

Section IV

Conditions of Contract

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A.General

1. Definitions

1.1 Boldface type is used to identify defined terms.

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

Bill of Qu

antities means the priced and completed Bill of Quantities forming part of the

Compensation Events are those defined in Clause 44 hereunder.

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

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

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

The **Contractor's bid** is the completed Bidding documents submitted by the Contractor to the Employer.

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

Days are calendar days; months are calendar months.

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

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

The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.

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

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

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

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

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

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

Materials are all supplies, including consumables, used by the Contractor for



incorporation in the Works.

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

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

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

Site Investigation Reports are those that were included in the Bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site. These reports also include those reports which are prepared for construction material sources.

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

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

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

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

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

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

2. Interpretation

- 2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.
- 2.2 If sectional completion is specified in the Contract Data, references in the Conditions of Contract to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - a. Agreement,
 - b. Letter of Acceptance,
 - c. Contractor's bid,
 - d. Contract Data,
 - e. Conditions of Contract,
 - f. Specifications,
 - g. Drawings,
 - h. Bill of Quantities, and
 - i. any other document listed in the Contract Data as forming part of the

Contract

- 3. Language and Law** 3.1 The language of the Contract and the law governing the Contract are stated in the Contract Data.
- 4. Project Manager's Decisions** 4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer fairly and impartially.
- 5. Delegation** 5.1 The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications** 6.1 Communications between parties that are referred to in the Conditions of Contract shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors** 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the Contract Data. The Contractor shall also provide facilities and services for them as described in the Schedule. Employer may modify schedule of other Contractors & shall notify the Contractor of such modification.
- 9. Personnel** 9.1 The Contractor shall employ either the key personnel named in the Schedule of Key Personnel, as referred to in the Contract Data, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Employer on the Project Manager's recommendation will approve any proposed replacement of key personnel only if their qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within 7 days and has no further connection with the work in the Contract.
- 9.3 A child who has not attained the age of fourteen years shall not be employed in any work as a labourer.
- 9.4 During continuance of the Contract, the Contractor and his sub-contractors shall abide at all times by all labour laws, including child labour related enactments, and rules made thereunder.
- 10. Employer's and Contractor's Risks** 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.



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- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- a. The risk of personal injury, death, loss of or damage to property (excluding the works, plant, materials, & equipment) which is due to
 - i. use or occupation of the Site by the Employer or for the purpose of the Works, which is the unavoidable result of the Works; or
 - ii. negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor;
 - b. The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant and Materials is an Employer's risk except loss or damage due to
- a. defect which existed on the Completion Date;
 - b. event occurring before the Completion Date, which was not itself an Employer's risk; or
 - c. activities of the Contractor on the Site after the Completion Date;
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer & the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts & deductibles stated in the Contract Data for the following events which are due to the Contractor's risks:
- a. loss of or damage to the Works, Plant and Materials;
 - b. loss of or damage to Equipment;
 - c. loss of or damage to property (except the Works, Plant, Materials and Equipment) in connection with the Contract; and
 - d. personal injury or death;
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Investigation**
- 14.1 The Contractor, in preparing the bid, shall rely on any Site Investigation Reports referred to in the Contract Data, supplemented by any information

available to the Bidder. In accordance with the Instructions to Bidders, Bidders must make their own arrangements to verify the availability and suitability of construction materials when preparing their Bids.

- 15. Queries about Contract Data** 15.1 The Project Manager will clarify queries on the Contract Data.
- 16. Contractor to Construct the Works** 16.1 The Contractor shall construct and install the Works in accordance with the Specification and Drawings.
- 17. The Works to Be Completed by the Intended Completion Date** 17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 18. Approval by the Project Manager** 18.1 The Contractor shall submit Specification and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 18.2 The Contractor shall be responsible for design of the Temporary Works.
- 18.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 18.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 18.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 19. Safety** 19.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 20. Discoveries** 20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- 21. Possession of the Site** 21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.



