



**GOVERNMENT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA
MINISTRY OF PORTS AND HIGHWAYS
ROAD DEVELOPMENT AUTHORITY**

GREATER COLOMBO URBAN TRANSPORT DEVELOPMENT PROJECT

**OUTER CIRCULAR HIGHWAY TO THE CITY OF COLOMBO
NORTHERN SECTION II (OCH-NS II)
KERAWALAPITIYA TO KADAWATHA**

FUNDED BY

EXPORT-IMPORT BANK OF CHINA (EXIM BANK OF CHINA)

CONTRACT NO: RDA/OCH/NS II

PROJECT DELIVERABLE
OUTER CIRCULAR HIGHWAY PROJECT
(PHASE II)

CONTRACT DOCUMENTS

VOLUME II

CONDITIONS OF CONTRACT

Section 1: Conditions of Particular Application (Part II)

Section 2: General Conditions of Contract (Part I)

CONTRACT

BETWEEN

ROAD DEVELOPMENT AUTHORITY

AND

METALLURGICAL CORPORATION OF CHINA (MCC) LTD

22 FEBRUARY 2013

**GREATER COLOMBO URBAN TRANSPORT DEVELOPMENT
PROJECT**

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CONTRACT DOCUMENTS

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Section 1

**Conditions of Particular Application
(Part II)**

Conditions of Particular Application (Part II)

The Conditions of Particular Application are intended to be read together with the General Conditions contained in Part-I of the Conditions of Contract. The Conditions of Particular Application provide amplification and /or clarification of provisions of the General Conditions and additional provisions. No clause or sub clause of the General Conditions, or any portion(s) thereof, is intended to delete or superseded by the Conditions of Particular Application unless expressly so stated. If, however, any inconsistency appears between the General Conditions and Conditions of Particular Application, the latter shall prevail

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Sub-Clause 1.1: Definitions

Delete Sub-Clauses 1.1. (a) (i), (ii)& (iv) and replace with the following:

"(a) (i) 'Employer' is the Road Development Authority established under Act No. 73 of 1981 under Ministry of Ports and Highways of the Democratic Socialist Republic of Sri Lanka.

(a) (ii) 'Contractor' means the person whose Proposal has been accepted by the Employer and the legal successors in tile to such person, but not (except with the consent of the Employer) any assignee of such person.

(a) (iv) The 'Engineer' will be appointed by the Employer, and notified to the Contractor in writing."

Sub-paragraph (b) (v) of Sub-Clause 1.1 is amended by the addition of the following words at the end:

"The word 'Tender' is synonymous with 'Bid', 'Proposal' and the words 'Tender Documents' with 'Bidding Documents'."

Sub-Clause 1.1(b) After sub-paragraph (viii) add the following sub-paragraphs:

"(ix)'Employer's Requirements' means the Scope of Works, Specifications, Drawings as included in the Contract, and any alterations and modification thereto in accordance with the Contract.

After Sub-paragraph (c), (ii) add the following Sub-paragraphs:

"(iii) 'Base Date', is the date of signing of Contract Agreement.

(iv) 'Due Date for Completion' means the date on the last day of the Time for Completion or any extension thereto of the whole of the Works or any Section thereof as the case may be.

In Sub-paragraph (e), (ii), substitute "Sub-Clause 60.5" for "Sub-Clause 60.2 (a)".

After Sub-paragraph (f) (vii) add the following Sub-paragraph:

"(f) (viii) 'Country' means the Democratic Socialist Republic of Sri Lanka

After Sub-paragraph (g) (iv) add the following new Subparagraphs:

(g) (v) 'Local Currency' means Sri Lanka Rupees denoted by 'SLR' synonymous with 'LKR' or 'Rs'

(vi) 'Foreign Currency' means currency of United States of American denoted by 'US Dollars' or 'USD'.

(h) (i) 'Government' means the Government of the Democratic Socialist Republic of Sri Lanka.

(h) (ii)'Contractor's Representative' means the person appointed by the Contractor from time to time under Sub-Clause 15.1 and notified in writing to the Engineer.

(h) (iii)' "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

Sub-Clause 2.1: Engineer's Duties and Authority

At the end of Sub-clause 2.1(b) add the following sub-paragraph:

The Engineer will administer the Contract and ensure that the Works are constructed in accordance with its provisions. The Engineer will have all of those powers, which are defined as being the Engineer's duties with the exception of the following, which will be retained and exercised by the Employer, generally on the advice of the Engineer. The Engineer shall obtain the specific approval of the Employer before taking any of the following actions specified below:

- (a) Issuing the Notice to Commence under Sub-Clause 41.1,
- (b) Approving the subcontracting of any part of the Works under Clause 4,
- (c) Determining an extension of time under Clause 44,
- (d) Fixing rates or prices under Clause 52 and 53,
- (e) Issuing a variation order under Clauses 51 and 52.

The Engineer shall have the authority to vary the Works under Clauses 51 and 52 without reference to the Employer only where:

- (i) such Variation is necessary to complete the Works in a satisfactory manner, and
 - (ii) in an emergency situation as reasonably determined by the Engineer affecting the safety of life or the work or adjoining property and
 - (iii) The estimated gross value of any single Variation (whether this be an addition or deduction from the Contract Price) shall not exceed Rs.500,000.00 (five hundred thousand Rupees) and
 - (iv) The estimated value of all known Variations does not exceed Rs. 25,000,000.00 (twenty five million Rupees).
- (f) Suspension of Works under Clause 40
 - (g) Issuing of the Taking-Over Certificate under Clause 48
 - (h) Issuing of the Defects Liability Certificate under Clause 62

Sub-Clause 2.5: Instructions in Writing

Delete Sub-clause 2.5 and replace with the following:

"Instructions given by the Engineer, the Engineer's Representative or the Engineer's Representative's assistants shall be in writing."

Sub-Clause 4.2: Assignment of Subcontractor's Obligations

At the end of Sub-clause 4.2 add the following:

In any Subcontract made and entered by the Contractor subject to Sub-Clause 4.1, a provision shall be included in the Subcontract agreement to effect the requirement stipulated in Sub-Clause 63.4.

After Sub-Clause 4.2 Add the following Sub-Clause 4.3

Sub-Clause 4.3: Improper Work of Subcontractor

If any Subcontractor either executes any work which in the opinion of the Engineer is not in accordance with the Contract or for any other reason is undesirable, the Engineer, on receipt of the Employer's consent, may by written notice require the Contractor to terminate the subcontract and the Contractor shall immediately dismiss the Subcontractor and the latter shall forthwith leave the Site.

In the event of such dismissal, the Contractor shall take over and complete that part of the Works which should have been executed by such Subcontractor without any additional payment.

Sub-Clause 5.1: Language/s and Law

(a) The language is the English language

(b) The law is that in force in the Democratic Socialist Republic of Sri Lanka.

Sub-Clause 5.2: Priority of Contract Documents

Delete the documents listed 1 - 6 and substitute:

1. The Contract Agreement (with power of attorney)
2. The Letter of Acceptance
3. Minutes of Negotiations if any
4. The Conditions of Particular Application (Part II)
5. The General Conditions (Part I)
6. The Form of Bid
7. The Addenda to Bidding documents
8. Appendix to Bid
9. Technical Specifications
10. Drawings
11. Bill of Quantities (Priced)
12. Schedules of Supplementary information

After Sub-Clause 5.2 Add the following Sub-Clause 5.3

Sub-Clause 5.3: Discrepancies in Contract Documents

Anything mentioned in the Specifications and not shown on the Drawings or anything shown on the Drawings and not mentioned in the Specifications shall be of like effect as if shown or mentioned in both.

In case of any difference between scaled dimensions and those on the Drawings, the dimensions on the drawings shall prevail. Large scale Drawings shall have precedence over small scale Drawings. If any discrepancies occur either in the Drawings, Specifications, or other Bid

Documents, the same shall be reported to the Engineer before proceeding with the work and the Engineer's decision on resolving each discrepancy shall be final.

Sub-Clause 6.1 Custody and Supply of Drawings and Documents

Delete the last text of the 1st paragraph "Upon issue of the Defects Liability Certificate, the Contractor shall return to the Engineer the Drawings, Specification and other documents provided under the Contract" and substitute with the following:

The Contractor shall disclose all such confidential and other information as the Engineer may reasonably require in order to verify the Contractor's compliance with the Contract.

Sub-Clause 7.2 Permanent Works Designed by Contractor

Add the following paragraphs at the end of paragraph (b) of sub clause 7.2

(c) The contractor shall carry out the design in Sri Lanka.

(d) The Contractor shall carry out and be responsible for the design of the entire works other than the parts of the works for which detailed designs are given in the tender (bid) documents. The contractor shall also be responsible for the design necessitated in remedying any defects in the works. The design shall be carried out in accordance with the specifications applicable to the design and all other requirements of the contract.

(e) The surveys and investigations to be carried out by the Contractor as detailed in the specifications or otherwise required shall be deemed to be a part of the design.

(f) The contractor shall carry out the detailed designs based on preliminary designs / outline designs / conceptual designs given in the contract. The outcomes of the design shall have sufficient details in compliance with the contract documents to the satisfaction of the Engineer.

(g) In case an initial design for a part of the work is not available in the contract or in the event the contractor wishes to deviate from an initial design given in the contract for good reason, the contractor shall with due care and diligence propose the most reasonable conceptual design for the consent of the Engineer. The consent of the Engineer shall be given in consultation with the Employer. On receipt of this consent the contractor shall proceed with the detailed design. The cost of complying with this sub clause shall be borne by the contractor, unless otherwise provided in the contract.

(h) The designs shall be carried out by qualified Engineers or other professionals and shall comply with criteria (if any) stated in the Employers Requirements and/or elsewhere in the contract. For each part of the works, the prior consent of the Engineer shall be obtained for the designer and/or design sub-contractor, if they are not named as such in the contract. Nothing contained in the contract shall create any contractual relationship of professional obligation between any designer or design sub-contractor and the Employer. The contractor warrants that he, his designers and design sub-contractors shall have the experience and capability necessary for the design. The contractor undertakes that his designers and / or

design sub-contractors shall be available for discussions with the Engineer at all reasonable times during the contract period.

