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SECTION-III CONDITIONS OF CONTRACT

ARTICLE I GENERAL PROVISIONS

A. Definitions

The following words shall be construed in accordance with the meanings assigned to them, except when a different meaning is clearly intended:

- (a) **Contract** - The signed Agreement entered into between the Employer and the Contractor and is deemed to include the following:
 - 1) Invitation for Bid;
 - 2) Instructions to Bidders;
 - 3) Letter of Acceptance;
 - 4) Conditions of Contract;
 - 5) Technical Specifications & Drawings;
 - 6) Price Schedule and Bill of Quantities; and
 - 7) Bid Form
 - 8) Schedule of Supplementary Information
 - 9) Such further documents as may be expressly incorporated in the Letter of Acceptance.

- (b) **Employer** - The party who employs the contractor to carry out the works or his duly authorized representative who can act on his behalf in supervising the implementation of the contract.

- (c) **Engineer** - Same as Employer.

- (d) **Contractor** - The party (a person or corporate body) who is employed by the Employer to carry out the works.

- (e) **Parties** - Refer to both Employer and Contractor.

- (f) **Works** - What the Employer requires the Contractor to do under the Contract, which may involve the use of labour, process technology, equipment, materials and suppliers.

- (g) **Plant** - Means machinery, apparatus, or instrument intended to form part of the works.

- (h) **Specifications** - Means the specifications of the works included in the Contract and any modification or addition made or approved by the Employer.

- (i) **Contract Price** - Is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

- (j) **Priced Bill of Quantities** - The quantities of works to be done together with their corresponding unit prices. Includes also the kind of labour to be employed and their day/hour rates.
- (k) **Drawings** - Include drawings, calculation, samples, patterns, models, manuals and other technical information provided by the Employer to the Contractor under the Contract for the execution of the Works.
- (l) **Unit Rate** - The price for a given measurement of Works or materials or labour used in the Works.
- (m) **Sub-Contractor** - Is a person or corporate body who has a contract with the Contractor to carry out a part of the Work under the Contract.
- (n) **Commencement Date** - The date indicated in the Notice to Proceed as the date for commencement of Work.
- (o) **Completion Date** - Is the date stated in the Taking-Over Certificate that the Works were substantially completed on this date in accordance with the Contract.
- (p) **Taking-Over Certificate** - Is the certificate issued by the Employer in accordance with the provisions of the Clause 51, Article V, when the whole of the Works was completed.
- (q) **Variation Order** - An order issued by the Employer which involves changing any aspect of the Works.
- (r) **Defect** - Any part of the Works not executed and completed in accordance with the provisions of the Contract.
- (s) **Site** - Means the places provided by the Employer where the Works are to be executed and any other places as may be specifically designated in the Contract as forming part of the site.

B. Language and Enforcement of Contract

The Contract is executed in English language. Enforcement of the contract will be in accordance with Bhutan laws and any dispute not settled by arbitration shall be brought to a Bhutan court having jurisdiction thereof.

C Amendments

The contract shall be amended only by written agreement between the Parties, except in such cases where the Employer may, under the provisions of the Contract, issue written instructions which shall be accepted by the Contractor.

D. Settlement of Disputes

All disputes arising in connection with the present Contract shall be resolved by arbitration in accordance with the rules and procedures of the Construction Development Board (CDB) located at Thimphu or any other agency that has been appropriately mandated at the time of submission of the disputes through its National Arbitration Committee. The arbitration award shall be final on the parties who shall be deemed to have accepted to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

ARTICLE II EMPLOYER'S AND CONTRACTOR'S OBLIGATIONS

E. Employer's General Obligations

1. Payment of the Contract Price

The Employer shall pay the Contractor the Contract Price in Bhutanese Ngultrum as stipulated in the Contract. Payment(s) shall be made in accordance with the terms of payment and it is the Employer's obligation to ensure that funds are released on time and are made available as needed. The Employer must also ensure that issuance of certifications, authorizations, or pre-audit procedures are not unnecessarily delayed and that no undue inconvenience is suffered by the Contractor in obtaining payments.

2. Measures for Commencement of Works

The Employer shall take all the steps necessary to enable the Contractor to commence work in accordance with the Commencement Date. These include giving the Contractor possession of the site of work and access thereto, acquisition of rights-of-way if needed, provision of data on hydrological and sub-surface conditions, drawings and specifications, supply of equipment, materials or supplies if to be provided by the Employer, and appointment of the Employer's representative who will act as the Engineer on behalf of the Employer.