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- 22. Access to the Site** 22.1 The Contractor shall allow the Project Manager and any person authorised by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
- 23. Instructions** 23.1 The Contractor shall carry out all instructions of the Project Manager which comply with the laws of Nepal.
23.2 The Contractor shall permit the Donor Agency to inspect the Contractor's accounts and records relating to the performance of the Contractor and to have them audited by the auditors appointed by the Donor Agency, if so required by the Donor Agency.
- 24. Disputes** 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 25. Procedure for Disputes** 25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
25.2 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
25.3 In case of arbitration, the arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place shown in the Contract Data.
- 26. Replacement of Adjudicator** 26.1 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 28 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of receipt of such request.

B. Time Control

- 27. Program** 27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.
27.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
27.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the Contract Data. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next

- payment after the date on which the overdue Program has been submitted.
- 27.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
- 28. Extension of the Intended Completion Date**
- 28.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 28.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date



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

C. Quality Control

- 33. Identifying Defects** 33.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 34. Tests** 34.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.



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- 35. Correction of Defects** 35.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 35.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 36. Uncorrected Defects after Completion Date** 36.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. Cost Control

- 37. Bill of Quantities** 37.1 The Bill of Quantities shall contain items for the construction, installation, testing and commissioning work to be done by the Contractor.
- 37.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 38. Changes in the Quantities** 38.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
- 38.2 The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 10 percent, except with the prior approval of the Employer.
- 38.3 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 39. Variations** 39.1 All Variations shall be included in updated Programs produced by the Contractor.
- 40. Payments for Variations** 40.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period stated by the Project Manager & before the Variation is ordered by him.
- 40.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 38.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 40.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.

- 40.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 40.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 41. Cash Flow Forecasts**
- 41.1 When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
- 42. Payment Certificates**
- 42.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 42.2 The Project Manager shall check the Contractor's monthly statement (bill) and certify the amount to be paid to the Contractor.
- 42.3 The value of work executed shall be determined by the Project Manager.
- 42.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.
- 42.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 42.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 43. Payments**
- 43.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 43.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 43.3 Unless otherwise stated, all payments and deductions will be paid or charged in the proportions of currencies comprising the Contract Price.
- 43.4 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 44. Compensation Events**
- 44.1 The following shall be Compensation Events:
- The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.
 - The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

- c. The Project Manager orders a delay or does not issue Drawings, Specifications/instructions required for execution of Works on time.
 - d. The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
 - e. The Project Manager unreasonably does not approve a subcontract to be let.
 - f. Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
 - g. The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
 - h. Other contractors, public authorities, utilities, or the Employer do not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
 - i. The advance payment is delayed.
 - j. The effects on the Contractor of any of the Employer's Risks.
 - k. The Project Manager unreasonably delays issuing a Certificate of Completion.
 - l. Other Compensation Events described in the Contract or determined by the Project Manager shall apply.
- 44.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 44.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.
- 44.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.
- 45. Tax**
- 45.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of Bids for the Contract and the date of the last Certificate of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of Clause 47.
- 46. Currencies**
- 46.1 Where payments are made in currencies other than Nepalese Rupees, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's bid.

- 47. Price Adjustment** 47.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Contract Data. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:
- $$P_c = A_c + B_c \cdot I_{mc}/I_{oc}$$
- where:
 P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.
 A_c and B_c are coefficients specified in the Contract Data, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c”; and
 I_{mc} is the index prevailing at the end of the month being invoiced and I_{oc} is the index prevailing 28 days before bid opening for inputs payable; both in the specific currency “c”.
- 47.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
- 48. Retention** 48.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Contract Data until Completion of the whole of the Works.
- 48.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected.
- 48.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee.
- 49. Liquidated Damages** 49.1 The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 49.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 43.1.
- 50. Bonus** 50.1 It will be according to the contract data .
- 51. Advance Payment** 51.1 The Employer shall make advance payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against

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

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

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

52. Securities

52.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Defects Liability Certificate in the case of a bank guarantee.

