

No. [09/2016/TT-BXD](#)

Hanoi, March 10, 2016

CIRCULAR

GUIDANCE ON CONSTRUCTION CONTRACTS

Pursuant to the Law on Construction No. [50/2014/QH13](#) dated June 18, 2014;

Pursuant to the Decree No. [37/2015/ND-CP](#) detailing the construction contracts dated April 22, 2015;

Pursuant to the Government's Decree No.62/2013/ND-CP defining the functions, tasks, entitlements and organizational structure of the Ministry of Construction dated June 25, 2013;

Pursuant to the Government's Decree No. 46/2015/ND-CP on construction works maintenance and quality control dated May 12, 2015;

Pursuant to the Government's Decree No. 59/2015/ND-CP on construction project management dated June 18, 2015;

At requests of the Director of Department of Construction Economics; the Minister of Construction hereby issues this Circular guiding the conclusion of construction contracts.

Article 1. Scope and regulated entities

1. This Circular provides a number of guidelines on construction contracts.

2. This Circular applies to organizations and individuals participating in the conclusion and management of construction contracts of the following construction projects (including construction contracts between PPP project hirers and contractors of contractor projects:

a) Construction projects invested by regulatory authorities, political organizations, socio-political organizations, socio-political-professional organizations, socio-professional organizations, social organizations, affiliates of the People's armed forces and public service providers.

b) Construction projects invested by state-owned enterprises or enterprises funded with at least 30% of State capital;

c) Construction projects other than those specified in point a and b of this clause and the proportion of the State capital in which is at least 30% or exceeding 500 billion dong.

Organizations and individuals engaging in construction contracts of projects funded by other sources of finance should follow provisions hereof

3. Where the provisions hereof regarding construction contracts of construction projects funded with ODA (hereinafter referred to as “ODA project”) and international agreements to which Vietnam is a signatory conflict, the international agreement shall prevail.

Article 2. Scope of work and workloads

1. The scope of work and workload shall be mutually agreed by both parties (the hirer and contractor) and shall be specified in the construction contract. The scope of work shall be defined according to the bidding documents or request for proposals, bid or proposals, minutes of negotiations or relevant legal documents.

A construction contract may include the following tasks, in whole or in part:

a) Transferring, receiving and managing construction sites, construction site boundaries, markers

b) Providing building materials, personnel, and construction vehicles/machines/equipment stipulated in the contract.

c) Constructing the construction works according to the approved design and current construction regulations and standards.

d) Surveying and monitoring at requests of designers; carrying out on-line testing and off-line testing according to the commissioning plan prior to acceptance procedure.

dd) Controlling construction quality, installing equipment, supervising sub-contractor performance (if the contractor is prime contractor or EPC contractor).

e) Remedying defects (if any) occurring during the construction

g) Testing quality of building materials and structure

h) Conducting the acceptance by construction stage, part of construction work, acceptance of work items and construction works

i) Performing HSE and fire/explosion prevention;

k) Protecting construction sites within the scope of contract.

l) Ensuring the construction site security

m) Cooperating with other contractors (if any)

n) Clearing the construction site and transferring construction works after the completion.

o) Other tasks as agreed in the contract, documents and provisions of laws.

2. Building materials or construction vehicles provided by the hirer shall be specified in the contract, including: weight, quality, date and place of provision.

Article 3. Requirements for construction works quality, acceptance and transfer

1. Requirements for construction works quality:

a) The construction work shall follow the design, drawings (including amendments approved by the hirer), deliverables specified in the bidding documents (or request for proposals), applicable standards and regulations on construction works quality; every contractor shall prepare the description of their quality control and supervision plan.

b) Every contractor shall provide the hirer with testing results of material/work items. Such result shall be released by an accredited testing laboratory.

c) The contractor shall commit that his/her materials/equipment origin is conformable to that stipulated in the contract.

2. Inspection or supervision by hirers

a) Every hirer has the right to access the construction site and places where the natural resources are extracted for implementation of the construction contract;

b) Every hirer has the rights to inspect, examine, measure and test materials, the manufacture and processing of materials and construction equipment in the construction site or other places stipulated in the contract.

Every contractor shall facilitate the manufacturing and processing by the hirer's staff by giving permission for site access, construction vehicles and protective equipment, and necessary permits. No obligations of the contractor shall be affected by such actions.

The contractor shall notify the hirer of the completion of tasks under the hirer's inspection and measurement before moving onto the next step. The hirer shall immediately inspect, test or measure the work without explanations, or if it is unnecessary, the hirer shall promptly notice the contractor. The hirer shall not have the right to lodge any complaint if he/she refuses to attend the inspection, testing or measurement.

3. Acceptance of the completed work

a) Only completed work that satisfies the quality requirements under clause 1 of this Article is approved.

b) Documents for acceptance of completed works includes drawings (including amendments approved by the hirer); technical descriptions, relevant standards and regulations, Certificates of testing; acceptance record forms and relevant regulations.

c) Participants in the acceptance are hirer's representatives, contractor's representatives or consultant's representatives (if any)

d) Acceptance and transfer documents, including:

- Acceptance records under the State regulations

- Testing results of the work needing approving and other relevant provisions of laws.

4. Project commissioning (if any)

Prior to the commissioning, the contractor shall submit all as-built documents, operating and maintenance manuals which specify specifications and instructions on operating, maintenance, re-installation, adjustment and repair.

The contractor shall support and provide necessary machinery, documents, equipments, fuel, instrument, qualified and experienced staff, etc. for the commissioning. The contractor and hirer shall decide place and time of commissioning.

The hirer shall send a notice of participation in the commissioning to the contractor 01 day prior to the date of commissioning. If the hirer do not attend the commissioning at the designated time and place, the contractor may carry out the commissioning themselves and it is considered that the commissioning is carried out in the presence of the hirer, unless otherwise agreed by both parties.

If any expense incurs at the contractor's account due to the compliance with the hirer's instructions or if it is delayed by the hirer's fault, the contractor shall send the hirer a notice of that fact and shall be entitled to:

a) Be granted an extension of time;

b) Have all additional expenses covered

The contractor shall submit the hirer all commissioning reports and records as the basis for contract finalization under provisions of laws.

5. Acceptance and transfer of works and work items

After the construction is completed and the commissioning (if any) indicates that the construction works satisfies all acceptance requirements under Article 31 of the Government's Decree No. 46/2015/ND-GCP on quality control and maintenance of construction works and contract requirements, both parties shall carry out the acceptance procedure.

Both parties shall prepare the acceptance record and transfer record if the works satisfy all acceptance requirements. Every unfinished work or minor defect that does not affect the project operation shall be specified in the acceptance and transfer records. Such unfinished work and defect shall be completed and remedied at the contractor's account.

For any works unqualified for being approved, both parties shall identify causes of failure to meet the acceptance requirements and specify tasks that the contractor need carry out to complete the works.

The competent State authority shall inspect the acceptance of construction works during and after the construction is completed under laws on quality control and maintenance of construction works.

6. Responsibilities for defects by contractors

a) The contractor shall finish all unfinished work at their account by the date stipulated in the acceptance record, and transfer such work to the hirer within the required period but exceeding the period of fulfillment of the unfinished work stipulated in the contract.

b) In case of failure to remedy defects:

- If the contractor fails to remedy any defect within an acceptable period, the hirer or hirer's representative shall designate a date to remedy such defect and notify the contractor of that date.

