

## Section IV. Contract Forms

### A. Letter of Acceptance

*[letterhead paper of the Employer]*

*[insert date]*

To: *[insert name and address of the Contractor]*

Subject: *[Notification of Award Contract No]*

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the Contract and identification number]* for the accepted Contract Price of the equivalent of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to sign, date and return to our Agency the Contract Agreement attached hereto, within twenty-eight (28) days of receipt of this Letter, in accordance with Clause 34. of the Instruction to Bidders included in the Bidding Documents.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

## B. Contract Agreement

THIS CONTRACT, made and entered into this *[insert date]* day of *[insert month]*, *[insert year]*, by and between *[insert name of the executing agency]*, *[insert formal name of the recipient country]* (hereinafter referred to as “the Client”), and *[insert name of the Contractor]* (hereinafter referred to as “the Contractor”)<sup>1</sup>,

WITNESSETH:

WHEREAS, the Japan International Cooperation Agency (hereinafter referred to as “JICA”) extends a grant to the Government of *[insert name of the recipient country]* on the bases of the Grant Agreement (hereinafter referred to as “G/A”) signed on the *[insert date]* day of *[insert month]*, *[insert year]*, between the Government of *[insert name of the recipient country]* and JICA concerning *[insert name of the project on the G/A]* (hereinafter referred to as “the Project”);

WHEREAS, the Client, as a competent authority for the Project, desires that the works for the Project should be executed by the Contractor, and has accepted a bid by the Contractor for the execution and completion of these works for the Project and the remedying of any defects therein,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the Client and the Contractor agree as follows:

1. In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents (hereinafter “Contract documents”) shall be deemed to form and be read and construed as part of this Contract. This Contract Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance;
  - (b) the Letter of Bid;
  - (c) the Addenda Nos *[insert addenda numbers if any]*;
  - (d) the Conditions of Contract;
  - (e) the Specifications;
  - (f) the Drawings;
  - (g) the Bill of Quantities; and
  - (h) Acknowledgement of Compliance with Procurement Guidelines for the Japanese Grants.

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<sup>1</sup> In case of ‘Joint Venture’; *[insert name of the Joint Venture/Consortium]* (hereinafter referred to as “the Contractor”), consisting of the following entities, namely, *[insert name of the leading member]* and *[insert name of members]*.

For the purpose of interpretation, the priority of the listed documents shall be in accordance with the above listed order.

3. In consideration of the payments to be made by the Client to the Contractor as specified in this Contract Agreement, the Contractor hereby covenants with the Client to execute the works for the Project and to remedy defects therein in conformity in all respects with the provisions of the Contract documents.
4. The Client hereby covenants to pay the Contractor the amount of *[insert amount in numbers and words]* *[insert name of currency]* (hereinafter "Contract Price") in consideration of the execution and completion of the works for the Project by the *[insert date]* day of *[insert month]*, *[insert year]* (hereinafter "Intended Completion Date") and the remedying of defects therein.
5. This Contract, and any major amendment or termination of this Contract, shall be verified by JICA as eligible for a grant on the bases of G/A.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in accordance with the laws of *[insert name of the recipient country]* on the day, month and year indicated above.

Signed by: \_\_\_\_\_  
for and on behalf of the Client  
in the presence of:

Signed by: \_\_\_\_\_  
for and on behalf of the Contractor  
in the presence of:

\_\_\_\_\_  
Witness, Name, Signature, Address, Date

\_\_\_\_\_  
Witness, Name, Signature, Address, Date

## C. Conditions of Contract

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## A. General

### 1. Definitions

- 1.1 The following words and expressions shall have the meanings hereby assigned to them.
- (a) “Bill of Quantities” is the priced and completed Bill of Quantities forming part of the Bid.
  - (b) “Completion Date” is the date of completion of the Works as certified by the Consultant, in accordance with Clause 35.
  - (c) “Consultant” is a firm appointed by the Client and notified to the Contractor, who is responsible for supervising the execution of the Works and administering the Contract.
  - (d) “Contract” is the Contract Agreement between the Client and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in Sub-Clause 2.2.
  - (e) “Contract Price” is the price payable to the Contractor as specified in the Contract Agreement.
  - (f) “day” means calendar day.
  - (g) “Defect Liability Period” is the period pursuant to Sub-Clause 24.1.
  - (h) “Force Majeure” is an exceptional event or circumstance specified in Sub-Clause 9.1.
  - (i) “Intended Completion Date” is the date, which is specified in the Contract Agreement 4, on which it is intended that the Contractor shall complete the Work.
  - (j) “Performance Certificate” is a certificate issued by the Consultant after the end of the Defect Liability Period, which certifies that all defects notified by the Consultant to the Contractor before the end of this period have been corrected.
  - (k) “Program” is a program showing the general methods, arrangements, order, and timing for all activities in the Works, in accordance with Clause 19.
  - (l) “Site” is the places where the permanent works are to be executed, including storage and working area, and is located at *[insert address of the Site]*.
  - (m) “Taking-Over Certificate” is the certificate issued by the Consultant upon deciding that the whole of the Works is completed for the purposes of taking-over, in accordance with Clause 35.
  - (n) “Works” means the permanent works and the temporary works (works designed, constructed, installed, and removed that are temporarily needed for construction or installation of the Works) to be executed by the Contractor under this Contract.

### 2. Interpretation

- 2.1 In interpreting this Conditions of Contract, words indicating one

gender include all gender. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Consultant shall provide instructions clarifying queries about this Conditions of Contract.

- 2.2 The documents forming the Contract shall be interpreted in the following order of priority:
- (a) Contract Agreement,
  - (b) Letter of Acceptance,
  - (c) Letter of Bid,
  - (d) Addenda Nos *[insert addenda numbers if any]*,
  - (e) Conditions of Contract,
  - (f) Specifications,
  - (g) Drawings,
  - (h) Bill of Quantities, and
  - (i) Acknowledgement of Compliance with Procurement Guidelines for the Japanese Grants.
- 2.3 The Contract constitutes the entire agreement between the Client and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of the Contract.
- 2.4 No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

### 3. Language

- 3.1 The language of the Contract shall be the **English** language.

### 4. Consultant's Decisions

- 4.1 Except where otherwise specifically stated, the Consultant shall decide contractual matters between the Client and the Contractor in the role representing the Client.

### 5. Communications

- 5.1 Communications between parties that are referred to in the Contract shall be effective only in writing.
- 5.2 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address hereunder. A notice shall be effective only when it is delivered.

[The Client]

Attention: *[insert full name of person, if applicable]*

Address: *[insert address, including country name]*

Telephone: *[insert telephone number, including country codes]*

E-mail Address: *[insert e-mail address]*

[The Contractor]

Attention: *[insert full name of person, if applicable]*

Address: *[insert address, including country name]*

Telephone: *[insert telephone number, including country codes]*

E-mail Address: *[insert e-mail address]*

- 6. Subcontracting** 6.1 The Contractor may subcontract with the approval of the Consultant, but may not assign the Contract without the approval of the Client in writing. Subcontracting shall not alter the Contractor's obligations.
- 7. Personnel and Equipment** 7.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Consultant. The Consultant shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 7.2 If the Consultant asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven (7) days and has no further connection with the work in the Contract.
- 8. Client's and Contractor's Risks** 8.1 The Client carries the risks which are specified as Client's risks in the Contract, and the Contractor carries the risks which are specified as Contractor's risks in the Contract.
- 9. Client's Risk** 9.1 From the start of the Works until the end of the Defect Liability Period, the following are Client's risks:
- (a) The risks of loss of or damage to property (excluding the Works, plant, materials, and equipment), which are due to:
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Client 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 Client or in the Client's design, or due to Force Majeure, which includes, but not limited to, war, hostilities (whether war declared or not), invasion, act of foreign enemies, rebellion, terrorism, revolution, insurrection, military or usurped power, civil war, riot, commotion of disorder or radioactive contamination, or force of nature which is unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions, directly affecting the country where the Works are to be executed.
- 9.2 From the Completion Date until the end of the Defect Liability

Period, the risk of loss of or damage to the Works, plant, and materials is an Client's risk except loss or damage due to:

- (a) a defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Client's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

**10. Contractor's Risk**

10.1 From the start of the Works until the end of the Defect Liability Period, the risk of personal injury, death, and loss of or damage to property (including, without limitation, the Works, plant, materials, and equipment) which are not Client's risks are Contractor's risks.

**11. Insurance**

11.1 The Contractor shall provide, in the joint names of the Client and the Contractor, insurance cover from the start of the Works to the end of the Defect Liability Period, for the following events which are due to the Contractor's risks, in the amounts and deductibles stated as follows:

- (a) loss of or damage to the Works, plant, and materials; *[insert amounts and currency]*
- (b) loss of damage to equipment; *[insert amounts and currency]*
- (c) loss of or damage to property (except the Works, plant, materials and equipment) in connection with the Contract: *[insert amounts and currency]*; and
- (d) personal injury or death: *[insert amounts and currency]*.