3 Approvals, Authorizations

The employer shall not unnecessarily withhold or delay giving any approval, authorization, instructions or notices as may be required by him under the provisions of the contract. Any issue, problem, or matter submitted to him for consideration or decision must be addressed promptly and decisively.

4 Employer's Risk

From the Commencement Date until the Taking-Over Certificate has been issued, the following are Employer's risk:

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipments), which are due to:

- (i) use or occupation of Site by the Works or for the purpose of the Works, which is the unavoidable result of the works; or
 - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the contractor.
- (b) The risk of damage to the Works, Plant, Materials and Equipment to the extent that it is due to a fault of the Employer or in the employer's design, or due to war or radioactive contamination directly affecting Bhutan.

F. Contractor's General Obligations

5. Execution of the Works

The contractor shall execute and complete the Works and remedy any defects therein to the satisfaction of the Employer in accordance with the provisions of the Contract. He shall provide all the technical expertise, labour, materials, machinery and equipment, plant and temporary facilities necessary for the execution and completion of the Works in accordance with the drawings, specifications, and instructions provided by the Employer under the terms of the Contract.

The Contractor shall, with due care and diligence, design (to the extent provided for by the Contract), execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract. The Contractor shall provide all superintendence, labour, materials, Plant, Contractor's Equipments and all other things, whether of a temporary or permanent nature, required in and for such design, execution, completion and remedying of any defects, so far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract.

The Contractor shall give prompt notice to the Engineer, with a copy to the Employer, of any error, omission, fault or other defect in the design of or executing the work.

6. Early Warning

The Contractor shall warn the Employer at the earliest opportunity of specific likely future events or circumstances which may adversely affect the quality of the works, increase the Contract Price or delay the Intended Completion Date. The Employer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Intended Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

The Contractor shall cooperate with the Employer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Works and in carrying out any resulting instruction of the Employer.

7. Performance Security

On issuance of the Letter of Acceptance, the Contractor shall submit a performance security in favour of the Employer in the amount equivalent to **Ten percent (10%) of the Contract Price** to guarantee the faithful compliance of the Contractor's obligations under the contract at the time of signing of the Contract Agreement. The Contractor shall provide such security in the form of a Bank Guarantee or irrevocable letter of credit acceptable to the Employer, issued by a bank in Bhutan. The performance security shall be valid until the date of issue of the Taking over Certificate. The cost of complying with the requirements of this clause shall be borne by the contractor.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract in the event of:

- (a) Failure by the Contractor to extend the validity of the Performance Security as described in the preceding paragraph, in which event the Employer may claim the full amount of the Performance Security.
- (b) Failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or Clause 43 (Payment upon Termination) within forty two days after this agreement or determination,
- (c) Circumstances which entitle the Employer to terminate the contract upon Clause 39 (Termination by the Employer), irrespective of whether notice of termination has given.

8. Compliance with Laws, Rules and Regulations

The Contractor shall, in the execution of the works, comply with all existing applicable laws, rules and regulations, and shall obtain the necessary permits, pay the required fees and taxes, and indemnify the Employer against any claim or liability arising from the violation of any law, rule or regulation.

9. Representation against Material Favors

The Contractor declares that it has not given, nor promised to give; any money, gift or material favor or consideration to any government official, employee or any other bidder to secure the contract and that contrary action shall be sufficient ground for revocation of cancellation of the contract.

10. Taxation

The prices bid by the Contractor shall include all customs duties, import duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulations. Nothing in the contract shall relieve the Contractor from his responsibility to pay any tax that may be levied by the Government.

ARTICLE III CONDITIONS FOR EXECUTION OF THE WORKS

11. Commencement Date

The employer shall issue a Notice to Proceed, which will be the basis for commencement of work by the contractor. The Contractor should start work not later than the date indicated in the Notice to Proceed. For justifiable reasons, the Employer and Contractor may subsequently agree on another commencement date.