- If the contractor fails to remedy such defect on the designated date, the hirer shall remedy such defect on their own or employ a third party to remedy, and all incurred expenses shall be paid by the contractor (the contractor shall not have the right to file a complaint against such expenses if he/she is unable to prove their inaccuracy). The contractor may be relieved from the remedy but shall be liable for their obligations to fulfill the construction contract.

c) If the defect affects the project operation or the operation of majority of the project, the hirer has the right to terminate the contract, and the contractor shall reimburse the hirer for all damage under terms of the construction contract or provisions of laws.

d) If it is unable to remedy the defect on the construction site, the contractor may transport defective equipment to another location to have it repaired, if it is approved by the hirer.

7. Additional tests

If the defect remedy affects the project operation, the hirer has the right to request to re-conduct any test mentioned in the contract, including tests before and after the construction is completed. The request for re-testing shall be noticed within 30 days after the date on which the defect is remedied. The re-testing shall conform to requirements for testing but shall be paid by the contractor.

8. Unfulfilled obligations

After the acceptance and transfer record is issued, both parties shall be responsible for their unfulfilled obligations. Unfulfilled obligations are still governed by the contract.

Article 4. Management of construction contract performance

The contract performance management shall be governed by Article 7 of the Decree No.37/2015/ND-CP and the following provisions:

1. Every complaint, request, proposal and response by either party shall specify name of the agreement, date of complaint, required date of response, name of the requesting party, name of the responding party, contents, list of required documents (if any), incurring costs (if any) and other contents, signature (seal, where necessary).

2. Contract schedule management:

Both parties shall decide the contract schedule, date of reporting and acceptance of the work as the agreement is concluded (the schedule shall be consistent with that in the bid).

3. Quality control:

The transferred work/work item shall satisfy requirements for construction works quality. The contractor shall control the quality of the work carried out by both themselves and that by subcontractors (if any).

4. Construction management:

The construction works shall be managed under the Government's Decree No. 46/2015/ND-CP on quality control and maintenance of construction works, the Government's Decree No. 59/2015/ND-CP on construction project management dated June 18, 2015 and relevant provisions of laws.

5. Workloads and contract price management:

Both parties shall control the workloads stipulated in the contract and contract documents. The construction contract workload shall be adjusted in accordance with clause 1, Article 7 hereof.

6. The fire and explosion prevention and HSE shall conform to Article 48 of the Decree No.37/2015/ND-CP and the following provisions:

a) Occupational safety and health:

- The contractor shall built fences, lighting systems and guardians to protect the construction site until it is completed and transferred to the hirer;

- The contractor shall regularly check protective equipment, scaffoldings, platforms, jacks, construction vehicles, lifting equipment, lighting systems, and update regulations on replacement of such equipment.

b) Fire & explosion prevention

- Parties to the construction contract shall comply with State regulations on fire and explosion prevention;

- Fire and explosion prevention systems and fire alarm systems shall be installed to reduce the damage caused by fire and explosion.

7. Amendments to contracts and other terms of contracts:

The construction contract shall conform to Article 7 hereof, points a, b, c, d and dd of this Article and terms agreed by both parties under laws on construction project investment.

Article 5.Contract duration and schedule

1. The contract duration shall be calculated from the effective date of the contract to the date on which both parties fulfill their contract obligations.

2. The contractor shall submit the detailed schedule to the hirer which specify:

a) The order of work, schedule of work, duration of construction of primary work items, work items and the construction works.

b) Date for checking and inspecting the work, work items and construction works;

c) Reports on applicable construction techniques and main construction phases; reports on the number of officers, workers and equipment required for each main construction phase. The contractor shall follow the detailed schedule approved by the hirer.

3. The contract schedule shall specify milestones and date of transfer of the primary works.

4. both parties shall specify cases which requires to adjust the contract schedule. Any adjustment to the contract schedule that does not make the contract schedule extend (including the

acceptable extension time under terms of the contract) shall be agreed by the both parties. Where the adjustment make the contract schedule last longer, the hirer shall request the person competent to make investment (hereinafter referred to as “investment decision-maker”) to consider deciding, and each party shall define their liabilities for damage due to the delay.

5. Both parties should speed up their performance of contracts while still ensuring the construction works quality.

6. The contractor shall submit a prediction of potential adverse events that may affect the construction work or may make the contract price increase.

Article 6. Contract prices, advances and payment

1. According to the properties, nature and scale of the contract, the hirer may select one of types of contracts and comply with its requirements stipulated in the Article 15 of the Decree 37/2015/ND-CP.

a) The contract price is a sum of money that the hirer commits to pay the contractor for their performance of contract according to the workload, quality, schedule, and terms of payment, advance and other terms of the contract.

b) The contract price includes all expenses for the contract performance, royalties, profits of the contractor and every involved tax under provisions of laws. The construction contract shall specify types of expenses, taxes and charges (if any) that are not included in the contract price. The parties shall adjust the contract price in consistence with the price elements and shall specify in the contract. Where more than one type of currency are used for settling the contract, both parties shall specify the contract price by type of currency.

c) The contract price may include costs of materials, workers or construction vehicles; equipment; storage or installation including storage or freight charges; construction techniques, water and electricity, insurance premiums for the contractor and third party; testing and commissioning, warehouse, traffic, road maintenance and repair; safety assurance, environment handling fees, safety assurance for adjacent construction sites and other expenses.

d) The cost of equipment may include the costs of following elements: equipment, taxes and charges under provision of laws on import tax, customs service charges, VAT and other charges (if any); freight charges, premiums and other expenses incurring in connection with the freight, technical service charges for the execution of the contract, work items and construction works

e) The contract value is determined according to the contract negotiation, decision on the wining price (or approval for proposed contract prices in case of contract directing) under the bidding document (or requests for proposal).

2. The advance shall be made in accordance with Article 18 of the Decree No.37/2015/ND-CP The advance recovery method shall be stipulated in the contract on the following principles:

a) The advance shall be deducted by payment after the contractor receives the advance;

b) Where the payment is equal to 80% of the contract value, the advance shall be cleared.

c) The advance shall be conformable to the construction documents.

3. The contract shall be settled in accordance with Article 19 of the Decree No.37/2015/ND-CP and the following provisions:

a) It may be paid in lump-sum or installment;

b) The payment may be made by period of time (by month or quarter); or by the work (concrete or steel, etc.), construction phase, construction part (foundation, body, completion, road-bed or road surface), work item, or construction works;

c) The date of payment is stipulated in the contract according to the payment period.

d) Payment documents are conformable to that in Article 20 of the Decree No.37/2015/ND-CP;

dd) Methods of payment:

- For lump-sum contracts: The payment shall be made by percentage of the contract value or by respective workload for each respective payment period .

- For fixed price contracts: the payment equal (=) the actual completed workload approved during the payment period (whether increase or decrease, if any) multiplied (x) by its unit price stipulated in the contract.

- For adjustable price contracts: the payment shall equal (=) according the actual completed workload approved during the payment period (whether increase or decrease, if any) multiplied (x) by its adjusted unit price stipulated in the contract. Where it is not eligible for adjusting the unit price during the payment period, the unit price in the contract or unit price temporarily adjusted shall apply. When the unit price is officially adjusted, both parties shall re-calculate the sum of payment for the respective payment period according to the officially-adjusted unit price.

- For combined-price contract; the payment shall be made according to payment period stipulated in the set forth contracts.

c) For construction contracts of construction projects funded with ODA or loans from foreign credit institutions, the time limit for payment shall conform to provisions of international agreements. The time limit for payment shall be decided by both parties according to provisions of International Agreements and invested capital payment procedures under regulations of laws. Where the payment is made in foreign currency, the foreign exchange rate and its source shall be specified in the contract.