11.2 Policies and certificates for insurance shall be delivered by the Contractor to the Consultant for the Consultant's approval before the start of the Works. Alterations to the terms of an insurance shall not be made without the approval of the Consultant.

11.3 Both parties shall comply with any conditions of the insurance policies.

**12. Contractor to Construct the Works**

12.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

12.2 Unless otherwise agreed, the Contractor shall commence execution of the Works within fourteen (14) days after the signing of the Contract, and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Consultant, and complete them by the Intended Completion Date.

**13. Approval by the Consultant**

13.1 The Contractor shall be responsible for design of the temporary works in accordance with the requirements specified in the Specifications.

13.2 The Contractor, if requested, shall submit design documents of the temporary works to the Consultant for his approval. The

Consultant's approval shall not alter the Contractor's responsibility for design of the temporary works.

- 13.3 All drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Consultant before their use.

**14. Safety**

- 14.1 The Contractor shall:
- (a) comply with all applicable safety regulations;
  - (b) take care for the safety of all persons entitled to be on the Site;
  - (c) use reasonable effort to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
  - (d) provide necessary fencing, lighting, guarding and watching of the Works until completion and the taking-over; and
  - (e) provide any temporary works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

**15. Discoveries**

- 15.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Client. The Contractor shall notify the Consultant of such discoveries and carry out the Consultant's instructions for dealing with them.

**16. Access to the Site**

- 16.1 The Client shall give possession of all parts of the Site to the Contractor within fourteen (14) days after the signing of the Contract.
- 16.2 The Contractor shall allow the Client and the Consultant and any person authorized by the Consultant 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.

**17. Consultant's Duties and Authority**

- 17.1 The Consultant shall have no authority to amend the Contract.
- 17.2 The Consultant may exercise the authority attributable to the Consultant as specified in or necessarily to be implied for the Contract.
- 17.3 Except as otherwise stated in these Conditions:
- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Consultant shall be deemed to act for the Client;
  - (b) the Consultant has no authority to relieve either party of any duties, obligations or responsibilities under the Contract;
  - (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Consultant (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under

the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and

(d) any act by the Consultant in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

17.4 The Consultant shall obtain the specific approval of the Client before agreeing or determining an extension of time and/or additional cost.

## **18. Settlement of Disputes**

18.1 The Client and the Contractor shall make every effort to resolve amicably by direct negotiation, with support from the Consultant, any disagreement or dispute arising between them under or in connection with the Contract.

18.2 If the parties hereto have failed to resolve their dispute or difference by such mutual negotiation, and if the parties so agree, disputes shall be referred to an adjudicator for decision. The adjudicator shall be appointed jointly by the Client and the Contractor.

18.3 Either party may refer the dispute in writing to the adjudicator for its decision, with copies to the other party. The cost of the adjudicator shall be divided equally between the Client and the Contractor.

18.4 If either party is dissatisfied with the adjudicator's decision, then either party may give a notice of dissatisfaction to the other party indicating its dissatisfaction and intention to commence arbitration.

18.5 Arbitration with proceedings shall be conducted in accordance with the laws of *[inert name of the recipient country]*. The place of arbitration shall be *[inert name of the recipient country]*; and the arbitration shall be conducted in the **English** language.

*[It is strongly advised that Clause 18, which prescribes "Settlement of Disputes", shall be reviewed and revised based on the advices of the legal adviser, for the purpose to adjust it to the local environment properly.]*

## **B. Time Control**

### **19. Program**

19.1 Within fourteen (14) days after the date of the signing of the Contract, the Contractor shall submit to the Consultant for approval a Program showing the general methods, arrangements, order, and timing for all activities in the Works.

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

19.3 The Contractor shall submit to the Consultant for approval an updated Program within fourteen (14) days of being instructed to

by the Consultant.

19.4 The Consultant's approval of the Program shall not alter the Contractor's obligation. The Contractor may revise the Program and submit it to the Consultant again at any time.

**20. Extension of the Intended Completion Date**

20.1 The Consultant shall extend the Intended Completion Date if a Compensation Event prescribed in Sub-Clause 31.1, or another event which makes it impossible for the completion of the Works 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.

