General Conditions of Contract, FIDIC 1999, 1ST Edition (Section V – Volume II, Bidding Documents);
- (7) the Technical Specifications; (Section VI – Volume III, Bidding Documents)
 - (i) Part I -Indonesian Technical Specifications
 - (ii) Part IIA – Supplemental Specifications and Special Provisions;
- (8) the Approved Drawings;
- (9) the Priced Bill of Quantities (including Annexes to the Bill of Quantities); and
- (10) the Schedules (Forms) included in Section X and other pertinent documents listed in the Appendix to Bid, Volume V of the Bidding Documents.

With respect to the Specifications, the order of precedence shall be as follows:

- (1) Supplemental Specifications and Special Provisions containing pertinent revisions to Part I – Indonesian Technical Specifications, Section VI of the Bidding Documents.
- (2) Indonesian Technical Specifications, Section VI – Bidding Documents

With respect to the Drawings, the order of precedence shall be as follows:

- (1) Figures govern over scaled dimensions;
- (2) Approved detailed drawings govern over standard drawings;

and

- (3) Approved change order drawings (revised plans) over standard drawings and shop drawings.

Add the following Sub-Clauses:

**Sub-Clause 1.15
JBIC Guidelines**

The Contract shall meet the requirements of the JBIC "Guidelines for Procurement under ODA Loans" and the "Procurement Conditions of the Special Term for Economic Partnership (STEP) Loan."(L.A. No. IP-528)

**Sub-Clause 1.16
Shop Drawings**

The Contractor shall furnish to the Engineer all Contractor's, and Subcontractor's Shop Drawings. Shop Drawings shall be deemed to include design drawings, fabrication drawings, catalogue cuts, brochures, illustrations, material lists, design calculations, reference standards and performance data which may be required by the specification necessary for the proper execution of the Work, or as otherwise required by the Engineer for assurance that there is intent to meet the requirements of the specifications. All Shop Drawings shall be in English.

The Contractor shall submit all Shop Drawings to the Engineer in the manner hereinafter described, in sufficient time to prevent delays in the delivery of materials or in the progress or completion of the work. Regardless of the source of Shop Drawings, all submissions shall be deemed to be submissions by the Contractor under the Contract.

All Subcontractors' Shop Drawings shall first be sent directly to the Contractor. The Contractor shall thoroughly check all such Shop Drawings for measurements, sizes of members, materials and all other details, to assure him that the Shop Drawings conform to the intent of the Drawings and Specifications.

The Contractor shall return to the Subcontractors for correction such Shop Drawings that are found inaccurate or otherwise in error. After the Contractor has checked and approved such Shop Drawings he shall place thereon the date of such approval and the legible signature of the checker, and shall then submit them to the Engineer for review. The Engineer may refuse to check or review any Shop Drawings that are not submitted in compliance with the foregoing requirements.

The Contractor shall submit five (5) copies of Shop Drawings plus the number that the Contractor wishes to return for his own and his Subcontractor's use.

For all Equipment, Shop Drawings shall be completed in all respects and shall show clear compliance with the Specifications. Where applicable, performance figures of equipment, finishes and reference to other relevant drawings must be noted on the Shop Drawings. Details of ancillary items being supplied with the particular equipment must be submitted. Piecemeal submissions will not be considered.

Descriptive brochures that are applicable shall be included for information. Any notation on the Shop Drawings which is on the prints and not on the original from which the prints were made shall be in GREEN INK.

The Engineer will review submitted Shop Drawings within a reasonable time and will return them stamped with "NO COMMENT", "SEE COMMENTS" or "RESUBMIT".

The Engineer may, at his discretion, require an immediate re-submission of Shop Drawings noted "SEE COMMENTS" so that he can make a further review or amendments. Drawings requiring re-submission shall be either amended and re-submitted or shall be superseded by another Shop Drawings. Comments on Shop Drawings are not orders for Extra Work.

Shop Drawings re-submitted for further review will be reviewed for response to previous notations only and the Contractor, by such re-submission shall be held to have represented that such Shop Drawings contain no other alterations, additions or deletions, unless the Contractor (in writing) directs the Engineer's specific attention to the same.

Should the Contractor question, or dissent, from such notations or comments, he shall direct the Engineer's attention to the same for further clarification before re-submitting.

By reviewing Shop Drawings, the Engineer does not assume responsibility for errors or omissions and non-compliance with the Contract requirements. Such errors and omissions must be made good by the Contractor, irrespective, of the receipt, checking, or review of the Shop Drawings by the Engineer and even though the Work is done in accordance with such Shop Drawings.

**Sub-Clause 1.17
As-Built Plans**

The Contractor shall prepare and submit one complete set of "As-Built" Plans in reproducible medium and two complete sets of print copies of "As-Built" Plans together with the back-up of the quantity calculation to the Engineer within thirty (30) days after the completion date of the Project. These "As-Built" Plans shall indicate all approved changes made during construction, superimposed on the original plans / "As-Staked Plans".

The final measured quantities for all pay items shall be included on all "As-Built" Plans. These "As-Built" Plans shall be prepared continuously as execution of the Works progresses and shall be submitted to the Engineer for review as sections or parts of the Project are completed. No Certificate of Completion for a Sector or the whole of Works shall be issued to the Contractor by the Engineer without the approved "As-Built" Plans. The preparation of the "As-Built" Plans shall be at the expense of the Contractor, payment for which is subsidiary to the pay items of the Contract.

The review and approval by the Engineer or by the Employer of the "As-Built" Plans does not relieve the Contractor of any responsibility for and/or liabilities arising out of inaccurate, false or otherwise incorrect "As-Built" Plans prepared and submitted by the Contractor.

The approved "As-Built Plans" shall be reproduced (Blue Print) by the Contractor in five (5) copies and return the same to the Employer.

**Sub-Clause 1.18
As-Staked
Drawings**

"As-Staked" Drawings shall be prepared for the entire project. These drawing shall be submitted to the Employer for review and approval regardless of the nature of the changes in the original design. If there is an increase/decrease of more than ten percent (10%) in quantities of the items of work, Variation Order shall be prepared in accordance with Sub-Clause 13.1.

"The preparation of the "As-Staked" drawings and the corresponding back-up quantity calculations must be completed within a reasonable period from the commencement of the project. The "As Staked" drawings shall indicate major modifications (i.e., change in road alignment, change in type or main components of the structures, introduction of new work items) superimposed on the original drawings."

The approved "As-Staked" drawings shall be reproduced (blue print) by the Contractor in five (5) copies. The preparation of the "As-Staked" drawings and reproduction cost shall be at the expense of the Contractor, payment for which is subsidiary to the pay items of the contract.

**Sub-Clause 1.19
Quality of Plans
("As-Built", "As Staked"
and other Drawings for
Variation)**

All sheets of the "As-Built", "As-Staked" and other drawings for Variations should be of uniform size and one (1) standard size (600mm x 900mm) using Mylar or other quality tracing paper. The sheets must be neat and clean and without any crossed-out or voided portion. The title block should be made an integral part of the sheet plans and not merely patched-up.

**Sub-Clause 1.20
Supplementary
Drawings and
Instructions**

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

The Contractor shall designate an additional set of drawings as "Record Drawings" and keep them to the site.

The Contractor shall clearly and neatly mark the Record Drawing in ink to indicate all authorized changes in the work, and also as actually constructed. These additional plans will not change the work of the Contract but will elucidate or explain it.

CLAUSE 3 THE ENGINEER

Amend the third paragraph to read as follows:

Sub-Clause 3.1 Engineer's Duties and Authority

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

- (a) approving subletting of any part of the Works under Sub-Clause 4.4, Subcontractors;
- (b) certifying additional cost determined under Sub-Clause 4.12, Unforeseeable Physical Conditions;
- (c) determining an extension of time under Sub-Clause 8.4, Extension of Time for Completion;
- (d) issuing a variation under Clause 13, Variations and Adjustments, except;
 - (i) in an emergency situation as reasonably determined by the Engineer Representative; or
 - (ii) If such variation would increase the Contract Price by less than fifteen (15) percent.
- (e) determining increase or decrease in the Contract Cost arising from Sub-Clause 17.3, Employer's Risks;
- (f) determining increase or decrease in the Contract Cost arising from Sub-Clause 13.7, Adjustments for Changes in Legislation; and
- (g) determining increase or decrease in the Contract Cost arising from Sub-Clause 13.8, Adjustments for Changes in Cost.

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, 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 such instruction of the Engineer.

Add the following Sub-Clause:

Sub-Clause 3.6 Management Meetings

The Engineer or the Contractor's Representative may require the other to attend a management meeting in order to review the arrangements for future Work. The Engineer shall record the business of management meetings and supply copies of the record to those attending the meeting and to the Employer. In the record, responsibilities for any actions to be taken shall be in accordance with the contract.

CLAUSE 4 THE CONTRACTOR

Add the following before the first paragraph:

Sub-Clause 4.1 Contractor's General Obligations

The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any defect in the design of or Specifications for the Works which he discovers when reviewing the Contract or executing the Works. The Engineer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Drawings and Specifications.

Add the following paragraphs at the end of Sub-Clause 4.1:

The Contractor shall remove all of its temporary facilities, materials, supplies and other temporary items and thoroughly clean and restore the Project site and premises after completing the Permanent Works or as the Engineer may otherwise direct.

Replace the first three paragraphs with the following:

Sub-Clause 4.2 Performance Security

The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after receipt of the Letter of Acceptance. The Performance Security shall be in the form a bank guarantee or performance bond as stipulated by the Employer in the Appendix to Bid.

"If the performance security is a bank guarantee, it shall be equivalent to **10% of the Contract Price** and shall be issued either by a reputable bank located in the country of the Employer or by a foreign bank through a correspondent local bank which has been determined in advance to be acceptable to the Employer."

"If the performance security is a performance bond, it shall be **equivalent to 30% of the Contract Price** and shall be issued by a bonding or insurance company acceptable 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 twenty five percent (25%) of the portion of the Contract price 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 equal percentage.

This Performance Security shall be denominated in the types and proportions of currencies in which the Contract price is payable. The Performance Security shall be posted in favor of the **Directorate General of Highways (DGH)**, and shall guarantee payment of the amount of the security as a penalty in the event that

it is established that the Contractor is in default with respect to his obligations.

If the term of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the performance Security until the Works have been completed and any defects have been remedied. The institution providing such security shall be subject to the approval of the Employer Should the surety providing the performance become unacceptable to the Employer, the Contractor shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety to the satisfaction of the Employer.

In the execution of the Performance Security, the following condition shall be complied with:

- a) It shall be executed in accordance with the form prescribed therefore; and
- b) It shall be co-terminus with the final completion of the project.

When providing the performance security or any revised security to the Employer, the Contractor shall notify the Engineer of so doing.

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

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

Add the following Sub-Clause:

**Sub-Clause 4.2.1
Replacement of
Performance
Security**

Should any Surety bond for the Performance Security of this Contract become unacceptable to the Employer the Contractor shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original surety to protect the interest of the Employer.

**Sub-Clause 4.3
Contractor's
Representative**

Add the following paragraph:

The Contractor's representative shall be fluent in English. If the Contractor's 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.

**Sub-Clause 4.4
Subcontractors**

Add the following paragraphs:

The Contractor will not be allowed to change the Specialist Subcontractors listed in the Prequalification Documents unless it can be demonstrated by the Contractor that any newly proposed Subcontractor can satisfactorily demonstrate experience at least

equal to the minimum requirements stated in the Prequalification Documents. Where, for a critical element so identified in the Prequalification Documents, it was intended that such work would not be undertaken by a specialist Subcontractor but by a joint venture partner, the Contractor will similarly not be allowed to sublet the work unless the Contractor can demonstrate that the proposed Subcontractor for the work can satisfactorily demonstrate experience at least equal to the minimum requirements stated in the prequalification documents

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 recommendation of the Engineer and approval by the Employer.

All subcontracting Works including those undertaken by the Principal Named Subcontractors shall not exceed twenty percent (20%) of the Total Contract Price. Subcontracting shall not relieve the Contractor of his full responsibility for the fulfillment of sub-contracted portions of the contract which should be constructed in accordance with the plans and specifications therein.

