
Ministry of Physical Infrastructure and Transport,
Department of Roads



Government of Nepal



NAGDHUNGA TUNNEL CONSTRUCTION PROJECT

LOAN AGREEMENT No. (NE-P10)

CONTRACT No. DOR - NTCP -W-ICB-01

BIDDING DOCUMENTS

PART 3: CONDITIONS OF CONTRACT & CONTRACT FORMS (SECTIONS VII to IX)

PART 3 – Conditions of Contract and Contract Forms

Section VII: General Conditions of Contract (GCC)

The General Conditions governing this Contract shall be Conditions of Contract for Construction MDB Harmonized Edition, prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 2010, all rights reserved, (hereinafter referred to as “Standard GC”). This publication is exclusive for the use of JICA’s Borrowers and their project implementing agencies as provided under the License Agreement dated August 1st, 2008, between JICA and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the parties above and only for the exclusive purpose of preparing this Contract.

The General Conditions of Contract are available on the JICA’s website shown below:

http://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/guide/tender/index.html

A copy of these General Conditions is not attached to these Bidding Documents/Contract.

Section VIII: Particular Conditions of Contract (PCC)

The following Particular Conditions of Contract (PCC) shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	<p>The Employer is: Department of Roads Project Director Nagdhunga Tunnel Construction Project Address: Jwagal - Lalitpur Lalitpur - Nepal</p> <p>The Employer's Representative is: Project in Charge (PIC) Nagdhunga Tunnel Construction Project</p>
Engineer's name and address	1.1.2.4 & 1.3	<p><u>Name</u>: Joint Venture of Nippon Koei Co., Ltd., Eight-Japan Engineering Consultants Inc., Nippon Civic Consulting Engineering Co., Ltd., in association with GEOCE Consultants Ltd., and ITECO Nepal Ltd.</p> <p>Address: 5-4 Kojimachi Chiyoda-ku, Tokyo 102-8539 Japan</p> <p>P.O. Box No. 1009 660, Prashuti Griha Marga, Thapathali, Kathmandu. Tel./Fax. +977-4101589. Nepal</p>
Bank's name	1.1.2.11	The Incorporated Administrative Agency - Japan International Cooperation Agency (JICA)
Borrower's name	1.1.2.12	<p>Government of Nepal</p> <p>Represented by the Ministry of Physical Infrastructure and Transport, Department of Roads</p>
Time for Completion	1.1.3.3	1,260 days
Defects Notification Period	1.1.3.7	365 days
Sections	1.1.5.6	Not applicable

Conditions	Sub-Clause	Data
Electronic transmission systems	1.3	Facsimile and/or E-mail can be used as electronic transmission for communication. The electronic transmission shall be deemed effective provided the original is hand delivered (against receipt) within a week.
Governing Law	1.4	Laws of the Federal Democratic Republic of Nepal
Ruling language	1.4	English
Language for communications	1.4	English
Time for access to, and possession of all parts of, the Site	2.1	Within 28 days after Commencement Date
Engineer's Duties and Authority	3.1(B)(ii)	0.50%
Performance Security	4.2	The Performance Security will be in the form of an unconditional bank guarantee in the amount(s) of 10 percent of the Accepted Contract Amount and in the same currencies of the Accepted Contract Amount (excepting VAT). The Performance Security shall be valid until a date minimum of 28 days beyond the Defect Notification Period and Performance Certificate issued by the Engineer. The security, if issued by a foreign bank, shall be counter guaranteed by a "A" Class commercial bank established in Nepal.
Normal working hours	6.5	48 hours per week; 8 hours from Sunday through Friday from 0800 hours to 1700 hours with 1 hour break, or as indicated by the Labour Law of Nepal, Labour Act, 2048 (1992).
Delay damages for the Works	8.7	0.1% of the Accepted Contract Amount (excepting VAT) per day.
Maximum amount of delay damages	8.7	10% of the Final Contract Amount (excepting VAT).
Provisional Sums	13.5(b)(ii)	10 %