12. Time for Completion

The Employer shall issue notice to proceed, which shall be the basis for commencement of work by the contractor. The contractor should start work not later than the date indicated in the notice to proceed. The contractor shall begin the Works on the Start Date and shall perform and complete the Works in accordance with the program submitted by him, as updated with the approval of the Employer, by the intended completion date as below:

Package No.	Description of Package	Duration (Months)
Package B7	RE Works in Chapcha, Geling and Dungna Gewogs under Chukha Dzongkhag.	12
Package B8	RE Works in Matapkha, Geling, and Lokchina Gewogs under Chukha Dzongkhag.	12
Package B9	RE Works in Balujhora/Sampheling and Phuentsholing Gewogs under Chukha Dzongkhag.	9
Package B10	RE Works in Getena Gewog under Chukha Dzongkhag.	12
Package B11	Construction of 33 kV line from Ketokha village (Bongo Gewog) to Gangu School (Getena Gewog) under Chukha Dzongkhag.	8
Package B12	RE Works in Darla and Bongo Gewogs under Chukha Dzongkhag.	12
Package E2	RE Works in Gakiling and Sombaykha Gewogs under Haa Dzongkhag.	12
Package H2	RE Works in Lungnyi and Doga Gewog under Paro Dzongkhag.	5
Package J2	RE Works in Guma and Tewang Gewogs under Punakha Dzongkhag.	7
Package S7	RE Works in Nahi, Sephu, Bjina and Athang Gewogs under Wangdue Dzongkhag.	12

Package L19	RE Works in Samtse, Dophuchen (Dorokha Dungkha) and Tendu Gewogs under Samtse Dzongkhag.	12
Package L20	RE Works in Samtse and Pagli Gewogs under Samtse Dzongkhag.	11
Package L21	RE Works in Pagli Gewog under Samtse Dzongkhag.	11
Package L22	RE Works in Denchukha Gewog under Samtse Dzongkhag.	11
Package L23	RE Works in Denchukha Gewog under Samtse Dzongkhag.	11
Package L24	RE Works in Denchukha Gewog under Samtse Dzongkhag.	11

If the works are to be done by sections or in part thereof, completion of each section will be in accordance with the schedules of completion of work submitted to and agreed upon by the Employer.

13. Extension of Time for Completion

An extension of the time for Completion may be allowed by the Employer for the following reasons:

- (a) additional work has to be done,
- (b) adverse climate conditions or other natural calamities have caused work stoppages,
- (c) delay or impediment on the part of the Employer, and
- (d) there are unusual circumstances that have occurred which are not directly attributable to the Contractor.

The Contractor must give notice of any event causing a delay within twenty one (21) days of such occurrence and the Employer must within reasonable time decide on the extended date for completion. The Contractor shall extend the period of validity of the Performance Security accordingly.

14. Sub-contracting of the Work

The Contractor shall not sub-contract the work or any part of the work under any circumstances. Sub-contracting of works shall lead to termination of the Contract and will lead to the forfeiture of performance security deposit.

15. Work Program

The Contractor shall prepare the Work Program for the execution of the works, if advisable, with the use of spread sheet or any other networks or equivalent. One

original and two copies of such diagram must be provided to the Employer not later than twenty-one (21) days after the commencement Date. The work must cover all the activities for which the contractor is responsible and must ensure that the resource required for the execution of each activity are or will be available and taken into account in setting activity duration.

16. Transportation of Materials

Materials required for the execution of the Contract are to be transported to the work sites for all Packages by the Contractor at his own arrangements from the **Regional Stores Division / RE Micro stores** as indicated below:

Package No.	Regional Stores / Micro Stores
B7, B8, B9, B10, B11, B12, E2, H2, L19, L20, L21, L22, L23, and L24	Regional Stores Division, Phuentsholing
J2, and S7	Punakha Micro Stores

The contractor shall transport the materials to the sites in such a manner that materials required at the earliest will be first transported.

17. Insurance

The contractor shall obtain the following insurance coverage in such forms and amount as may be considered sufficient for the risk or liability insured against, and must be in force until the Taking-Over Certificate of the works is issued:

- (a) for the works (including plants and materials incorporated therein) and Contractor’s equipment against loss or damage;
- (b) against liability for accidental death or injury of any person, or loss or damage to any property arising out of the performance under the Contract. The Loss or damage of any material arising out of the performance under the contract shall be made good;
- (c) against liability arising from accident suffered by the Contractor’s workers while performing their work in accordance with Government rules and regulations; and
- (d) the Contractor shall avail full road accident insurance of goods during transportation from stores to work sites. The insurance policy should protect the goods during the vehicle accident viz. vehicle off road, head on collision, etc.

The Contractor shall assume full responsibility for the care and protection of the works, materials and plants from the Commencement Date to the date of acceptance of the whole of the Works, or of any section thereof incase of partial completion. Any loss or damage of the works occurring during this period shall be from the contractor’s

account. However, if the loss or damage is caused by Force Majeure, including war, civil insurrection, fires, floods, epidemics and earthquakes, the cost of restitution therefore may be considered as an addition to the Contract Price to the extent that it is not recoverable from the proceeds of any insurance coverage.