Sub-Clause 7.4 As-Built Drawings

"The Contractor shall prepare, and keep up-to-date, a complete set of "As-Built" records of the execution of the Works, showing the exact "As-Built" locations, sizes and details of the Work as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be submitted to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall prepare and submit to the Engineer "As-Built drawings" of the Works, showing all Works as executed. The drawings shall be prepared as the Works proceed, and shall be submitted to the Engineer progressively for his inspection. The Contractor shall obtain the consent of the Engineer as to the size of the drawings, the referencing system, and other pertinent details.

Prior to the issue of any "Taking-Over Certificate", the Contractor shall submit to the Engineer:

- (i) One electronic copy (CD) of all "As-Built" drawing files using AutoCAD computer software in a version format acceptable to the Engineer,
- (ii) Six sets of all "As-Built" drawings (A-3 size bound) and
- (iii) Any further Construction Documents specified in the Employer's reasonable requirements.

Any cost for preparation of documents under this Sub-Clause shall be borne by the Contractor.

The Works shall not be considered to have satisfied the requirements for taking-over under Sub-Clause 48.1 until such documents have been submitted to and approved by the Engineer."

Sub-Clause 8.1: Contractor's General Responsibilities

Add the following after the end of this Sub-Clause:

"The Contractor shall promptly notify the Employer and the Engineer of any error, omission, fault or any other defect in the design of or specifications for the Works which he discovers when reviewing the Contract Documents or in the process of execution of the Works."

The Contractor shall carry out such additional test / investigations that the Engineer deems necessary to construct each earth and concrete structure. The Contractor shall submit the results of such investigations as part of the Construction Documents. The cost of such requirements shall be compensated under the Provisional Sum available for this purpose in the BOQ

After Sub-Clause 8.2 add the following:

Sub-Clause 8.3: Utilities

"The Contractor shall be responsible for the management, co-ordination and execution of all activities associated with the survey, recording, relocation, removal and protection of public

utilities including:

- (i) liaising with utility authorities, the Employer, the Engineer, landowners and any other party concerned,
- (ii) the performance of the relocation, removal or protection work. (At the discretion of the public utility concerned part or parts of this work may be performed by either the utility agency concerned or the Contractor).
- (iii) After seeking approval of the Employer for any amounts payable to public utility authorities, making payment to public utility authorities of such amounts payable for work performed or to be performed by utility agencies.

Sub-Clause 9.1: Contract Agreement

The parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance.

The Contractor shall submit a Power of Attorney for the person authorized for signing and execution of the Agreement at the time of signing. If the authorized person will change subsequently during the execution of the Contract, the Contractor shall issue new Power of Attorney accordingly, such that a valid Power of Attorney shall be available until the end of the Defects Liability Period.

Sub-Clause 10.1: Performance Security

Replace the text of Sub-Clause 10.1 with the following:

"The Contractor shall provide security for his proper performance of the Contract to the Employer within 28 days after the receipt of the Letter of Acceptance in the sum stated in the Appendix to Tender. The Performance Security shall be in the form of an unconditional bank guarantee, issued either

- (a). By a Bank located in Sri Lanka and approved by Central Bank of Sri Lanka or
- (b). by a bank located outside Employer's Country (which is acceptable to the Central Bank of Sri Lanka) having a corresponding bank in Employer's Country to make it enforceable or
- (c). By an Export Credit Agency of any foreign government or reputed international financier who extending the loan for this project.

In both cases, the banks shall be acceptable to the Employer. The Performance Security shall be denominated in the types and proportions of currencies in which the Contract Price is payable. When providing such security to the Employer, the Contractor shall notify the Engineer of so doing.

The Performance Security shall be in accordance with the form of Performance Security included in Part 4-1 of Volume I of the Bidding Documents.

Without limitation to the provisions of the preceding paragraph, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer's written request, shall promptly increase the value of the Performance Security in that currency by an equal percentage. The Performance Security of a joint venture shall be in the name of the joint venture.

The cost of obtaining and maintaining any increase in the Performance Security required under

the Contract shall be reimbursed to the Contractor by increase in the item of the Bill of Quantities considering the duration over which the increased security was provided".

Sub-Clause 10.2: Period of Validity of Performance Security

Delete the final full stop, substitute a comma and: add

"provided that the Contractor has furnished documentary proof of compliance with the regulations of the Sri Lankan Customs Department regarding duty-exempt materials, Contractor's Equipment and Plant if any, associated with the Works." The Performance Security shall be valid until a date 28 days from the end of the Defect Liability Period.

Add the following Sub-Clause-11.2 after Sub-Clause 11.1:

Sub-Clause 11.2: Access to Data

"Data made available by the Employer in accordance with Sub-Clause 11.1 shall be open for inspection at the office of:

Project Director/PMU
Outer Circular Highway Project (OCHP),
Road Development Authority (RDA),
21/9 Pagoda Road, Nugegoda,
Sri Lanka.
Tel: 94(0)11 2817 823, 2768 306
Fax: 94(0)11 2817 821

Sub-Clause 14.1: Programme to be Submitted

The time within which the program shall be submitted is in the Appendix to Bid. The programme shall be prepared in accordance with Section 112 of Specifications.

The Programme shall be prepared using commonly available software application showing the Critical Path and submitted along with Resource utilization and Vector Diagram.

Sub-Clause 14.2: Revised Programme

After the end of this Sub-Clause add the following:

"Any revised programme shall be submitted within 21 days of the Engineer's request for such. The Engineer will have the right to withhold the payment certificate due to the Contractor at any time if the Contractor fails to submit the revised programme.

Sub-Clause 14.3: Cash Flow Estimate to be Submitted

Delete "within the time after the date of the Letter of Acceptance" of 1st line and substitute with "seven (7) days prior to receipt of first instalment of Advance Payment."

After Sub-Clause 14.4 add the following Sub-Clause

Sub-Clause 14.5: Monthly Progress Reports

"Monthly Progress Reports shall be prepared by the Contractor and submitted to the Engineer in accordance with Section 109 of Specifications."

Sub-Clause 15.1: Contractor's Superintendence

After the end of Sub-Clause 15.1 add the following:

"On the removal of the Contractor's personnel, the Engineer shall notify the Contractor of the reason of the removal. The Contractor shall not be entitled to any compensation nor any extension of time for completion due to such removals.

If the Contractor's Representative is not, in the opinion of the Engineer, fluent in the English language, an option to have available on Site at all times a competent interpreter to ensure proper transmission of instructions and information.

Sub-Clause 16.1: Contractor's Employees

Delete the full stop at the end of paragraph (b) substitute a comma and add "and".

Add the following paragraphs (c) and (d):

- (c) If all Contractor's higher level supervisory, technical and office staff do not, in the opinion of the Engineer, have an acceptable working knowledge of English, an option to have available on site at all times a competent interpreter(s) to ensure proper transmission of instructions and information.

All supervisors at foreman level shall have sound working knowledge of English and if hired locally, also fluent knowledge of Sinhala and/or Tamil languages to ensure proper transmission of instructions and information.

- (d) The Contractor shall submit to the Engineer for the Engineer's approval the Contractor's proposed organization structure. This structure will only be approved and be considered to remain approved if:
 - (i) it ensures that each individual team of workers is properly supervised by a suitably experienced leading hand, and
 - (ii) each appropriately sized group of teams and all subcontractors are supervised by a suitably experienced foreman in the direct employment of the Contractor, and
 - (iii) all leading hands and foremen are identified by name, and
 - (iv) all leading hands have an efficient means of communicating with foreman and all foremen have an efficient means of communicating with the Contractor's Representative, and
 - (v) the approved organization structure is implemented on Site."

After Sub-Clause 16.2 add the following Sub-Clauses 16.3 to 16.5:

Sub-Clause 16.3: Employment of Local Personnel

"The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour from sources within the Democratic Socialist Republic of Sri Lanka."

Sub-Clause 16.4: Employment of Foreign Labour

"The Contractor may limit to 650 skill grade foreign labour in order to execute the works where permitted by the contract. The Contractor shall submit a list of all non-Sri Lankan personnel required and labour whom the Contractor and his Subcontractors plan to employ for execution of the Works and shall process with the relevant Sri Lankan authorities to obtain permits with assistance of the Employer for legal entry into, and temporary residency in Sri Lanka of those non-Sri Lankan personnel. The Contractor shall pay all expenses in connection with arrival to, and departure from Sri Lankan territory of employees who are non-Sri Lankan nationals and were hired from countries outside the Democratic Socialist Republic of Sri Lanka for work on the Contract when such employee's services are no longer required, or if and when demanded by the appropriate authority of Sri Lanka or official representative of the country of which the employee is a citizen."

Contractor shall submit to the Engineer at monthly intervals a record of details of all employees, including copy of passport, for whom the Employer has facilitated obtaining Visa.

Sub-Clause 16.5: Political Activity Prohibited

"The entire Contractor's and his Subcontractors' foreign personnel are strictly prohibited to participate in any political activity in the Democratic Socialist Republic of Sri Lanka."

Add the following Sub-Clause -17.2 after Sub-Clause 17.1:

Sub-Clause 17.2: Notice of setting out

"The Contractor shall give to the Engineer not less than 24 hours exclusive of holidays written notice of his intention to set out or establish levels for any part of the Works so that timely arrangement may be made for checking or issuing instructions".

Sub-Clause 19.1: Safety, Security and Protection of the Environment

After the end of Sub-Clause 19.1 add the following:

"The Contractor shall note that this Clause and the provisions contained in Section 114 of the Specifications are complementary and mutually explanatory of one another. If, in the opinion of the Engineer, any ambiguities or discrepancies make it necessary to issue any instructions to the Contractor in explanation or adjustment, the Engineer shall have the authority to issue such instruction."