Conditions	Sub-Clause	Data
Total advance payment	14.2	<p>15%, Percentage of the Accepted Contract Amount (excluding provisional sums, dayworks and VAT) payable in the currencies and proportions in which the Accepted Contract Amount is payable.</p> <p>Payment will be made in two (2) instalments:</p> <p><u>First Instalment: (10%)</u></p> <p>To be paid upon submission of:</p> <ul style="list-style-type: none"> the Performance Security in accordance with Sub-Clause 4.2 [<i>Performance Security</i>], and an unconditional Bank Guarantee for the first instalment of the Advance Payment <p><u>Second Instalment: (5%)</u></p> <p>To be paid upon complying the following:</p> <ul style="list-style-type: none"> the completion of mobilization of all required resources to the Site as agreed in the Contract Document, after fulfilling all the contractual obligations including establishment of camp site, quality control laboratory and plants, submission of work programme comprising schedules for the works, labour, equipment, material, cash flow, insurance policies, etc. submission of an unconditional Bank Guarantee for the second instalment of the Advance Payment <p>The advance payment guarantee shall be valid until the intended completion date for whole of the Works.</p> <p>The guarantee, if issued by a foreign bank, shall be counter guaranteed by a “A” class commercial bank established in Nepal.</p>
Repayment amortization rate of advance payment	14.2(b)	25%
Percentage of Retention	14.3(c)	10%
Limit of Retention Money	14.3(c)	5% of the Accepted Contract Amount
Retention Money Security	14.3(c)	<p>The Retention Money Security will be in the form of an unconditional bank guarantee in the amount(s) herein established and in the same currencies of the Accepted Contract Amount (excepting VAT).</p> <p>The security, if issued by a foreign bank, shall be counter guaranteed by a “A” Class commercial bank established in Nepal.</p>
Plant and Materials	14.5(b)(i)	Not applicable

Conditions	Sub-Clause	Data
	14.5(c)(i)	Not applicable
Minimum Amount of Interim Payment Certificates	14.6	5.0% of the Accepted Contract Amount.
Maximum total liability of Contractor to the Employer	17.6	The product of 1.15 times the Accepted Contract Amount
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1	<i>Calculated from the Commencement Date</i> 28 days 28 days
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	USD 10,000
Minimum amount of third party insurance	18.3	Nepalese Rupee One Hundred Million (NPR 100,000,000) with the number of occurrence unlimited.
Date by which the DB shall be appointed	20.2	28 days after the Commencement Date
The DB shall be comprised of	20.2	Three (3) members
Appointment (if not agreed) to be made by	20.3	UNCITRAL (United Nations Commission on International Trade Law)
Rules of Arbitration	20.6	PCA Secretary General under UNCITRAL (United Nations Commission on International Trade Law) rules.

Part B - Specific Provisions

Sub-Clause 1.1.2.8 *Replace the entire Sub-Clause 1.1.2.8. with the following:*

Subcontractor “Subcontractor” means any person named in the Contract as a subcontractor or suppliers of materials and equipment, or any person appointed as a subcontractor or supplier of materials and equipment, for a part of the Works; and the legal successors in title to each of these persons.

Sub-Clause 1.15 *This Sub-Clause is deleted entirely.*

Inspections and Audit by the Bank

Sub-Clause 1.5 *Replace the sequence with the following:*

Priority of Documents

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Memorandum of Understanding (MOU) (if any)
- (d) the Letter of Tender,
- (e) the Particular Conditions - Part A,
- (f) the Particular Conditions - Part B,
- (g) these General Conditions,
- (h) the Specification,
- (i) the Drawings, and
- (j) the Schedules and any other documents forming part of the Contract.

Sub-Clause 2.2 *At the end of the Sub-Clause add new paragraph:*

Permits, Licenses or Approvals “The Contractor shall be responsible for obtaining all import permits or licenses required for any part of the Materials, Plant, Goods and Contractors Equipment in reasonable time having regard to the time for delivery to the site or designated storage area for the completion of the Works by the specified time”.

Sub-Clause 3.1 *At the end of the Sub-Clause add followings:*

Engineer’s Duties and Authority “The Engineer shall obtain the specific approval of the Employer before taking any of the following actions:

- (a) Instructing of variation orders under Sub-Clause 13.1;
- (b) Determining the Extension of the 'Intended Completion Date' under Clause 8.4;
- (c) Evaluation under Sub-clause 12.3;
- (d) Issuance of Taking-Over Certificate under Clause 10.1;
- (f) Approving sub-contracting of any work under Clause 4.4;
- (g) Specifying the amount payable in each of the applicable currencies under sub-clause 13.4; if different from the provisions of the contract agreement.

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute

all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer”.

Sub-Clause 3.6

Add new sub-clause 3.6 as follow:

Management Meeting

“The Engineer shall summon all parties concerned to the first Site Meeting where he shall decide upon the date, time and place of future meetings.

It is the duty of the Contractor or his Representative to participate in the Site Meetings.

The purpose of the Site Meetings is to co-ordinate the Works with the Contractor, to review the progress of the Works in relation to the Programme and to record understandings and agreed arrangements regarding the conduct and execution of the Works”.

Sub-Clause 3.7

Add new sub-clause 3.7 as follow:

Minutes of Site Meeting

“Agreements recorded in Minutes of the Site Meetings are binding on all parties, if objections to the minutes have not been given in due time.

Any objections to the Minutes of a Site Meeting shall be raised in writing at the next Site Meeting and in any case not later than 4 weeks after the meeting to which the Minutes refer. If the Contractor at this time has not received the Minutes of the Site Meeting, the objection must be given in writing to the Engineer not later than 4 working days after the subsequent receipt of the said Minutes.