18. Contractor's Superintendence

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. The Contractor, or a competent authorized representative approved of by the Engineer, which approval may at any time be withdrawn, shall give his whole time to the superintendence of the Works. Such authorized representative shall receive, on behalf of the Contractor, instructions from the Engineer. If approval of the representative is withdrawn by the Engineer, the Contractor shall, as soon as is practicable, having regard to the requirement of replacing him as hereinafter mentioned, after receiving notice of such withdrawal, remove the representative from the Works and shall not hereafter employ him again on the Works in any capacity and shall replace him by another representative approved by the Engineer.

19. Engineer at Liberty to Object

The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person provided by the Contractor who, in the opinion of the Engineer, misconducts himself, or is incompetent or negligent in the proper performance of his duties, or whose presence on Site is otherwise considered by the Engineer to be undesirable, and such person shall not be again allowed upon the Works without the consent of the Engineer. Any person so removed from the Works shall be replaced as soon as possible.

20. Setting Out

The Contractor shall be responsible for setting out the works and for ensuring the correctness of the positions, levels, dimensions and alignment of the works. The route alignment, identification of locations for the construction of substations and pole fixing will be conducted by the Contractor in the presence of the representative engineer from the Employer. All the above settings have to be approved by the Site Engineer of the Employer prior to the commencement of works. All the measurements will be taken by the Site Engineer only for the works approved by the Employer. At any time during the execution of the works, the Contractor shall correct any error at his own expense when required to do so by the Employer. Boreholes, exploratory excavations or soil testing may be done if instructed by the Employer. In case, costs of boreholes or explanatory excavations or soil testing are not included in the Contract Price, the cost shall be borne by the Employer.

21. Safety of Operations and Protection of Environment

The Contractor shall assume full responsibility and comply with all applicable safety regulations for the adequacy and safety of site operations and methods of construction, and he shall adopt measures to prevent injuries to persons or damage to properties or utilities. He shall hold the Employer harmless for any liability for loss or damage resulting from his failures to take the necessary precautions. He shall avoid undue interference with private business, public travel, or with the work of other contractors. He shall take steps to protect the environment and to minimize noise, pollution or other undesirable effects from his method of operation.

The Contractor shall, throughout the execution and completion of the Works and the remedying of any defects therein:

- (a) have full regard for the safety of all persons entitled to be upon the Site and keep the Sites (so far as the same is under his control) in an orderly state appropriate to the avoidance of danger to such persons;
- (b) provide and maintain at his own cost all lights, guards, fencing, warning signs and watching, when and where necessary or required by the Engineer or by any duly constituted authority, for the protection of the works or for the safety and convenience of the public or other; and
- (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or other resulting from pollution, noise or other causes arising as a consequence of his method of operation.

22. Provision of Competent Personnel

The Contractor shall provide adequate qualified technical personnel to supervise the Works and such skilled and semi-skilled labour as necessary to complete the Works within the time specified. He shall, subject to the approval of the Employer, appoint a competent authorized representative who will act on his behalf in receiving instructions from the Employer and in supervising the execution of the works.

23. Compliance with Standards

The Contractor shall ensure that the quality of the materials, plants and workmanship meet all standards as specified in the Contract. Whenever a specific standard is mentioned in the specifications, it is intended only as a reference and equivalent or superior standards are equally acceptable subject to prior approval of the Employer. The execution procedure should be strictly adhered as specified in Section-IV, Technical Specification.

24. Responsibility to Rectify Loss or Damage

If any loss or damage happens to the Works, or any part thereof, materials or Plant for incorporation therein, during the period for which the Contractor is responsible for the care thereof, from any cause whatsoever, the Contractor shall, at his own cost, rectify such loss or damage so that the Permanent Works conform in every respect with the provisions of the Contract to the satisfaction of the Employer. The Contractor shall also be liable for any loss or damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations.

25. Examination of Work

The Employer shall have the right to conduct whatever tests or inspections it may consider necessary to determine whether or not the work is being executed in accordance with the provisions of the contract. Such right may include testing of samples of materials used in the works, examination of the quality of the workmanship and conformity of the works to drawings and specifications.

The Contractors shall provide such facilities, apparatus and instruments, sample of materials, manpower and other forms of assistance that are needed in conducting the tests or inspections. Tests may be done in the workshops or at the site of operations and the date and time for carrying them out should be agreed upon between the Employer and the Contractor.