20.2 The Consultant shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Consultant for a decision upon such event and submitting full supporting information.

20.3 In case that the extended period is more than three (3) months or the period between the Intended Completion Date and the deadline of availability of the grants based on G/A become less than six (6) months, the extension of the Intended Completion Date shall be subject to prior concurrence by JICA.

**21. Management Meetings**

21.1 Either the Consultant 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 that may likely arise in future and adversely affect the execution of the Works.

**22. Early Warning**

22.1 The Contractor shall warn the Consultant at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, cause a request for increase of the Contract Price by the Contractor, or delay the execution of the Works.

22.2 The Contractor shall cooperate with the Consultant 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 Consultant.

## C. Quality Control

**23. Identifying Defects**

23.1 The Consultant 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 Consultant may instruct the Contractor to search for a defect and to uncover and

test any work that the Consultant considers may have a defect.

- 24. Correction of Defects**
- 24.1 The Consultant shall give notice to the Contractor of any defects before the end of the Defect Liability Period, which extends over three-hundred sixty-five (365) days calculated from the Completion Date. If a defect is corrected under this Sub-Clause, the Defect Liability Period shall be extended to the extent that the Works cannot be used for the purposes for which they are intended. However, in no event shall the Defect Liability Period extend beyond twenty-four (24) months after the Completion Date.
- 24.2 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Consultant's notice.
- 24.3 If the Contractor has not corrected a defect within the time specified by the Consultant's notice, the Consultant shall assess the cost of having the defect corrected, and the Contractor shall pay this amount.

- 25. Modification**
- 25.1 Any major modification of the Specifications and Drawings shall be subjected to the amendment of the Contract.
- 25.2 Major modification of the Specifications and Drawings shall include the followings:
- (a) decline in quality and/or functions in accordance with the Specifications and Drawings;
  - (b) increase in amount of the Contract Price; and
  - (c) change of the Site.

## D. Cost Control

- 26. Contract Price**
- 26.1 The Bill of Quantities shall contain the priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to monitor the progress of the Works on which basis the Contractor will be paid the partial payments prescribed in Clause 29.
- 26.2 The Contract Price, which is stated in the Contract Agreement, shall not be altered by the reason that the final quantity of the work done differs from the quantity in the Bill of Quantities.
- 26.3 Fluctuations in the cost of inputs shall not cause the adjustment of the Contract Price.
- 26.4 The Contract Price shall be altered only by the amendment of the Contract.
- 27. Tax Exemption**
- 27.1 The Value Added Tax for this Contract levied in *[insert name of the recipient country]* shall be exempted in accordance with Schedule 4 "Obligations of the Recipient" in the G/A stipulated in the Contract Agreement.

- 27.2 Customs duties, internal taxes and other fiscal levies with respect to the works under this Contract, and which may be subject to exemption in accordance with the G/A, shall be arranged by the Contractor at the Contractor's expense.

*[It is strongly advised that Clause 27, which prescribes "Tax Exemption", shall be reviewed and revised based on the advices of the tax accountant, for the purpose to adjust it to the local environment properly.]*

**28. Advance Payment**

- 28.1 The Client shall make advance payment to the Contractor of the amounts *[insert amount in numbers and words] [insert name of currency]*, which corresponds to *[ex. twenty percent (20%)]* of the Contract Price, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Client in amounts and currencies equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid.
- 28.2 The request for the advance payment shall be accompanied by a photocopy of the bank guarantee in accordance with the Sub-Clause 28.1.
- 28.3 The advance payment shall be repaid by deducting proportionate amounts from each partial payment prescribed in Clause 29.

**29. Partial Payments**

- 29.1 The Contractor shall submit to the Consultant monthly statements of the estimated value of the work executed. The Consultant shall check the Contractor's monthly statement and certify the value of works to be achieved, and issue the certificate of achievement.
- 29.2 The Client shall make partial payments to the Contractor against this certificate of achievement.
- 29.3 The request for the partial payments shall be accompanied by the certificate of achievement issued by the Consultant in accordance with the Sub-Clause 29.1.
- 29.4 The Client shall retain from each partial payment due to the Contractor the proportion of ten (10) percent.
- 29.5 Partial payments shall be adjusted by deductions for the advance payment and the above-mentioned retention.