Add following Sub-Clause 19.3 after Sub-Clause 19.2:

Sub-Clause 19.3 HIV Awareness and Prevention Programme

The Contractor

- (a) is responsible for implementing an HIV Awareness and Prevention Program among the Contractor's Employees (and the local community) for the duration of the Contractor's contract and commencing as soon as practicable after the Contractor's Employees arrive at the Site in conjunction with occupational health staff of the Contractor and the local health authorities involved in HIV/AIDS prevention.
- (b) may sub-contract with a Service Provider in the case that he will not be able to implement the Program; when sub-contracting with the Service Provider, the Contractor shall give any representative of the Service Provider and the Employer all reasonable access to the Site in connection with the HIV Awareness and Prevention Program
- (c) shall instruct the Contractor's Employees to participate in the HIV Awareness and Prevention Program in the course of their employment and during their normal working hours or any period of overtime provided for in the relevant employment contracts
- (d) shall do nothing to dissuade the Contractor's Employees from participating in the HIV Awareness and Prevention Program.

The cost incurred by the Contractor in satisfying the provisions of this Clause is deemed to be included in other rates and prices of his bid.

Where a clinic is provided on behalf of the Contractor on Site, the Contractor shall ensure that such clinic provides to the Contractor's Employees without charge: information and counselling on STI/HIV/AIDS and condoms that comply with the quality standard set by Ministry of Health or relevant ministries in the country or with the WHO/UNAIDS Specification and Guidelines for Condoms 1998 to a maximum of 100 per member of the Contractor's Employees per year.

The Contractor's Employees' means, without prejudice to any other definition contained in the Contract, any workers who are under the Contractor's control and on the Site in connection with the Contract, including any workers who are under the control of any person or entity to whom the Contractor has sub-contracted any obligations under the Contract other than those responsibilities set out in this Sub-Clause.

The HIV Prevention Program' means basically:

- 1) Promotion of condom use,
- 2) Test and treatment of Sexually Transmitted Infection (STI),
- 3) HIV/AIDS education through peer education,
- 4) Volunteer Counseling and Testing in cooperation with the Employer.

'Service Provider' means a person or entity approved by Implementing agency and National HIV/AIDS authority (i.e. relevant national authority of the Ministry of Health to have responsibility for HIV/AIDS prevention) to provide the HIV Awareness and Prevention Program.

Sub-Clause 20.4: Employer's Risks

Replace the text of Sub-Clause 20.4 with the following:

The Employer's risks are:

- (a) Insofar as they directly affect the execution of the Works in the country where the Works are to be executed:
 - (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
 - (iii) ionising radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (v) riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his Subcontractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by the Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
- (d) any operation of the forces of nature (insofar as it occurs on the Site) which an experienced Contractor could not have reasonably fore seen or could reasonably have foreseen, but against which he could not reasonably have taken appropriate measures to prevent loss or damage to physical property and human life from occurring.

Add the following Sub-Clauses 20.5 and 20.6 after Sub-Clause 20.4:

Sub-Clause 20.5: Obstruction of Rights of Way

The Contractor shall not close, obstruct or modify any right of way without the written permission of the person having legal charge over the right of way (the "Right of Way Owner"). Where any right of way is affected by the Contractor's operations, the Contractor shall take such steps as may be agreed by the Engineer and the Right of Way Owner to maintain the function of the right of way.

Where any operation connected with the Works requires the closure of any road or any other right of way, the written approval of the Engineer, the Right of Way Owner and the relevant authorities shall be obtained by the Contractor at least 48 hours in advance.

Sub-Clause 20.6: Work Disrupting Existing Facilities

Unless otherwise specifically provided for in the Contract or agreed with the Engineer, the Contractor shall not do any work in the course of fulfilling his obligations under the Contract which would disrupt or interfere with the operation of any utility, service, drainage channel,

structure or agricultural process, free flow of water or the like until he has obtained the permission of the owner of the facility and has given the Engineer due notice of his intention to start such work.

Sub-Clause 21.1: Insurance of Works and Contractor's Equipment

Delete sub-paragraph (a) and replace with:

"(a) The Works, together with materials and Plant for incorporation therein, to the full replacement cost (the term "cost" in this context shall include profit).

It is understood that such insurance shall provide for compensation to be payable in currencies required to rectify the loss or damages incurred".

In sub-paragraph (b), after the last word, "nature", add the following words:

"It is understood that such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred".

Delete sub-paragraph (c) and replace with:

"(c)The Contractor's Equipment and other things (which are deemed to include offices, huts, laboratories and accommodation provided by the Contractor for the use of the Employer, Engineer or other firms or persons as required by the Contract) brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site."

Add a new paragraph (d):

The Contractor shall provide evidence to the Engineer that a Professional Liability Insurance for a value of Sri Lankan Rupees 200,000,000.00 (Two hundred million) has been taken out and maintained and that the premiums have been paid with respect to the Designs performed as per Sub clause 7.2. The validity of Professional Liability Insurance shall be 4 years after issuance of Taking over Certificate.

Sub-Clause 21.2: Scope of Cover

After the end of the Sub-Clause add the following:

"Such insurance shall be effected with an insurance company established and registered in Sri Lanka and acceptable to the Employer."

An Insurance cover against the injury or death to Engineer's/ Employer's personnel shall also be provided.

Sub-Clause 21.4: Exclusions

This Sub-Clause 21.4 is amended to read as follows:

"There shall be no obligation for the insurances in Sub-Clause 21.1 to include loss or damage caused by the risks listed under Sub-Clause 20.4, sub-paragraphs (a), (i) to (v)."

Sub-Clause 22.1: Damage to Persons and Property

In the second line of the first sentence after the word "Employer" add the words "the Employer's representatives, their contractors, agents and employees".

Sub-Clause 22.2: Exceptions

Add the following paragraph (e):

"(e) Notwithstanding the provisions of paragraph (d) above the Contractor shall continue to indemnify the Employer as required by Sub-Clause 22.1 where the Employer has had to employ such other contractors, servants or agents for reasons for which the Contractor is responsible."

Sub-Clause 23.3: Cross Liabilities

At the end of this Sub-Clause add the following:

"Wherever pursuant to the Contract the insurance is effected in more than one name, the policy of such insurance shall provide that, insofar as the policy may cover more than one insured, all insuring agreements and endorsements shall operate in the same manner as if there were a separate policy of insurance covering each party comprising the insured. Such policy shall provide that the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties constituting the insured and the failure by any insured party to observe and fulfil the terms of the policy shall not prejudice the insurance in regard to any other insured party."

Add the following Sub-Clause 23.4 after Sub-Clause 23.3:

Sub-Clause 23.4: Motor Insurance

"The Contractor shall, without limiting his obligations and responsibilities under Clause 22, effect and maintain policies of Motor Insurance in respect of all vehicles used by him and his Subcontractors including their employees, or furnished to the Employer or Engineer in connection with the Works on public highways, roads and Site access roads or in any circumstances such as to be eligible for compulsory Motor Insurance."

Add the following Sub-Clause after Sub-Clause 24.2:

Sub-Clause 24.3: Minimum Amount of Insurance

"Such insurance shall provide and thereafter maintain for all employees under the employment of the Contractor, security for compensation benefits meeting at least the minimum requirements of the applicable law of Sri Lanka for injury or death in the course of such employment or in the absence of such law, Employer's Liability Insurance."

Sub-Clause 25.1: Evidence and Terms of Insurances

Delete "84 days of the Commencement Date" before the word "provide" in the third line and replace with "56 days of the date of signing of Contract Agreement".

Sub-Clause 25.2: Adequacy of Insurance

At the end of this Sub-Clause add the following:

"The Contractor shall submit the particulars of re-insurers of the proposed insurer and the

re-insurer shall be acceptable to Employer"

Add the following Sub-Clause 26.2 after Sub-Clause 26.1:

Sub-Clause 26.2: Employer's Assistance Concerning Statutes, Regulations

Without limiting the Contractor's obligation and responsibilities under this Clause, the Employer shall give the Contractor assistance to enable him to ascertain the nature and extent of any laws, regulations, orders or bylaws having the force of law in Sri Lanka which may affect the Contractor and shall assist the Contractor in obtaining the necessary permits and licenses to perform the Works.

Further, the Employer shall assist the Contractor to obtain Right of Way and clearance for additional areas which may be proposed by the Contractor and agreed by the Engineer as additional working areas, such as borrow pit, dumping area, quarry and access road thereto and assist in identifying such areas when necessary which the Contractor will bear all associated costs.

Sub-Clause 28.2: Royalties

At the end of the first sentence of Sub-Clause 28.2, delete the full stop and add the following:

"including material obtained from the Government quarries or borrow areas.

The Contractor shall also be liable for all payments or compensation, if any levied in relation to the dumping of part or all of any such materials or any other surplus material in connection with the execution of the Works which the Contractor will bear all associated costs."

Sub-Clause 29.1: Interference with Traffic and Adjoining Properties

After the end of this Sub-Clause add the following:

"If conditions are observed that might develop into public controversy and misunderstanding, this information should be transmitted to the Engineer without delay. The Contractor should ensure the safety and convenience of the public and their property. Courtesy and consideration are necessary in all contacts with the public as the entire Project is judged by the actions of its personnel.

Sub-Clause 30.1: Avoidance of Damage to Roads

After the end of this Sub-Clause add the following:

"Should the Contractor fail to comply with the requirements of this Sub-Clause or with the constraints relating thereto described in the Specification, the Engineer may arrange for any necessary rectification work to be performed by others and the Contractor shall indemnify the Employer in accordance with the provisions of Sub-Clause 22.1 in respect of such work. After due consultation with the Employer and the Contractor, the Engineer will determine the amount to be deducted from the Contract Price for such work."

Add the following Sub-Clause after Sub-Clause 30.4:

Sub-Clause 30.5: Maintenance of the Temporary Accesses and Bypasses

"Should the Contractor fail to comply with the requirements of the Specification relating to the maintenance of that part of the Works of which he has possession of Site, the Engineer may arrange for necessary maintenance work to be performed by others and the Contractor shall indemnify the Employer in accordance with the provisions of Sub-Clause 22.1 in respect of such work. After due consultation with the Employer and the Contractor, the Engineer will determine the amount to be deducted from the Contract Price for such work."

Add the following Sub-Clause after Sub-Clause 32.1:

Sub-Clause 32.2: Dust Nuisance

"Dust nuisance originating from any construction activity at or near the Site shall be adequately controlled by the Contractor to the satisfaction of the Engineer."