If the Employer determines, after inspections, that materials used or the work done are defective in any respects, he may reject the said materials or Works and demand that the Contractor rectifies the defects by replacing the materials or by re-executing the works. If the Contractor fails within a reasonable period of time to such action as instructed by the Employer, the Employer shall have the right to employ other persons to carry out the same and the cost shall be borne by the Contractor.

26. Monitoring of Work Progress

At such time as will be agreed upon between the Employer and the Contractor, a periodic review meeting of the progress made will be undertaken. Based on the actual progress achieved, if necessary, an up-date of the work program for the execution of the remaining works will be prepared by the Contractor taking into account the effect of variations and additional works to be undertaken. Failure to submit an up-dated work Program will entitle the Employer to withhold payment of the next amount due as progress payment.

If delay is being encountered in the execution of the Works as determined against the approved Work program, the Employer and the Contractor shall, after examining the causes of the delay, agree on appropriate measures to be taken in order to make up the delay and to avoid further work slippages.

The Employer's acceptance of any revised Work Program shall not relieve the Contractor of his obligations under the contract.

27. Variation Orders

The Employer may, at any time during the progress of the Works, make variations in the form, quality or quantity of the works. Such variations may consist of the following:

- (a) Increase or decrease in the quantity of work to be done as indicated in the Contract;
- (b) Omission or insertion of any item of work;
- (c) Change in the level, lines, positions and dimensions of any part of the works;
- (d) Change in the character, quality, or kind of any work;
- (e) Additional work of any kind; and
- (f) Change in the sequence or timing of construction activities.

The Employer can order a variation by issuing a written instruction to the Contractor. A variation made shall not, in any way, vitiate or invalidate the Contract.

All variations, except under item (a) above, shall be valued at the rate and prices set out in the Contract ("Bill of Quantities"). If the Contract does not contain any rate(s) applicable to the variations, suitable rates or prices will be agreed upon between the Employer and the Contractor. In the event of disagreement between the parties, the Employer shall fix the rates as may consider fair and appropriate and shall notify the contractor.

The Contractor shall not make any such variation without an instruction of the Engineer.

For variations under item (a) increase or decrease in the quantities of work, variations shall be valued at the rates and prices set out in the Contract, if the variation in quantity is within the limit of (20%) for each item of work. If the final quantity of the work executed varies from the quantity in the Bill of Quantities of the Contract for that item by more than 20%, and the value of this variation exceeds one percent (1%) of the Original Contract Prices stated in the Letter of Acceptance, the excess quantity over the limit shall be paid to the Contractor at a suitable rate or price agreed upon between the Employer and the Contractor. In the event of disagreement between the parties, the Employer shall fix the rates and prices as may be considered fair and appropriate and shall notify the Contractor. If the value of this variation is less than one percent (1%) of the Original Contract Price, the excess quantity shall be paid to the Contractor at the unit rate or price set out in the Contract.

The value of all variations shall be taken into account in determining the final Contract Price.

28. Instructions for Variations

The Contractor shall not make any such variation without an instruction of the Engineer. Provided that no instruction shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an instruction given under this Clause, but is the result of the quantities exceeding or being less than those stated in the Bill of Quantity.

29. Measurement of works

The quantities set out in the Bill of Quantities should be considered as estimates and may not necessarily be the actual and correct quantities of work to be performed under the Contract.

The Contractor shall be responsible for the measurements of Works and the preparation of its bills. The measurement of works shall be carried out jointly by the Employer's representative and the contractor. The Employer's Representative shall record the measurements in the measurement book in accordance with the Financial Manual. The record entered in the measurement book shall be signed by the Employer's representative and countersigned by the contractor. The works shall be measured net except otherwise provided for in the specifications.

No part of the Works shall be covered up or put out of view without the approval of the Employer's representatives and the Contractor afford full opportunity for the Employer's representative to examine and measure any such part of the works which is about to be covered up or out of view. The contractor shall give due notice examination and measurement. The Employer's representative shall, without unnecessary delay, arrange for examining and measuring such part of the works, unless he considers it unnecessary and advises the Contractor accordingly.

30. Guarantee of Works after Completion Date

The contractor guarantees that the work performed, and the materials and equipment furnished shall be free from defects, that they comply with the prescribed specification and that they passed the required performance tests. This guarantee shall be **for a period of twelve (12) months** after the Completion of the whole Works known as defects liability period and within that period, the Contractor commits itself to repair or replace, promptly and without charge, any work, equipment and materials or part thereof which fail to meet the aforementioned guarantee.