The Minutes of the Site Meetings shall be numbered consecutively. Minutes shall be deemed to have been received by the Contractor unless the Contractor gives notice at the following meeting that the Minutes were not received and there is no evidence to the contrary”.

Sub-Clause 3.8

Add new sub-clause 3.8 as follow:

Emergency Work

“If the emergency action involves work which the Contractor was liable to do at his own expense under the Contract, the reasonable cost of that work shall be recoverable from the Contractor by the Employer. As soon as practicable after the taking of the action the Engineer shall notify the Contractor of the emergency and thereafter confirm in writing its extent and the cost of the emergency work carried out.

If the emergency action involves work which the Contractor was not liable to do at his own expense under the Contract, Clause 13 [Variations and Adjustments] shall apply”.

Sub-Clause 4.1

(1) Add the following text after the first paragraph, as the new second paragraph of Sub-Clause 4.1:

Contractor's General Obligations

- ♦ The Contractor shall carry out, and be responsible for, the design review and updating, drawings, implementation, etc. of the following Works:
 - Steel Bridge Flyover
 - Roadside Service Station
 - O&M Facilities
 - Transmission Line

- Street Lighting System
- Traffic Information Boards
- Tunnel Facilities
- ◆ The Contractor shall be responsible for, and shall prepare, the Reviewed and Updated Design based on the Conceptual Design or Layouts provided by the Employer.

(2) *Replace in the third paragraph:*

“as defined by the Bank” with “as defined by the Loan Agreement between the Bank and the Borrower”.

Sub-Clause 4.2
Performance
Security

Delete the passage “as the results of a change in cost and/or legislation, or as a result of a Variation amounting to more than 25 percent of the Contract Price payable” in the last paragraph and replace with the following:

“, as a result of a change or an accumulation of changes in cost and/or legislation and/or as a result of a Variation or an accumulation of Variations, amounting to more than 25 percent of the portion of the Accepted Contract Amount”

Sub-Clause 4.4
Subcontractors

Add the following at the end of the Sub-Clause 4.4:

“In the event of approved subcontracting the Contractor shall ensure that the Subcontractor does not further sub-let his Subcontract. The Contractor shall be responsible for keeping a log showing following information of all Subcontractors engaged in the Works:

- ◆ Name and address of the Subcontractors
- ◆ Date of Subcontract
- ◆ Works included in the Subcontract
- ◆ Commencement of Subcontract
- ◆ Completion of Subcontract
- ◆ Value of Subcontract
- ◆ Payment

The Contractor shall include such records in the progress report as per Sub-clause 4.21”.

Sub-Clause 4.8
Safety Procedure

Replace the first line of Sub-Clause 4.8 with the following:

“Without detriment to the stipulations for safety specified in Sub-Section 110: “Project Safety” of the Standard Specifications and relevant requirements of the Standard Specifications, the Contractor shall:”

Sub-Clause 4.9
Quality Assurance

Add the following as per the first paragraph of Sub-Clause 4.9:

“Without detriment to the stipulations specified in Sub-Section 500: “Quality Control” of the Standard Specifications and its Special Provisions to the Standard Specifications, and other relevant specifications for Quality Assurance, the Contractor shall comply the requirements shown here below.”

Add the following at the end of the Sub-Clause 4.9:

“The Contractor is responsible to submit and get approval from the Engineer for the consignment invoice of the purchase of the

bitumen from the source/company in the name of this project to use it for the bituminous works in this Contract. The Engineer's approval shall not alter the contractor's obligations to supply the bitumen as per the Specifications”.

Sub-Clause 4.17 *Supplement this Sub-Clause with the following:*

Contractor's Equipment

“A master list of all the Contractor's Equipment, including essential spare parts thereof, to be imported by the Contractor for the sole purpose of executing the Contract, shall be prepared by the Contractor in a form agreed by the Employer (or the Engineer on his behalf) and submitted to the Employer for his consent within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, or as soon as reasonably practicable. Any change to the model, capacities or specifications of the items in the master list shall be promptly notified to the Engineer for his consent”.

Sub-Clause 4.18 *Add the following as per the first paragraph of Sub-Clause 4.18:*

Protection of the Environment

“Without detriment to the stipulations for environmental protection specified in Sub-Section 109: “Environmental Protection Works” of the Standard Specifications and its Special Provisions to the Standard Specifications, the Contractor shall comply the requirements shown here below.”

Add the following at the end of Sub-Clause 4.18:

“The Contractor shall ensure that fuel wood is not used as a means of heating during the preparation or processing of any materials forming part of the Works. The contractor shall provide alternative source for the same.