53. Dayworks

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

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

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

53.4 The hiring charge for equipment other than those specified in the Bill of Quantities shall be based on the standard method of calculation.

54. Cost of Repairs

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

E. Finishing the Contract

55. Completion

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

56. Taking Over

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

57. Final Account

57.1 The Contractor shall supply the Project Manager with a detailed account of the

total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

- 58. Operating and Maintenance Manuals**
- 58.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.
- 58.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the Contract Data or the date instructed by the Project Manager, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the Contract Data from payments due to the Contractor.
- 59. Termination**
- 59.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 59.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- The Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorised by the Project Manager.
 - The Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days.
 - The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation.
 - A payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate.
 - The Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager.
 - The Contractor does not maintain a Security, which is required.
 - The Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the Contract Data.
 - If the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
For the purpose of this paragraph:
"Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish Bid Prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open



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- competition.
- i. The Contractor does not comply with sub-clauses 9.3 and 9.4 of the Conditions of Contract.
- 59.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 59.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 59.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- 60. Payment upon Termination**
- 60.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the Contract Data. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 60.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
- 61. Property**
- 61.1 All Materials on the Site, Plant, Equipment, Temporary Works and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
- 62. Release from Performance**
- 62.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.
- 63. Suspension of Donor Agency Loan/Credit/Grant**
- 63.1 In the event that the Donor Agency suspends the loan/ credit/grant to the Employer from which part of the payments to the Contractor are being made:
- a. the Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Donor Agency's suspension notice; and
- b. If the Contractor has not received sums due him within the 28 days for payment provided for in Sub-Clause 43.1, the Contractor may immediately issue a 14-day termination notice.

F. Additional Clauses

- 64. Project Manger's Duties and Authority** 64.1 The Project Manager's duty and authority are restricted to the extent of as detailed in the Contract Data.
- 65. Quarries and Spoil Dumps** 65.1 Any quarry operated as part of this Contract shall be maintained and left in a stable condition without steep slopes and be either refilled or drained and be landscaped by appropriate planting. Rock or gravel taken from a river shall be removed over some distance so as to limit the depth of material removed at any one location, not disrupt the river flow or damage or undermine the river banks.
- The Contractor shall not deposit excavated material on land in Government or private ownership except as directed by the Project Manager in writing or by permission in writing of the authority responsible for such land in Government ownership, or of the owner or responsible representative of the owner of such land in private ownership, and only then in those places and under such conditions as the authority, owner or responsible representative may prescribe.
- 66. Safety, Security and Protection of the Environment** 66.1 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 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. Provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when necessary or required by the Project Manager or by any duly constituted authority, for the protection of the Works of for the safety and convenience of the public or others.
 - c. Take all reasonable steps to protect the environment on and off the site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of his methods of operation.
 - d. Ensure that any cut or fill slopes are planted in grass or other plant cover as soon as possible to protect them from erosion. This planting shall follow the recommendations given in manuals and handbooks such as "Vegetation structures for stabilizing highway slopes – A manual for Nepal", department of Roads.
 - e. Any spoil or material removed from drains shall be disposed off to designated stable tipping areas as directed by the Project Manager.
 - f. Shall not use fuel wood as a means of heating during the processing or preparation of any materials forming oart of the works.
 - g. The Project Manager shall have the power to disallow any working practice or activity of the Contractor or direct that such practices or activities be modified should the Project Manager consider, on the advice of the relevant Government Departments, that the practices or activities will be harmful to wildlife.
 - j. Provide on the Site such life saving apparatus as may be appropriate and an adequate and easily accessible first aid outfit or such outfits as may be required by any government ordinance, factory act, etc., subsequently



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published and amended from time to time.