**Sub-Clause 4.9
Quality Assurance**

Amend the first paragraph to read as:

The Contractor shall institute a valid quality assurance system in accordance to JIS or other internationally accepted standard which ensures quality equivalent to or higher than ISO 9000 to demonstrate compliance with the Contract. The Engineer shall be entitled to audit any aspect of the system.

**Sub-Clause 4.10
Site Data**

Add the following Sub-Clause:

**Sub-Clause 4.10.1.
Access to Data**

Data made available by the Employer in accordance with Sub-Clause 4.10 shall be deemed to include data listed elsewhere in the Contract as open for inspection at the Employers address stipulated in the Bidding Data.

It shall be deemed to have been understood by the Contractor prior to submitting his Bid that any data made available by the Employer for bidding purposes was not to be considered representative of all the conditions existing at the Site. Accordingly, the Contractor shall be deemed to have allowed in the contract price for all risks affecting his Bid that could reasonably have been assumed or discovered beyond the information provided by the Employer.

**Sub-Clause 4.17
Contractor's
Equipment**

Add the following paragraphs:

The Contractor, shall provide and bring to Site all equipment required and necessary for the execution, completion and remedying of any defects in the Works. The minimum essential equipment required of the Contractor is listed in Appendix 3 to Bid, of the Bidding Documents. His compliance, however, in furnishing the equipment listed as minimum essential equipment shall in no way release him of his responsibility of providing additional and/or

other equipment that are required in the execution of the Works or that are necessary to complete the Works within the contract time and remedy the defects in full compliance with the Contract.

A Contractor pledging equipment still to be purchased or to be rented shall, within fourteen (14) days after receipt of the Letter of Acceptance, show notarized evidence that same has been complied with, in the form of firm order in case of purchase, or lease agreement in case of lease.

Only the equipment and Plants suitable to produce the quality of work and materials required shall be permitted to operate on the project.

The Contractor shall provide adequate and suitable equipment and Plants to meet the requirements, and when ordered by the Engineer shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory Plants.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location, and shall furnish to the Engineer a list giving the description of each piece of equipment and its identifying number.

While certain specifications may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Engineer to use equipment of different size or type in place of the equipment specified.

The Engineer, before considering or granting the request, may require the Contractor to furnish, at the Contractor's expense, evidence satisfactory to the Engineer that the equipment proposed for the use of the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment listed.

If permission is granted by the Engineer, it shall be understood that the permission is granted for the purpose of obtaining the quality of work actually which, in the opinion of the Engineer, are equal to, or better than, that which can be obtained with the equipment listed. The Engineer shall have the right to withdraw permission at any time that the Engineer determines that the alternative equipment is not producing work that is equal, in all aspects, to that which can be produced by the equipment listed. Upon withdrawal of permission by the Engineer, the Contractor shall be required to use the equipment originally listed and shall, in accordance with the directions of the Engineer, remove and dispose of or otherwise remedy, at the Contractor's expense, any defective or unsatisfactory work produced with the alternative equipment.

The Contractor's equipment must be insured under the Contractor's All Risk's Insurance (CARI) Policy with an insurance company acceptable to the Employer, which shall be already in effect before the Contractor commences the execution of the Works.

Add the following Sub-Clause:

**Sub-Clause 4.17.1
Proof of Ownership
Or Lease
Agreement**

All owned and pledged equipment shall be listed by the Contractor in detail to include the type/description, serial number, capacity, brand or make, condition and other relevant specifications including its present location. The equipment previously pledged by the Contractor in any of his on-going contracts should not be pledged anew for the Project unless the Contractor has proof that the equipment in question can be released from his on-going Project without adversely affecting the progress of its execution. Availability of previously pledged equipment shall be supported by certification stating the status of the project and assessment of their Engineer that the equipment can be released from their on-going project. On request by the Engineer, the Contractor shall show proof of ownership or lease of such Plant or Equipment, pledged by the Contractor exclusively for the project. Such evidence may be in the form of Deed of Sale, Invoice, Lease Agreements, and the like, which shall be subject to inspection and verifications by the Engineer.

**Sub-Clause 4.18
Protection of the
Environment**

Replace Sub-Clause 4.18 with the following

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;
- b) Take all reasonable steps to protect the environment on and off the site and to avoid damage and nuisance to persons or to property of the public or others resulting from pollution, noise, or other causes arising as the consequence of his methods of operation; and
- c) Provide and maintain at his own cost all lights, guards, fencing and warning signs, 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.

The Contractor shall comply with the measures issued by the Environmental Impact and Assessment Office of Indonesia for this environmentally critical project and shall take all reasonable precautions to avoid harm to the living and work environment. Such precautions shall include but not limited to the following:

- a) Protection of existing water courses (e.g. from increased erosion and sedimentations, etc), irrigations, channels and drainage paths;

- b) Avoidance of ground and water contamination caused by fuel, lubricants, asphalt, noxious gas and solid wastes, etc associated with the Works;
- c) Avoidance of excessive noise and other potential impacts due to construction (i.e. vibration, etc.);
- d) Avoidance of wanton destruction of flora and fauna including trees, shrubs, bamboo, other plants and wildlife; and
- e) Provision of appropriate sanitation facilities and other health and safety measures particularly prevention against the spread of communicable diseases like sexually transmitted disease, malaria, etc.

If the Engineer considers that adequate precautions have not been provided, the Contractor shall take such precautions as the Engineer may reasonably direct.

**Sub-Clause 4.24
Fossils**

Replace Sub-Clause 4.24, Fossils with the following:

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 Republic of Indonesia.

The Contractor shall take reasonable precautions to prevent his workmen or any other person from removing or damaging 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 shall suffer delay and/or shall incur costs then the Engineer shall, after due consultation with the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Sub-Clause 8.4; and
- (b) the amount of such costs which shall be added to the Contract Price.

and shall therefore prepare the necessary variation order, which shall be duly accepted by the Contractor, for the approval of the Employer. The variation order shall not unreasonably be disapproved by the Employer.

No right whatever shall accrue to the Contractor and no compensation of any nature shall be due him for discovery of such objects and all rights accruing under the law to the discoverer shall devolve exclusively to the Republic of Indonesia.

Add the following Sub-Clauses:

**Sub-Clause 4.25
Cooperation with
Utility Companies
and Private
Property Owners**

The Employer will notify all utility companies, all pipeline owners, or other parties and endeavor to have all necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction, made as soon as practicable.

“At the locations where the Contractor’s operations are adjacent to properties of railways, telegraph, telephone, and power agencies or companies, or are adjacent to other property, damage to which might result in considerable expense, loss, or inconvenience, the Work shall not be commenced without reasonable grounds and schedule concerned, until all arrangements necessary for the protection thereof have been made.”

The Contractor shall cooperate with the Owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner and that duplications of re-arrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

It is understood that the Contractor has considered in his Bid all of the permanent and temporary utility appurtenances in their present or relocated positions as shown on the plans. The Contractor shall cooperate fully with the utility and private property owners and schedule his work so as to minimize any potential delays, inconveniences, or damage to the Work that may result from utility interferences or the operations of moving them.”

**Sub-Clause 4.26
Existing Utilities
And Structures**

The Contractor shall assume full responsibility for the protection of all buildings, structures, and utilities, public or private, including poles, signs, signals, fences, trees, service connections, water pipes, hydrants, sewers, drains, and electric and telephone cables, gas lines, whether or not they are shown on the Drawings. The Contractor shall carefully support and protect all such structures and utilities from damage of any kind. Any damage resulting from the Contractor’s operations shall be repaired by him at his own expense.

Before commencing any excavation, the Contractor shall ascertain from records or otherwise, the existence, horizontal and vertical positions, and ownership of all existing utilities and service connections. If the Contractor discovers any utility or service connections in the line of the work that is not shown on the Drawings, he shall immediately notify the Engineer upon determination of the actual position of existing utilities and service connections. No work on affected utilities shall be done until proper coordination and adjustments have been made.

Service connections of utilities shall be kept operational. If it is necessary to remove or disturb a utility or service connection, the Contractor shall notify both the utility company and the Engineer prior to proceeding with the Work.

The utility company and private owners affected by the Work shall have the right to enter when necessary upon any portion of the Work for the purpose of maintaining service and of making changes, in, or repairs to, its facility.

Any utility or property removed or damaged shall be reconstructed as promptly as possible (in close coordination with the utility company or private property owners) to its original or other authorized location in a condition at least as good as its original condition.

The Contractor's responsibilities shall apply even in the event damage occurs after backfilling.

**Sub-Clause 4.27
Public Convenience
and Safety**

At all times during the conduct of the Work, the Contractor shall insure the least practicable obstruction to traffic. The convenience of the general public and the residents along the highway and the protection of persons and property are of prime importance and shall be provided for by the Contractor in an adequate and satisfactory manner. When it is necessary for residents living along or near the project area to use a portion of the road under construction or a temporary road, the Contractor shall maintain, within the limits of the specifications, that portion of the road or temporary road in a suitable condition for vehicular travel. When it is indicated in the plans or provided in the specifications that traffic will be carried through construction, the Contractor shall provide and maintain suitable means for the movement of such traffic at all times.

The Contractor shall provide and maintain in a safe condition, temporary approaches to and crossing of intersecting highways, railroads, private entrances and approaches to partly constructed Work during the construction and until the Taking- Over of Works and Sections by the Employer. This maintenance shall be done with adequate equipment and forces to the end, so that the roadway or structures, are kept in satisfactory condition at all times

All cost of maintenance Work during construction and before the project is accepted shall be deemed included in the unit price bid on various pay items in the Bill of Quantities and the Contractor shall not be paid any additional amount of such Work except when provided in the Special Provision.

**Sub-Clause 4.28
Barricades and
Warnings**

The Contractor shall, at his expense provide, erect and maintain at all times during the progress or temporary suspension of the Work, suitable barricades, fences, signs, and watchmen as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those in connection with the Work

The Contractor shall furnish and erect all detour and traffic control signs that are required by the plans and specifications. The Contractor shall furnish all posts, skids, easels, and supports and shall be required to set, move and remove all signs as directed. All signs, barricades and traffic control devices shall be approved by the Engineer prior to erection on the project. The cost of furnishing and erection of all warning signs and barricades shall be considered subsidiary to the item of the Contract for which payment is made.

All barricades and obstructions shall be protected at night by torches or red signal lights which shall be positioned in an approved manner and which shall be kept burning from sunset to sunrise. Barricades and signs shall be erected in accordance with the details shown on the plans, but in case no such details are shown, barricades shall be of substantial construction and shall be visible at night.

Where it is necessary for residents living along the road to use the road which is barricaded, suitable means shall be provided for their entrance or exit, but the general traveling public shall be excluded.

The Contractor's responsibility for the maintenance of barricades and lights on any individual portion of the Work included in the Contract shall continue throughout the duration of the Contract.

The Contractor shall use every precaution possible to safeguard the persons and property of the traveling public, and divert traffic from the road on which Work is in progress. The failure of the Engineer to notify the Contractor to maintain barriers, lights, signals, or watchmen shall not relieve the Contractor from his responsibility.

**Sub-Clause 4.29
Removal/Disposal
Of Structure and
Obstruction**

All buildings, utilities or any other private or public improvements which are to be removed from the right-of-way and replaced or reconstructed at new locations shall be removed by the Contractor under a separate agreement unless otherwise noted on the plans.

The Contractor shall remove any and all materials not suitable for use in the Work, obstructions, obstructing fences, existing culverts, and all other structures or part of structures within the highway right-of-way, which interfere with or are rendered useless by new construction, unless otherwise provided on the plans or in the Special Specifications. The Contractor shall remove and dispose all foundations, debris, trash, and remains left after the previous removal by others of vacated dwelling houses or other buildings. Such removal shall be performed at the Contractor's own cost and expense and is considered subsidiary Work included in other items of Work performed, unless a separate bid is taken on removal of old structures as hereinafter provided, or except as portions of existing substructure units fall within the limits of "Structure Excavation."