Article 7. Adjustments to construction contracts

1. The construction contract workload shall be adjusted in accordance with Article 37 of the Decree No.37/2015/ND-CP Article 10 hereof and the following provisions:

a) Any force majeure event that causes changes in the workload shall be dealt with in accordance with Article 10 hereof.

b) For lump-sum contracts: Any change in the design that are approved by the hirer resulting in changes in the workload (whether increase or decrease) shall be reasonably adjusted as a basis for contract price adjustment under clause 3 of this Article.

c) For fixed-price contracts and adjustable price contracts: the adjustment to such types of contracts shall be made in accordance point b, clause 2, Article 37 of the Decree No.37/2015/ND-CP

d) Both parties shall decide the unit price of any workload that is beyond the scope of contract and its unit price are not included in the contract prior to the contract execution.

2. The contract schedule shall be adjusted in accordance with Article 39 of the Decree No.37/2015/ND-CP Article 10 hereof and the following provisions:

In case of changes in contract schedule due to the hirer's fault, the hirer shall grant an extension and pay all expenses (if any) incurring due to contract extension. In case of changes in the contract schedule due to the contractor's fault, the contractor shall pay all incurred expenses (if any) as agreed in the construction contract.

b) Where any force majeure event occurs affecting the contract schedule, both parties shall project the duration of delay due to the force majeure event as the basis for adjusting the contract performance progress.

c) The contractor is entitled to adjust the detailed schedule (by week, month, etc.) provided that it is consistent with the contract schedule;

3. Adjustments to unit prices and contract prices

The contract price and unit price shall be adjusted in accordance with the Circular No. 07/2016/TT-BXD on adjustment to construction contract prices dated March 10, 2016 by the Minister of Construction.

4. Other adjustments are as follows:

a) Adjustments to construction methods: The contractor may change the construction method for speeding up the construction progress, ensuring quality, safety and effectiveness if it is approved by the hirer.

b) Adjustments to origins or types of materials or equipment:

- Changes in types of materials or equipment without any impact on the construction quality, progress, contract price and project effectiveness shall be allowed.

- Changes in origins of materials or equipment without any impact on the construction quality, progress, contract price and project effectiveness shall be allowed after it is approved by the investment decision-maker.

c) Any adjustment other than those specified in point a and b of this clause shall be decided by both parties in accordance with terms of the contracts and relevant provisions of laws.

Article 8. Construction contract insurances and warranties

1. Insurances

a) Every hirer shall buy the construction works insurance for the project affecting the community safety and environment or those applying sophisticated construction techniques or complicated construction conditions. Where the insurance premium is included in the contract price, the contractor shall buy the construction works insurance under provisions of laws.

b) The contractor shall buy necessary insurances such as insurances for construction workers, the third party or construction equipment, etc.

2. Warranties

a) The contractor shall provide warranties on the construction works and equipment as agreed in the contract. Every agreement on warranty period and warranty claim shall conform to laws on construction.

b) The warranty obligation may be guaranteed by a sum of guarantee or other methods agreed by both parties; however, the guarantee for warranty obligation is strongly recommended;

c) The guarantee shall be returned to the contractor after the warranty period is ended and the warranty obligation is certified “fulfilled” by the hirer;

d) The contractor shall deliver their warranty obligation within 21 days from the date of receipt of notice of defects from the hirer during the warranty period; if the contractor refuses to deliver their obligation, the hirer is entitled to hire other organization or individual to repair and pay them with the guarantee amount;

dd) The period of warranty on Class 1 or Special- Class work items or construction works shall be at least 24 months; the period of warranty on the remaining work items or construction works shall be at least 12 months. The period of warranty on housing shall be at least 05 years.

e) The period of warranty on equipment shall be conformable to that in the construction contract but not shorter than the warranty period provided by the manufacturer and shall be calculated from the date of acceptance of equipment installation.

g) The warranty on any work item which contains quality defects or suffers breakdown repaired by the contractor may last longer according to the agreement by both parties prior to the acceptance.

h) The minimum guarantee amount is as follows:

- For class-1 or special-class construction works : 3% of the contract value;

- For every construction works other than class-1 or special-class construction works: 5% of the contract value;

i) The contractor shall be entitled to refuse to perform the warranty if the defects or breakdown occurs by the hirer's fault or force majeure events.

k) After the warranty period, the contractor shall submit a report on fulfillment of warranty obligations to the hirer. The hirer shall issue a Certificate of fulfillment of warranty obligations to the contractor.

Article 9. Subcontracts

1. There may be more than one subcontract in a prime contract. Every EPC contractor, prime contractor or foreign contractors shall:

a) Only enter into subcontracts with qualified subcontractors.

b) Every foreign contractor as the prime contractor of construction projects in Vietnam shall employ Vietnamese subcontractors that satisfy the construction requirements, and enter into subcontracts with foreign subcontractors only when Vietnamese contractors fail to meet the construction contract. Every material or equipment temporarily imported for re-export shall be specified in the contract on the principle that the Vietnamese material or equipment satisfying construction contract requirements is prioritized.

c) Every subcontractor not included in the list of subcontractors shall obtain the hirer's approval.

d) Every EPC contractor or prime contractor shall be responsible for the construction progress, quality, HSE, their errors and their subcontractor's work towards the hirer.

dd) Neither EPC contractor nor prime contractor is entitled to get their whole work stipulated in the contract done by subcontractors.

During the negotiation and conclusion of the contract, both hirer and contractor shall specify the list of subcontractors, subcontractor's scope of work and the value of the work expected to be carried out by subcontractors. Prior to the addition to the subcontractor's work other than those specified in the subcontractor's scope of work approved by the hirer, the prime contractor shall obtain the hirer's consent.

2. Subcontractors designated by hirers (if any)

a) The subcontractor designated by the hirer (hereinafter referred to as "designated subcontractor") refers to any subcontractor who is appointed by the hirer to help the EPC contractor or prime contractor carry out demanding jobs; or where the prime contractor or EPC contractor fails to meet requirements for HSE, quality or construction progress at the hirer's request.

b) For any construction work needing designated subcontractors, the hirer and contractor shall specify cases in which the subcontractor is designated by the hirer;

c) The EPC contractor or prime contractor has the right to refuse the designated contractor if the EPC contractor or prime contractor or their subcontractors carries out the work in conformity with terms of the contract or has evidences or proofs of failure to satisfy the contract requirements by the designated subcontractor.

3. Hirers shall directly settle payment to the designated subcontractors according to the proposals of prime contractors or EPC contractors, unless otherwise stipulated in the contract.

4. The designated subcontractors have all rights and obligations under provisions hereof and relevant regulations of laws.

Article 10. Risks and force majeure

1. Risks and force majeure are defined in Article 51 of the Decree No.37/2015/ND-CP and the following provisions:

a) Force majeure event herein means any adverse event that may occur beyond the control and assumption by both parties prior to the conclusion of the contract during the construction include karst topography, antiquities or slug bags .

b) Responsibilities for risks by both parties

- Where a risk whose cost is estimated in the contract price occurs, the damage shall be paid by the contractor.

- Where any risk under the coverage of the insurance occurs, the damage shall be covered by the insurer and shall not be included in the contract price.

- The contractor shall compensate for damage, losses and costs (including legal fees and charges) incurred in connection with his/her fault

- The hirer shall compensate for damage, losses and costs (including legal fees and charges) incurred in connection with his/her faults.

c) Notice of force majeure

- Either party encountering force majeure events shall promptly send a written notice of the force majeure event to another party in which the failure to perform the contract in relation to consequences of the force majeure event shall be specified.