The Contractor shall ensure that any cut or fill slopes are planted with grass or other approved plant cover as soon as possible to protect them from erosion. This planting shall follow the recommendations in the Nepali manual entitled “Vegetative Structures for Stabilizing Highway Slopes” (DoR), or the requirements of the Specification as directed by the Engineer.

The water used in road construction shall not be allowed to affect water availability in the local communities. Where a scarcity of water is expected to arise, the Contractor shall explore and tap alternative sources of safe water. In case of interference with the water supply of a settlement, the Contractor is liable to provide the affected population with potable drinking water from alternative sources at no extra cost to the contract or the local people”.

Sub-Clause 4.21 *At the end of the Sub-Clause 4.21 add new paragraph as follows:*

Progress Reports

“The Contractor shall keep a Site Diary wherein full details of all work carried out each day shall be recorded. The Site Diary may be prepared in sections relating to different parts of the works being carried out in different locations. The Contractor shall submit daily ‘Daily Site Report’ of the preceding day to the Engineer in an approved format. The Daily Site Report shall also include the details of the following:

- i. Atmospheric condition,
- ii. Rainfall data,
- iii. Description and location of work performed,
- iv. Interruption of work due to any circumstances,
- v. Working hours,

- vi. Number and category of workers worked on the site,
- vii. Type of Equipment and Number of hours equipment usage,
- viii. Test carried out including results if available,
- ix. Inspections carried out by the Engineer and/or Persons assigned by the Engineer,
- x. Supplied materials,
- xi. Notices and site instructions,
- xii. Any non-compliances with environmental, health and safety requirements;
- xiii. Any grievances received; and
- xiv. Accidents.

“Supplementary to the above the Contractor shall prepare and submit to the Engineer in his progress report the detailed records showing:

- (i) materials delivered to the Site and materials consumed in the Works
- (ii) plant and equipment on Site together with number of hours worked by and current status of each item
- (iii) all incidents affecting the safety and the health and welfare of persons and causing damage to property together with such other records as the Engineer may from time to time require to be kept and provided”.

Sub-Clause 4.23

Add the following as per the first paragraph of Sub-Clause 4.23:

Contractor’s Operations on Site

“Without detriment to the stipulations specified in Sub-Section 103: “Publicly and Privately Owned Services” of the Standard Specifications and its Special Provisions to the Standard Specifications, the Contractor shall be responsible and comply the requirements shown here below.”

Sub-Clause 4.24

Add the following after the first paragraph of Sub-Clause 4.24:

Fossils and Physical Cultural Resources

“All materials and things of any kind obtained from excavations or found on or under the Site, or under any additional Site which the Contractor may be allowed to occupy, shall remain the property of the Government and shall not be used in the works or sold or otherwise disposed of without the written authority of the Engineer unless otherwise expressly provided in the Specification.

If the Contractor discovers archaeological sites, historical sites, remains and objects, including graveyards and/or individual graves during excavation or construction, the Contractor shall:

- (a) Stop the construction activities in the area of the chance find;
- (b) Delineate the discovered site or area;
- (c) Secure the site to prevent any damage or loss of removable objects. In cases of removable antiquities or sensitive remains, a night guard shall be arranged until the responsible local authorities or the National Culture Administration take over;
- (d) Notify the supervisory Engineer who in turn will notify the responsible local authorities and the National Culture

- Administration immediately (within 24 hours or less);
- (e) Responsible local authorities and the National Culture Administration would be in charge of protecting and preserving the site before deciding on subsequent appropriate procedures. This would require a preliminary evaluation of the findings to be performed by the archaeologists of National Culture Administration. The significance and importance of the findings should be assessed according to the various criteria relevant to cultural heritage; those include the aesthetic, historic, scientific or research, social and economic values;
 - (f) Decisions on how to handle the finding shall be taken by the responsible authorities and National Culture Administration. This could include changes in the layout (such as when finding an irremovable remain of cultural or archaeological importance) conservation, preservation, restoration and salvage;
 - (g) Implementation for the authority decision concerning the management of the finding shall be communicated in writing by relevant local authorities; and
 - (h) Construction work could resume only after permission is given from the responsible local authorities or National Culture Administration concerning safeguard of the heritage”.

Sub-Clause 4.25*Add new sub-clause 3.7 as follow:***Early Warning**

“The Contractor shall give notice to the Engineer at the earliest opportunity of specific likely future events or circumstances which may adversely affect the Works, increase the Contract Price or delay execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedures]. The Contractor shall submit such estimate and/or proposal as soon as practicable. The Contractor shall co-operate with the Engineer in making and considering proposals to mitigate the effect of any such event or circumstances, and in carrying out instructions of the Engineer”.