The disposal of materials outside the project boundaries shall be the responsibility of the Contractor. He shall make his

arrangements with the property owners of disposal sites outside the project boundaries as indicated on the Plans or Contract Documents.

The Contractor shall obtain a written permit from the property owner of the disposal site. He shall submit to the Engineer the said permit absolving the Employer from any and all responsibility in connection with the disposal of materials on his property. No material shall be disposed without prior authority from the Engineer.

When materials are disposed as provided above and the site is visible from the highway, the Contractor shall make the disposal in a neat and presentable manner to the satisfaction of the Engineer.

CLAUSE 5 NOMINATED SUBCONTRACTORS

Add the following paragraphs:

Sub-Clause 5.3 Payments to Nominated Subcontractors

For all works 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 13.5, as may be determined in accordance with Clause 13; and
- 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 by the Contractor in the Appendix to Bid and repeated where provision for such is made in a special item provided in the Bill of Quantities for such purpose.

Amend Sub-clause 5.4 to read as:

Sub-Clause 5.4 Evidence of Payments

Before issuing any certificate under Clause 14, which includes any payment in respect to 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 to the work or goods, materials, Plant or services of such nominated Subcontractor have been paid or discharged by the Contractor. If Contractor fails to supply such proof or otherwise unless the Contractor;

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

then the Employer shall be entitled to pay to such nominated Subcontractor directly, 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 sum due or to become due from the Employer to the Contractor.

Provided that, where the Engineer has certified and the Employer has paid directly as aforesaid, the Engineer shall, in issuing any further certificate in favor 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.

Add the following Sub-Clause:

**Sub-Clause 5.5
Prior Clearance/
Approval by the
Employer on
Subcontractor**

Before award of portions of Works under contract, the Contractor shall submit a written request for clearance/approval by the Employer or his authorized representative on the subcontractors proposed by the Contractor other than the nominated subcontractor. The Contractor shall not award portions of works under contract to subcontractors without the explicit written permission of the Employer.

Any subcontractor awarded without the permission of the Employer shall not be recognized, and any claim by a subcontractor for assistance for the enforcement of any claim against the Contractor, shall not be entertained, without prejudice to the government's right to takeover the contract work and to impose appropriate sanction, pursuant to pertinent laws and regulations of Indonesia.

CLAUSE 6 STAFF AND LABOUR

Add the following as final paragraph:

**Sub-Clause 6.1
Engagement of
Staff and Labour**

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications from sources within the Republic of Indonesia. The Government of the Republic of Indonesia will only allow expatriate Engineers, skilled workers and senior management staff who have visas and permission to work in the Indonesia.

Add the following paragraph:

**Sub-Clause 6.5
Working Hours**

Subject to any provision to the contrary contained in the Contract, none of the Permanent Works shall, save as hereinafter provided, be carried out during the night or on Sundays, if locally recognized as days of rest, or their equivalent, without the permission in writing of the Engineer or his representative, except when the 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 or his representative. Provided, always that the provisions of this Clause shall not be applicable in the case of any work which is customarily carried out by rotation or double shifts.

Amend Sub-clause 6.6 to read as:

**Sub-Clause 6.6
Facilities for Staff
And Labour**

“The Contractor shall provide and maintain adequate housing and amenities as he may consider necessary for his staff and labour including sanitary facilities in accordance with the Public Health Rules and Regulations, especially as related to contagious diseases, including all fencing, water supply (both for drinking and other purposes), electricity supply, fire prevention and fire fighting equipment, furniture and other requirements in connection with such accommodation or amenities.

The Contractor, in his relations with his employees, shall comply with the regulations in force regarding compensations, medical treatment, securities needed, as well as other benefits specified in the pertinent Labor laws of Indonesia as a minimum. The Contractor shall provide, at no profit for himself, a constant supply of food for his employees without creating a monopoly for himself or restricting to secure food from other sources. The DGH will not be liable to any damages or compensation payable by law in respect or in consequence of any accident or injury to any employees of the Contractor and the Contractor shall meet all claims, demands, proceedings, costs changes and expenses whatsoever in respect thereof or in relation thereto.

On completion of the Contract, unless otherwise agreed with the Employer, the temporary housing/camp provided by the Contractor shall be removed and the Site reinstated to its original condition, all to the approval by the Engineer.

Amend the last paragraph to read as:

**Sub-Clause 6.8
Contractor’s
Superintendence**

A reasonable proportion of the Contractor’s superintending staff shall have working knowledge of the English language (both spoken and written). Should the Engineer deem it necessary to facilitate communications between the Engineer and the

Contractor's superintending staff, the Contractor shall also provide a sufficient number of competent English/Japanese translators full time on the Site. Full time on-Site English/Indonesian translators shall be employed by the Contractor, with adequate technical knowledge to ensure the proper transmission of instructions and information to his workpeople and the faithful interpretation of the Specifications and Drawings.

The superintending staff shall have full authority to execute the orders or directions of the Engineer without delay and to supply promptly such materials, tools, plants, equipment, and labor as may be required.

Add the following Sub-Clauses:

**Sub-Clause 6.12
Foreign Staff
and Labour**

The Contractor may import any personnel who are necessary for the execution of the Works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return of imported Contractor's Personnel to the place where they are recruited or to their domicile. In the event of death in the country of any of these personnel or member of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

All associated cost shall be borne by the Contractor.

**Sub-Clause 6.13
Measures against
Insect and Pest
Nuisance**

The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Contractor shall provide suitable prophylactics for the Contractor's Personnel and shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

**Sub-Clause 6.14
Alcoholic Liquors
and Drugs**

The Contractor shall not, other than in accordance with existing laws, ordinance and rules and regulations of the Republic of Indonesia in force, import, sell, possess, give, barter or otherwise dispose of any alcoholic beverages or drugs, nor allow such acts by his staff and labour within the Site.

**Sub-Clause 6.15
Arms and
Ammunitions**

The Contractor, in accordance with existing laws, ordinances and rules and regulations in force, shall not possess, give, sell, barter or otherwise dispose of any arms and ammunitions of any kind or allow such acts by his staff and labour within the Site

**Sub-Clause 6.16
Holidays, Festivals,
Days of Rest
and Religious
Customs**

The Contractor shall, in all his dealing with his staff and labour for the time being employed in or in connection with the Works, have due regard to all officially declared holidays, recognized festivals, days of rest and religious and other customs. The Contractor shall be at liberty not to carry on for the purpose of the Contract on any day upon which there shall be celebrated any recognized festival or religious or other customs and even if the Contractor has received from the Engineer a notice in writing ordering the Contractor to carry on work on that day, the Contractor shall not be eligible for an extension of time for the completion of the Works in respect of that day. Allowance for holidays, festivals, days of rest and religious and other customs is included in the time for completion of the Works.

Should he desires to work on any such holiday he shall give the Engineer written notice, at least four (4) calendar days in advance of such holiday stating the places where the works will be conducted.

**Sub-Clause 6.17
Night and
Sunday Work**

To speed-up the Works and meet the construction target schedule, Work may proceed on a two or three eight-hour-shift basis. The Engineer may order any work to be carried out in whole or in part at night. No work, however, shall be undertaken at night without the consent in writing of the Engineer.

Whenever Works is being done by the Contractor during periods other than daylight hours, he shall provide suitable lighting equipment, approved by the Engineer, so that the Works can be carried on in the same manner as during the daylight hours.

Whenever in the judgment of the Engineer it may be considered necessary or expedient, in order to maintain traffic flow over or on any street or road, to do work at night or after or before the regular working time, such night or overtime work shall be performed by the Contractor without additional cost to the Owner beyond the price bid for the Works.

**Sub-Clause 6.18
Accident
Prevention**

Provisions shall be taken by the Contractor to prevent accidents and ensure the safety of his staff and labour. He shall have on his staff at the Site an officer to take care of questions regarding safety and protection against accidents of all staff and labour.

The officer shall be qualified for the work and shall be given authority to take necessary measures to prevent accidents.

**Sub- Clause 6.19
Health and Safety**

Due precautions shall be taken by the Contractor, at his own cost, to ensure the safety of his staff and labor and, in collaboration with and to 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.

**Sub-Clause 6.20
Supply of Water**

The Contractor shall, in so far as is reasonably practicable, having regard to local conditions, provide on the Site to the satisfaction of the Engineer an adequate supply of drinking water and other water for the use of his staff and labour.

**Sub-Clause 6.21
Temporary Latrine**

The Contractor shall provide and maintain efficient and sanitary latrine accommodation for the use of his staff and labour and shall keep the Site and the latrine in a clean and sanitary condition to the satisfaction of the Engineer.

**Sub-Clause 6.22
Epidemics**

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, order and requirements as may be made by the Government, or the local medical or sanitary authorities, for the purpose of dealing with and overcoming the same.

**Sub-Clause 6.23
Preservation of
Peace**

The Contractor shall at all times take all requisite precautions and use his best endeavors to prevent any unlawful, riotous or disorderly conduct by or among his staff and labour on the Site and for the preservation of the peace and protection of persons and property in the neighborhood of the Works against the same. The Contractor, however, is not entitled to have his own police force at the Site.

**Sub-Clause 6.24
Squatting**

The Contractor shall use his best endeavors to prevent squatting on the Site, even by his staff and labour.

**Sub-Clause 6.25
Burial of The
Dead**

The Contractor shall make all necessary arrangement for the transport, to any place as required for burial of any of his expatriate staff and labour or members of their families who may die in the country. He shall also be responsible to the extent required by local regulations for making arrangements with regards to burial of any of his local staff and labour that may die while engaged upon the Works.

**Sub-Clause 6.26
Housing for
Labor**

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labor, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire-

fighting equipment, air conditioning units, cookers, refrigerators, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer.

**Sub-Clause 6.27
Employment of
Persons in the
Service of Others**

The Contractor shall not recruit or attempt to recruit his staff and labor from amongst persons in the service of the Employer or the Engineer.

**Sub-Clause 6.28
Labour
Legislation**

The Contractor shall be responsible for ascertaining the requirements of and complying fully with all laws regarding workmen's health and safety, compensation for injuries and death, minimum wages, hours of labor, and other labor laws, ordinances, and rules and regulations in any manner affecting labour.

**Sub-Clause 6.29
Permits and
Registration of
Expatriates**

The Contractor shall not employ any expatriate staff without first having obtained necessary permits and approvals

**Sub-Clause 6.30
Health and
Safety Records**

The Contractor shall keep and maintain records and make reports concerning the health and welfare of his staff and labour including illnesses that may occur among the staff and labour and of the damages to property as the Engineer may require from time to time.

**Sub-Clause 6.31
Accident Reports**

The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence, at least within twenty-four hours. In case of serious accidents or fatalities, the Contractor shall, in addition, notify the Engineer immediately by the fastest available means, followed by one in writing.

CLAUSE 7 PLANT, MATERIALS AND WORKMANSHIP

Add the following Sub-Clause:

**Sub-Clause 7.1.1
Certificate of Origin,
Contents and/or
Standard of
Quality**

When requested, the Contractor shall furnish a manufacturer's certificate of origin, contents and/or standard of quality for all materials, plant and equipment to be incorporated into the

permanent works on compliance with the requirements for all manufactured, fabricated or prepared materials and Plant.

**Sub-Clause 7.3
Inspection**

Add the following Sub-Clauses:

**Sub-Clause 7.3.1
Inspection and
Testing**

For materials and plant whose sampling and testing is not possible after their manufacture, fabrication or preparation as sampling for testing itself is not possible as the utility or structural qualities of the material and plant will be adversely affected, it shall be the responsibility of the Contractor to see to it that inspection, sampling and testing are undertaken prior to or during manufacture, fabrication or preparation.

In the event that plant inspection is undertaken, the following conditions shall be met:

- (a) The Engineer shall have the cooperation and assistance of the Contractor and/or the producer with whom he has contracted for the supply of the materials.
- (b) The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- (c) Adequate safety measures are to be provided and maintained

**Sub-Clause 7.3.2
Dates for Inspection
and Testing**

The Contractor shall agree with the Engineer on the time and place for the inspection or testing of any material or plant as provided in the Contract. The Engineer shall give the Contractor not less than 24 hours notice of his intention to carry out the inspection or to attend the tests. If the Engineer, or his authorized representative, cannot attend on the date agreed, the Contractor shall reset inspection and testing to another date convenient to both the Engineer and the Contractor. The Contractor shall never proceed with the test without the presence of the Engineer and in his absence, his authorized representative, and the Engineer for his part shall never unreasonably delay any testing.