- The party encountering force majeure events shall be relieved from liabilities for the delay of the performance of contract during the time of force majeure.

e) Responsibilities for force majeure

- If the performance of contract is delayed or any expense is incurred due to the force majeure event that is notified to the hirer under terms of contract, the contractor shall be entitled to:

+ Be granted an extension of payment due date under terms of the contract

+ Have all additional expenses covered under terms of contract.

- The hirer shall consider approving requests by the contractor.

- The payment obligations by both parties shall not be affected by force majeure event consequences.

g) Contract termination due to force majeure, settlement or obligation fulfillment

If the period of delay due to force majeure is longer than that in the notice, either party has the right to terminate the contract.

In this case, the hirer shall pay:

- For any work that has been done at the cost stipulated in the contract;

- Costs of equipment or materials sent to the contractor or items that shall be delivered by the contractor (as the time of payment by the hirer, such equipment and materials shall become the hirer's assets (and liabilities) and are used by the hirer);

Article 11. EPC contracts

1. EPC contract herein refers to any construction contract between an EPC contractor and hirer under which the EPC contractor shall perform all work to complete a construction project.

2. The EPC management (EPCM) of the whole project shall conform to Article 4 hereof.

3. Rights and obligations of EPC contractors:

a) Every EPC contractor shall have all rights specified in clause 1 of Article 28 of the Decree No.37/2015/ND-CP and shall be entitled to:

- Control all construction vehicles/machine/equipment and construction methods within the construction site.

- Select subcontractors by bidding or direct contracting in accordance with the EPC contract and provisions of laws on construction.

- Hire or replace subcontractors (where necessary) after obtaining by the hirer's consent to ensure the construction quality, progress and contract prices;

b) Every EPC contractor shall fulfill its obligations specified in clause 2 of Article 28 of the Decree No.37/2015/ND-CP and shall:

- Run the construction site, coordinate the effective utilization of auxiliary works for the construction by subcontractors; use and ensure the construction site security. Every subcontractor shall comply with the EPC contractor's instructions on construction site execution.

- Prepare and consult with the hirer on the construction schedule and plan, primary work items and payment schedule;

- Procure, manufacture and supply materials and equipment according to requirements and schedule of the EPC contract; negotiate with the hirer about the bidding document on procurement of primary technical equipment and costs of equipment according to the bidding result (if it is included in the contract);

- Run the quality control and quality assurance system under regulations on construction quality control and terms of contract.

- Execute, coordinate and control activities on the construction sites; apply HSE plans, fire and explosion prevention and construction site security.

- Cooperate with the hirer to provide training in project operation for administrative officers and operatives; transfer technologies, drawings, deliverables related to the project operation and maintenance to the hirer;

- Carry out tests, rectifications, commissioning and transfer completed works to the hirer under the contract and State regulations of laws;

- Provide warranties on the construction works under regulations of laws;

- Take legal responsibilities for the quality and progress of the work stipulated in the contract, including every work carried out by their subcontractors and compensate for damage by their faults.

4. EPC costs shall be included in the EPC contract price.

Article 12. Guidelines on application of construction contract samples

1. The construction contract sample enclosed herewith shall be applied to draw up construction contracts by any organization or individual.

2. The construction contract sample herewith shall be applied to construction contracts between hirers and contractors, and EPC contracts.

3. The parties using the construction contract sample hereunder shall comply with provisions of the Decree No. 37/2015/ND-CP and the following guidelines:

a) The payment schedule, duration of contract performance guarantee, time limits for responses, contract termination and similar circumstances shall be specified in the contract

b) In case of difference between scope of work and job requirements in the detailed contract and that in the construction contract sample herewith, both parties shall negotiate to reasonably adjust.

c) In case of differences between scope of acceptance of the construction work in the construction contract and that in the contract sample herewith, both parties shall negotiate to reasonably adjust

d) For consortiums of contractors, the contact performance guarantee and advance payment guarantee shall be made in accordance with provisions of laws.

e) The advance shall be negotiable according to the construction contract requirements.

f) The currency of payment and payment methods stipulated in the contract shall not contravene that in the bidding documents and provisions of laws on foreign currencies.

g) Both parties shall select one of types of contracts specified Article 15 of the Decree No. 37/2015/ND-CP according to the nature, properties and requirements of the construction project.

Article 13. Entry into force

1. Transitional provisions:

a) Construction contract signed and executed before the effective date of this Circular shall apply regulations on construction contracts issued before the effective date of this Circular.

b) Any term of construction contracts that are under negotiation and have not signed yet inconsistent with provisions hereof shall be reported to the investment decision-maker to consider revising on the principles of schedule and quality assurance, effectiveness and saving harm from the parties.

c) Every difference between provisions of the construction contract in the approved bidding documents that has not published and that in this Circular shall be adjusted. Any change in bidding documents or requests for proposals that have been published related to the construction contract shall be announced to every bidder. Where the bid is closed, clause b shall apply.

2. Terms of construction contracts that are not stipulated in this Circular shall conform to provisions of the Decree No. 37/2015/ND-CP

3. This Circular enters into force from May 01, 2016 and replaces the Circular No. 09/2011/TT-BXD on construction contract forms dated June 28, 2011 by the Ministry of Construction.

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**PP. MINISTER
DEPUTY MINISTER**

Bui Pham Khanh

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MODEL CONSTRUCTION CONTRACT

(Issued together with the Circular No. 09/2016/TT-BXD guiding the construction contracts dated March 10, 2016 by the Ministry of Construction)

THE SOCIALIST REPUBLIC OF VIETNAM

Independence - Freedom - Happiness

..... [Location and date].....

-

CONSTRUCTION CONTRACT

No: /... (year)/..... (contract symbol)

-

[Name of the project or construction work or contract]

BETWEEN

(HIRER'S BUSINESS NAME)

AND

(CONTRACTOR'S BUSINESS NAME)

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PART I – BASIS OF CONTRACT

Pursuant to the Law on Construction No.50/2014/QH13 dated June 18, 2014;

Pursuant to the Law No.43/2013/QH13 on bidding dated November 26, 2013;

Pursuant to the Decree No. 37/2015/ND-CP detailing the construction contracts dated April 22, 2015;

Pursuant to the Government's Decree No. 46/2015/ND-CP on construction works maintenance and quality control dated May 12, 2015;

Pursuant to the Government's Decree No. 59/2015/ND-CP on construction project management dated June 18, 2015;

Pursuant to the Circular No.09/2016/TT-BXD on construction contracts dated March 10, 2016 by the Ministry of Construction.

Pursuant to the bidding result specified in document No.....

PART 2 – TERMS AND CONDITIONS OF THE CONTRACT

This contract is made as of [date] in..... [location] between:

1. The hirer:

Business name.....

Representative(s) (or authorized person(s)): Title:

Address:

Account No:

TIN:

Business registration (if any)

Tel:Fax..... E-mail:

And:

2. The contractor:

Business name:

Representative(s) (or authorized persons(s): Title:

Address:

Account No:

TIN:

Business registration (if any)

Tel: Fax:

E-mail:

Power of attorney No..... [date]..... (where the contract is signed by the authorized person)

(For consortiums of contractors, specify information of all members of the consortium and the consortium's representatives)

Both parties hereby agree to sign the construction contract of (name of project) as follows:

Article 1. Interpretation of terms

For the purpose of this contract, terms herein shall be construed as follows:

1.1. "The hirer" refers to..... (hirer's business name).

1.2. "The Contractor" refers to (contractor's business name).

1.3. "Hirer's representative" refers to the person that is named in the construction contract by the hirer and is authorized to execute the work on behalf of the hirer.