Add the following Sub-Clause after Sub-Clause 33.1:

Sub-Clause 33.2: Temporary Roads to be Handed Over

"Temporary roads constructed by the Contractor for the purpose of the Works shall, as an alternative to their removal and at the discretion of the Employer, be put by the Contractor into a good state of repair to the satisfaction of the Engineer and be handed over to the Employer without any payment. Failure by the Contractor to carry out any such instruction given shall be dealt with in accordance with Sub-Clause 49.4 hereof."

Sub-Clause 34.1: Rates of Wages and Conditions of Labour

Delete Sub-Clause 34.1 and substitute:

"The Contractor shall comply with the following regulations for the local labour and other statutory laws as enforced by the Government of Sri Lanka from time to time during the continuance of the Contract:

- (a) Age of Labour: The minimum age of the labour to be employed shall be eighteen unless otherwise stated in the Labour Laws of the Government of Sri Lanka.
- (b) Fair Wages: The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or condition of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favourable than the general level of wages and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (c) The Contractor shall, notwithstanding the provisions of any contract to the contrary, pay fair wages to labour indirectly engaged in the Works including any labour engaged by sub-contractors in connection with the said Works as if labour had been directly employed by him.
- (d) Notices: The Contractor shall, before the commencement of the Work, display and correctly

maintain in a clean and legible condition at a conspicuous place on the Site, notices in English and Sinhala/Tamil stating therein the rate of wages which have been fixed as fair wages and the hours of work for which such wages are earned and send a copy of such notice to the Engineer.

- (e) Wages Records: The Contractor shall maintain records of wages and other remuneration paid to his employees in such form as may be convenient and to the requirements of the Employer/Engineer and the Inspecting Officer or such other authorised person appointed by the Government and the same shall include the following particulars for each worker.
- (i) Name, worker's number and grade
 - (ii) Rate of daily or monthly wage
 - (iii) Nature of work on which employed
 - (iv) Total number of days worked during each wage period
 - (v) Total amount payable for the work during each wage period
 - (vi) All deductions made from the wage with details in each case of the ground for which the deduction is made
 - (vii) Wages actually paid for each wage period
 - (viii) Deductions made as per Statutory requirements (EPF, ETF etc.)
- (f) The Contractor shall provide a wage slip for each worker employed on the Works.
- (g) The wage records and wage slips shall be preserved for at least 12 months after the last payment.
- (h) Inspection of Wage Records: The Contractor shall allow inspection of the aforesaid wage records and wage slips to the Engineer and to his agent at a convenient time and place after due notice is received, or to the Employer or any other person authorised by him on his behalf.
- (i) The Employer and the Engineer or any other person authorised by them on their behalf shall have power to inspect the wage records at any time.
- (j) The Employer has the right to deduct from the monies due to the Contractor any sum required or estimated to be required for making good the loss suffered by a worker or workers by reason of non-payment of the aforesaid fair wage, except on account of any deductions that may be permissible under any law for the time being in force.

Add the following Sub-Clauses 34.2 to 34.19 after Sub-Clause 34.1:

Sub-Clause 34.2: Employment of Persons

"The Contractor shall:

- (a) not recruit or attempt to recruit his staff and labour from amongst persons in the service of

the Employer or the Engineer.

(b) to an extent which is practicable, reasonable and as governed by the regulations in force from time to time in Sri Lanka, employ citizens of Sri Lanka as staff and labour.

Sub-Clause 34.3: Repatriation of Labour

The Contractor shall be responsible for the return to the place where they were recruited or to their domicile of all such persons as he recruited and employed for the purposes of or in connection with the Contract and shall maintain such persons so to be returned in a suitable manner until they have left the site or, in the case of persons who are not nationals of and have been recruited outside the Democratic Socialist Republic of Sri Lanka shall have left the Democratic Socialist Republic of Sri Lanka.

Sub-Clause 34.4: Housing for Labour

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such accommodation and amenities necessary for all his staff and labour, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and fire fighting equipment, air conditioning, cookers, refrigerators, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer."

Sub-Clause 34.5: Safety Manager for Accidents Prevention

"The Contractor shall have on his staff a Safety Manager dealing only with questions regarding the safety and protection against accidents of all staff and labour. This Safety Manager shall be qualified for this work and shall have the authority to issue instructions and shall take preventive measures to prevent accidents."

Sub-Clause 34.6: Health and Safety

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

Within the time stated in the Appendix to Bid the Contractor shall prepare and submit to the Engineer for review and approval a Safety Plan based on International safety standards and practices in accordance with the provision stipulated in Section 114 of Specifications."

Sub-Clause 34.7: Measures against Insect and Pest Nuisance

"The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the Site from insect nuisance, rats, and other pests and reduce dangers to health and the general nuisance caused by same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria, and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. "

Sub-Clause 34.8: Epidemics

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

Sub-Clause 34.9: Burial of the Dead

"The Contractor shall make any necessary arrangements for the transport, to any place as required for burial, of any expatriate employees or members of their families who may die in the Democratic Socialist Republic of Sri Lanka.

The Contractor shall also be responsible, to the extent required by the local regulations, for making any arrangements with regard to any of his local employees who may die when engaged upon the Works."

Sub-Clause 34.10: Supply of Foodstuffs

"The Contractor shall arrange for the provision of a sufficient supply of suitable food at reasonable prices for all his staff and labour, or his Subcontractors, for the purposes of or in connection with the Contract."

Sub-Clause 34.11: Supply of Water

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

Sub-Clause 34.12: Alcoholic Liquor or Drugs

"The Contractor shall not, otherwise than in accordance with the Statutes, Ordinance and Government Regulations or Orders for the time being in force, import, sell, give, barter, or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labour."

Sub-Clause 34.13: Arms and Ammunition

"The Contractor shall not give, barter, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid."

Sub-Clause 34.14: Festivals and Religious Customs

"The Contractor shall, in all dealings with his staff and labours have due regard to all recognized festivals, days of rest, religious, and other customs."

Sub-Clause 34.15: Disorderly Conduct

"The Contractor shall be responsible for keeping discipline on the Site and shall obey all police, health and municipal regulations and all other regulations which may from time to time require his observance and he shall instruct his agents, Subcontractors and other employees to obey such regulations. The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

The Contractor shall not interfere with any members of any authorized force or other official security forces of Sri Lanka who shall have free and undisputed access at all times to any part of the Works in the execution of their duties."

Sub-Clause 34.16: Conspicuous Notice to Workers

"Notices shall be posted in conspicuous places and work places concerned to inform the workers of the conditions of work provided by the Contract."

Sub-Clause 34.17: Labour Conflicts

"The Contractor is obliged to notify immediately the Engineer of any labour conflicts faced by him or his Subcontractors that could influence the progress of the Works."

Sub-Clause 34.18: Observance by the Subcontractors

"The Contractor shall be responsible for observance by his Subcontractors of the foregoing provisions of this Clause."

Sub-Clause 34.19: Cost for Labour Affairs

"The cost of complying with this Clause and of complying with any relevant laws and regulations in force in Sri Lanka at the time of Tender shall be deemed to be included in the relevant unit rates, lump sum prices and day-work rates quoted in the Bill of Quantities."

Add the following Sub-Clauses 35.2 and 35.3 after Sub-Clause 35.1

Sub-Clause 35.2 Records of Safety and Health

"The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe."

Sub-Clause 35.3 Reporting of Accidents

"The Contractor shall report to the Engineer details of any accidents as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also report such accident to the appropriate authority whenever such report is required by laws and regulations etc. in force in Sri Lanka."

Sub-Clause 36.1: Quality of Materials, Plant and Workmanship

In the final paragraph after the word, "before", add "and after".

Add the following paragraph at the end of Sub-Clause 36.1:

"The Contractor is encouraged, to the extent practicable and reasonable, to use Plant and materials from sources within the Democratic Socialist Republic of Sri Lanka."

Add the following Sub-Clauses 36.6 to 36.9 after Sub-Clause 36.5:

Sub-Clause 36.6: Method of Working

"As stipulated in relevant Sections of Specifications, at least 28 days in advance of his programmed commencement of each item of work; the Contractor shall furnish for the Engineer's consent, the method of working he intends to adopt for execution of the item giving full details of the method of working, equipment to be deployed and measures to be adopted for ensuring quality of construction and safety. Contractor will receive response from Engineer within 21 days"

Sub-Clause 36.7: Method of Construction Affecting Others

"Where, in the opinion of the Engineer, any particular aspect of the Works is of such a nature that its manner of execution may affect the safety of, or interfere with, the activities of the Employer or any third party then the Engineer may request, and the Contractor shall submit at such times and in such detail as the Engineer may reasonably require, such information pertaining to the methods of construction (including Temporary Works and the use of Contractor's Equipment) which the Contractor proposes to use so as to enable the Engineer to decide whether, if these methods are adhered to, the Works can be constructed in accordance with the Contract and without unduly disturbing the activities of the Employer or the affected party."

Sub-Clause 36.8: Method of Construction Affecting Permanent Works

"If required by the Engineer, the Contractor shall submit at such times and in such detail as the Engineer may reasonably require, information pertaining to the methods of construction (including Temporary Works and the use of Contractor's Equipment) which the Contractor

proposes to use and the calculations of stresses, strains and deflections that will arise in the Permanent Works or any part thereof during construction, so as to enable the Engineer to decide whether, if these methods are adhered to, the Works can be constructed in accordance with the Contract and without detriment to the Permanent Works."

Sub-Clause 36.9: Quality Assurance

The Contractor shall establish and implement a documented Quality Management /Assurance System (QMS) in accordance with ISO 9001/BS 5750 per Section 101 of Technical Specifications, within 28 days after the Commencement Date and submit evidence for the same for Engineer's review and approval. The Contractor shall also prepare and submit for Engineer's approval a Project Quality Plan (PQP) for the project based on requirements of the Contract, Contractor's site organization, Contractor's method of construction and statutory requirements, within 28 days after the Commencement Date. PQP shall include Inspection and Test Plans/Schedules for works and materials.

The Engineer shall be entitled to audit any aspect of the system and order any additional tests to be carried out in his presence.