**Sub-Clause 7.3.3
Absence or Silence
of Specifications**

In the absence of definite specifications or reference to a specifications or apparent silence of the Specifications and Plans as to any detail or the apparent omission of detailed description concerning materials, plant and workmanship, it shall be deemed as meaning that only the best general practice is to prevail and that only materials, plant and workmanship of first class quality are to be used. All interpretation of the Specifications and Plans shall be on the basis stated above.

Works in which untested materials and plant are used without approval or written permission of the Engineer shall be considered as performed at the Contractor's risk. Materials and Plant found to be unacceptable or unauthorized shall not be paid for and, if directed by the Engineer, shall be removed at the expense of the Contractor.

**Sub-Clause 7.4
Testing**

Add the following Sub-Clauses:

**Sub-Clause 7.4.1
Costs of Sampling
and Testing**

Sampling and quality control testing as well as any check test to verify the quality of materials shall be done by the Contractor at his own expense under the direct supervision of the Engineer. The kind of tests and frequency of testing shall conform to the Minimum Quality Control Testing requirements of the Employer. Sampling and testing shall be in accordance with the methods specified in the item of work in the Specifications, and if not specified, shall conform to the latest edition of American Association of State Highway and Transport Officials (AASHTO), American Society for Testing and Materials (ASTM) or equivalent Standard Test Methods.

**Sub-Clause 7.4.2
Re-sampling and
Re-Testing**

The approval of preliminary samples shall not be considered as an indication of acceptance of all materials from the same source. Any material that has passed the prescribed tests may be re-sampled and re-tested at any time.

**Sub-Clause 7.4.3
Untested Materials**

All materials shall be inspected, tested and approved by the Engineer before incorporation into the Works. Any untested materials that are used without the approval or written permission of the Engineer shall be at the Contractor's risk. If materials are found to be unacceptable and unauthorized, it shall not be paid for and shall be removed by the Contractor at his own expense. For materials and plant whose sampling and testing is not possible after their manufacture, fabrication, or preparation because sampling and testing shall adversely affect its utility and structural qualities, it shall be the responsibility of the Contractor that such sampling and testing be made at an appropriate time.

**Sub-Clause 7.4.4
Manufacturer's
Certificate in Lieu
of Testing**

Where obtaining samples from a finished manufactured product would adversely delay the project construction, the Engineer may, in lieu of requiring tests, accept at his discretion the manufacturer's certified analysis for such product.

**Sub-Clause 7.4.5
Field Testing and
Laboratory**

In order to expedite the inspection and testing of materials and Plant and Works, the Contractor shall provide and maintain as part of the Facilities for the Engineer, a field testing laboratory at the project site, as called for in the Specifications and in the Bill of Quantities. The Contractor is required to furnish the testing equipment and provide qualified and experienced laboratory staff who shall conduct the tests under the supervision of the Engineer.

The provision and maintenance of the field testing laboratory is a pay item under the Facilities for the Engineer.

The Fabrication Plant to be provided by the Contractor and indicated in the Plans and Specifications shall be furnished with complete equipment, more particularly for pre-cast concrete members, and provided with experienced and qualified laboratory staff who shall conduct the tests under the supervision of the Engineer.

**Sub-Clause 7.4.6
Source of Supply**

In order to expedite the inspection, sampling and testing of materials and Plant, the Contractor shall notify the Engineer of his proposed sources of materials and Plant prior to delivery. At the option of the Engineer, materials and Plant may be approved at the source of supply before delivery is started.

If it is found after trial that sources of supply for previously approved materials do not produce the specified products, the Contractor shall furnish materials from other approved sources.

If there are suggested sources of local materials, the quality of materials in such suggested sources will be acceptable in general, but the Contractor shall determine for himself the equipment and work required to produce material meeting the specifications. It shall be understood that it is not feasible to ascertain from samples the limits of an entire deposits and that variations shall be considered as usual and to be expected. The Engineer may order procurement of materials from any portion of a deposit and may reject portions of the deposit as unacceptable.

In case of suggested sources of local materials, it is the responsibility of the Contractor to negotiate and acquire the right to take materials from the suggested sources, together with the right to use such property as may be required for plant site, stock piles and haul roads. Acquisition of right of access to reach such suggested sources is also the responsibility of the Contractor.

If the Contractor desires to use materials from sources other than those suggested or other sources of materials have to be used due to insufficiency of the suggested sources, tests on preliminary samples must indicate general acceptability of the material before permission is granted. Additional samples may be required of the Contractor for inspection, sampling and testing prior to approval and authorization to use the source.

If the material is to be purchased by the Contractor from suppliers, the Contractor shall, before placing order for materials,

manufactured articles and machinery to be a part of permanent works, submit for approval of the Engineer, a complete description of such items, the names of the firms from whom he proposes to obtain such items, together with a list of the items he proposes each firm would supply. No materials, manufactured articles or machinery shall be ordered from any firm without the written approval of the Engineer. When directed by the Engineer or otherwise specified in the Contract, the Contractor shall submit samples for approval.

If it is found after trial that sources of supply for previously approved materials, manufactured articles, or machinery do not produce specified products, the Contractor shall furnish the items from other sources approved by the Engineer.

No material, regardless of its source, shall be incorporated in the Work until representative samples taken by the Contractor and tested in an approved laboratory or tested by the Contractor in the presence of the Engineer, have been approved and written authority is issued by the Engineer for the use thereof.

**Sub-Clause 7.4.7
Materials of Other
Dimensions**

If any material and Plant described in the Contract or ordered by the Engineer in the metric measure and the Contractor, having used his best endeavors, cannot without undue delay or additional expense or at all procure such material or Plant in the measure specified in the Contract or ordered by the Engineer but can obtain such material or Plant in the other measure to dimensions approximating those described in the Contract or ordered by the Engineer, then the Contractor shall forthwith notify the Engineer in writing, with a copy to the Employer, of the fact stating the dimensions in which such material or Plant are procurable in the other measure. Such notice shall be given in sufficient time to enable the Engineer to consider and if necessary give effect to any design change which may be required and to avoid delay in the execution of the Contractor's other obligation under the Contract. Any additional cost or expense incurred by the Contractor as a result of any delay arising out of his default under this Sub-Clause shall be borne by him.

As soon as practicable after the receipt of any such aforementioned notice, the Engineer shall, if he is satisfied that the Contractor had used his best endeavor to obtain the material or Plant to the dimensions described and that they are not obtainable without undue delay or without putting the Contractor to undue additional expense, either:

- (a) Instruct the Contractor to supply such materials (despite such delay or expense) in the dimensions described in the Contract or originally ordered by the Engineer; or
- (b) Give an order to the Contractor pursuant to Clause 13 to:
 - i. Supply such materials or Plant to the dimensions stated in his said notice to procurable dimensions instead of the dimensions described in the Contract or originally ordered by the Engineer; or

- ii. Make other variation whereby the need to supply such materials or Plant to the dimensions described in the Contract or originally ordered by the Engineer will be avoided.

This Sub-Clause shall apply irrespective of whether the material or plant in question is to be supplied in accordance with the Contract directly by the Contractor or indirectly by a Nominated Subcontractor.

**Sub-Clause 7.4.8
Failure to
Disapproved**

Failure of the Engineer to disapprove or any person acting under him to disapprove any work or material shall not prejudice the power of the Engineer to subsequently disapprove such work or materials.

**Sub-Clause 7.4.9
No Compensation
for Delay due to
Testing**

The Contractor shall not be entitled to any compensation for any delay or damage incurred *for* which the Contractor is responsible pending the completion of testing and approval of materials, Plant or the Works.

Add the following Sub-Clauses:

**Sub-Clause 7.9
Equivalency of
Standard
and Codes**

Wherever reference is made in the Contract to specific standards and codes, the provision of the latest current edition or revision of the relevant standards and codes in effect shall apply.

Where such standards and codes relate to a particular country or region, other authoritative standards which ensure an equal or higher quality than the standards and codes specified, will be acceptable subject to the Engineer's prior review and written approval.

Differences between the standards specified and the proposed alternative standards must be fully described in writing by the Contractor and submitted to the Engineer for approval at least 28 days prior to the date when the Contractor desires to use it.

**Sub-Clause 7.10
Contractor's Equipment,
Temporary Works
And Materials
Exclusive Use for
The Contract**

All Contractor's equipment, temporary works and materials provided by the Contractor shall, when brought 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 as required for the Contractor to fulfill obligations under the Contract.

CLAUSE 8 COMMENCEMENT, DELAYS AND SUSPENSION

Sub-Clause 8.1 Commencement of Works

Amend the last paragraph to read as follows:

The Contractor shall commence the Work after receipt by him of a Notice To Proceed (NTP) which shall be issued by the Employer upon the approval of the Contract. The Contract effectivity shall depend on the stipulations made on the NTP. The Contractor shall then proceed with the works with due expedition and without delay.

Add the following Sub-Clause:

Sub-Clause 8.1.1 Pre-Construction Meeting

A Pre-Construction Meeting shall be held for the purpose of establishing guidelines and procedures for the smooth execution of the Contract.

As soon as the Contractor has received the Notice to Proceed, the Engineer shall set a pre-construction meeting with the Contractor and his staff together with the Employer's representative(s). The meeting agenda shall include (but not limited to) the following:

1. Project Organizational set-ups with the definition of the lines of Authority.
 - a. Contractor's Table of Organization
 - b. Engineer's Table of Organization
 - c. Employers Table of Organization
2. Agreed PERT/CPM and Construction Schedule of the Contractor
3. Joint Survey Schedule
4. Sources of Materials
5. Testing Materials
6. Right of Way
7. Coordination meetings, schedule and frequency
8. Accomplishments estimates and cut-off dates
9. Reporting and monitoring
10. Clarification on the application of pertinent laws like Decree No. 8, (year 2006) supplemented with Presidential Decree No. 67 (Year 2005)
11. Billing Procedures
12. Sub-Contractors to be proposed for approval
13. Inter-office relations and procedures
14. Other matters/problems of specific nature to the project that could affect construction progress.

**Sub-Clause 8.3
Programme**

Amend Sub-Clause 8.3 to read:

The Contractor shall, within fifteen (15) calendar days after Letter of Acceptance, submit to the Engineer for his approval a programme that shall include, but not limited to:

- (a) Construction Schedule
 - (i) A PERT/CPM network diagram of all activities involved in the execution and completion of the works within the Contract time, clearly identifying the critical path with allowance for bad weather and contingencies.
 - (ii) A time-sequenced BAR CHART based on the PERT/CPM network diagram with the progress S-Curve superimposed thereon, indicating the monthly progress estimates of accomplishments for every pay item expressed in terms of percentages and quantities as amounts.
- (b) An updated construction method which shall embody a narrative description of the order of procedure in which the Contractor proposes to carry out for each main item of work.
- (c) An updated Contractor's Organization Charts:
 - (i) Structural Chart showing the hierarchical order of personnel, the Contractor shall assign for superintendence in the execution of the works.
 - (ii) Functional chart showing the respective duties, roles, etc. of every component of the chart.
- (d) Manpower Schedule showing the complement of manpower proposed for the execution of the Works.
- (e) Equipment Utilization schedule showing the complement of equipment for the execution of the Works including provision for downtime based on the provision on the foregoing diagram.
- (f) Cash flow and payments schedule showing a detailed cash flow estimate, in monthly and quarterly periods, of all payments the Contractors will be entitled to receive under the Contract, consistent with the foregoing diagram, chart and schedule.

The Construction Schedule submitted by the Contractor as part of his Bid shall meet the Time(s) for Completion specified in the Bidding Data of the Bidding Documents. Following the award of Contract, the Employer, the Engineer and the Contractor will agree to clarifications and modifications of the Construction Schedule submitted by the Contractor as part of his Bid. The Work shall be performed in accordance with the Construction Schedule as revised following the award of Contract or as subsequently approved by the Employer with the recommendation of the Engineer.