- 67. Local Taxation** 67.1 The prices tendered by the Contractor shall include all taxes that may be levied in accordance to the laws and regulations in being in Nepal on the date 28 days prior to the closing date for submissions of Bids on the Contractor's equipment, plant and materials acquired for the purpose of the Contract and on the services performed under the Contract. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in Nepal on profits made by him in respect of the Contract.
- 68. Value Added Tax** 68.1 The Contract is not exempted from value added tax. An amount specified in the schedule of taxes shall be paid by the Contractor in the concerned VAT office within time frame specified in VAT regulation.
- 69. Income Taxes on Staff** 69.1 The Contractor's staff, personal and labour will be liable to pay personal income taxes in Nepal in respect of their salaries and wages, as are chargeable under the laws and regulations for the time being in force, and the Contractor shall perform such duties in regard to such deductions as may be imposed on him by such laws and regulations.
- 69.2 The issue of the Final Account Certificate pursuant to clause 57 shall be made only upon submittal by the Contractor of a certificate of income tax clearance from His Majesty's Government of Nepal.
- 70. Duties, Taxes and Royalties** 70.1 Any element of royalty, duty or tax in the price of any goods including fuel oil, lubricating oil, cement, timber, iron and iron goods locally procured by the Contractor for the works shall be included in the Contract rates and prices and no reimbursement or payment in that respect shall be made to the Contractor.
- 70.2 The Contractor shall familiarise himself with the rules and regulations of Nepal with regard to customs, duties, taxes, clearing of goods and equipment, immigration and the like, and it will be necessary for him to follow the required procedures regardless of the assistance as may be provided by the Employer wherever possible.
- 70.3 The Contractor shall pay and shall not be entitled to the reimbursement of cost of extracting construction materials such as sand, stone/boulder, gravel, etc. from the river beds or quarries. Such prices will be levied by the local District Development Committee (DDC) as may be in force at the time. The Contractor, sub-contractor(s) employed directly by him and for whom he is responsible, will not be exempt from payment of royalties, taxes or other kinds of surcharges on these construction materials so extracted and paid for to the DDC.
- 71. Member of Government, etc, not Personally Liable** 71.1 No member or officer of HMGN or the Employer or the Project Manager or any of their respective employees shall be in any way personally bound or liable for the act or obligations of the Employer under the Contract or answerable for any default or omission in the observance or performance of any of act, matter or thing which are herein contained.
- 72. Approval of Use of Explosives** 72.1 No explosives of any kind shall be used by the Contractor without the prior consent of the Employer in writing and the Contractor shall provide, store and handle these and all other items of every kind whatsoever required for blasting operations, all at his own expense in a manner approved in writing by the



Employer.

- 73. Compliance with Regulations for Explosives** 73.1 The Contractor shall comply with all relevant ordinances, instructions and regulations which the Government, or other person or persons having due authority, may issue from time to time regarding the handling, transportation, storage and use of explosives.
- 74. Permission for Blasting** 74.1 The Contractor shall at all times maintain full liaison with and inform well in advance, and obtain such permission as is required from all Government authorities, public bodies and private parties whatsoever concerned or affected, or likely to be concerned or affected by blasting operation.
- 75. Records of Explosives** 75.1 Before the beginning of the Defects Liability Period, the Contractor shall account to the satisfaction of the Project Manager for all explosives brought on to the Site during the execution of the Contract and the Contractor shall remove all unused explosives from the Site on completion of works when ordered by the Project Manager.
- 76. Traffic Diversion** 76.1 The Contractor shall include the necessary safety procedures regarding motorised & pedestrian traffic diversion that is needed in execution of the works. The Contractor shall include in his costing of works, any temporary works or diversion that are needed during the construction period.
- All traffic diversion should be designed for the safety of both the motoring public and the men at work. It shall ensure the uninterrupted flow of traffic and minimum inconvenience to the public during the period concerned. As such, adequate warning signs, flagmen and other relevant safety precautionary measures shall be provided to warn motorists and pedestrians well ahead of the intended diversion as directed by the Project Manager.
- All traffic devices used shall be designed in accordance with prevailing Department of Roads Guidelines or as instructed by the Project Manager.