The Contractor shall submit for Engineer's review, Audit Reports for Internal and third party audits, Quality records for Inspection and testing, Corrective Action Requests and Non Conformance Reports as evidence for effective implementation of his Quality Management/Assurance System. The Contractor shall be responsible for ensuring that all Sub-Contractors and Suppliers comply with the requirements of the Contractor's Quality Management System and the PQP.

The entire cost of maintaining quality assurance and quality control systems including testing, carried out by the Contractor shall be deemed to be included in the rates and prices quoted by the bidder, except where otherwise specifically provided for in the Contract.

The Contractor's attention is drawn to the provisions of the various sections of the Specification regarding the minimum frequency of testing that will be required for quality control. The Contractor shall, at his own initiative, increase this frequency where necessary to ensure adequate control.

The Employer may carry out audits on the Contractor's Quality Management/Assurance System either jointly with a third party or jointly with the Engineer, to determine the effectiveness of implementation of the Contractor's QMS and QAP.

Add the following Sub-Clause-39.3 after Sub-Clause 39.2:

Sub-Clause 39.3: Removal of Soil, Rock or Other Substances

"The Contractor shall not sell or otherwise dispose of or remove off the Site, except for the purpose of the Works, any sand, stone, clay, ballast, rock or other substances or materials which he obtains from any excavation made for the purpose of the Works or any buildings or produce upon the Site at the time of the delivery of the possession of the Site, and all such substance, material, buildings and produce shall be the property of the Employer. Provided that the

Contractor may with the permission in writing of the Engineer dispose of them off the Site at approved locations."

Sub-Clause 41.1: Commencement of Works

Add the following paragraph at the end of Sub-Clause 41.1:

"Employer shall give Notice to Commence after

- (a) Submission of the Performance Guarantee and Advance Payment Guarantee for first instalment of Advance Payment acceptable to the Employer by the Contractor.
- (b) First instalment of the Advance Payment made to the Contractor by the Employer
- (c) Loan agreement between Government of Sri Lanka and EXIM Bank of China has been signed"

Nevertheless the Contractor may commence mobilization, the preliminary works, preparation and any other works agreed with the Employer after signing Contract agreement.

Sub-Clause 42.1 Possession of Site and Access Thereto

Delete the text of Sub-Clause 42.1 entirely and substitute:

"Access to the Site" means the entitlement to the Contractor to enter the Site and does not mean the Temporary access mentioned in Section 107 of the Specifications.

Unless otherwise provided by the Drawings, or the Specifications, the Employer shall provide land required for all Permanent Works. The Contractor will provide land required for Temporary Works associated with the Permanent Works.

The Employer shall assist the Contractor with respect to the release of the land for road diversions for which the Contractor shall bear all associated costs.

Within the time specified in the Appendix to Bid, the Employer will give the Contractor possession of the Site as specified in the Appendix to Bid for the purpose of performing the Works, subject to the limitations set forth below:

- (a) The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.
- (b) Possession of the Site shall be deemed to give the Contractor only such limited possession as shall be necessary to enable him to perform the work effectively but shall not be deemed to confer a right to exclusive possession.
- (c) Utilities in the site shall be dealt according to Clause 8.3.

Sub-Clause 44.1: Extension of Time for Completion

In paragraph (e), after the words "which may occur", add "or a change in any specified sequence or timing of construction of any part of the Works which may be instructed".

Sub-Clause 44.2: Contractor to Provide Notification and Detailed Particulars
Delete paragraph (a) entirely and substitute:

(a) as soon as practicable, but within 28 days after identifying the event or circumstance which is the subject of the claim, notified the Engineer with a copy to the Employer, and submitted to the Engineer records for verification. Such verification shall apply to the physical circumstances, and shall not imply acceptance of any claim arising from such circumstances.

For the purposes of Sub-Clauses 44.2 and 44.3, detailed particulars shall include the following:

- (i) a full description of the facts relating to the events or circumstances which the Contractor considers entitles him to an extension to the Time for Completion, and
- (ii) the contractual basis or legal basis upon which an extension of Time for Completion is sought, and
- (iii) a full description of how the Contractor has identified the consequences of the events or circumstances referred to in (i) above upon the Time for Completion for which an extension is sought, and
- (iv) the records relevant to (iii) above."

Sub-Clause 44.3: Interim Determination of Extension

Delete "an extension of time" in the line 4 and substitute "have his claim for an extension of time considered".

Replace third sentence with the following sentence:

In both such cases the Engineer shall make his determination after due consultation with the Employer within 28 days of receipt of the Contractor's detailed particulars subject to the detailed particulars being acceptable to the Engineer. The Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Add the following Sub-Clauses 44.4 and 44.5 after Sub-Clause 44.3:

Sub-Clause 44.4: Exceptionally Adverse Climatic Conditions

(a) For the purposes of Sub-Clause 44.1, it is agreed that "exceptionally adverse climatic conditions" shall be exclusively where:

- (i) on any single day, the rainfall measured at meteorological station noted in the Appendix to Bid exceeds the 98 percentile value of the daily rainfall for that calendar month for that station, as calculated using the last 120 calendar months of that station's rainfall record or, in the case where the station's rainfall records do not extend back as far as 120 months, then that station's available records, and
- (ii) Work is in progress that day in that station's zone of influence, and
- (iii) the days of heavy rainfall was observed at relevant sites and critical path works were

affected by the rain (The works and rainfall reports shall be submitted.)

- (b) Any delay caused by exceptionally adverse climatic conditions will be "no fault delay" and cost will be deemed to lie where they fall. That is in the case of such delay, pursuant to the Contract, the Contractor is entitled only to an extension of time and the Engineer will approve only an extension of time for the period of delay.

Sub-Clause 44.5: Applicability of Clause 44

"Notwithstanding the provision of any other Sub-Clause in this Contract, all claims for extension of the Time for Completion shall be governed by Clause 44."

Add the following Sub-Clause 45.2 after Sub-Clause 45.1:

Sub-Clause 45.2: Working Hours

The Contractor shall be deemed to have based his Tender on normal working hours of 08:00 to 12:00 and 13:00 to 17:00 from Monday to Friday inclusive and 08:00 to 13:00 on Saturdays, giving a total of 45 hours per week, and made allowance for not working on the normal public and mercantile holidays observed in Sri Lanka. Should the Contractor, for any reason other than an emergency affecting the safety of life or of the Works or of adjoining property, or in order to comply with any requirements with regard to working times or limitations on possession of Site given in the Specification, require to work extended hours, to employ a multiple shift system, to work during the hours of darkness or to work during locally recognized rest-days or public and industrial holidays, he shall not do so without the written consent of the Engineer.

Should the Contractor's requirements in this respect involve the Employer in an increase in supervision costs, such increased costs shall, after due consultation with the Employer and Contractor, be determined by the Engineer and shall be recoverable by the Employer from the Contractor and may be deducted from any payments which may be due or which may become due to the Contractor.

Sub-Clause 47.1: Liquidated Damages for Delay

At the end of this Sub-Clause add the following:

"The Employer may recover an interim payment of liquidated damages from any payment that is due to the Contractor. Such interim payment shall be calculated by multiplying the amount per day stated in the Appendix to Bid by the number of days that have elapsed between the Due Date for Completion and the date on which the interim calculation is made, less any previous interim payment made."

Add the following Sub-Clause 48.5 after Sub-Clause 48.4:

Sub-Clause 48.5: Prevention from Testing

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer or the Engineer or other contractors employed by the

Employer are responsible, the Employer shall be deemed to have taken over the Works or Sections (as the case may be) on the date when the Tests on Completion would otherwise have been completed but for such prevention.

The Engineer shall issue a Taking-Over Certificate accordingly.

If the Works are taken over under this Sub-Clause, the Contractor shall nevertheless carry out such Tests as soon as practicable, or before expiry of the Defects Liability Period. The Engineer shall require the Tests to be carried out by giving 14 days notice.

Any additional costs, which the Contractor may incur, in making such tests, shall be valued under Clause 52."

Sub-Clause 51.1: Variations

In paragraph (e) after the words "necessary for the completion of the Works," add "and/or the proper rectification of defects not attributable to the Contractor and agreed by the Engineer,".

Sub-Clause 51.2: Instructions for Variations

Delete the text from "Provided that no instruction..." through to the end of the paragraph.

After Sub-Clause 51.2 add the following Sub-Clause:

Sub-Clause 51.3: Changes that are not Variations

Increases or decreases in the Bill of Quantities that arise through the re-measurement of the Works and the subsequent correction of errors made in the estimation of the amounts of work described in the Bill of Quantities shall not constitute varied works under the Contract. Such increases or decreases do not require an instruction from the Engineer."

Sub-Clause 52.1: Valuation of Variations

At the end of this Sub-Clause add the following:

"The Contractor shall provide his rates or prices for the varied work within 28 days of receipt of the Engineer's order pursuant to Sub Clause 51.1 of the Conditions of Contract.

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

of various currencies specified in the Appendix to Bid for payment of the Contract Price."

Sub-Clause 52.2: Power of Engineer to Fix Rates

At the end of the first paragraph, add the following:

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

Sub-Clause 52.3: Variations Exceeding 15 percent

Delete this Sub-Clause entirely

Add the following Sub-Clauses 52.5, 52.6 and 52.7 after Sub-Clause 52.4:

Sub-Clause 52.5: Variations for the Convenience of the Contractor

"If the Contractor requests the Engineer in writing to approve a variation for the convenience of the Contractor, the Engineer may do so in writing. The approval may be conditional.

Unless the Engineer directs otherwise in the notice approving the variation, the Contractor shall not be entitled to:

- (a) an extension of Time for Completion of the Works, or
- (b) extra payment, in respect of the variation or anything arising out of the variation which would not have been approved.

The Engineer shall not be obliged to approve a variation for the convenience of the Contractor.

Where the Contract provides for the payment of the Contract price in more than one currency, the amount or proportion payable in each of the applicable currencies shall be specified when such further sum is agreed or determined, it being understood that in specifying these amounts or proportions the Contractor and the Engineer (or, failing agreement, the Engineer) shall take into account the currencies (and the proportions thereof) in which the Contractor's Site and general overhead cost of the Contract were incurred without being bound by the proportions of various currencies specified in the Appendix to Bid for payment of the Contract Price."