1.4. "Contractor's representative" refers to the person who is named in the construction contract by the contractor and is authorized in writing to execute the work on behalf of the contractor.

1.5. "Consultant" refers to any organization or individual who enters into the consulting contract to perform at least one task related to the contract performance management (the consultant may be project management consultants or construction supervision consultants).

1.6. "Consultant's representative" refers to any person who is authorized to perform the consulting service by the consultant.

1.7."Design consulting" refers to the consulting service for the purpose of project design.

1.8. “Subcontractor” refers to any entity entering into subcontracts to perform part of the contractor’s work.

1.9.”Project” refers to (name of project).

1.10. “Contract” refers to all documents specified in Article 2 [Contract documents and the order of priority].

1.11. ‘Bidding document’ (or request for proposal) by the hirer refers to all documents specified in the Annex No..... [Bidding documents (request for proposal) by the hirer]

1.12 “Bid” (or proposal) of the contractor refers to all documents prepared by the contractor according to requests in the bidding document and submitted to the hirer under the Annex No..... [Bid (or proposal) by the contractor].

1.13. “Technical manual” refers to a set of technical requirements and technical instructions on building materials, construction vehicles/machines/equipment that will be used for construction, and supervision and acceptance according to applicable construction project technical standards and regulations.

1.14. “Design documentation” refers all drawings, design calculation sheets and specifications that are provided by the hirer, or prepared by the contractor and approved by the hirer.

1.15. “Bill of quantities” refers to a detailed list of measured quantities of items of the work defined in the contract and its estimated costs.

1.16. “Party” refers to the hirer or contractor according to the purpose of the context.

1.17. “Commencement Date” refers to the date defined in clause 7.1 [Commencement date and contract duration].

1.18. “Acceptance record” refers to any record released under Article 6 [Quality Requirements, Acceptance and Transfer of Works].

1.19.”Day” means the calendar day and “month” means calendar month.

1.20.”Working day” means calendar days, excluding Sundays, holidays and Tet holidays under provisions of laws.

1.21. “Contractor’s equipment” refers to all construction vehicles, machines and equipment owned by the contractor for the execution of the construction works or defect remedy (if any).

1.22. “Construction works” refers to(name of the construction works) constructed by the contractor under the contract.

1.23. “Work item” refers to the main works or part of the main works.

1.24. “Temporary works” refers to part of works that enables the construction of the permanent works or main works.

1.25. “Works” refers to both temporary work and construction works or either of them.

1.26. “Hirer’s equipment” refers to all construction vehicles, machines and equipment provided by the hirer as stipulated in the Annex No.....[The hirer’s bidding documents (*requests for proposal*)].

1.27. “Risk and force majeure” is defined in Article 20 [Risks and Force majeure]

1.28. “ Law” refers to laws of the Socialist Republic of Vietnam.

1.29. “Construction site” refers to a land lot where the construction is carried out and any other places specified in the contract.

1.30. “Adjustment” refers to any change or alteration in the scope of work, technical manual, design documents, contract price or construction progress approved by the hirer in writing.

Article 2. Contract documents and the order of priority

2.1. The contract documents includes this contract and all enclosed documents.

2.2. The following enclosed documents form an integral part of the contract:

a) Notice of bid award or direct contracting

b) Specific terms of the contract

c) Miscellaneous terms

d) Bidding documents or requests for proposal by the hirer

dd) Drawings and technical manuals

e) Bids and proposals by the contractor

g) Minutes of negotiations and amendments

h) Annexes

i) Other relevant documents

2.3. The order of priority of the foregoing documents shall follow the order prescribed in clause 2 of this Article.

Article 3. Applicable laws and contract languages

3.1. This contract shall be governed by the laws of the Socialist Republic of Vietnam.

3.2. The contract is made in Vietnamese. (Where the foreign element is involved, the contract shall be made in both Vietnamese and a foreign language mutually agreed by both parties. Where at least 02 languages are used in the contract, both parties shall decide the transaction language and their order of priority for settlement of disputes).

Article 4. Contract performance guarantees and advance payment guarantees

4.1. Contract performance guarantees:

The contractor shall submit.....% of the contract value as the guarantee for contract performance to the hirer within.....days after the date on which the contract is signed. The contractor shall obtain the hirer's consent to the contract performance guarantee. Such guarantee shall be made using the form in the Annex No.....[Contract payment guarantee] (or different forms approved _____ by _____ the _____ hirer).

The consortium of contractor shall comply with clause 3, Article 16 of the Government's Decree No. 37/2015/ND-CP detailing construction contracts dated April 22, 2015.

The contract performance guarantee shall be valid until the guaranteed construction works or work item stipulated in the contract is approved by the hirer. If the contract performance guarantee expires for.....days before the date on which the contractor fulfills his/her obligations, the contractor shall extend the duration of the contract performance guarantee to the date of completion.

The contractor shall not receive the contract performance guarantee back if he/she refuses to execute the contract or.....(other cases agreed by both parties).The hirer shall return the contract performance guarantee to the contractor as the contractor fulfills his/her obligations and moves onto warranty stage.

4.2 Advance payment guarantees (where it is agreed by both parties)

The contractor shall submit an advance payment guarantee that equals the amount of advance to the hirer before receiving the advance from the hirer. With respect to consortiums of contractors, the provision in point b, clause 4, Article 18 of the Decree No. 37/2015/ND-CP shall apply.

The advance payment guarantee shall be deducted in proportion to the advance deduction by each payment (as agreed by both parties).

Article 5. Scope of work and workloads

The contractor shall follow drawings (including the amendments approved by the hirer), technical manuals in the Annex No.....[The contractor's bid (or proposal) approved by the hirer, minutes of negotiations, construction progress, estimates, HSE and other arrangements in the contract. To be specific, the contractor shall:

5.1) Transfer, receive and manage construction sites, construction site boundaries, markers

5.2. Supply building materials, provide personnel, construction vehicles/machines/equipment stipulated in the contract.

5.3. Construct the construction works according the approved design documentation and current construction regulations and standards.

5.4. Survey and monitor at requests of designers Carry out off-line testing and on-line testing according to the commissioning plan prior to request for acceptance.

5.5. Control the construction quality, install equipment, supervise sub-contractors' performance (if the contractor is prime contractor or EPC contractor).

5.6 Remedy defects occurring in the construction (if any)

5.7. Test the quality of building materials and structure

5.8. Conduct the acceptance procedure by construction stage, part of construction work, acceptance of completed work items and construction works

5.9. Perform HSE activities and fire/explosion prevention0}

5.10. Protect the construction site within the scope of contract.

5.11. Ensure the construction site security

5.12. Cooperate with other contractors in the construction site (if any)

5.13. Clear construction site and transfer construction works after the completion.

5.14. Carry out other tasks as agreed in the contract, documents and provisions of laws.

Article 6. Requirements for construction works quality, acceptance and transfer of work

6.1. Requirements for construction works quality

a) The construction shall be carried out in accordance with drawings (including amendments approved by the hirer), technical manuals in the Annex No...[Bidding documents (or request for

proposals)], applicable standards and regulation on construction works quality; the contractor shall prepare the description of its quality control and supervision plans.

b) The contractor shall provide the hirer with testing results of materials and all completed work. Such result shall be released by an accredit testing laboratory.

c)The contract shall commit that his/her materials/equipment origin is conformable to the contract.

6.2. Inspection or supervision by the hirer

a) The hirer has the right to access the construction site and other places where the natural resources are extracted for the construction;

b) The hirer has the rights to inspect, examine, measure and test materials, material and construction equipment manufacturing and processing on the construction site and in other places stipulated in the contract.