Upon the issue of any Taking-Over Certificate, the Contractor shall clear away and remove from that part of the Site to which such taking-over Certificate relates all Contractor's Equipment, surplus material, rubbish and Temporary Works of every kind, and leave such part of the Site and Works clean and in a workmanlike condition

to the satisfaction of the Engineer. Provided that the Contractor shall be entitled to retain on Site, until the end of the Defects Liability Period, such materials, Contractor's Equipment and Temporary Works as are required by him for the purpose of fulfilling his obligations during the Defects Liability Period.

31. Indemnity for Infringement of Property Rights

The Contractor shall indemnify the Employer for any claim, cost or liability on account of any infringement of any patent, trademark, trade name or any protected right in respect of equipment, materials or plants used in the Works except where such infringement results from compliance with the design or specifications provided by the Employer.

32. Storage of Plant and Materials

The Contractor shall provide adequate and safe facilities for storing Plant and materials that will be used in the execution of the works. They must be neatly piled and compactly stored in the places that provide clear access to the site and without causing any inconvenience or create any danger to the public.

Excavated materials, wreckage and waste products, shall be disposed off quickly so as not to cause unnecessary obstruction or create sanitation/environmental problems.

The loading of materials to their trucks will also be arranged by the Contractor and will comply with the instruction issued by the Stores Officer of the Employer.

If there is any balance materials left after the completion of the works which is supplied by the Employer under the Contract, the Contractor will hand over the same to the nearest Micro-Stores/Regional Stores Division as indicated by the Employer. The Contractor should meet all associated cost to this effect and the Employer shall not be responsible for any cost involved.

If the Contractor fails to return the balance materials in full set of each item, the Contractor shall pay employer's purchasing cost of the items plus 50% on the purchasing cost to the Employer. Final bills shall be released only after return of all balance materials.

Any excess materials returned by the Contractor will not be taken by the Employer and paid for.

33. Facilities for Other Contractors

The Contractor shall, upon the instructions of the Employer, provide other contractors and workmen employed by the Employer, reasonable opportunity for carrying out the works and if required, to make available the use of roads, equipment and labour subject to additional compensation as may be determined by the Employer.

34. Unforeseen Obstacles

If during the execution of the works, the Contractor encounters physical obstructions or adverse geological or hydrological conditions on the site that could not have been reasonably foreseen, he shall give notice to the Employer, and both the Contractor and the Employer will determine:

- (a) to what extent and extension of time will be necessary, and
- (b) the amount of additional costs which have been incurred by reason of such obstructions or conditions and how, and by whom the cost will be born.

35. Discoveries

Anything of historical or other interest or of significant value discovered on the site shall be the property of the Employer. The Contractor shall notify the employer of such discoveries and carry out in accordance with the instructions of the Employer for dealing with such discoveries.

36. Outbreak of Hostilities

If during the period when the contract is in force, which may be before or during the execution of the works, there is an outbreak of hostilities between the armed opposite forces, which may impede or render impossible the commencement, continuance or completion of works, then the parties shall agree between themselves as to what steps will be taken under the circumstances, including a deferment or temporary suspension of the works or even termination of the Contract. However, the Contractor shall, until the decision has been reached, endeavour to start or complete the execution of the works to the best to his ability in close consultation with the Employer.

In case of termination by reason of outbreak of hostilities, the Employer shall pay the Contractor whatever amounts are due for Work already performed and for such other expenditures which the Contractor has incurred in accordance with the provisions of the Contract.

37. Suspension of work

The Employer may suspend the execution of the Works or any part thereof and the Contractor shall, during such suspension, protect the Works against loss or damage due to adverse external conditions. If the suspension is not due to default or breach of Contract on the part to the Contractor, an extension of time for the completion of works will be allowed, as may be determined by the Employer. The Employer and the Contractor may also agree on the amount to be added to the Contract Price by reason of such suspension.

Should the suspension which is not caused by the default of the Contractor last for more than forty five (45) days, the Contractor may request thereafter permission to

continue with the works giving his reasons thereof. If permission is not granted without justifiable reason within twenty one (21) days after permission has been requested, such denial may be treated as Employer's default and the Contractor shall be entitled to terminate his employment under the Contract.

The Contractor shall be entitled to suspend the execution of the works if the Employer fails or refuses to pay the Contractor any amount due under the Contract within sixty (60) days after the amount becomes due and payable, after prior presentation of Notice for Payment. Should the Employer pay subsequently after such suspension or reduction of Work, the Contractor shall resume normal work as soon as is reasonably possible.