The execution of the Works shall not commence unless the program is duly reviewed and approved. Any delay incurred and any costs attributable to such delay due to the submission of incomplete, or otherwise unsatisfactory program shall be the Contractor's responsibility.

Add the following Sub-Clause:

**Sub-Clause 8.3.1
Revision of
Programme**

The Employer or the Engineer shall have the right to reject any part of the original programme submitted with the Bid even if the Bid is accepted and to require the Contractor to revise the original programme to the satisfaction of the Engineer following the award of Contract. The Contractor shall not commence execution of the Works prior to acceptance (not receipt) of the Programme, subject to the provisions of the following Sub-Clause.

The Construction Schedule shall be revised and re-submitted at the intervals as required by the Employer or the Engineer. In addition, the Contractor shall immediately advise the Engineer of any proposed changes in the Construction Schedule. Revised changes in the Construction Schedule shall show construction operations for each item of work from the time of Notice to Proceed to the anticipated completion date, thereby indicating the periods during which work was previously under way as well as estimated future periods of construction operations. Each revised Construction Schedule shall be related to the originally revised and accepted Construction Schedule and shall show months ahead or behind the schedule for both completed activities and future activities.”

**Sub-Clause 8.4
Extension of Time
for Completion**

Add the following as final paragraphs:

Should the amount of additional work of any or for other special circumstances of any kind whatsoever, occur such as to fairly entitle the Contractor to an extension of contract time, the Engineer shall determine the length of time of such extension; provided that the Employer is not bound to take into account any claim for an extension of time unless the Contractor has, prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the Employer notices in order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the Contractor of any claim. Upon receipt of such and detailed particulars, the Employer shall examine the facts and extent of the delay and shall extend the contract time for completing the contract work when, in the Employer's opinion, the findings of facts justify an extension.

Extension of Contract time may be granted to the Contractor under the following conditions:

- (a) When the affected activities fall within the critical path of the Approved PERT/CPM Network diagram
- (b) When the reason given to support the request for extension was not considered in the determination of the Original Contract time for the completion of the works during the

conduct of the detailed engineering and preparation of the Bid Documents.

- (c) When major calamities such as exceptionally destructive typhoons, floods, earthquakes and epidemics occur and for other causes such as non-delivery on time of materials, working drawings or written information to be furnished by the Employer.

No extension of Time for Completion shall be granted to the Contractor due to:

- a) Ordinary unfavorable weather conditions typical for the location and season (and thus to be expected);
- b) Inexcusable failure or negligence of the Contractor to provide adequate resources for the Works (whether the Contractor's Equipment, materials or labour resources.); and
- c) Other causes for which the Employer is not directly responsible.

No extension of the Time for Completion shall in itself entitle the Contractor to any additional costs associated therewith.

Add the following Sub-clause 8.6.1:

**Sub-Clause 8.6.1
Show Cause
Meeting**

It is the intention of this Clause to remind and call the attention of the Contractor in defining the courses of actions to be taken whenever the Contract has reached the level of negative slippage indicated below:

- 1 If the physical progress is delayed by 5% to 7%, a Show Cause Meeting shall be held between the Project Manager, the Engineer's representative (Field Supervision Consultant) and the Contractor.
- 2 If the physical progress is delayed between 7% and 10% against the approved construction, a Show Cause Meeting shall be held between the Chief of (Province) Regional Infrastructure, the Project Manager, the Engineer's representative (Field Supervision Consultant), and the Contractor.
- 3 If the physical progress is delayed by more than 15% against the approved construction schedule, a Show Cause Meeting shall be held at the Central Regional Infrastructure level with the Director of Implementation for the concerned region, to decide whether the Contractor can continue, whether a three (3) party agreement should be entered into, or whether the contract should be determined.

For all Show Cause Meetings held, Minutes of Meeting shall be prepared and shall be signed by all concerned parties as

a true record of the agreements made as the course of action to be followed.

If the contractor fails to fulfill the agreements in the Show Cause Meetings, Sub-clause 15.2 shall be applied.

CLAUSE 9 TESTS ON COMPLETION

Sub-Clause 9.2 Delayed Tests

Add the following Sub-Clause:

Sub-Clause 9.2.1 Compensation

The Contractor shall not be entitled to any compensation for any delay or damage incurred pending the completion of testing and approval of materials and plants on the Works.

CLAUSE 11 DEFECTS LIABILITY

Add the following Sub-Clause:

Sub-Clause 11.1.1 Maintenance Period/ Defects Notification Period

The Maintenance Period also defined as Defects Notification Period shall mean the three hundred sixty-five (365) calendar days (one year) period of maintenance calculated from the date of completion of the project.

Within the prescribed Maintenance Period, the Contractor shall be liable for any defect and failures noted or occurring on the project which may be traceable to poor workmanship, use of poor quality materials and non-compliance with the Drawings and Specifications.

At the end of the Maintenance Period, the Employer shall conduct inspection of the project to determine if there are defects or failures that has occurred within the period. If there are any, the Contractor shall correct/remedy the defects at his own expense.

After correction, the Contractor shall request for Final Inspection prior to the issuance of the Performance Certificate. The inspection will again be conducted by the Employer.

The request for inspection shall be accompanied by the following documents:

- (a) Final Inspection Report (Completion) by the Employer;
- (b) Certificate of Completion for the Project;
- (c) Certification from the Employer that they have conducted inspection of the project after the Defects/Liability Period together with the punch-list of defects/failures that occurred during the period; and
- (d) Certification from the Employer that the Contractor has already corrected the noted defects/failures of the project

and that all rectification works were verified to have been undertaken in accordance with recommendations of the Employer.

If everything is satisfactorily corrected as found during the Employer's inspection, a Performance Certificate shall be issued to the Contractor as soon as possible.

Add the following Sub-Clauses:

**Sub-Clause 11.12
Maintenance or
Defects Notification
Security**

Within 28 days after the issuance of the Hand-Over Certificate for the whole of the Works, the Contractor shall submit to the Employer a Maintenance / Defects Notification Security in a similar form as the Performance Security and in a fixed sum equivalent to five percent (5%) of the contract price effective for 1 year. On receipt of the Maintenance/Defects Notification Security, the Performance Security shall be released to the Contractor by the Employer, provided that there are no claims filed and/or pending against the Performance Security.

**Sub-Clauses 11.13
Extension of
Security Period**

The Contractor shall ensure that the periods of validity of the Performance Security and the Defects Notification Security are extended to reflect the actual period required for completing the Works prior to taking over by the Employer and any extended maintenance periods arising through major repairs of or replacement of defective Plant. Such extensions of the periods of validity of the securities shall be arranged entirely at the expense of the Contractor.

CLAUSE 12 MEASUREMENT AND EVALUATION

Amend Sub-Clause 12.1 to read:

**Sub-Clauses 12.1
Works to be
Measured**

The Contractor shall ascertain and determine by measurement the value of the Works accepted by the Engineer in accordance with the Contract and such measurement shall be subject for review and approval by the Engineer and the Employer respectively. The value of the Works measured and approved shall be paid for in accordance with Clause 14. The Engineer shall at anytime have the right to be present and participate, if in his opinion it is necessary or desirable, in the measurement of the completed works provided that such shall not prejudice the authority of the Engineer to review and disapprove such measurement. The Engineer shall, when he requires any part of the works to be measured anew, give reasonable notice to the Contractor 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 neglect or omit to send his representative, then the measurement made by the Engineer or verified/recommended by him shall be taken to be the correct measurement of such part of the Works.

Except as otherwise stated in the Contract, 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 records and drawings, the Contractor does not agree the same or does not sign the same as agreed, they shall nevertheless be taken to be correct, unless the Contractor, within 14 days of such examination, lodges with the Engineer notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Engineer shall review the records and drawings and either confirm or vary them.

Add the following paragraphs:

**Sub-Clause 12.2
Method of
Measurement**

All Works completed and accepted under the Contract shall be measured by the Contractor according to the Indonesian standard metric measurement. The Engineer shall at any time have the right to be present to supervise the taking of such measurements. For the purpose of measuring permanent works, the Contractor shall prepare records and drawings which shall be submitted to the Engineer for approval.

Unless otherwise shown on the Drawings or specified in the Specifications, all lengths and distances shall be measured horizontally. Pavement surfaces, when paid for by surface measurement, shall be measured along the actual surface and not horizontally. Items paid for by the linear meter, such as culverts, fences, underdrains, etc., shall be measured parallel to the base of foundation upon which such structures are placed. In computing volumes, the method of average end areas with distances to be measured along the centerline will be used for excavation and embankments, and the prismoidal formula will be used for masonry. Structures shall be measured according to neat lines shown on the Drawings or as ordered by the Engineer.

Unless otherwise specifically provided for in the Specifications or in the Special Provisions, items to be paid for by weight shall be measured on suitable scales furnished by and at the expense of the Contractor. Such scales shall be tested and sealed at the Contractor's expense as often as is deemed by the Engineer to be necessary to insure accurate measurement.

Where measurement by volume in vehicles is stipulated, the water-level capacity of the vehicle shall be determined by the Engineer. Measurement shall be at the point of delivery to the nearest 0.1 cubic meter.

CLAUSE 13 VARIATIONS AND ADJUSTMENTS

Add the following Sub-Clauses:

Sub-Clause 13.1.1 Variation Order

The Engineer, upon approval by the Employer, shall make any variations of the Works or any part thereof that may in his opinion be necessary for the completion of the Works. The variation orders will cover any increase/decrease in quantities, including the introduction of new work items that are not included in the original contract or reclassification of work items that are either due to change of plans, design or alignment to suit actual field conditions resulting in disparity between the pre-construction plans used for purposes of bidding and the "As-Staked" Plans or constructions drawings prepared after a joint survey by the Employer, the Engineer and the Contractor after award of contract. The addition/deletion of works should be within the general scope of the project as bid and awarded. A variation order may either be in the form of a Change Order, Extra Work Order or a Supplemental Agreement.

Sub-Clause 13.1.2 Change Order

A Change Order may be issued by the Engineer after it has been approved by the Employer to cover any increase/decrease in quantities of original work items in the Contract under the following conditions:

- a. Where the aggregate cost of Change Order(s) is limited to twenty five percent (25%) of the escalated original contract cost provided that no major pay item (i.e., pay item which represents more than 2% of total estimated cost of the contract) shall be increased by more than 100% of its original cost. All Change Orders shall be subject to price adjustment in accordance with duly approved guidelines.
- b. Where there is a decrease or increase in original work items under the contract due to necessary deletion/addition of work items or sections of the Project.
- c. Where there is damage to structure and/or destruction of finished work in any section of the project due to force majeure or causes beyond the control of man.

For a unit price contract, quantity overruns or underruns of not more than ten percent (10%) of the estimates per item in the Bill of Quantities need not be covered by a Change Order provided that the same is authorized by the Employer.

Sub-Clause 13.1.3 Extra Work Order

An Extra Work Order may be issued by the Engineer after it has been approved by the Employer to cover the introduction of new work items under the following conditions:

- (1) Where additional works are needed and necessary for the completion, improvement or protection of the project which were not included as items of work in the original contract.
- (2) Where there are subsurface or latent physical conditions at the Site differing materially from those indicated in the

Contract beyond the limit of the Change Order.

- (3) Where there are unknown physical conditions at the Site of an unusual nature differing materially beyond the limits of a Change Order from those ordinarily encountered and generally recognized as inherent in the work of character provided for in the Contract.
- (4) Where there are duly approved construction drawings or any instruction issued by the implementing office during the term of Contract which involved extra cost.

**Sub-Clause 13.1.4
Supplemental
Agreement**

A separate Supplemental Agreement may be entered into for all change orders and extra work orders if the aggregate amount exceeds 25% of the escalated original contract price. A Supplemental Agreement may likewise be entered into for Works immediately beyond the project limits but are immediately abutting the project under the same terms and conditions as the original contract provided that it does not exceed 100% of the escalated original contract price less the cost of mobilization and provided further that funds are certified as available and subject to approval by the Employer.