The contractor shall facilitate the manufacturing and processing by the hirer's staff by giving permission for site access, construction vehicles and protective equipment, and necessary permits. No contractor's obligations shall be affected by such actions.

The contractor shall notify the hirer of the completion of tasks under the inspection and measurement by the hirer's staff before moving onto the next step. The hirer shall immediately carry out the inspection, testing or measuring without explanations, or where unnecessary, the hirer shall promptly notice the contractor.

6.3. Acceptance of the completed work

a) Only the completed work that satisfies the quality requirements under clause 6.1 is approved by the hirer.

b) Documents for acceptance of the completed works includes the drawings (including amendments approved by the hirer); technical descriptions, relevant standards and regulations, Certificates of testing ; acceptance record form, etc.

c) Participants in the acceptance:

- Contractor's representative (s)(name of contractor's representative(s))

- Hirer's representative(s)(name of hirer's representative(s))

- Consultant's representative(s)(name of consultant's representative(s))

d) Documents on acceptance and transfer , including:

- Quality acceptance records (using the acceptance record form which specifies the quantity mutually agreed by both parties under the State regulations)

- Testing results of the work needing approving

6.4. Project commissioning (if any)

This clause shall apply to every commissioning stipulated in the contract, including the commissioning after the project is completed.

Prior to the commissioning, the contractor shall submit all as-built documents, operating and maintenance manuals which specify specifications and instructions on operation, maintenance, re-installation, adjustment and repair.

The contractor shall provide necessary machinery, documents, equipments, fuel, instrument, qualified and experienced staff, etc. for the commissioning. The contractor and hirer shall decide a place and time of commissioning.

The hirer shall send a prior notice of his/her participation in the commissioning to the contractor 01 day ahead of the date of commissioning. If the hirer do not attend the commissioning at the designated time and place, the contractor may carry out the commissioning themselves and it is considered that the commissioning is carried out in the presence of the hirer, unless otherwise indicated by the hirer.

If the contractor incurs any expense due to the compliance with hirer's instructions or if it is delayed by the hirer's fault, the contractor shall send the hirer a notice of that fact and shall be entitled to exercise rights specified in the Article 22 hereof to:

a) Be granted an extension if the construction falls into behind schedule or if the contract is forecasted to be completed behind schedule under clause 7.3 hereof;

b) Have all additional expenses covered

After receipt of the notice, the hirer shall consider dealing with this issue according to point 12.5 [Decisions by consultants].

The contractor shall submit all certified commissioning reports to the hirer. After the commissioning is completed, the hirer shall approve the commissioning record. If the hirer does not attend the commissioning, the commissioning report shall be deemed to be "approved".

6.5. Acceptance and transfer of work items and construction works

After the construction is completed and the commissioning (if any) indicates that the works satisfies acceptance requirements under Article 31 of the Government's Decree No. 46/2015/ND-CP on quality control and maintenance of construction works and contract

requirements, both parties shall carry out the acceptance procedure. Both parties shall prepare the record of works acceptance and transfer. Unfinished works or minor defects that do not affect the project operation shall be specified in the acceptance and transfer records. Such unfinished work and defect shall be remedied at the contractor's account.

For every works unqualified for being approved, the parties shall identify causes of failure to meet the acceptance requirements and specify tasks necessary for the completion.

The competent State authority shall inspect the acceptance procedure of construction works during and after the construction is completed in accordance with laws on quality control and maintenance of construction works.

6.6. Responsibilities for defects by contractors

a)The contractor shall finish all unfinished work at their account by the date stipulated in the acceptance record and transfer such work to the hirer within the required period but not later than the period of fulfillment of the unfinished work stipulated in the contract.

b) In case of failure to remedy defects:

- If the contractor fails to remedy defects within an acceptable period, the hirer or hirer's representative shall designate a date to remedy such defect and notify the contractor of that date.

- If the contractor fails to remedy such defects on the designated date, the hirer shall remedy such defect on their own or hire a third party to remedy such defect, and all incurred expenses shall be paid by the contractor (the contractor shall not have the right to complain about the incurred expenses if he/she is unable to prove the inaccuracy of such expenses). The contractor may relieve from the remedy but shall be liable for their obligations to the construction contract.

c)If the defect affects the operation of project or majority of the project, the hirer has the right to terminate the contract, and the contractor shall compensate the hirer for all damage under terms of contract or provisions of laws.

d) If it is unable to remedy the defect at the construction site, the contractor may carry out the remedy in another location outside the construction site, if it is approved by the hirer.

6.7. Additional tests

If the defect remedy affects the project operation, the hirer has the right to request to re-conduct any test mentioned in the contract, including tests before and after the construction is completed. The request for re-testing shall be noticed within 30 days from the date on which the defect is remedied. The re-testing shall conform to testing requirements but its cost shall be paid by the contractor.

6.8. Unfulfilled obligations

After the record of work acceptance and transfer is issued, both parties shall be responsible for their unfulfilled obligations. Unfulfilled obligations are still governed by the contract.

Article 7.Contract duration and schedule

7.1. Commencement date and contract duration

Commencement date is.....[date] (or the specified time agreed by both parties).

The contractor shall start the construction (right after the commencement date) and shall stick to the contract schedule.

The contractor shall fulfill their obligations withindays from the effective date of the contract.

7.2. Contract schedule

Unless otherwise stipulated in the contract, each construction schedule shall specified:

a) The order of work execution by the contractor and construction duration for main phases;

b) Inspection procedures and date of inspection;

c) Each construction progress report shall specify:

- Construction methods and main phases of the construction;

- The detailed construction schedule may be adjusted by week or month but shall conform to the contract schedule.

Every contractor shall stick to the construction schedule and fulfill their obligations stipulated in the contract. Any difference between the detailed construction schedule and the contract schedule shall be noticed to the contractor within.....days from the date of receipt of the detailed construction schedule. The hirer has the right to request the contractor to follow the contract schedule.

The contractor shall notify the hirer of potential occurrences that may affect or prevent the performance on the contract or contract price. In this case, the hirer or consultant may request the contractor to submit a report on potential occurrence impact and proposal under clause 7.3 [Extension]. The contractor shall submit the adjusted construction schedule in accordance with this clause.

7.3. Extension

The contractor shall be granted an extension of completion time under Article 22 [Complaints and settlement of disputes] in the following cases:

a) Any change in scope of work, design or construction method at requests of the hirer affects the construction progress.

b) Any force majeure event occurs such as earthquakes, storms, floods, tsunamis, conflagrations, epidemics or others;

c) Any work is delayed or hindered by the hirer, hirer's staff or other contractors such as: failure to comply with provisions on transfer of construction site under the contracts and relevant procedures

7.4. Mitigation of delay

If the actual construction falls behind schedule due to reasons other than those specified in the clause 7.3 [Extension], the hirer shall request the contractor to submit an adjusted construction schedule within a required period of time.

Article 8. Contract prices, advances and payment

8.1. Contract prices:

The total contract value :.....dong (in letters)

This contract is a lump-sum contract (or fixed-price contract or adjustable price contract).

Refer to Annex.....[Contract prices, advances and payment] for contract price details.

The set forth contract value include all cost elements for the execution of the construction contract, royalties, profits of the contractor and taxes in connection with the construction under provisions of laws.

The contract price shall only be adjusted in accordance Article 9 [Adjustments to contract prices].