Sub-Clause 4.27*Add new sub-clause 4.27 as follow:***Compensation for Land Occupied or Used by Contractor**

“No land shall be occupied or used by the Contractor without the full consent and agreement of affected persons or as otherwise agreed by the Engineer. The Contractor shall fully compensate the occupier or owner of any land used or occupied by the Contractor with such compensation in accordance with the WB Guidelines for relocation, resettlement or compensation and to the satisfaction of the affected person(s) or as agreed by the Engineer.

The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the execution and maintenance of the Works to a condition specified and at least equal to that obtaining before his first entry on them.

If, in the opinion of the Engineer, the Contractor shall have failed to take reasonable and prompt action to fulfil his obligations in the matter of reinstatement, the Engineer will inform the Contractor in writing of his opinion in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or

which shall become due from the Employer to the Contractor”.

Sub-Clause 6.2 *Insert the following text after the first paragraph:*

Rates of Wages and Conditions of Labour “The Contractor’s scales of wages shall be such as to ensure that there is no differentiation between wages for men and women for work of equal value”.

Sub-Clause 6.4 *Insert the following text after the first paragraph:*

Labour Laws “The Contractor shall ensure that no one under the age of the end of compulsory schooling in the area of the Works is engaged by him or any of his Subcontractors and in the case of workers below the age of 18 shall ensure that all the provisions of the labour code relating to the engagement of workers below the age of 18 and the Conventions of the International Labour Organisation are fully complied with. The Contractor and sub-contractors shall comply with all applicable laws and regulations in Nepal”.

Sub-Clause 6.7 *Add the following as per the first paragraph of Sub-Clause 6.7:*

Health and Safety “Without detriment to the stipulations specified in Sub-Section 110: “Project Safety” of the Special Provisions to the Standard Specifications, and Sub-Section 804: “Safety and Public Health Requirements” of the Standard Specifications, the Contractor shall comply the requirements shown here below.”

Delete “reasonable” and add “essential” in first line of the second paragraph.

Add “and workers” after “the Contractor’s Personnel” in first sentence of the second paragraph.

Sub-Clause 8.1 *Delete paragraph (d)*

Commencement of Works

Sub-Clause 8.4 *Add the following paragraph at the end of Sub-Clause 8.4:*

Extension of Time for Completion “The granting of an extension of time for completion shall not entitle the Contractor to any additional payment. Where, in the opinion of the Contractor, additional costs have been incurred in connection with or in consequence of the cause or the event (including bandhs affecting the operation of project) for which an extension of time for completion has been granted, such costs shall be documented and claimed separately, in accordance with the provisions of Sub-Clause 20.1”.

Sub-Clause 8.7 *Add the following paragraphs at the end of Sub-Clause 8.7:*

Delay Damages “If the Contractor fails to complete the Works by the time prescribed by Sub-Clause 8.2, or any approved extension thereto pursuant to Sub-Clause 8.4, he shall be liable to bear the cost of the Engineer’s Services for the period of such delay.

In the event of the Contract not being completed by the prescribed time, or any extension thereto, the Contractor shall, in addition to Delay Damages, be responsible to continue the provision and maintenance at his own cost of all the items relating to facilities for the Employer’s Representative and/or the Engineer as may be contained in the Bill of Quantities, until such time as the Contract is completed. Should the Contractor’s maintenance of the facilities

under such circumstances be less than the standard provided for in the Technical Specifications or inadequate for the full and proper functioning of the Employer's Representative/Engineer, then the Engineer shall assess the cost of such expenses based on the projected delay and the full rates of all the items relating to the such facilities and an advance deduction shall be made for the amount so derived from any payment due to the Contractor. The money so deducted shall be used to reimburse the Employer on a monthly basis against his costs to maintain the said facilities".

Sub-Clause 10.2 *Add the following paragraph at the end of Sub-Clause 10.2:*

**Taking Over of
Parts of the
Works**

"In the operation of this Sub-clause the passage over or through the Works by the public or the agents or servants of the Employer or by public traffic or by vehicles of the Employer, whether connected with the Contract or not, shall not constitute use or occupation by the Employer."

Sub-Clause 12.3 *Delete para (a) (ii) and replace with:*

Evaluation

"(ii) This change in quantity multiplied by such specified rate for this item exceeds 2% of the Accepted Contract Amount".

Sub-Clause 13.5 *Add the following text at the end of Sub-Clause 13.5:*

Provisional Sums

"As an exception to the above, the Provisional Sum for the cost of the DB shall be used for payments to the Contractor of the Employer's share (one-half) of the invoices of the DB for its fees and expenses, in accordance with GC 20.2. No prior instruction of the Engineer shall be required with respect to the work of the DB. The Contractor shall produce the DB invoices and satisfactory evidence of having paid 100% of such invoices as part of the substantiation of those Statements submitted under Sub-Clause 14.3, which contain requests for payment under the Provisional Sum toward the cost of the DB. The Engineer's certification of such Statements shall be based upon such invoices and such evidence of payment by the Contractor. Contractor's overhead, profit, etc., shall not be included in the provisional sums for the cost of the DB."