Add the following paragraphs:

**Sub-Clause 13.3
Variation
Procedure**

Any Variation Order (Change Order or Extra Work Order) shall be subject to the escalation formula used to adjust the original contract price less the cost of mobilization.

In claiming for any variation order, the Contractor shall, within seven (7) calendar days after such work has been commenced or after circumstances leading to such condition(s) leading to the extra cost have occurred give notice to the Engineer of his intention to request for a variation order and, within twenty eight (28) calendar days deliver a written communication giving full and detailed particulars of any extra cost in order that it may be investigated at the time.”. Failure to provide either of such notices in the time stipulated shall constitute a waiver by the Contractor for any claim. The preparation and submission of Change Orders, Extra Work Orders or Supplemental Agreements are as follows:

- (a) If the Engineer believes that Change Order, Extra Work Order or Supplemental Agreement should be issued, he shall prepare the proposed Order or Supplemental Agreement accompanied with the notices submitted by the Contractor, the plans therefore, his computations as to the quantities of the additional works involved per item indicating the specific stations where such works are needed, the date of his inspections and investigations thereon, and the log book thereof, and a detailed estimate of the unit cost of such items of work together with his justifications for the need of such Change Order, Extra

Work Order or Supplemental Agreement, and shall submit the same to the Employer.

- (b) The Employer upon receipt of the proposed Change Order, Extra Work or Supplemental Agreement shall instruct the Engineer to conduct an on-the-spot investigation to verify the need for the work to be prosecuted. A report of such investigation shall be submitted directly to the Employer
- (c) The Engineer after being satisfied that such Change Order, Extra Work Order or Supplemental Agreement is justified and necessary, shall review the estimated quantities and prices and forward the proposal with supporting documentation to the Employer for consideration.
- (d) If, after review of the plans, quantities and estimated unit cost of the items of work involved, the proper office/agency committee empowered to review and evaluate Change Orders, Extra Work Orders or Supplemental Agreements recommends approval thereof, the Employer believing the Change Order, Extra Work Order or Supplemental Agreement to be in order, shall approve the same.

Provided further that no change in the rate or prices for any items contained in the Contract shall be considered unless such item accounts for an amount more than two (2) percent of the contract price as stated in the Letter of Acceptance and the actual quantity of work exceeds or falls short of the quantity set out for the Bill of Quantities by more than twenty five percent (25%).

Add the following paragraphs:

**Sub-Clause 13.4
Payment in
Applicable
Currencies**

All payments to the Contractor shall be computed first in Indonesian Rupiah. Any amount to be billed by the Contractor for expenditures made in other currencies shall be converted to Indonesian Rupiah. For the purposes of such computation, the exchange rates provided under Clause 14.15 of the Conditions of Contract shall be used.

To be entitled for payment in foreign currency(ies), the Contractor shall produce proof of purchase and/or payment and other pertinent documentary evidences as may be acceptable to the Employer, attesting that the Contractor actually incurred such expenditures in foreign currency from the materials procured in Japan.

Add the following to Sub-clause 13.7:

**Sub-Clause 13.7
Adjustments for
Changes in
Legislation**

The amounts payable to the Contractor and valued at base rates and prices pursuant to Sub-Clause 14.3 (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 in accordance with the following Sub-Clause 13.8.

Amend Sub-clause 13.8 to read:

**Sub-Clause 13.8
Adjustments for
Changes in Cost**

The amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in Sub-Clause 13.9. 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 contingency of such other rise or fall of costs.

The unit prices in the contract shall be adjusted by applying the following formulae:

- a) For project without application of Advance Payment

$$H_n = H_o I_n$$

- b) For project with Application of Advance Payment

- i) In case that the Advance Payment is made within three (3) months after the date of submission, the following formulae is applied to the adjustment of the unit prices:

$$H_n = U_m H_o + (1 - U_m) H_o I_n$$

- ii) In case that the Advance Payment is made more than three (3) months after the date of submission, the following formulae is applied to the adjustment of the unit prices:

$$H_n = U_m H_o I_u + (1 - U_m) H_o I_n$$

Where:

H_n = Unit price of pay items, which have been specified in Appendix 6 to Bid, at specific date when the work is scheduled to be done.

H_o = Unit price of pay items, which have been specified in Appendix 6 to Bid, at specific date defined in Sub-clause 13.10.

U_m = Percentage (%) of Advance Payment defined in Sub-clause 14.2 and stated in the Appendix to Bid.

I_n = Price adjustment indices of item, which have been specified in the Appendix 6 to Bid, at the specific date when the work

is scheduled to done.

I_u = Price adjustment indices of item, which have been specified in the Appendix 6 to Bid, at the specific date when the Advance Payment is made to the Contractor (Issuance date of the document).

The selected pay items as per Appendix 5 to Bid, shall be adjusted in respect of the rise or fall in the cost of inputs to the works by applying the formula prescribed in this clause to the local components (Rupiah) of labor, materials, equipment and fuel only. The foreign component of the selected pay items shall not be eligible to cost escalation or de-escalation.

Add the following Sub-Clauses:

**Sub-Clause 13.9
Adjustments for
Changes in Cost
Of Local Currency
Payments**

It is mandatory to include price adjustment provisions if the contract extends beyond 18 months. The adjustment to the Interim Payment Certificates in respect of change of cost and legislation shall be determined from the formulae below for the local currency (Rupiah) portion on selected pay items.

$$P_n = A + I(L_n/L_o) + m_1(M_{1n}/M_{1o}) + m_2(M_{2n}/M_{2o}) + m_3(M_{3n}/M_{3o}) + e(E_n/E_o) + f(F_n/F_o)$$

Where:

P_n = is the fluctuation factor, to be applied to the local currency portion (Rupiah) of the affected pay items, being the coefficient representing the increase or decrease of the unit price as a result of fluctuation.

“A” = is a 0.15 fixed coefficient representing the contractor’s profit, and other non-adjustable items.

$L, m_{(1,2,3)}, e$ and f = are the constants or weightings representing the estimated proportion of each cost element (labor, materials, equipment usage and fuel [based on Pertamina prices]) in the Works or sections thereof such that:

$$L + m_1 + m_2 + m_3 + e + f + A = 1$$

$L_o, M_{(1,2,3)o}, E_o$ and F_o are the base price indices or price at the date specified in Sub-clause 13.10.

Ln, **M_{(1,2,3)n}**, **En** and **Fn** are the current prices indices representing costs of labor, materials and equipment operating cost for the month and “n”, as determined in accordance with the date agreed upon in the contract and every month thereafter.

Ln and **Lo** are the General Indices for the relevant provincial capital published monthly in the “Indicator Economy”, Table 1.3, General Index.

M_{(1,2,3)n} and **M_{(1,2,3)o}** are the Price Indices for materials with the index sources applicable for each affected pay items are defined by the tables “Component Cost Factors for Pay Items” and “Price Index Sources”. The indices are published yearly in “Index Harga Perdagangan Besar Indonesia – The Wholesale Price of Indices for Building / Construction Material”. Interim data may be obtained directly from Badan Pusat Statistik.

En and **Eo** are Price Indices for equipment. The indices are published yearly in “Index Harga Perdagangan Besar Indonesia – The Wholesale Price of Indices for Building / Construction Material, Iten 23, Machines and Spare Parts”. Interim data may be obtained directly from Badan Pusat Statistik.

Fn and **Fo** are Price Indices for fuel. The indices are published yearly in “Index Harga Perdagangan Besar Indonesia – The Wholesale Price of Indices for Building / Construction Material, Iten 11, Oil Refinery Products”. Interim data may be obtained directly from Badan Pusat Statistik.

**Sub-Clause 13.10
Base, Current and
Provisional
Indices**

The base cost indices or prices shall be those prevailing on the date 28 days after the scheduled date of completion of the Works. Current indices or prices shall be those prevailing on the day 28 days prior to the last day of the period to which a particular Interim Payment Certificate is related. If any at the 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.

**Sub-Clause 13.11
Weightings**

The weightings for each of the factors of cost given in the Bidding Data for local currency portion 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 or executed or instructed under Clause 13 or for any other reason.

**Sub-Clause 13.12
Sources of Indices
And Weightings**

The sources of indices shall be those listed in the Bidding Data, or as approved by the Engineer. Indices shall be appropriate for their purpose and shall relate to the Contractor’s proposed source of supply of inputs on the basis of which the Contract Price and expected foreign currency requirements shall have been computed.

As the proposed basis for price adjustment, the Contractor shall have submitted with his bid the tabulation weightings and source of Indices in the Appendix to Bid, which shall be subject to the approval by the Engineer.

**Sub-Clause 13.13
Adjustment after
Completion**

If the Contractor fails to complete the Works within the time for completion prescribed under Clause 8, 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 Sub-Clause 8.4, the above provision shall apply only to adjustments made after the expiry of such extension of time.

**Sub-Clause 13.14
Subsequent
Legislation**

If, after the day of the scheduled date of completion of the Works, there occur in Indonesia 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 13, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, 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 taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 13.8 to 13.13.

CLAUSE 14 CONTRACT PRICE AND PAYMENT

Amend the fifth paragraph to read:

**Sub-Clause 14.2
Advance Payment**

The advance payment shall be made in accordance with the following:

1. The Employer shall, upon a written request of the Contractor which shall be submitted as a contract document, make an advance payment to the Contractor in an amount equal to fifteen percent (15%) of the total contract price, to be made in accordance with the schedule specified in the Appendix to Bid and other relevant Bidding Documents.
2. The advance payment shall be made only upon approval of the contract, issuance of the Notice to Proceed (NTP) and only upon submission to and acceptance by the Employer

of a bank guarantee in a form and by a reputable bank acceptable to the Employer in amount(s) and currency(ies) equal to the advance payment, or a guarantee payment bond, callable on demand, issued by a surety or insurance company acceptable to the Employer.

3. The advance payment shall be repaid by the Contractor through percentage deductions from the Monthly Certificates or Interim Payment Certificates certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate (Monthly Certificate) following that in which the total of all interim payments certified to the Contractor has reached the percentage of the Contract price stipulated in the Appendix to Bid less Provisional Sums (if any), and shall be made at the rate stated in the Appendix to Bid 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 80% percent of the Contract Price has been certified for payment.

Amend Sub-clause 14.4 to read:

**Sub-Clause 14.3
Application of
Interim Payment
Certificates
(Monthly
Certificates)**

Disbursement procedures of JBIC ODA Loans shall be applied for disbursement of the proceeds of JBIC ODA Loans for eligible payments under this Contract. The Contractor shall submit a statement in six (6) 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 12.1 at the unit rates and prices included in the Contract, in the various currencies of the Contract Price 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 previous month, at the 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 the various currencies of the Contract Price 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 Sub-Clause 13.3;
- (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 in the Bill of Quantities;
- (f) Amounts reflecting changes in cost, pursuant to Sub-Clause 13.7 and 13.8 expressed in the relevant amounts of foreign and local currencies;
- (g) Any credit or debit for the amount 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 14.5;
- (h) A Retention Money amounting to ten (10) percent of the amounts, in foreign and local currencies, due under paragraphs 14.3 (c), (d), (e) and (f) shall be made by the Engineer in the first and following Interim Payment Certificates until the amount so retained by the Employer reaches the limit of Retention Money stated in the Appendix to Bid;
- (i) Any amounts to be deducted as repayment of the Advance under the provisions of Sub-clause 14.2: and
- (j) Any other sum expressed in the applicable currency or currencies to which the Contractor may be entitled under the Contract or otherwise.

Amend Sub-Clause 14.5 to read as:

**Sub-Clause 14.5
Plant and Materials
Intended for the
Works**

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

- a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction.
 - (i) the materials and Plant are in accordance with 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 records 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 currencies of payment thereof are those indicated in the Appendix to Bid;
- b) the amount to be credited to the Contractor shall be the equivalent of 80 percent of the Contractor's reasonable cost of the materials and Plant delivered to the Site, as determined by the Engineer after review of the Documents listed in paragraph (a) (iv) above, as determined by the Engineer;
 - c) the amount to be debited to the Contractor for any materials and Plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and Plant pursuant to Sub-Clause (b) above as determined by the Engineer 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 case of a credit, the currencies shall be those listed in the Appendix to Bid for the relevant item of materials or Plant; and (ii) that in case of debit, the currencies shall be those in which the credit for the respective item of materials or Plant had been given.