Sub-Clause 52.6: Failure to Agree on Extra Works

"In the case any extra or additional work is requested in the proper performance of the Works under this Contract, it shall be understood that if the Contractor and the Engineer fail to arrive at an agreement to perform such extra or additional work, the Employer reserves the right to have such work done by person, firm or corporation other than the Contractor and the Contractor shall

not be entitled to make any claim on account thereof.

Should the Employer award any extra work or other contracts for additional work to any other person, firm or corporation, the Contractor shall not in any way interfere with, cause any inconvenience or molest such person, firm or corporation. The Contractor shall not be entitled to claim for damages or to any privileges or rights other than expressed by this Contract by reason of such Action by the Employer.

The Contractor shall, as far as possible, arrange his work and direct his employees, Subcontractors, materials and equipment so as not to interfere with the work or storage of materials of other contractors engaged in the works. He shall also coordinate his work with that of other contractors engaged in the Works. He shall also coordinate his work with that of others in a proper manner, and in accordance with the spirit of the Drawings and Specifications, and perform his work in the proper sequence in relation to that of any other contractors.

"In the case any extra or additional work is requested in the proper performance of the Works under this Contract, it shall be understood that if the Contractor and the Engineer fail to arrive at an agreement to perform such extra or additional work.

Sub-Clause 52.7: Time Limit for the Engineer

In the event of disagreement of the rates or prices between the Engineer with the Employer and the Contractor, the Engineer shall, within 28 days after receipt of the Contractor's rate or price or the work, fix a rate or price for the work but subject to submission of proper documentation acceptable to the Engineer and the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Sub-Clause 53.1: Notice of Claims

After the end of this Sub-Clause add the following:

"If the Contractor fails to give notice of a claim within such period of 28 days, the time for completion shall not be extended, the Contractor shall not be entitled to additional payment and the Employer shall not accept the claim."

Sub-Clause 53.3: Substantiation of Claims

After the end of this Sub-Clause add the following:

"For the purposes of this Sub-Clause 'detailed particulars' shall include the following:

- (a) a full description of the facts relating to the events or circumstances which the Contractor considers entitles him to additional payment, and
- (b) the contractual or legal grounds upon which the claim for additional payment is based, and
- (c) a full description of how the Contractor has identified and linked the financial consequences of the events or circumstances referred to in (a) above to the additional payment sought, and

(d) the records relevant to (c) above."

Sub-Clause 53.5: Payment of Claims

In the first line after the words "The Contractor shall" add a comma and the words "if he has complied in all respects with the relevant requirements of Sub-Clauses 53.1, 53.2 and 53.3,".

After Sub-Clause 53.5 add the following Sub-Clause:

Sub-Clause 53.6: Determination of Additional Payment Due

"Where, in accordance with the requirements of Sub-Clause 53.5, the Engineer has determined that, if any amount is finally due in respect of any claim, then that determination is agreed as being the proper valuation of such amount unless the determination is disputed by the Contractor or the Employer and referred to the Engineer for a decision within 21 days of such reference.

If either party do not agree with this decision of the Engineer, the dispute shall be settled, pursuant to Clause 67."

Add the following Sub-Clauses 54.9 and 54.10 after Sub-Clause 54.8:

Sub-Clause 54.9: Records of Equipment

"Immediately an item of Contractor's Equipment is brought in the Site, the Contractor shall notify the Engineer's Representative in writing to this effect and shall provide a description of the equipment, giving its type, manufacturer, model and capacity, together with a unique identification number. If an item of Contractors' Equipment is hired, then the Contractor shall provide the name and address of the owner thereof or the name and address of the vendor named in the agreement for hire purchase thereof.

A certified copy of the agreement shall be supplied to the Engineer.

The Contractor shall submit, to the Engineer, details showing the number of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works."

Sub-Clause 54.10: Ownership of Materials on Site

"All materials paid for under Sub-Clause 60.1 shall be deemed to be owned by the Employer who shall have the full rights of ownership."

Sub-Clause 56.1: Works to be measured

Delete the text entirely and substitute:

"The Engineer shall, except as otherwise stated, ascertain and determine by measurement the value of the Works in accordance with the Contract and the Contractor shall be paid that value in accordance with Clause 60. The Engineer shall, when he requires any part of the Works to be

measured, give reasonable notice of the time appointed for such measurement to the Contractor who shall:

- (a) send, at the appointed time, qualified and appropriately equipped representatives to conduct the measurement under the supervision of the Engineer, and
- (b) supply all particulars required by the Engineer.

Should the Contractor neglect or omit to send such representatives, then the measurement may be made by the Engineer and taken to be the correct measurement of such part of the Works. For the purpose of measuring such Permanent Works as are to be measured by records and drawings, the Contractor shall prepare records and drawings as the work proceeds and the Engineer, when called upon to do so in writing, shall, within 14 days, attend to, examine and agree such records and drawings with the Contractor and shall sign them when so agreed. If the Engineer does not attend to examine and agree such records and drawings, they shall be taken to be correct. If, after examination of such records and drawings, the Engineer does not agree with them or does not sign them as agreed, they shall nevertheless be taken to be correct, unless the Engineer, within 14 days of such examination, lodges with the Contractor notice of the respects in which such records and drawings are claimed by him to be incorrect. On receipt of such notice, the Contractor shall review the records and drawings and either confirm or vary them."

Sub-Clause 58.2: Use of Provisional Sums

Delete (a) and (b) entirely and last word "by" in first paragraph and substitute the following,

- (i) The Contractor will be entitled to the value determined in accordance with Clause 52 but the mark up (overhead cost and profit) shall be decided as follows"
 - a. For work directly handled by the contractor - 25% on direct cost
 - b. For work done on Subcontract - 15%
 - c. Utility Agencies - 10%
 - d. Supply of vehicles, provision of Securities & Insurances and payment only items - 5%
- (ii) For work performed by subcontractors or suppliers, a transparent sealed quotation procedure participated by the Engineer and the Employer, shall be followed by the Contractor in engagement of subcontractors

Sub-Clause 60.1 to 60.10 of the General Conditions is deleted and the following Sub-Clauses 60.1 to 60.14 are substituted thereof:

Sub-Clause 60.1: Monthly Statements

The Contractor shall submit a statement in six copies to the Engineer at the end of each month, in a tabulated form approved by the Engineer, showing the amounts to which the Contractor considers himself to be entitled. The statement shall include the following items, as applicable, which shall be taken into account in the sequence listed:

- (a) the estimated contract value of the Works executed up to the end of the month in question, determined in accordance with Sub-Clause 56.1, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price in which the contract is payable;
- (b) the actual value certified for payment for the Works executed up to the end of the previous month, at the unit rates and prices included in the Contract, in the various currencies of the Contract Price;
- (c) the estimated contract value at the unit rates and prices included in the Contract of the Works for the month in question, in the various currencies of the Contract Price, obtained by deducting (b) from (a);
- (d) the value of any variations executed up to the end of the month in question, less the amount certified in the previous Interim Payment Certificate, expressed in the relevant amounts of foreign and local currencies, pursuant to Clause 52;
- (e) amounts approved in respect of Day work executed up to the end of the month in question, less the amount for Day work certified in the previous Interim Payment Certificate, indicating the amounts of foreign and local currencies as determined from the Day work Schedule of the Bill of Quantities;
- (f) amounts reflecting changes in cost and legislation, pursuant to Clause 70, expressed in the local currency;
- (g) any credit or debit for the month in question in respect of materials and plant for the Permanent Works, in the relevant amounts in foreign and local currencies, and under the conditions set forth in Sub-Clause 60.3;
- (h) any amount to be withheld under the provisions of Sub-Clause 60.5, determined by applying the percentage set forth in Sub-Clause 60.5 to the amounts in foreign and local currencies due under paragraphs 60.1 (c), (d), (e), and (f);
- (i) any amounts to be deducted as repayment of the Advance under the provisions of Sub-Clause 60.7; and
- (j) any other sum, expressed in the applicable currency or currencies, to which the Contractor may be entitled under the Contract or otherwise."

Sub-Clause 60.2: Monthly Payments

"The said statement shall be approved or amended by the Engineer in such a way that, in his opinion, it includes all diagrams, calculations, detailed information and the like sufficient to justify any amount or quantity claimed, and it reflects the amounts in various currencies due to the Contractor in accordance with the Contract, after deduction, other than pursuant to Clause 47, of any sums which may have become due and payable by the Contractor to the Employer. In cases where there is a difference of opinion as to the value of any item, the Engineer's view shall prevail. Within 28 days of receipt of the monthly statement referred to in Sub-Clause 60.1 in a form acceptable to the Engineer, the Engineer shall determine the amounts due to the Contractor and shall issue to the Employer and the Contractor a certificate hereinafter called 'Interim Payment Certificate', certifying the amounts due to the Contractor.

Provided that the Engineer shall not be bound to certify any payment under this Sub-Clause if the net amount thereof, after all retentions and deductions, would be less than the Minimum Amount of Interim Payment Certificates stated in the Appendix to Bid.

Notwithstanding the terms of this Clause or any other Clause of the Contract, no amount will be certified by the Engineer for payment until the Performance Security referred to in Sub-Clause 10.1 has been provided by the Contractor and approved by the Employer."

Sub-Clause 60.3: Materials and Plant for the Permanent Works

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

- (a) no credit shall be given unless the following conditions shall have been met to the Engineer's satisfaction:
 - (i) the materials and plant are in accordance with the Specifications for the Works;
 - (ii) the materials and plant have been delivered to the Site and are properly stored and protected against loss, damage or deterioration;
 - (iii) the Contractor's records of the requirements, orders, receipts and use of materials and plant are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
 - (iv) the Contractor has submitted a statement of his cost of acquiring and delivering the materials and plant to the Site, together with such documents as may be required for the purpose of evidencing such cost; and
 - (v) the origin of the materials and plant and the currencies of payment thereof are those indicated in the Appendix to Bid;
- (b) the amount to be credited to the Contractor shall be the equivalent of 75 percent of the Contractor's reasonable cost of the materials and plant delivered to the Site, as determined by the Engineer after review of the documents listed in paragraph (a) (iv) above, as determined by the Engineer;
- (c) the amount to be debited to the Contractor for any materials and plant incorporated into the Permanent Works shall be equivalent to the credit previously granted to the Contractor for such materials and plant pursuant to Sub-Clause (b) above, as determined by the Engineer; and
- (d) the currencies in which the respective amounts shall be credited or debited as set forth above shall be determined by the Engineer, provided (i) that in the case of a credit, the currencies shall be those listed in the Appendix to Bid for the relevant item of materials or plant; and (ii) that in the case of a debit, the currencies shall be those in which the credit for the respective item of materials or plant had been given."