8.2. Advances

a) The hirer shall pay the contractor an advance of.....dong after receipt of the advance payment guarantee.

b) The advance shall be gradually deducted by after the contractor receives the advance;

c) Where 80% of the contract value is paid, the advance shall be clear.

d) The advance shall be deducted from the payments, the deduction ratio is specified in the Annex.....[contract prices, advances and payment]

Where the advance is not returned prior to the signature of acceptance record and the termination of the contract under Article 17 [Contract suspension and termination by the hirer], Article 18 [Contract suspension and termination by the contractor] or Article 20 [Risks and force majeure], the amount of unreturned advance shall be considered liability due to date and shall be paid to the hirer by the contractor.

8.3. Payment

a) For lump-sum contracts:

* The payment shall be made in.....installments:

- The first installment:.....% of the contract value (or the value of the completed work item).....after the contractor completes the work item.....(name of the work item).

- The second installment:.....% of the contract value(or the value of the completed work item).....after the contractor completes the work item(name of the work item).

- The installment

- The final installment:.....% of the contract value (or the full payable) after the contractor fulfills his/her obligations under the contract and issue a guarantee for warranty obligations to the hirer.

b) For fixed-price contracts: The payment shall equal (=) the actual completed workload monthly approved (or at a designated time agreed by both parties) multiplied (x) by its unit price stipulated in the contract.

b) For adjustable price contracts: The payment shall equal (=) the actual completed workload monthly approved (or at a designated time agreed by both parties) multiplied (x) by its adjusted unit price under Article 8 [Price adjustments to adjustable price contracts].

8.4. Time limits for payment

a) The hirer shall make payment withinworking days from the date of receipt of the valid payment document from the contractor.

b) If the hirer delays to make payment for.....days after the set forth time limit in point a, he/she shall be charged a late payment interest for the delay period at the interest rate announced by the commercial bank where the contractor's account is registered at the first date of late payment.

8.5. Withholding return

The hirer shall return the amount of withholding to the contractor after the amount of each payment is evidenced and the contractor fulfills his/her warranty obligations under Article 19 [Insurances and warranties].

8.6. Currency of payment and methods of payment

a) The payment shall be made in Vietnam dong (VND) and.....(any foreign currency (if any), specify time of payment, name of bank, type of foreign currency and its foreign exchange).

b) Method of payment: transfer (other methods of payment as agreed by both parties).

8.7. Payment documents:

a) Lump-sum contracts:

- Acceptance records of the completed work during the payment period (using the quality acceptance record sample which specifies the quantity) certified by the hirer's representative or consultant's representative (if any) and contractor's representative. The acceptance record is considered as a certificate of completion of the construction works, work items and the work stipulated in the scope of work under the contract.

- Incurred cost calculation sheet (if any) for the work beyond the scope of work under the contract certified by the hirer's representative or consultant's representative (if any) and contractor's representative (Annex 4) .

- The contractor's payment request which specify the value of the completed work, value of the additional work (if any) advance deductible, the final proposed amount of payment certified by the hirer's representative and contractor's (Annex 1);

b) For fixed price contracts

- Acceptance records of the completed work during the payment period (using the quality acceptance record sample which specify the quantity) certified by the hirer's representative or consultant's representative (if any) and contractor's representative;

- Incurred cost calculation sheet (if any) which specifies the workload and unit price of the work beyond the scope of contract and is certified by the hirer's representative or consultant's representative (if any) and contractor's representative (Annex 4);

- The contractor's payment request which specifies the value of the completed work, value of the additional work (if any) advance deduction, the final amount of payment certified by the hirer's representative and contractor's (Annex 1);

b) For adjustable price contracts:

- Acceptance records of the completed work during the payment period (using the quality acceptance record sample which specify the quantity) certified by the hirer's representative or consultant's representative (if any) and contractor's representative;

- The calculation sheet of costs adjusted by escalation (also known as settlement price) under Article 9 [Adjustments to contract prices] certified by the hirer's representative or consultant's representative (if any) and contractor's representative (Annex 3);

- The contractor's payment request which specifies the value of the completed work, value of the additional work (if any) advance deduction, the final amount of payment certified by the hirer's representative and contractor's (Annex 1);

Article 9. Adjustments to contract prices

Adjustments to the contract price shall be made in accordance with Article 7 of the Circular guiding on construction contracts and the Circular No. 07/2016/TT-BXD on adjustments to contract prices dated March 10, 2016 by the Minister of Construction.

Article 10. Rights and obligations of the hirer

10.1. Rights:

If the hirer has any complaint in connection with the payment under Articles hereof or relevant laws, he/she shall send the contractor a notice and details of such payment as soon as possible.

The notice of extension of notice period shall be made within an acceptable period. The complaint shall specify grounds for complaining and shall include proofs of the payment or the extension of payment due date. The hirer, thereafter, shall determine:

- The amount (if any) the hirer requesting the contractor to pay;

- The extension (if any) of time limits for notice of errors.

Any payable or future payable of the contractor may be deducted from this amount.

The deduction is only made according to the contractor's certified payable or other complaints under this clause.

10.2.

Obligations:

The hirer shall :

Apply for the construction permit under provisions of laws;

b) Transfer the construction site , in whole or in part) to the contractor under terms of contract;

- c) Send staff and submit the list of staff managing and executing the contract to the contractor;
- d) Fulfill the payment obligations to the contractor according to the payment schedule prescribed in the contract;
- dd) Employ construction supervision consultants to supervise the construction work under Article 12 or 13 of this contract [Rights and obligations of consultants];
- e) Promptly provide design documentation, relevant documents and materials (if any) under terms of contract and provisions of relevant laws;
- g) Review and consider approving the Contractor's proposals related to the design and construction during the construction phase. If the hirer does not respond to the contractor's proposal, the proposal is deemed to be approved.
- h) Provide the contractor with documents on geological and hydrogeological assessment, construction surveys and reports on surrounding environment.

Article 11. Rights and obligations of the contractor

11.1. Rights:
The contractor has the right to

- a) Propose additions of the work not included in the contract; refuse tasks beyond the scope of work stipulated in the contract or tasks not agreed by both parties or illegal requirements of the hirer;
- b) Change the construction method to speed up the construction progress, enhance quality assurance, safety and effectiveness according to the contract price, if it is approved by the hirer;
- c) Access the construction site;

- The hirer shall transfer the construction site to the contractor for the execution of the contract.

- If the site transfer is delayed or any expense is incurred by the hirer's fault, such incurred expense shall be included in the contract price and shall be paid by the hirer.

If the delay or expense incurs by the contractor's fault, the contractor shall not be reimbursed incurred expenses by the hirer or the contract duration shall not be extended .

11.2. Obligations:

The contractor shall:

Send staff, materials, construction equipment and other instruments by category as stipulated in the contract;

Carry out the construction in accordance with the design, project standards and regulations, construction standards, quality assurance, HSE and fire and explosion prevention;

Prepare the construction plan, construction logbook, payment documents, as-built documents, contract settlement, material and equipment testing under the contract;

Ensure the contract confidentiality under provisions of laws on confidentiality.

Respond to the hirer's request in writing within.....days.

If the contractor does not respond to the hirer's enquiries within the set forth time limit, such request shall deem to be approved.

11.3. Contractor's personnel

The contractor's staff must be qualified for practicing according to requirements for qualifications and experiences under provisions of laws on construction The hirer has the right to request the contractor to displace any staff on the construction site or participating in the construction work, including the contractor's representative if such staff has negative attitude or is accused of negligence, incompetence; or inobservance of any term of the contract; or causing damage to health, safety and environment.

In this case, the contract shall (*or must*) replace such staff with another designated one. The contractor shall ensure the security of people and property in the construction site.