G. Provisional Sum

- 77. Definition of Provisional Sum** 77.1 "Provisional Sum" means a sum included in the Contract and so designated in the Bill of Quantities for the execution of any parts of the works or for the supply of goods, materials, plants or services, or for contingencies, which sum may be used, in whole or in part, or not at all, on the instructions of the Project Manager. The contractor shall be entitled to only such amounts in respect of the work, supply or contingencies to which such Provisional Sums relate as the Project Manager shall determine in accordance with this clause. The Project Manager shall notify the Contractor of any determinations made under this sub-clause with a copy to the Employer.
- 78. Use of Provisional Sum** 78.1 In respect of every provisional sum the Project manager shall have authority to issue instructions for the execution of work or for the supply of goods, materials, Plants, sums or services by:
- The contractor, in which case the contractor shall be entitled to an amount equal to the value thereof determined.



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- 79. Production of Voucher** 79.1 The Contractor shall produce to the Project Manager all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of provisional sums, except where work is valued in accordance with rates or prices set out in the Tender.
- 80. Payments** 80.1 For all goods, materials, plants or services supplied by the contractor, he shall be entitled to:
- a. the actual price paid by the contractor as approved by the Project Manager,
 - b. In respect of all other charges and profit a sum being the percentage rate of actual price paid. Such percentage shall be as provide in the Bill of Quantities.



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Section V

Contract Data

SECTION V

CONTRACT DATA

Conditions of Contract Clause Reference

1.1	<p>The Site is located at Kavre District, Nepal, as specified in Construction Standards.</p> <p>The Project Manager is: Distribution Centre Chief, Kavre Distribution Centre or any other competent person appointed by the Employer and notified to the contractor</p> <p>The name and identification number of the Contract is: Installation/ Erection, Commissioning & Testing and Handover of 11/0.4/0.23kv Distribution Line & Transformers at Various VDCS of Kavre District Including Transportation from NEA Stores.</p> <p>The Supervising Engineer: will be notified at the time of Contract Agreement.</p> <p>The Start Date shall be from the signing of the Contract.</p>
2.3	<p>The following documents also form part of the Contract:</p> <p>Addendum, if any.</p>
3.1	<p>The language of the Contract documents is English/ Nepali. The law that applies to the Contract is the law of the Federal Republics of Nepal.</p>
9.1	<p>The Schedule of Key Personnel shall be as defined in clause 4.5 of Section II, Instruction to Bidders.</p>
13.1	<p>The minimum insurance covers shall be: The minimum cover for personal injury or death insurance</p> <ol style="list-style-type: none">for the Contractor's employees is that specified in the Labor Act of Nepal andfor other people including NEA staff, consultant staff and third parties is NRs 500,000 (Five hundred thousands) per person, limited to 25 persons with unlimited number of occurrence.
14.1	<p>Site Investigation Reports: Not Available.</p>
17.1,	<p>The Intended Completion Date for the whole of the Works shall be 9 Calendar months from the Contract Agreement Date.</p>
21.1	<p>The Site Possession Date shall be within 7 (Seven) days after the signing of the contract. However, Site Possession may be provided in sections or partially.</p>
23.2	<p>Not Applicable.</p>
25.1	<p>Replace "28 days" by "84 days"</p>