Sub-Clause 14.1
**The Contract
Price**

Delete the last paragraph of Sub-Clause 14.1 and the Sub-Clause 14.1(d); and; Replace the entire Sub-Clauses 14.1(b) and (d) with the following [Sub-Clause 14.1(c) remains without modifications]:

- (b) The Contractor shall familiarize himself with the rules and regulations regarding to corporate and personal income taxes, customs duties, import duties, business tax, and other taxes, fees and levies as are applicable under the laws of Government of Nepal, and it will be necessary for him to follow the required procedures regardless of any assistance which may be provided by the Employer.

Unless otherwise specified in the Contract, the Bid Price submitted by the Bidder and its suppliers and subcontractors shall include all customs duties, import duties, business taxes, income taxes and other taxes that may be levied in accordance with the laws and regulations in force or in effect in Nepal. Nothing in the Contract shall relieve the Contractor, its suppliers and subcontractors from its responsibility to pay any and all taxes that may be levied in the Employer's Country including on profits made by the Contractor, its suppliers and subcontractors

in respect of the Contract.

The Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation]

In the event that the origin of any of the Contractor's or its Subcontractors' or the Nominated Subcontractors' plant, equipment and materials is India, the provisions for the exemption of customs duties and VAT in accordance with this Sub-Clause shall be applied only under the following conditions, and failure to comply with these conditions will result in application of normal customs duties and VAT in accordance with the prevailing rules and regulations of the Government of Nepal:

- (i) should the Contractor request payment in Indian currency, the equipment and materials must have been imported under the "Duty Refundable Procedures (DRP)";
- (ii) should the Contractor request payment in any other convertible currency, the equipment and materials must have been imported under the "In Bond Transfer Procedures".

Notwithstanding the provisions of this Contract, the following special provisions for taxes and duties shall apply:

- (1) The following special tax conditions shall apply to the withholding taxes and/or TDS (Tax Deduction at Source) under this Contract:
 - (i) withholding taxes and/or TDS shall be levied as per the prevailing Government rules and regulations.
 - (ii) No reimbursement will be made by the Employer for the withholding taxes and/or TDS paid by the Contractor.
- (2) The following special tax conditions shall apply to Customs Duty (Import Tax) for Contractor's construction equipment and machinery under this Contract:
 - (i) Contractor's construction equipment and machinery, including their essential tools and spare parts, imported by the Contractor for the sole purpose of executing the Contract and which will be exported out of Nepal upon completion of the Works shall be exempted from payment of customs duties levied in Nepal.
 - (ii) In order to be eligible for this exemption the Contractor shall be required to deposit the amount or provide a bank guarantee to the Government of Nepal Customs Department, with a copy to the Employer, equal to the amount of applicable customs duties assessed in accordance with the prevailing laws, rules and regulations of Nepal for those imported items at the time of import.

The amounts of the deposits so provided will be refunded, or the bank guarantees cancelled by the Nepal Customs Department, after the submission to

- the Nepal Customs Department of the re-export certificates with respect to these items issued by the Customs Department.
- (iii) The Contractor shall re-export his construction equipment and machinery within 90 days after the completion of the Project, in accordance with the approved mobilization schedule and the Programme, for the purpose of exemption of customs duties.
 - (iv) If the Contractor disposes of any of his construction equipment and machinery imported in Nepal, he shall pay all customs duties and taxes applicable on such items under the laws and regulations of Nepal in force at that time.
 - (v) In the event that the value of the imported spare parts for each item of the construction equipment and machinery exceeds 10% of the CIP to Nepal Customs Point of Entry value of the respective item of imported construction equipment and machinery, the Contractor shall be liable to pay all applicable taxes and duties on the import of these imported spare parts.
- (3) The following special conditions shall apply to Registration for Tax under this Contract:
- (i) The Contractor (in sole capacity or in a JV) and any foreign Subcontractors or Nominated Subcontractors employed for execution of the Works, if not already registered in Nepal, shall be required to be registered with the concerned Inland Revenue Office and/or any other concerned government office for the Contract. The Contractor and foreign Subcontractors shall complete this registration not later than 28 days after the date of signing the Contract Agreement. The certified copies of the Income Tax Registration Certificate(s) shall be submitted to the Employer within 14 days after the registration.
 - (ii) The Final Payment Certificate and the Performance Certificate pursuant respectively to Sub-Clause 14.13 [Issue of Final Payment Certificate] and Sub-Clause 11.9 [Performance Certificate] of the General Conditions of Contract (GCC), shall be issued only after submission by the Contractor to the Employer of an Income Tax Clearance Certificate issued by the Government of Nepal for the Contractor himself and any foreign Subcontractors employed for the Works.
- (4) The following special tax conditions shall apply to Import Duty and **Value Added Tax** (VAT) for the Plant, materials and supplies (permanent, temporary and consumable) imported for performing the Works of this Project under this Contract:
- (i) Value Added Tax (VAT) is not applicable on import of Plants and materials required for the Works of the Project under this Contract.
 - (ii) Value Added Tax (VAT) as per the prevailing