*[Option]*

- 29.1 The Client shall make partial payment to the Contractor of the following amounts, upon following execution of the works.*
- (a) [amount (ex: 18% of the Contract Price)]: for the execution of first 20% of the Contract Price*
- (b) [amount (ex: 15% of the Contract Price)]: for the execution of next 20% of the Contract Price*
- (c) [amount (ex: 12% of the Contract Price)]: for the execution of next 20% of the Contract Price*
- (d) [amount (ex: 10% of the Contract Price)]: for the execution of next 20% of the Contract Price*

29.2 *The value of the work executed shall be determined by the Consultant based upon the Contractor's statements of the estimated value of the work executed.*

29.3 *The Consultant shall check the Contractor's statement and certify the value of works to be achieved, and issue the certificate of achievement.*

29.4 *The Client shall make partial payments to the Contractor against this certificate of achievement.*

29.5 *The request for the partial payments shall be accompanied by the certificate of achievement issued by the Consultant in accordance with the Sub-Clause 29.3.*

*[In the Clause of the option, the amount of each partial payment shall be decided considering the deduction of repayment of the Advance Payment and the retention to be retained.]*

### **30. Payment Procedure**

30.1 All payments to the Contractor by the Client, shall be made upon a request for payment by the Contractor accompanied by the necessary certificates and/or documents.

30.2 Payments shall be made by the bank transfer form a bank in Japan designated by the Government of *[insert name of the recipient country]*. The commissions and expenses of bank transfer, other than covered by the Government of *[insert name of the recipient country]*, shall be borne by the Contractor.

### **31. Compensation Events**

31.1 The following event shall, but not limited to, be Compensation Event.

(a) The Specifications and the Drawings contain any inaccuracies or deficiencies, which substantially effects on the Contractor, adversely.

(b) The Specifications and the Drawings contain any ambiguous or unclear expressions, which substantially effects on the Contractor, adversely.

(c) The actual natural or artificial conditions including, but not limited to, land configuration, nature of soil, ground water, and limiting factors for the execution of the Works at the Site are substantially more adverse than could reasonably have been assumed from the Specifications and the Drawings, from information available publicly and from a visual inspection of the Site.

(d) Unforeseeable special situations occur in the conditions that are not specified in the Specifications and the Drawings.

(e) The Consultant gives an instruction for dealing with an unforeseen condition, caused by the Client, or additional work required for safety or other reasons.

(f) Other contractors, public authorities, utilities, or the Client does not work within the dates and other constraints stated in the Contract, and they cause extra cost to the Contractor.

(g) Any of the Client's Risks effects on the Contractor, adversely.

- 31.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price may be increased and/or the Intended Completion Date shall be extended. The Consultant 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.
- 31.3 As soon as information demonstrating the effect of each event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Consultant. If the Contractor's forecast is deemed unreasonable, the Consultant shall adjust the Contract Price based on the Consultant's own forecast. The Consultant shall assume that the Contractor shall react competently and promptly to the event.
- 31.4 Based on the assessment of the Consultant, both parties shall consider the amendment of the Contract in the consultation with JICA.
- 31.5 The Contractor shall not be entitled to compensation to the extent that the Client's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Consultant.

**32. Liquidated Damages**

- 32.1 In case that the Contractor could not complete the Work by the Intended Completion Date, the Contractor shall pay liquidated damages to the Client at the rate of zero point one percent (0.1%) for each day from the Intended Completion Date up to the Completion Date. The total amount of liquidated damages shall not exceed ten percent (10%) of the Contract Price. The Client may deduct liquidated damages from payments due to the Contractor.

**33. Securities**

- 33.1 The Performance Security shall be provided to the Client within twenty eight (28) days after receiving the Letter of Acceptance. The Performance Security shall be issued by a bank or surety acceptable to the Client, in an amount of ten percent (10%) of the Contract Price, and denominated in the currency of which the Contract Price is payable. Performance Security shall be valid and enforceable until the Contractor has executed and completed the Works and remedied any defects.
- 33.2 The Consultant shall issue the Performance Certificate within twenty-eight (28) days from the last date of the Defect Liability Period, or as soon thereafter as the Contractor has corrected all defects notified by the Consultant to the Contractor before the end of the Defect Liability Period.
- 33.3 The Performance Security shall be returned to the Contractor against the Performance Certificate.