25.2	Fees and types of reimbursable expenses to be paid to the Adjudicator: to be agreed later. Replace "28 days" by " 90 days"
25.3	Arbitration will take place in accordance with Arbitration Act 2055 B.S. Place of Arbitration is Kathmandu, Nepal.
26.1	Appointing Authority for the Adjudicator: to be agreed later.
27.1	The Contractor shall submit a Program for the Works during the signing of the contract.
27.3	The period between Program updates is 45 (forty five) days. The amount to be withheld for late submission of an updated Program is NRs 50,000 (Fifty thousand only).
35.1	The Defects Liability Period is 12 (twelve) months.
42.2	Add Sub-Clause 42.7 in Condition of Contract. The value of Interim Payment Certificate shall be not less than NRs 1,000,000.00 (One Million only). Not Applicable
43.1	The Employer shall pay the contractor the amounts certified by the Project Manager within 56 days. Progress Payments 1. Payments shall be made adhering to actual measurements at site strictly. For any variations in quantity the unit rate of the bid shall prevail. 2. Progress Payment shall be made only after the completion of work under any load center complete as mentioned in during contract agreement at suitable time frame as per standard drawing, specifications and as directed by the Project Manager.
44.1	The following events shall also be Compensation Events: None
47.1	The Contract is not subject to price adjustment and is fixed price contract .
48.1	The proportion of payments retained is 5% (five) percent of the amount certified by the Project Manager for interim payment.
48.2	After the expiry of Defects Liability Period, total amount retained shall be released upon submission of tax clearance certificates (including VAT) and certification of completeness by the Project
49.1	The liquidated damages will be calculated at 0.05 percentage of the value of the Contract. The maximum amount of liquidated damages is 10% (ten) percent of the Contract Price.
51.1	The Advance Payment shall be limited to 10% (ten percent) of the Contract Price excluding provisional sums and day-works. The advance payment shall be deducted in proportion to each and every running bill submitted by the contractor. The advance bank guarantee shall be made valid up to the entire contract period.



2.1	<p>Performance Security: If the bid price is within 85% of the official estimate value: five percent of the Bid Price including VAT. If the bid price is less than 85% of the official estimate value: (85% of Estimate – Bid Price including VAT) x 0.5 + five percent of Bid Price including VAT</p> <p>It shall be in the currency of Bid. In case of joint venture (J/V), the Performance Security shall be in the name of J/V</p> <p>The standard form(s) of Performance Security acceptable to the Employer shall be “an Unconditional Bank Guarantee” acceptable to the Employer of the type presented in Section 9 of the Bidding Documents.</p>
58.1	<p>The date by which operating and maintenance manuals are required is: Not Applicable.</p> <p>The dates by which “as built” drawings are required is: 2 months after the work execution.</p>
60.1	<p>The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is 15%.</p>



Section VI. Sample Forms of Securities

Bid Security (Bank Guarantee)

Whereas, [name of Bidder] (hereinafter called “the Bidder”) has submitted his bid dated [date] for the construction of Tender No.:(hereinafter called “the bid”). Know all people by these presents that We [name of Bank] of [name of country] having our registered office at [address] (hereinafter called “the Bank”) are bound unto (hereinafter called “the Employer”) in the sum of [amount] for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors, and assigns by these presents.

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

The conditions of this obligation are:

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

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

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

Date: _____ Signature of the Bank: _____

Witness: _____ Seal: _____



Performance Bank Guarantee (Unconditional)

To:
Nepal Electricity Authority
Distribution and Consumer Services Directorate
Kathmandu Regional Office
Kavre Distribution Centre
Tel. : + 977 (011) 661453
Fax : + 977 (011) 664797

Whereas *[name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. to execute (hereinafter called “the Contract”);

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

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

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

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

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

This Guarantee shall be valid until a date 30 days from the date of issue of the Defect Liability Certificate.

Signature and seal of the Guarantor: _____

Name of Bank: _____

Address: _____

Date: _____

 

Bank Guarantee for Advance Payment

To: *[name and address of*

Employer] [name of Contract]

Madam/Gentlemen:

In accordance with the provisions of the General Conditions of Contract, Clause 50 (“Advance Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee] [amount in words]*

We, the *[Bank or Financial Institution]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee] [amount in words]*.

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

The validity period of the guarantee shall be 30 days beyond the period scheduled for repayment of the advance payment and the guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until the receives full repayment of the same amount from the Contractor. Any demand in respect of this Guarantee should reach the Bank not later than [date].

Yours truly,

Signature and seal: _____

Name of Bank: _____

Address: _____

Date: _____