38. Liquidated Damages

If the Contractor fails to complete the whole of the works, or any part thereof within the time agreed upon for completion, the Employer shall have the right to collect from the Contractor liquidated damages equivalent to **0.1 percent of the Original or Executed Contract Value, whichever is lower for every Day of delay**. However, the total amount of liquidated damages shall not exceed ten percent (10%) of the Original Contract Price.

39. Termination of Contract by Employer

The Employer may terminate the Contract upon thirty (30) days notice to Contractor if the other party causes a fundamental breach of Contract. Fundamental breaches of Contract shall include, but not be limited to, the following:

- (a) Contractor has stopped working continuously for ten (10) days and in spite of repeated (three times) notice by Employer to start the work.
- (b) In the opinion of the Employer, in spite of repeated notice, Contractor was not able to deploy sufficient manpower at site to execute the Contract and may not be in position to complete the work as per schedule.
- (c) Continuance of the work has become impossible, or will work adversely against the Employer's interest.
- (d) The Contractor has become insolvent or financially incapable of completing the works or has assigned his assets for the benefit of his creditors.
- (e) The Contractor has violated certain important provisions to the Contract, such as Sub-Contracting of the works, failure to comply technical specifications, poor workmanship, unreasonable delay etc., and has failed to take compensatory measures.

40. Termination of Contract by Contractor

The Contractor may terminate the Contract upon thirty (30) days notice to the Employer where;

- (a) The works have been suspended by the Employer for sixty (60) days and no permission to resume work has been granted, and
- (b) The Employer has failed to pay any substantial sums due to the Contractor under the terms of the Contract within the time specified for payment.

41. Take Over of the Works by the Employer

In case of termination under Clause 39 above, the Employer will take possession of the works, materials, tools & equipment which have been provided in connection with the Works, and may continue and complete the works by whatever manner or method it deems best including the employment of another contractor.

42. Corrupt or Fraudulent Practices:

If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the contract, then the Employer may, after giving 14 days' notice to the Contractor terminate the Contractor's employment under the Contract and expel him from the site, and the Contractor shall stop the work immediately, make the site safe and secure, and leave the Site as soon as reasonably possible.

For the purpose of this Clause:

- (a) "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (b) "fraudulent practice" is an act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit to avoid an obligation;
- (c) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (d) "coercive practice" is impairing or harming, or threatening to impair to harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(e) “Obstructive practice is

- (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation of making false statements to investigators in order to materially impede any investigation into allegations of corrupt, fraudulent, coercive or collusion practice; and / or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or pursuing the investigation; or
- (ii) acts intended to materially impede the exercise of the inspection and audit rights of the Employer or organization or person appointed by the Employer and/or relevant RGoB agency.

43. Payment upon Termination

If the Contract is terminated because of a fundamental breach of Contract by the Contractor and/or due to violation of any of the provisions under the Integrity Pact by the Contractor, the Employer shall issue a certificate for the value of work done less advance payments received up to the date of the issue of the certificate and less twenty percent (20%) of the value of work not completed. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor to the Employer.

If the Contract is terminated for the Employer’s convenience or because of a fundamental breach of Contract by the Employer, the Employer shall issue a certificate for the value of the work done, materials ordered, less advance payments received up to the date of the certificate.

44. Termination without Prejudice to Other Rights

The right of either the Employer or the Contractor to terminate the Contract in accordance with the foregoing provision is without prejudice to any actions, or remedies which either party may take under the provisions of the Contract.

ARTICLE IV PAYMENT PROVISIONS

45. Cash Flow Estimates

The Contractor shall submit a quarterly cash flow estimate indicating the amount of quarterly payments expected to be made under the Contract based on the approved Work Program.

46. Advance Payment

The Contractor shall be eligible for advance payment of ten percent (10%) of the contract price excluding provisional sum and contingency, which can only be used to

pay for equipment and other mobilization expenses required to start the works. The advance payment will be made only upon submission to the Employer of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amount equal to the advance payment. Such guarantee shall remain effective until the advance payment has been repaid fully.

The advance payment shall be repaid by the Contractor through percentage deduction from the interim progress payments and that the advance payment shall be fully repaid prior to the time when eighty percent (80%) of the Contract Price has been certified for interim progress payment. The amount of the bank guarantee may proportionately be reduced with every repayment made by the Contractor.

47. Retention Money

From each amount due for payment, the Employer will deduct ten percent (10%) thereof as Retention Money. Such deductions will be made until the completion of the Works and shall serve as a guarantee that any defects discovered during the Defects Liability Period will be corrected. Upon the expiration of the Defects Liability Period, the remaining balance to the retention money will be returned to the Contractor.