- Government rules and regulations shall be imposed on all locally procured materials and equipment for the Works.
- (iii) A special import duty rate of 1% of the CIP to Nepal Customs Point of Entry value shall be paid on Plants and materials imported by the Contractor for executing the Works of the Project under this Contract.
 - (iv) The Contractor shall prepare a separate Statement (payment invoices) for the amounts paid at this special import duty rate of 1% and these amounts shall be reimbursed by the Employer to the Contractor.
- (5) The Contractor shall maintain records satisfactory to the Employer documenting use of all the Contractor's equipment, the Works' Plant, and Materials imported into and/or procured for the performance of the Works. If any such Contractor's equipment, the Works' Plants, and Materials and/or Supplies, imported into Nepal or otherwise supplied to the Project at a special or preferential rate of Import Duties or taxes are misused or found to be used or appropriated for any purpose other than the Project, the Contractor shall be held fully responsible, and liable to pay customs duties, VAT and other taxes and/or any penalties as may be imposed in accordance with the prevailing laws and regulations of Nepal.
- (6) The Government of Nepal will exempt:
- (i) Japanese Companies operating as suppliers, contractors and/or consultants from all fiscal levies and taxes imposed in Nepal with respect to the income accruing from the supply of products and/or services to be provided under the Loan;
 - (ii) Japanese Companies operating as suppliers, contractors and/or consultants from all duties and related fiscal charges imposed in Nepal with respect to the import and re-export of their own materials and equipment needed for the implementation of the Project; and
 - (iii) Japanese employees engaged in the implementation of the Project from all fiscal levies and taxes imposed in Nepal on their personal income derived from Japanese companies operating as suppliers, contractors and/or consultants for the implementation of the Project.
- (c) any quantities which may be set out in the Bill of Quantities (BOQ) or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
- (i) of the Works which the Contractor is required to execute, or
 - (ii) for the purposes of Clause 12 [Measurement and Evaluation]
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a full breakdown of its Bid, including all prices and rates for all items of the BOQ.

Sub-Clause 14.3 *Add the following between “six copies” and “to the Engineer” in the*

**Application for
Interim Payment
Certificates***first sentence:*

“(together with an electronic copy)”

Sub-Clause 14.7*Supplement this Sub-Clause with the following:***Payment**

All the payment in Local Currency and Foreign Currency shall be made, respectively, in accordance with the Reimbursement Procedure and Transfer Procedure for Japanese ODA Loans (December 2015).

https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/procedure/c8h0vm0000aocpw-att/transfer_201512.pdf

Insert the following before “; and” in sub-paragraph (b):

“including any amounts due in accordance with a decision by the DB which have been included in the Interim Payment Certificate”

Sub-Clause 14.15*Replace the entire Sub-Clause 14.15 with the following:***Currencies of
Payment**

The Contract Price shall be paid in the currency or currencies in which the bid price was expressed in the Letter of Bid. If more than one currency is so named, payments shall be made as follows:

- (a) payment of the damages specified in GC 8.7, shall be made in the currencies and proportions specified in the Letter of Bid;
- (b) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (c) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (d) the applicable rates of exchange shall be those prevailing on the Base Date and determined by the central bank of the Country.

Sub-Clause 15.6*Replace the entire Sub-Clause 15.6 with the following:***Corrupt or
Fraudulent
Practices**

“If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days, notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor’s Personnel].

Any fraudulent practice including using sub-standard material

will be subjected to the prosecution under the Country's prevailing laws related to corruption and fraud. Fraud and Corruption as per JICA's Guideline Guidelines for Procurement under Japanese ODA Loans: Section 1.06 Corrupt or Fraudulent Practices”.

Sub-Clause 17.2 *Insert the following paragraphs at the end of Sub-Clause 17.2:*

Contractor's Care of Works

“The Contractor shall carefully protect all work and materials that may be affected by weather from injury thereby.

The Contractor shall provide storage to the satisfaction of the Engineer for materials to be incorporated in the Works or to be delivered to the Employer. Such storage shall be of a kind that will prevent loss of or damage to the materials. The Contractor shall take particular care to ensure the security of stores containing materials the loss of which would be likely to cause significant delay to the completion of the Works or part thereof.”