Sub-Clause 60.4: Place of Payment

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

Sub-Clause 60.5: Retention Money

"A retention amounting to 7.5 (seven and a half) percent of the amounts due in each currency, determined in accordance with the procedure set out in Sub-Clause 60.1 up to the limit of retention specified in the Appendix to Bid shall be made by the Engineer in the first and following Interim Payment Certificates.

Once the limit of retention has been reached, the amount of retention held shall remain constant until the retention is released pursuant to the Contract."

Sub-Clause 60.6: Payment of Retention Money

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

At the request of the Contractor, the second half of the Retention Money may also be released at the issue of the Taking-Over Certificate provided a bank guarantee acceptable to the Employer is provided by the Contractor for an amount equal to half the Retention Money for the period from the issue of the Taking-Over Certificate to Twenty Eight (28) days after the expiry of the Defects Liability Period.

Upon the expiration of the Defects Liability Period for the Works the other half of the Retention Money shall be certified by the Engineer for payment to the Contractor (or return of the bank guarantee, as the case may be). Provided that, in the event of different Defects Liability Periods being applicable to different Sections or parts of the Permanent Works pursuant to Clause 48, the expression "expiration of the Defects Liability Period" shall, for the purposes of this Sub-Clause, be deemed to mean the expiration of the latest of such periods.

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

If the amount guaranteed under the Performance Security is more than half of the Retention Money when the Taking-Over Certificate is issued, the bank guarantee for the Retention Money will not be required. If the amount guaranteed under the Performance Security is less than half of the Retention Money when the Taking-Over Certificate is issued, the bank guarantee for the Retention Money will only be required for the difference between half of the Retention Money and

the amount guaranteed under the Performance Security.”

Sub-Clause 60.7: Advance Payment

The Employer shall make an advance payment, as an interest free loan for mobilization and cash flow support, to the Contractor in accordance with this sub clause. The total advance payment and the applicable currencies and proportions shall be as stated in the Appendix to Bid.

- a) The Employer shall within 180 calendar days after issuing Letter of Acceptance and receipt of the documents substantiating the approval of the loan from EXIM Bank of China, make the first instalment of advance payment to the Contractor exclusively for the costs of mobilization in respect of the Works in an amount equivalent to 7.5 (Seven and a half) per cent of the Accepted Contract Amount named in the Letter of Acceptance, payable in proportions of foreign and local currencies of the Accepted Contract Amount. Payment of such advance amount will be due under separate certification by the Engineer after;
- (i) Provision by the Contractor of the performance security in accordance with Sub – Clause 10.1;
 - (ii) Submission of Programme, methodology and cash flow estimates as per clauses 14.1 and 14.3, acceptable to the Engineer.
 - (iii) Provision by the Contractor of an unconditional on demand bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The bank guarantee shall be obtained either from a
 - a. Bank located in Sri Lanka and approved by Central Bank of Sri Lanka; or
 - b. Bank located outside Employer’s Country (which is acceptable to the Central Bank of Sri Lanka) having a corresponding bank in Employer’s Country to make it enforceable; or
 - c. By an Export Credit Agency of any foreign government or reputed international financier who extends the loan for this project.

The guarantee shall be denominated in types and proportions of currencies in which the Contract Price is payable.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been fully repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

- b) Employer will make the Second instalment of advance payment in an amount equivalent to 7.5 (Seven and a half) per cent of the Accepted Contract Amount, within three months from the receipt of first instalment and receipt of satisfactory evidence that the required detailed design have been commenced. Also the Contractor substantially mobilizes on site and on evidence of documentation to the satisfaction of the Engineer with regard to the procurement of plant and equipment not yet on site, but required for the execution of works. In the case of such plant and equipment already owned by the Contractor, satisfactory

evidence of condition and availability for the project e.g. photographic evidence and certification from the relevant employer of the current or previous project on which the plant or equipment was deployed. The issue of this 2nd advance payment shall be subject to the same terms and conditions specified in paragraph (a) above.

- c) The advance payment under (a) and (b) above shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with this Clause. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments certified to the Contractor has reached 30 (Thirty) percent of the Accepted Contract Amount and shall be made at an amortization rate calculated in accordance with the following formula

$$Y = \frac{(X - 0.3) * Z}{(0.9 - 0.3)}$$

Y = Cumulative repayment

Z = Total amount of Advance

X = Percentage value of cumulative payments certified

In the types and proportionate amounts of currencies of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when 90% of the Accepted Contract Amount has been certified for payment.

Interest for delay of Advance payment shall be paid by the Employer and be calculated in the manner stipulated in Sub-Clause 60.8. Provided that upon the occurrence of any of the events described in Sub-Clause 63.1 or termination under Clauses 65, 66, or 69, the whole of the balance of the advance payments then outstanding shall immediately become due and payable by the Contractor to the Employer.

Sub-Clause 60.8: Time of Payment and Interest

- (a) The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor within 56 days (Checking by the Engineer within 28 days and Payment by the Employer within 28 days) after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of the Final Payment Certificate pursuant to Sub-Clause 60.13, within 84 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification. In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor simple monthly interest at the rate(s) stated in paragraph (b) and (c) of this Sub-Clause upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due.
- (b) The interest payable on unpaid sums in local currency shall be paid entirely in the applicable local currency. The rate stated in the Appendix to Bid is to be added to the Average Weighted Prime Lending Rate (AWPLR) published by the Central Bank of Sri Lanka current on the date upon which such payment first becomes overdue.

- (c) The interest payable on unpaid sums in foreign currency shall be paid entirely in the applicable foreign currency. The rate stated in the Appendix to Bid is to be added to the London Inter Bank Offered Rate (LIBOR) current on the date upon which such payment first becomes overdue.
- (d) For the purpose of calculating the interest payable on amounts due in local currency, the date of payment shall be defined as the day on which the Contractor physically receives the financial instrument of payment. For calculating the interest payable on amounts due in foreign currency the date of payment shall be defined as the day on which remits payment to the bank nominated by the Contractor.

Sub-Clause 60.9: Correction of Certificates

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

Sub-Clause 60.10: Statement at Completion

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

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

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

Sub-Clause 60.11: Final Statement

"Not later than 56 days after the issue of the Defects Liability Certificate pursuant to Sub-Clause 62.1, the Contractor shall submit to the Engineer for consideration six copies of a draft final statement with supporting documents showing in detail, in the form approved by the Engineer,

- (a) the value of all work done in accordance with the Contract; and
- (b) any further sums which the Contractor considers to be due to him under the Contract.
- (c) Six copies of the following Contractor's affidavits confirming:
 - (i) complete payment of all subcontractors, materials, labour, employees, suppliers of goods and services and other debts and liabilities related to the Contract, and

- (ii) complete payment of any applicable charges and fees in connection with the Contract, and
- (iii) release of any and all liens.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed (for the purposes of these Conditions referred to as the "Final Statement"). If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Engineer shall issue to the Employer an Interim Payment Certificate for those parts of the draft final statement which are not in dispute. The dispute shall then be settled in accordance with Clause 67. The Final Statement shall be agreed upon settlement of the dispute."

Sub-Clause 60.12: Discharge

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

Sub-Clause 60.13: Final Payment Certificate

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

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

Sub-Clause 60.14: Cessation of Employer's Liability

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

Sub-Clause 62.1: Defects Liability Certificate

Delete the words "Sub-Clause 60.3" in the end and replace with "Sub-Clause 60.6".

Sub-Clause 63.1: Default of Contractor

After the paragraph (e) delete the text and substitute:

- "(f) has failed to duly perform any requirement and instruction of the Engineer duly made in accordance with the Contract or has otherwise failed to fulfil any obligation imposed upon him by the Contract,
- (g) plant, materials or workmanship not being in accordance with the Contract,
- (h) has violated the Laws and Regulations of Sri Lanka or,
- (i) is culpable of or has contravened Clause 74, "Bribes".

then the Employer may, after giving 14 days notice to the Contractor, enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract, or releasing the Contractor from any of his obligation or liabilities under the Contract, and may himself complete the Works or may employ any other contractor to complete the Works. The Employer or such other contractor may use for such completion so much of the Contractor's Equipment, Temporary Works and unused plant and materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

In any case stipulated in this sub-Clause the performance security will be called by the Employer for any excess in the costs and for damages therefrom, with notice to the Contractor as stipulated in Sub-Clause 10.3"

Add the following Sub-Clause 63.5 after Sub-Clause 63.4:

Sub-Clause 63.5 Corrupt or Fraudulent Practices

"If in the judgement of the Employer the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then the Employer may, after having given 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel the Contractor from the Site, and the provisions of Clause 63 shall apply as if such corrupt or fraudulent practices had been a reason for termination under Sub-Clause 63.1."

Sub-Clause 65.2: Special Risks

This Sub-Clause is amended to read as follows:

"The Special Risks are the risks defined under paragraph (a), sub-paragraphs (i) to (v) of Sub-Clause 20.4."

Sub-Clause 68.2: Notice to Employer and Engineer

For the purposes of this Sub-Clause the respective addresses are:

- (a) The Employer: The Chairman, Road Development Authority, "Sethsiripaya", Battaramulla, Sri Lanka.
- (b) The Engineer: will be notified later

Sub-Clause 68.3: Change of Address

Between the words "executed" and "by prior notice" insert "or in an outside country"

Sub-Clause 69.1: Default of Employer

In Sub-Clauses 69.1, 69.4 and 69.5, substitute "Sub-Clause 60.8" for "Sub-Clause 60.10".

In Sub-Clause 69.1 (a), substitute "56days" for "28days"

Sub-Clause 69.3: Payment on Termination

Delete from "but", in addition to the payments specified... to the end of the sub-clause.