The Employer and the Contractor may agree that after the completion of the Works but during the warranty period, the Retention Money or part thereof will be returned to the Contractor and in lieu thereof, a bank guarantee may be put up by the Contractor.

48. Additional Claims

Should the Contractor have any additional claims for payment pursuant to any provision of the Contract, he shall advise the Employer about such claims, and submit to the Employer full details thereof including the basis of the claims. The Contractor shall permit the Employer to examine all records relevant to the claims.

Within thirty (30) days after receipt of the claims, the Employer shall establish the veracity and propriety of the claim and shall communicate to the Contractor his decision. The Employer may decide to pay the full amount claimed, or may opt to pay just part thereof, to the extent of what has been substantiated by the evidence submitted by the Contractor. In case of disagreement, an arbitrator(s) may be appointed by the parties to resolve any difference between them.

49. Price Adjustment

The rates and prices in the Bill of Quantity are fixed for the duration of the Contract. Hence, no price adjustment shall be applicable under the contract.

50. Terms of Payments

All payments under the contract shall be made in local currency (Bhutanese Ngultrum). The Contractor shall submit monthly bills/invoices for completed works.

The bills/invoices must be supported by joint measurement duly signed by the Engineer of the Employer. Based on these measurements, the Employer shall then review and verify the bills/invoices submitted by the Contractor and determine how much is actually payable to the Contractor after necessary deductions. The Employer may make any correction or modification in any previous payments which has been approved by him.

The Final Payment by the Employer to the Contractor in respect of the whole Works under the Contract shall be made as per Article V, Clause 52.

Payment shall be made by the Employer within sixty (60) days from receipt of statement, unless delay is encountered in the submission of supporting documents if required by the Employer.

ARTICLE V COMPLETION OF THE WORKS

51. Taking – Over Certificate

When whole of the works have been substantially completed and satisfactorily pass any tests on completion prescribed by the Contract, the Contractor may give a notice to this effect to the Employer, accompanied by a written undertaking to finish with due expedition any minor outstanding work during the Defects Liability Period. Such notice and undertaking shall be deemed to be a request by the Contractor for the Employer to issue a Taking-Over Certificate in respect of the work. The Employer shall either issue a Taking-Over Certificate, stating the date on which the works were completed in accordance with the Contract, or give instructions in writing to the Contractor specifying all the work, including any defects in the Works affecting completion, which is required to be done before the issue of such certificate. The contractor shall be entitled to receive such Taking-Over Certificate within 21 days of satisfactory completion of the works so specified and remedying any defects so notified.

52. Statement of Completion

After the issue of the Taking-Over Certificate in respect of the whole works and when the minor outstanding works have been completed including the final clean-up of the Site has been performed, the Contractor shall submit the Employer a Statement of Completion which shall show in detail:

- (a) The final value of the work done in accordance with the Contract, including variations.
- (b) Any further sums that are due to the Contractor and remain unpaid.

Upon receipt of such statement, the Employer shall conduct a final inspection of the Works, measure the works and within Forty five (45) days from receipt of the

statement of Completion prepare a final estimate and present the same to the Contractor for his concurrence. This statement, if approved by both parties, is the Final statement and the total amount of the Final Statement represent full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract.

53. Contractor's Liability

Neither the final inspection nor the preparation of the Final Statement by the Employer, nor the issuance of the Taking-Over Certificate to the Contractor, nor the payment of the amount due, nor the possession by the Employer of the Work, shall operate as a waiver of the provision of the Contract, and the Contractor shall remain liable for a period of Twelve (12) months from the date of completion, stated in the Taking-Over Certificate, for any defect or damage arising from any violation or lack of compliance with the covenants and conditions of the Contract.

Any work of reconstruction and correcting of defects must be done within thirty (30) days from receipt of advice of the existence of such defects by the Contractor. The cost of such works shall be for the account of the Contractor if the defect(s) were due to:

- (i) The use of materials, plant or workmanship not in accordance with the Contract;
- (ii) Fault in design for which the Contractor was responsible; and
- (iii) Failure on the part of the contractor to comply with any obligation under the contract.

Neither shall the Contractor be released of any unfulfilled obligations including, but not limited to, the payment of taxes due to him, and for unpaid claims for labour, materials and equipment used in the works.

54. Release from Performance

If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the contractor, the Employer shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work afterwards to which a commitment was made.