Sub-Clause 17.3 *Insert the following paragraph at the end of Sub-Clause 17.3:*

Employer's Risks

“In the interpretation of Sub-clause 17.3(f) the term “use or occupation by the Employer” shall not be taken to mean or to imply that use or occupation of the road by the general public is in any way an Employer's risk, nor shall it be taken to mean or imply that use of the road as a means of travel by any agent or servant of the Employer is in any way an Employer's risk.”

Sub-Clause 17.6 *Insert the following text as the first paragraph to Sub-Clause 17.6:*

Limitation of Liability

“No member or officer of the Government or the Employer or the Engineer or anyone of their respective staffs or their employers shall be in any way personally bound or liable for the acts or obligations of the Employer under the Contract or answerable for any default or omission in the observance or performance of any acts, matters or things which are herein contained.”

Sub-Clause 20.4 *Insert the following at the end of the fourth paragraph:*

Obtaining Dispute Board's Decision

“If the decision of the DB requires a payment by one Party to the other Party, the DB may require the payee to provide an appropriate security in respect of such payment.”

Sub-Clause 20.6 *Replace the entire Sub-Clause 20.6 with the following:*

Arbitration

“Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the contract is with foreign contractors (or if the lead partner is a foreign contractor, in case of JV), international arbitration with proceedings administered by the UNCITRAL; by 3 arbitrators appointed in accordance with said arbitration rules.

The arbitration tribunal shall be formed as follows:

The Employer and the Contractor shall appoint one arbitrator each to the tribunal and the two arbitrators such appointed shall agree upon a third arbitrator who will act as the Chairman. In case of failure of the two Arbitrators

appointed by the parties to reach upon a consensus within 30 days from the appointment of the Arbitrator appointed in the last, the Presiding Arbitrator (Chairman) shall be appointed by the Appointing Authority defined in the Contract Data.

The place of arbitration shall be Nepal. The applicable law for arbitration shall be law of Nepal. The arbitration proceedings shall be conducted in English.

- (b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country. The procedures indicated by Nepal Council of Arbitration "NEPCA" should be referred.

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works".

Sub-Clause 20.7 *Replace Sub-Clause 20.7 in its entirety with:*

**Failure to Comply
with Dispute
Board's Decision**

"In the event that a Party fails to comply with any decision of the DB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference."

Section IX: Annex to the Particular Conditions - Contract Forms

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Letter of Acceptance

[Insert date]

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

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Documents

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the *[insert day]* day of *[insert month]*, *[insert year]*, between Ministry of Physical Infrastructure and Transport, Department of Roads, Foreign Cooperation Branch, Department of Roads, the Government of Nepal (hereinafter “the Employer”), of the one part, and *[insert name of the Contractor]* (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as *[name of the Contract]* should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

- (i) the Letter of Acceptance;
- (ii) the Letter of Technical Bid;
- (iii) the Memorandum of Understanding (MOU) (if any)
- (iv) the Letter of Price Bid
- (v) the addenda Nos *[insert addenda numbers, if any]* (if any);
- (vi) the Particular Conditions – Part A;
- (vii) the Particular Conditions – Part B;
- (viii) these General Conditions;
- (ix) Specifications;
- (x) the Drawings;
- (xi) the Supplementary Information (if any);
- (xii) the Schedules; and
- (xiii) the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

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

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of the Federal Democratic Republic of Nepal on the day, month and year specified above.

Signed by _____

Signed by _____

for and on behalf of the Employer
in the presence of

for and on behalf the Contractor
in the presence of

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

Performance Security

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Ministry of Physical Infrastructure and Transport, Department of Roads, Foreign Cooperation Branch, Department of Roads, Jwagal, Lalitpur - Nepal

Date: *[Insert date of issue]*

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

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

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of the contract and brief description of the Works]* (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

This guarantee shall expire, no later than the date twenty-eight (28) days after the date on which the Beneficiary has received a copy of the Performance Certificate issued by the Engineer, and any demand for payment under it must be received by us at this office indicated above on or before that date.

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

[signature(s)]

¹ The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

Advance Payment Security

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Ministry of Physical Infrastructure and Transport, Department of Roads, Foreign Cooperation Branch, Department of Roads. Jwagal, Lalitpur - Nepal

Date: *[Insert date of issue]*

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

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

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the contract]* dated *[insert date of the contract]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Works]* (hereinafter called “the Contract”).

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)¹ upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall be valid until the intended

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

completion date for whole of the Works². Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

[signature(s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

² Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

Retention Money Security

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Ministry of Physical Infrastructure and Transport, Department of Roads, Foreign Cooperation Branch, Department of Roads. Jwagal, Lalitpur - Nepal

Date: *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*)¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for its demand or the sum specified therein.

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

This guarantee shall expire no later than the date twenty eight (28) days after the date on which the Beneficiary has received a copy of the Performance Certificate issued by the Engineer, and

¹ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

any demand for payment under it must be received by us at the office indicated above on or before that date.

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

[signature(s)]

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]