Amend Sub-Clause 14.6 except the last paragraph:

**Sub-Clause 14.6
Issue of Interim
Payment
Certificates**

The said statement shall be approved or amended by the Engineer in such a way that, in the Engineer's opinions, it reflects the amounts in various currencies due the Contractor in accordance with the Contract, after deduction, other than pursuant to Sub-Clause 8.7, of any sums which may have become due and payable by the Contractor to the Employer." In case there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within 28 days of receipt of the monthly statement referred to in Sub-Clause 14.3, the Engineer shall determine the amounts due the Contractor and shall issue to the Employer and the Contractor a certificate herein called "Interim Payment Certificate", certifying the amounts due the Contractor.

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, would be less than the Minimum

Amount of Interim Payment Certificate stated in the Appendix to Bid.

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.

Amend Sub-Clause 14.7 to read as:

**Sub-Clause 14.7
Payment**

The Employer shall pay to the Contractor:

- a) advance payments in accordance with Sub-Clause 14.2;
- b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and
- c) the amount certified in the Final Payment Certificate within 84 days after the Employer receives this Payment Certificates.

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

Amend Sub-Clause 14.8 to read as:

**Sub-Clause 14.8
Delayed Payment**

In the event of failure of the Employer to make payment within the times stated, the Employer shall pay the Contractor interest compounded monthly at the rate(s) stated below upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due.

In the case of payments in more than one currency, the interest rate shall be the commercial rates for daily borrowing as published by the Central Bank of Indonesia.

Amend Sub-Clause 14.9 to read as:

**Sub-Clause 14.9
Payment of
Retention Money**

Upon the issue of the Taking-Over Certificate with respect to the whole of the Works, one half of the Retention Money, or upon issue of a Taking-Over Certificate with respect to a section or part of the Permanent Works only such portion thereof as the Engineer determines having regard to the relative value of such section or part of the permanent work, 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 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 the issue of the Taking-Over Certificate to the expiry of the Contract Period.

Upon the expiration of the Defects Notification Period (Maintenance 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 other Defect Notification Periods (Maintenance Period) being applicable to different section or parts of the Permanent Works pursuant to Sub-Clause 10.1 the expression "expiration of the Defects Notification Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such Defects Notification Period.

Provided also that if at such time, there shall remain to be executed by the Contractor any work pursuant to Sub-Clauses 11.1 and 11.8, the Engineer shall be entitled to withhold certification until completion of such work of so much of the balance of the Retention Money of which, in the opinion of the Engineer, represent the cost of the work remaining to be executed.

Amend Sub-Clause 14.15 (e) to read as:

**Sub-Clause 14.15
Currencies of
Payment**

- (e) if no rates of exchange are stated in the Appendix to Bid, they shall be the selling rates prevailing, as determined by the Central Bank of Indonesia or another appropriate source agreed between the Employer and the Contractor, on the Base Date (28 days prior to the deadline for submission of the Bid).

Add the following paragraphs:

The amount in foreign currency which the Contractor quotes in his Bid shall be justified by a unit price breakdown. The expected foreign currency requirements in his Bid shall include but not limited to the specific requirements mentioned below, subject however for negotiation, between the Contractor and the Employer.

- a. Expatriate staff and labor employed directly on the works;
- b. Social insurance, medical and other charges to such expatriate staff labour, and foreign travel expenses;
- c. Imported materials, both temporary and permanent, required or the Work;
- d. Depreciation and use of imported plants and equipment, including spare parts required for the Work;
- e. Foreign insurance and freight charges for imported materials, plant and equipment, including spare parts; and
- f. Overhead expenses, fees and financial charges arising outside the Indonesians in connection with the Works.

The equivalent percentage of the agreed amount to be paid in foreign currency shall be recomputed and shall be adjusted proportionately to the fluctuation of the exchange rate used in the bid preparation and the exchange rate to be adopted in the payment to the Contractor. This percentage shall remain fixed throughout the contract duration

Add the following Sub-Clause:

**Sub-Clause 14.16
Place of Payment**

Foreign currency payments to the Contractor by the Employer shall be made in accordance with the “Transfer Procedure” of JBIC. The Japanese Bank referred to in this Transfer Procedure shall be the Bank of Tokyo–Mitsubishi, Ltd., Tokyo, Japan. Local currency payments to the Contractor shall be authorized by DGH, and paid into a bank account nominated by the Contractor in the Republic of Indonesia, and payments shall be made by the Employer accordingly.

CLAUSE 15 TERMINATION BY EMPLOYER

Amend Sub-Clause 15.2 to read:

**Sub-Clause 15.2
Termination by
Employer**

The Employer shall be entitled to rescind the Contract when the Contractor has incurred a negative slippage of more than 15% and failed to comply with the requirements of the agreements of the Show Cause Meetings, regardless and whether or not previous warning have been issued to the Contractor to improve his performance, or for causes attributable to Contractor such as:

- (a) abandonment of the Contract Works;
- (b) fails to comply with Sub-Clause 4.2 or with notice under Sub-Clause 15.1;
- (c) not actually having on the project site the minimum essential equipment listed on the Appendix to Bid necessary to prosecute the works in accordance with the approved work schedule, as required for the project before the twenty five percent (25%) of the Original Contract Time expires;
- (d) not executing the Works in accordance with the Contract or is persistently or flagrantly neglecting to carry out his obligations under the Contract;
- (e) neglect or refusal to remove materials or to perform a new work that has been rejected as defective or unsuitable;
- (f) sub-letting any part of the Contract Works without approval by the Employer;
- (g) shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favor of his creditors or shall agree to carry out the Contract under a committee of inspectors of his creditors or, being a corporation, shall go into liquidation, other than a voluntary liquidation for the purposes of amalgamation or reconstruction, or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods; and
- (h) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other of value as an

inducement or reward.

In any of these events or circumstances, the Employer may, upon giving 14 days notice to the Contractor, terminate the Contract and expel the Contractor from the site. However, in the case of subparagraph (g) and (h), the Employer may by notice terminate the contract immediately.

Amend Sub-Clause 15.3 to read as:

**Sub-Clause 15.3
Valuation at Date
Of Termination**

After the issuance of the duly approved notice of termination, the Engineer, the Monetary Board of Examiners of Indonesia, and the Contractor or their respective representatives shall immediately conduct jointly an inventory which shall cover the following:

- 1) the work accomplished by the original Contractor as of the date of receipt of the notice of termination;
- 2) construction materials supplied to the Contractor by the Employer, if any;
- 3) materials that the Contractor has supplied and delivered at the project site, which the Employer or the new Contractor may use for the completion of the project;
- 4) all claims for labor, materials, equipment rentals, etc. used in the project.

The inventory serve as the basis for determining any amount still due to the Contractor or for work accomplished in the project, as well as the amount of obligation payable by the Contractor to the Employer, if any.

After giving fourteen (14) days notice in writing to the Contractor, the Employer may enter upon the Site and the Works and expel the Contractor therefrom 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 of the Employer or those conferred on the Engineer by the Contract, and may by itself complete the Works or may employ any other Contractor to complete the Works.

The Employer or such other Contractor may use for such completion so much of the construction plant, temporary works and materials which have been deemed to be reserved for the construction and completion of the Works, under the provisions of the Contract, as it or they may think proper, and the Employer may at any time sell any of the said construction plant, temporary works and unused materials and apply the proceeds of the sale in or towards the satisfaction of any sums due or which may become due to it from the Contractor under the Contract.

**CLAUSE 16 SUSPENSION AND TERMINATION BY
 CONTRACTOR**

Add the following to the first paragraph:

**Sub-Clause 16.2
Termination by
Contractor**

- (h) the Contract Works shall be completely stopped for a continuous period of more than three (3) months through no act or fault of the Contractor,
- (i) the Employer fails to deliver, within reasonable time, the necessary right-of-way, materials and supplies, it is obligated to furnish under the terms of the Contract, or
- (j) an adverse peace and order situation at the Site, as certified in writing by the Indonesian National Police having responsibility over the area of interest, makes it impossible to work.

Add the following as final paragraphs:

**Sub-Clause 16.4
Payment on
Termination**

Upon the issuance of the duly approved notice of termination of the Contract, the Engineer, the Monetary Board of Examiners of Indonesia and the Contractor or their respective representatives shall immediately conduct jointly an inventory adapting the same procedure under Sub-Clause 15.3.

If the Contract is terminated, the Contractor shall be paid for all the Works certified by the Engineer as having been executed and accomplished prior to the date of termination at the rates and prices provided for in the Contract, plus the following:

- 1) The amounts payable in respect of any preliminary items insofar as the work or service comprised therein has been carried out or performed, and a proper proportion as certified by the Engineer of any such items of the work or service comprised therein which has been partially carried out or performed.
- 2) The cost of materials or goods such as steel girders, expansion joint, steel bearings, rebars, etc. and other materials procured from Japan for the Permanent Works or Temporary Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or goods becoming the property of the Employer upon such payments being made by it).
- 3) The reasonable cost of removal of the construction Plant and the return thereof to the Contractor's plant site.

Provided always that against any payment due from the Employer under this clause, the Employer shall be entitled to be credited with any outstanding balance due from the Contractor for advances in respect of Construction Plant and materials, and any sum previously paid by the Employer to the Contractor in respect of the execution of the Work

CLAUSE 17 RISK AND RESPONSIBILITY

Add the following paragraph:

Sub-Clause 17.5 Intellectual and Industrial Property Rights

The Contractor's prices are to include all royalties and cost arising from patents, trademarks and copyrights in any way involved in the Works.

CLAUSE 18 INSURANCE

Add the following Sub-paragraph 18.2 (f):

Sub-Clause 18.2 Insurance for Works and Contractor's Equipment

- (f) Shall be a Contractor's All Risk's Policy with an insurance company acceptable to the Employer, which shall be already in effect from the first working day after the Commencement date.

Add the following paragraph:

Sub-Clause 18.3 Insurance against Injury to Persons and Damaged to Property

The insurance shall be with an insurance company acceptable to the Employer, which shall be in effect from the first working date after the commencement date.

CLAUSE 20 CLAIMS, DISPUTES AND ARBITRATION

Delete Sub-Clauses 20.2 and 20.3.

Delete the second paragraph of Sub-Clause 20.4 a substitute with the following:

Sub-Clause 20.4 Obtaining Dispute Adjudication Board's Decision

The Engineer shall act as the DAB in accordance with this Sub-Clause 20.4, acting fairly, impartially and at the cost of the Employer. In the event that the Employer intends to replace the Engineer, the Employer's notice under Sub-clause 3.4 shall include detailed proposals for the appointment of a replacement DAB.

Sub-Clause 20.5 Amicable Settlement

The provisions of this Sub-Clause are intended to encourage the

parties to settle a dispute amicably, without the need of arbitration: for example by direct negotiation, conciliation, mediation or other forms of alternative dispute resolution. Amicable settlement procedures often depend, for their success, on confidentiality and on both Parties' acceptance of the procedure. Therefore, neither party should seek to impose the procedure on the other Party.

Amend the following Sub-Clause 20.6 to read as:

**Sub-Clause 20.6
Arbitration**

Any dispute in respect of which the Recommendation, if any, of the Board has not become final and binding shall be finally settled by Arbitration under the UNCITRAL Arbitration Rules. The arbitral tribunal shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate, or valuation of the Engineer and any Recommendation(s) of the Board related to the dispute.

No party shall be limited in the proceedings before such tribunal to the evidence or arguments put before the Board for the purpose of obtaining its Recommendation(s) pursuant to Sub-clause 20.1. No Recommendation shall disqualify any Board Member from being called as witness and giving evidence before the Arbitrator(s) on any matter whatsoever relevant to the dispute.

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

The language of arbitration shall be the English Language.