Sub-Clause 69.4: Contractor's Entitlement to Suspend Work

Substitute "Sub-Clause 60.8" for Sub-Clause 60.10" in both places.

Substitute "within 56 days" for "within 28 days" in line 4

Sub-Clause 69.5: Resumption of Work

Substitute "Sub-Clause 60.8" for "Sub-Clause 60.10"

Sub-Clause 70.1 and 70.2 of the General Conditions is deleted and the following Sub-Clauses 70.1 to 70.5 are substituted thereof:

Sub-Clause 70.1: Increase and Decrease of Cost

The amount of price adjustment shall be paid only in local currency

No price adjustment shall apply to the foreign currency portion payable to the Contractor.

Price escalation shall be calculated from the date of signing the Contract Agreement.

The amount payable in Sri Lanka Rupees to the Contractor and valued at base rates and prices in any Interim Payment Certificate issued by the Engineer pursuant to Sub-clause 60.2 of these Conditions of Contract shall be adjusted, in respect of the rise or fall in the costs of labour, materials and construction plant, and other inputs to the works, on the basis of the following formula;

$$F = 0.966(V - V_{na})/100 \sum_{\text{All inputs}} P_x (I_{xc} - I_{xb})/I_{xb}$$

Where:

- F = Price adjustment for the period concerned
- V = Current valuation of the work done as described in (f) below
- V_{na} = Valuation of non-adjustable element for the proportion of the contract which is payable in local currency
- P_x = Input percentage of Input named x
- I_{xc} = Current Index of Input named x
- I_{xb} = Base Index of Input named x

The above formula for price adjustment of the local currency payments is agreed to be the full and only measure of any additions and deductions from the Contract Price caused by variations in the costs of labour, materials, equipment and other input costs to the contract and it shall be paid only in Sri Lankan Rupees.

(a) Contract Price Adjustment computed on the basis of this formula may be either an addition to or a deduction from the Contract Price.

(b) Source of Indices

The indices applicable to the operation of this formula are those compiled and published by the Institute for Construction Training and Development (ICTAD), Sri Lanka, in the ICTAD Bulletin of Construction Statistics.

(c) Input Percentage

"Input Percentage" means the proportionate percentage contribution of any input in terms of the cost of construction of the Works, computed at the time of design. For detailed %, see Clause 70.1 of "Appendix to Bid".

(d) Non-adjustable Elements

"Nonadjustable Elements" shall consist of the work done under the following items which shall not be considered for computation of price adjustment:

- (i) All items of work listed in Bill No.1: Preliminary and General Items:
- (ii) Extra works and Additional works done by order of the Engineer and valued in items of Clause 52.1 based on prices prevailing at the time such works were executed: and
- (iii) All work on Provisional items or sums for work valued using prices prevailing at the time such works were executed.

(e) Current Valuation

"Current Valuation" means the portion to be paid in local currency of the value of work duly executed during the valuation period being reviewed.

- (f) Base indices

"Base indices" means the indices applicable to the month of signing of Contract Agreement.

- (g) Current Indices

"Current Indices used for calculation of price adjustment in respect of the first Interim Payment Certificate shall be the indices pertaining to first month after the month of signing of Contract Agreement. The Current indices applicable in respect of any Interim Payment Certificate or the Final Payment Certificate shall be the indices prevailing for the calendar month following the month in respect of which the previous valuation was done".

Sub-Clause 70.2: Adjustment after the Due Date for Completion

Adjustment to the amount payable under the Contract in respect of work done after the Due Date for Completion of the whole of the Works pursuant to Clause 43 hereof or after the issue of Taking-Over Certificate pursuant to Clause 48 hereof shall be computed on the basis of Current Rates, Current Indices or Current Price as applicable, pertaining to the Due Date for Completion or the date of taking over, whichever is the earlier.

If the Contractor fails to complete the Works within the Time for Completion, thereafter and until the completion of the Works, price adjustments shall be made based upon the indices and prices pertaining to the Due Date for Completion, as may be adjusted pursuant to Clause 44.

Sub-Clause 70.3: Determination of Adjustment to Contract Price

The amount of any adjustment to the amount payable under the Contract pursuant to this Clause shall be determined by the Engineer in accordance with the foregoing method of adjustment.

Sub-Clause 70.4: Adjustment to be made in Interim Payments

Unless the parties otherwise agree any adjustment to the amount payable under the Contract as aforesaid shall be included in the monthly payments made to the Contractor under the provisions of Clause 60 hereof.

Sub-Clause 70.5: Subsequent Legislation

If after the date 28 days prior to the latest date for submission of Tenders for the Works, any changes or introduction occurred in Sri Lanka to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority and caused additional or reduced cost to the Contractor, other than those changes and effects which are redeemable by the Contractor under Sub-Clause 70 in the execution of the Contract, such additional or reduced cost:

- 1) shall be determined by the Engineer after a claim by the Contractor pursuant to the Contract and due consultation with the Employer and the Contractor,
- 2) shall be added to or deducted from the Contract Price and

3) the Engineer shall notify the Contractor accordingly, with a copy to the Employer.

Sub-Clause 72.2: Currency Proportions

Insert "in the Appendix to Bid" in between "Contractor has stated" and "the proportions or amounts"

Add second paragraph as follows:

"The foreign currency proportion of payments to the Contractor shall be as specified in the Appendix to Bid, except in the case of:

- (i) payments for Provisional Sums valued in accordance with Sub-Clause 58.2, when any foreign currency expenditure by the Contractor will be reimbursed in the foreign currency specified in the Appendix to Bid converted at the exchange rate applicable at the time when payment was made, and
- (ii) varied works as specified in Clause 52,

Add the following new Clauses 73 to 81 after Sub-Clause 72.3:

Clause 73: Taxation

Sub-Clause 73.1: Foreign Taxation

The Contract Price shall include all taxes, tariffs, duties and other charges imposed outside Sri Lanka on the personnel, production, manufacture, sale and transport of the Contractor's Equipment, Plant, materials and supplies to be used on or furnished under the Contract, and on the services performed under the Contract.

Sub-Clause 73.2: Local Taxation

The following concessions shall be available to the contractor, in connection with the contract.

All taxes, duties and levies to be paid in accordance to tax laws and regulations in force on the date 28 days prior to the closing date for submission of bids, in the Employer's country excluding Corporate Tax and personal tax will either be reimbursed or exempted.

The bid prices shall not include above reimbursed taxes, duties and levies. Nothing in the Contract shall relieve the Contractor from his responsibility to pay any tax that may be levied in the Employer's country on profits made by him in respect of the Contract and corporate tax. The bidder shall be familiar with the Tax laws of the Employer's country.

Sub-Clause 73.3: Income Tax on Contractor's Employees

The Contractor's Employees both local and foreign will be liable to pay personal income tax in Sri Lanka in respect of such 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 thereof as may be imposed on him by such laws and regulations.

Sub-Clause 73.4: Duties on Contractor's Equipment

Notwithstanding the provisions of sub-clause 73.2 Contractor's Equipment, including essential spare Parts thereof, temporary imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the time of completion of the contract plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event that the Contractor's Equipment is not exported from the Employer's country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare parts to be exported, based on the depreciation scale(s) and other criteria used by the customs authorities for such purposes under the provisions of the applicable law. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on

(a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to be exported and

(b) on the initial imported value of that Contractor's Equipment and spare parts remaining in the Employer's country after completion of the Contract.

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

The Contractor shall obtain letters of recommendation from the Employer' Ministry addressed to Customs Authorities, on case by case basis.

Clause 74: Bribes

Sub-Clause 74.1: Bribes

If the Contractor, or any of his Subcontractors, agents or servants gives or offers to give to any person any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any action in relation to the Contract or any other contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or to any other contract with the Employer, then the Employer may enter upon the Site and the Works and terminate the employment of the Contractor and the provisions of Clause 63 hereof shall apply as if such termination had been made pursuant to that Clause.

Clause 75: Termination of Contract for Employer's Convenience

Sub-Clause 75.1: Termination of Contract for Employer's Convenience

The Employer shall be entitled to terminate this Contract at any time for the Employer's convenience after giving 56 days prior notice to the Contractor, with a copy to the Engineer. In the event of such termination, the Contractor:

- (a) shall proceed as provided in Sub-Clause 65.7; and
- (b) shall be paid by the Employer as provided in Sub-Clause 69.3.

Clause 76: Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include a description of the proposed work to be performed and a programme for its execution, the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 14 and to the Time for Completion, and the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

1. the Contractor shall design this part,
2. (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;

(b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 5.1 [Languages and Law], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;

(c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and

(d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 48 until these documents and manuals have been submitted to the Engineer.

and
3. if this change results in a reduction in the contract value of this part, the Engineer shall

proceed to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

- (i) such reduction in contract value, resulting from the change, excluding adjustments under Clause 70 [Changes in Cost and Legislation] and
- (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

Clause 77: Jointly and Severally Liable

Sub-Clause 77.1: Jointly and Severally Liable

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

Clause 78: Details to be Confidential

Sub-Clause 78.1: Details to be Confidential

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

Clause 79: Customs and Security Requirements

Clause 79.1: Customs and Security Requirements

The Contractor shall comply with all regulations for the time being imposed by the Customs and Port Security Authorities in respect of the passage of Equipment, vehicles, materials, explosives, personnel through Customs and National Security barriers.

Clause 80: Media Releases

Clause 80.1: Media Releases

The Contractor shall not issue any information to any media nor issue any publication, document or article for publication concerning the project in any media without prior written approval of the Employer.

Clause 81: Damage to Services

Sub-Clause 81.1: Damage to Services

The Contractor shall be held liable for all damage and interference to channels, drains and pipes, to electric cables or lines of any kind either above or below ground caused by him or his subcontractors in the execution of the Works. Should any damage be done to drains, pipes, wires, telegraph or electric light services etc., the Contractor must make good the same without delay and do any further work considered necessary by the Engineer, all at his own cost. The contractor shall be deemed to have provided for these contingencies in fixing the rates and prices inserted in the Schedule of Quantities, Rates and Prices.

Section 2

**General Conditions of Contract
(Part I)**