- 34. Cost of Repairs** 34.1 Loss or damage to the Works or materials to be incorporated in the Works by the end of the Defects Liability Period shall be remedied by the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. Finishing the Contract

- 35. Completion** 35.1 The Contractor shall request the Consultant to issue the Taking-Over Certificate for the Works, and the Consultant shall do so upon deciding that the whole of the Works is completed for the purposes of taking-over.
- 36. Taking Over** 36.1 The Client shall take over the Site and the Works within seven (7) days of the Consultant's issuing the Taking-Over Certificate.
- 37. Final Payment** 37.1 The Client shall make final payment to the Contractor of the amounts of Contract Price, except the amount of payments already paid to the Contractor and the retention below, against the Taking-Over Certificate issued by the Consultant.
- 37.2 The request for the final payment shall be accompanied by the Taking-Over Certificate issued by the Consultant.
- 37.3 The Client shall retain five (5) percent of the Contract Price until the end of the Defect Liability Period. *[Option: The Contractor may substitute this retention money with an "on demand" Bank guarantee".]*
- 37.4 The retention above shall be paid to the Contractor against the Performance Certificate issued by the Consultant in accordance with Sub-Clause 33.2.
- 37.5 The request for the payment of the retention shall be accompanied by the Performance Certificate issued by the Consultant.
- 38. Termination** 38.1 The Client or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 38.2 Fundamental breaches of the Contract shall include, but not limited to, the following:
- (a) the Contractor stops work for more than twenty-eight (28) days when no stoppage of work is shown on the current Program, and the stoppage has not been authorized by the Consultant;
  - (b) the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (c) the Consultant gives notice that failure to correct a particular defect is a fundamental breach of the Contract and the Contractor fails to correct it within a reasonable period of time determined by the Consultant;

- (d) the Contractor does not maintain a Security, which is required;
- (e) 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 Clause 32;
- (f) if the Contractor, in the judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to Clause 39; or
- (g) if the Contractor continuously fails to comply with the instructions provided by the Consultant.

- 38.3 When either party gives notice of a breach of the Contract to the Consultant for a cause other than those listed under Sub-Clause 38.2 above, the Consultant shall decide whether the breach is fundamental or not.
- 38.4 Notwithstanding the above, the Client may terminate the Contract for convenience.
- 38.5 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.

**39. Corrupt or Fraudulent Practices**

- 39.1 If the Client determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Client may, after giving fourteen (14) days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site.

**40. Payment upon Termination**

- 40.1 If the Contract is terminated because of a fundamental breach of the Contract by the Contractor, the Consultant shall issue a certificate for the value of the work done and materials ordered, less advance payments and partial payments received up to the date of the issue of the certificate, and less fifteen percent (15%) of the value of the work not completed. Additional liquidated damages shall not apply. If the total amount due to the Client exceeds any payment due to the Contractor, the difference shall be a debt payable to the Client.
- 40.2 If the Contract is terminated for the Client's convenience, because of a fundamental breach of the Contract by the Client or result of the Force Majeure prescribed in Sub-Clause 9.1, the Consultant 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 cost of protecting and securing the Works, and less advance payments and partial payments received up to the date of the certificate.

**41. Property**

- 41.1 After termination in accordance with Sub-Clause 40.1, the Client

may complete the Works and/or arrange for any other entities to do so. The Client and these entities may then use any equipment, materials, plant, temporary works supplied by the Contractor under the Contract and documents of a technical nature made by or on behalf of the Contractor.

41.2 The Client shall then give notice that the Contractor's equipment and temporary works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Client, these items may be sold by the Client in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

**42. Release from Performance**

42.1 If the Contract is frustrated by Force Majeure, the Consultant 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.

## D. Performance Security

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and address of the Client]*

**Date:** *[insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[insert guarantee reference number]*

**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of the Contractor]* (hereinafter called “the Applicant”) has entered into Contract dated *[insert date]* with the Beneficiary, for execution of *[insert name of the Contract and brief description of the Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire, not later than the *[insert the day]* day of *[insert month]*, *[insert year]*, or the Defect Liability Period prescribed in the Contract, whichever earlier, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[Signature]*

## E. Advance Payment Security

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and address of the Client]*

**Date:** *[insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert guarantee reference number]*

**Guarantor:** *[insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of the Contractor]* (hereinafter called “the Applicant”) has entered into Contract dated *[insert date]* with the Beneficiary, for execution of *[insert name of the Contract and brief description of the Works]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* (*[insert amount in words]*) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*), upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant has used the advance payment for purposes other than the costs of mobilization in respect of the Works.

A demand under this guarantee may be presented as form the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant’s bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of documentation indicating full repayment by the Applicant of the amount of the advance payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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*[Signature(s)]*



# Section IV. Work Requirements

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