Amend Sub-Clause 20.7 to read as:

**Sub-Clause 20.7
Failure to comply
With Dispute
Adjudication
Board's Decision**

Where neither the Employer nor the Contractor has given notice of intention to commence arbitration of a dispute within the period stated in Sub-clause 20.2 and the related Recommendation has become final and binding, either Party may, if the other Party fails to comply with such Recommendation and without prejudice to any other right it may have, refer the failure to arbitration in accordance with Sub-clause 20.6. The provision of Sub-clause 20.1 shall not apply to ant such reference.

ADDITIONAL CLAUSES - MISCELLANEOUS CONDITIONS

Following Clause 21 shall be added:

CLAUSE 21 TAXATION

Add the following Sub-Clauses:

Sub-Clause 21.1 General Taxation

Notwithstanding the following taxation provisions stated herein, all are subject to Indonesian Laws in connection with the Project. The Contractor shall be deemed to have familiarized himself with the relevant tax laws and regulations of the Republic of Indonesia.

Sub-Clause 21.2 Foreign Taxation, Duties, Levies and other Charges

The unit prices bid by the Contractor shall include all taxes, duties, levies and other charges imposed outside Indonesia on the production, manufacture, sale and transport of the Contractor's equipment, Plant, materials, spare parts and supplies to be used on, or furnished under the Contract and on the services performed under the Contract.

Sub-Clause 21.3 Local Taxation, Duties, Levies and other Charges

The unit prices bid by the Contractor shall not include import taxes and duties that may be levied in accordance to the laws and regulations in being as of the Base Date in the Republic of Indonesia on the Contractor's Equipment, Plant, Materials and Supplies (permanent, temporary and consumable) acquired for the purpose of the Contract and on the services performed under the Contract. However, all such taxes shall be itemized by the Contractor in the appropriate schedules and submitted together with his bid. It being understood that in accordance with the Exchange of Notes, the Government of the Republic of Indonesia, through DGH shall be liable for the payment of all import duties, tariffs and taxes on the materials and equipment to be used for the Project and on the income tax imposable in the Republic of Indonesia on the income of the Contractor from the Project.

Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Republic of Indonesia that is not expressly stated to be the responsibility of the Government of the Republic of Indonesia through DGH, and for the Contractor's responsibility to file the requisite tax returns with pertinent taxing agencies of the Republic of Indonesia, regardless of the Party responsible for the payment of the taxes subject of the tax returns. The Contractor shall be deemed to have been familiar with the tax laws in the Republic of Indonesia prior to submitting his bid.

**Sub-Clauses 21.4
Income Taxes on
Staff**

The imposable income tax in the Republic of Indonesia on the compensation of the Japanese personnel and staff of the Contractor as are chargeable under the laws and regulations for the time being in force, shall be borne by the Republic of Indonesia through DGH. It is understood, however, that the Contractor and his Japanese personnel and staff shall continue to be responsible for compliance with the pertinent tax laws and regulations in respect of the filing of the requisite tax returns and withholding tax certificates and tax returns.

All other personnel, staff and labour of the Contractor who are nationals of Indonesia or of other countries other than Japan will be liable to pay personnel income taxes in respect of such of their salaries 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 deductions thereof as may be imposed on him by such laws and regulations.

**Sub-Clause 21.5
Duties on
Contractor's
Equipment**

Notwithstanding the provisions of Sub-Clause 21.2, Contractor's Equipment, including essential spare parts thereof, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempted from payment of import duties and taxes upon initial importation, provided the Contractor shall post with the Customs Authorities at the port of entry an approved re-export bond or bank guarantee, valid until the time of completion of the Contract plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's equipment and spare parts and callable in the event that the Contractor's Equipment is not re-exported from Indonesia on completion of the Contract. A copy of the bond or bank guarantee endorsed by the Customs Authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of the Contractor's equipment or spare parts, or upon completion of the Contract, the Contractor, shall prepare, for approval by the custom authorities, an assessment of the residual value of the Contractor's equipment and spare parts to be re-exported based on the depreciation scale(s) and other criteria used by the Customs authorities for such purposes under the provisions of the applicable law.

The said re-export bond or bank guarantee posted by the Contractor with the customs authorities shall be released in full upon re-export of the said equipment and spare parts on completion of the Contract.

The Contractor however, will be required to pay import taxes and duties on the residual value of equipment and spare parts remaining in Indonesia after completion of the Contract

Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.”

**Sub-Clause 21.6
Import Duties and
Related Taxes on
Materials**

Importation of materials for this Project shall be subject to duties and taxation according to the prevailing laws and regulations of the Republic of Indonesia, payable by the Government of the Republic of Indonesia, through **DGH**, at the time of importation.

To facilitate the payment of such import duties and taxes, all importations shall be coursed through and handled by **DGH**. For the purpose of the foregoing, the Contractor shall ensure that all documents relative to the shipment to and importation in Indonesia of such materials and equipment are complete and accurate, and are properly furnished to **DGH**.

Following Clause 22 shall be added:

CLAUSE 22 MISCELLANEOUS:

**Sub-Clause 22.1
Registration of
Foreign
Contractor**

The Contractor, if not registered in accordance with Indonesian laws, may, prior to the execution of the Contract, register his business in accordance with the laws of the Republic of Indonesia.

**Sub-Clause 22.2
Bribes**

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, 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 15.1 hereof shall apply as if such entry and expulsion had been made pursuant to that Clause

**Sub-Clause 22.3
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.
- (b) For the purposes of this Clause, "origin" means the place where the equipment is produced, or manufactures, or from which the services are provided.
- (c) The origin of Goods and Services is distinct from the Nationality of the Supplier.

**Sub-Clause 22.4
Joint and Several
Liability**

If the Contractor is a Joint Venture of two or more persons, all such persons 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 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

**Sub-Clause 22.5
Details to be
Confidential**

The Contractor shall treat the details of the Contract as private and confidential, save insofar 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 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 decision of the Employer whose award shall be final.

**Sub-Clause 22.6
Metrication**

The Work has been designed in the Metric System, unless otherwise specifically excerpted, all equipment, materials, standard and drawings required for the execution and completion of the Work shall be supplied in metric units in accordance with the International Standard.

The unit of measurement for the project shall be those indicated in the Method of Measurement and Payment of the individual item shown in the Bill of Quantities and as described in the Technical Specifications and/or Special Provisions.

**Sub-Clause 22.7
Alternative
Materials**

In cases where any prescribed materials are not readily obtainable in the market, the Contractor may request in writing to the Engineer to use alternative materials which may be acceptable and approved by the Employer to avoid a delay in the performance of the Contractor's obligation under the Contract, provided that such substitute materials are of equal or better quality.

**Sub-Clause 22.8
Dangerous
Materials**

The Contractor and his Sub-Contractors shall convey, store and make use of all explosives, petroleum, acetylene, carbide, or calcium and other similar dangerous materials provided by them for use in or on the Works in strict accordance with the provisions of all laws, ordinances, orders and rules and regulations that are in force at the Site or may be issued from time to time by the Government agency concerned during the progress of the Works.

**Sub-Clause 22.9
Employer and
Engineer not
Personally Liable**

In carrying out any of the provisions of the Contract, or in exercising

any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Employer, Engineer, or their authorized representatives, either personally or as officials of the Government, it being understood that in all such matters they act solely as agents and representatives of the Government.

**Sub-Clause 22.10
Inducements,
Rewards and/or
Gifts**

The Employer shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination or shall be entitled to recover from the Contractor the amount of any loss the Employer may have sustained, if the Contractor shall have offered or given or agreed to give any person any consideration of any kind as an inducement or reward or gift for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer or forbearing to show favor or disfavor to any person in relation to this Contract or any other Contract with the Employer.

**Sub-Clause 22.11
Public Services
and Utilities**

The Contractor shall ascertain from each Public Services and Utilities Authority the existence and location of all utilities which may be effected by the Works. The absence of such information on the drawings shall not release the Contractor from his responsibility under this Sub-Clause. The Contractor shall be responsible for advising the appropriate authority and the Engineer of any utilities likely to be affected by the Works. The cost of moving the utilities to permit the execution of the work will be borne, and the work will be undertaken, by the appropriate authority except where specified in the Contract. The Contractor shall be responsible for marking the location of services and for their protection. In the event of damage, the Contractor shall immediately notify the concerned authority and the Engineer, and the Contractor shall bear the cost of repair.

**Sub-Clause 22.12
Load Restriction**

The Contractor shall comply with the legal restrictions in the hauling of materials on public roads beyond the limits of the Project.

The Contractor shall use every reasonable means to prevent any of the highways 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 plant and materials from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be caused to such highways and bridges.

Should it be found necessary for the Contractor to move one or more loads of constructional plant machinery or pre-constructed units, or parts of units of Work, over part of a highway or bridge, the moving whereof is likely to damage any highway or bridge unless special protection or strengthening is carried out, then the Contractor shall, before moving the load on to such highway or

bridge, give notice to the Engineer of the weight and other particulars of the load to be moved and his proposals of protection of strengthening the said highway or bridge. Unless prior to fourteen (14) days of the receipt of such notice, the Engineer shall by counter-notice direct that such protection of strengthening is necessary, then the Contractor will carry out at his own expenses such proposals or any modification thereof that the Engineer shall require.

The Contractor shall bear all responsibility and liability for damages or injury resulting from his failure to abide by this provision except when such transport or passage is done by special written permission of the Employer. The Contractor shall be responsible for all damages caused by his hauling within the limits of the Work.

Any type of equipment of such weight or so loaded as to cause damage to drainage structures of any kind, or to any other type of construction, either constructed or previously constructed, will not be permitted to operate in any location where damage would be caused. No loads shall be permitted on a pavement or base before the expiration of the curing period.

**Sub-Clause 22.13
Works for
Authorities**

The Contractor shall comply with all the requirements and shall be responsible for all measures associated with:

(a) Special arrangements with Local Government Officials

The Contractor shall make all necessary arrangements with the Local Government Officials regarding work to be carried out that may or may not affect any navigable channel and or Rivers and take all necessary precautions to avoid accidents, damage, delay or interference of any kind that may interrupt or disrupt navigable channels or affect river other operations. The Contractor shall have no right or claim for compensation arising out of the obligations prescribed in this Clause.

(b) Special Arrangements with the Water District/Department

The Contractor shall make all necessary arrangements for the planning and coordination of work associated with the installation of water supply pipes and shall permit the installation of such pipes by other during the course of construction. The Contractor shall have no right or claim for compensation arising out of any obligation under this Clause.

(c) Special Arrangements with the National Telecommunications Agency within the provinces of the project areas or to the nearest city

The Contractor shall be entirely responsible for ensuring that all his operations, installation of radio communication facilities and other provisions comply fully with the requirements of the National Telecommunications Company. The Contractor shall obtain all necessary permits/approvals required for his operation, type of radio equipment to be used which do not cause interference to

airport, telecommunications, navigation equipment and radio stations transmitter facilities in the area. The Contractor shall have no right or claim for compensation arising out any obligation under this Clause.

**Sub-Clause 22.14
Fire Prevention
and Control**

The Contractor shall obey all national, provincial, district, city and local fire laws and ordinances.

If fire occurs in the construction area of the Work the Contractor shall dispatch and direct sufficient men and equipment for fire fighting operations.

Free access shall be maintained at all times to fire hydrants and water valves.

**Sub-Clause 22.15
Drainage**

All portions of the Work shall be kept properly and adequately drained during construction. The Contractor will be held responsible for all damage which may be caused from inadequate or improper drainage of the Site of Works.

**Sub-Clause 22.16
Indonesian
Jurisdiction**

This Contract shall be deemed to be an Indonesian contract and shall be governed and construed according to Indonesian laws. The Indonesian Court shall have exclusive jurisdiction to hear and determine all legal actions and proceeding in the event of any litigation arising out of the Contract.

The Contractor shall comply with all existing laws, rules and regulations issued or to be issued by competent agencies or authorities of the Indonesian Government which may have particular application to the Contract.

THIS IS THE LAST PAGE OF THE CONDITIONS OF PARTICULAR APPLICATION.