11.4. Personnel and equipment reporting by the contractor

The contractor shall submit detailed reports on their minimum quantity of staff and primary equipment on the construction site

11.5. Collaboration

The contractor shall collaborate with the hirer's staff and other contractors.

The above mentioned entities and other contractors may use the contractor's equipment, temporary works, or accesses the construction site by roads built by the contractor. Charges for the use of the aforesaid equipment, accesses or temporary works shall be included to the contract price.

The contractor shall be responsible for their construction work on the site and shall collaborate with other contractors to carry out the work within an extent specified in the hirer's bidding document (*request for proposal*) (if any).

11.6. Boundary marker positioning

The construction site shall be defined by boundary marker and reference elevation stipulated in the contract. The contractor shall be responsible for the accuracy of every work item positioning and shall correct errors in the position, elevation, size or construction alignment

The contractor shall check the accuracy of boundary markers, alignment and standard elevation before carrying out the construction and shall be responsible for the inaccuracy of the above mentioned elements.

Where the delay or expense is incurred due to the other party's faults , the contractor shall notify the hirer of that fact and apply Article 22 hereof [Complaints and settlement of disputes] to settle such issue.

11.7. Construction site conditions

It is considered that the contractor has carried out site surveys and verified the accuracy of set forth elements prior to the submission of bid, including:

a) Construction site topography, including geological conditions;

b) Hydrogeology and climate;

c) Workloads and nature of work, and materials for construction and correction of defects.

d) Laws on labor

e) The contractor's requirements for accesses, accommodation, means of transportation, personnel, traffic, water supply and other services.

It is considered that:

If the contractor encounters any geological difficulty beyond his/her anticipation, he/she shall notice the hirer of such difficulty as soon as possible. The notice shall clarify the geological difficulty and reasons for failure to anticipate such difficulty. The contractor shall continue to carry out the construction work, apply compatible measures and follow the instructions by the hirer. If any event occurs due to the compliance with the instruction, Article 20 [Risks and force majeure] shall apply.

11.8. Roads and means of transport

The contractor shall pay all charges or fees for the use of specialized roads and temporary roads, including accesses to the construction site. The contractor also pay for means of transport serving the construction work outside the construction site.

The contractor should save the roads, accesses or bridges from harm due to the use of the contractor and their staff and shall use proper means of transport and designated road routes.

Unless otherwise prescribed:

The contract shall not travel or occupy the whole roads or pavement, regardless of public roads, roads under the contractor administration or other's.

b) The contractor shall be responsible for repairing the road that is damage by themselves or their staff.

c)The contractor shall install signposts along their road routes and shall obtain the relevant authority's prior consent;

d)The hirer shall be free from complaints or issues arising in connection with road routes.

dd) The hirer do not guarantee for any the compatibility or availability of specific routes;

e)The contractor shall pay all fees or charges for the use of their on-demand roads.

11.9. Transport of materials and equipment (unless otherwise stipulated)

a) The contractor shall notify the hirer of the transport of materials and equipment to the construction site (including the packaging, handling, loading , transport, storage and protection of such materials/equipment) at leastdays in advance;

b) The contractor shall compensate for damage, losses and costs (including legal fees and charges) incurred in connection with the transport of materials/equipment

11.10. Contractor's equipment

The contractor shall be responsible for their equipment. All contractor's equipment on the construction site shall be used for the construction only. The contractor shall not transport their equipment out of the construction site without the prior consent of the hirer, except for vehicles for transport of material/equipment and their staff.

11.11.Materials and equipment supplied by the hirer (if any)

a) The hirer shall be responsible for their equipment supplied to the contractor.

b) The contractor shall be responsible for every equipment that is run, managed or controlled by the contractor's staff.

The necessary quantity of equipment and charges for the use of such equipment (at the mentioned price) shall be specified in the contract. The contractor shall pay charges for the use of the hirer's equipment.

The hirer shall complimentary provide the contractor with their material specified in the "list of materials supplied by the hirer" (if any) under the contract. The hirer shall supply such materials on the designated date and location prescribed in the contract at their account. The contractor shall check the supplied materials and shall promptly notice the hirer of any deficiency, inaccuracy or omission of such materials. The hirer shall promptly verify the deficiency, inaccuracy or omission of the materials as noticed by the contractor, unless otherwise stipulated in the contract.

The contractor shall carefully store and supervise such materials, thereafter. Notwithstanding the supervision, examination and storage of materials by the contractor, the hirer shall be responsible for the deficiency, inaccuracy or omission founded.

11.12. Contractor's activities on the construction site

The work carried out by the contractor, their equipment and staff shall be confined to the construction site and other areas approved by the hirer.

During the construction, the contractor shall keep the construction site tidy. The contractor shall clean the construction site and demolish all temporary works, where unnecessary. After receipt of the acceptance record, the contractor shall clear or remove their equipment, debris, leftover materials, wastes and temporary works from the construction site. The contractor shall keep the construction site clean and safe. However, necessary materials or equipment used for repair or correct defects may be left in the construction site during the remedy process. If such material or equipment is not removed from the construction site within.....days after the issue of acceptance and transfer record, the hirer may get rid of or sell such material or equipment. The earnings shall be returned to the contractor after the incurred expense is deducted.

11.13. Relevant issues
Every antiquity, coin, relics, geological or archeological object founded within the construction site shall be under the protection and control by the hirer. The contractor and their staff shall not damage to or take above mentioned object off the construction site. The contractor shall promptly notify the hirer of such object at the time it is founded. Where any delay or expense is incurred due to the compliance with the instructions of the hirer , the contractor shall notify the hirer of that fact and the Article 22 hereof [Complaints and settlement of disputes] shall be applied to settle such issue.

Article 12. Rights and obligations of project management consultants (where the employment of the project management consultant is employed by the hirer)

12.1. Rights:
The project management consultant shall:

Carry out tasks designated by the hirer under the contract. The consultant may include competent individuals qualified for managing the project.

Do not make any amendment to the contract. Exercise rights defined or implied in the contract. The contract shall specify the case in which the exercise of rights by the consultant is required to be approved by the hirer (if any). The hirer shall commit not to impose the rights of the consultant, unless otherwise agreed by both parties.

Nevertheless , it is deemed to be approved by the hirer where the consultant exercises any specific right required to be approved by the hirer (*for the purpose of the contract*).

Unless otherwise prescribed in the contract, the consultant shall:

a) The consultant shall be considered as the hirer's employee when he/she exercises any specific right defined or implied in the contract.

b) The consultant must not reduce the obligations or responsibilities of any party under the contract;

c) Notwithstanding the approval, certification, inspection, supervision, request, testing or the similar action by the consultant (including neutral ideas), the contractor shall fulfill their obligations under the contract, including responsibilities for defects, omission, inconsistencies or inobservance of terms of contract.

12.2. Authorization by consultants

The consultant may assign and authorize other individuals to carry out specific tasks if it is approved by the hirer. Authorized persons may be residential consultants or external superintendents designated to supervise or perform work item commissioning. The assignment/authorization or cancellation of assignment /authorization shall be submitted to the hirer in writing and only takes effect after the receipt of such notice by the employee. Unless otherwise stipulated in the contract or by the hirer, the authorization to make decisions shall not be made.

The authorized person shall be a competent one qualified for carry out tasks under the authorization.

The assignee or authorized person shall provide the contractor with instructions within the authorization only. Any approval, certification, inspection, supervision, request, testing or the similar action by the authorized person shall be considered as exercising the consultant's work.. Nevertheless;

a) The failure or disapproval for any work, equipment or material shall not affect the consultant's rights to remove or reject any work, equipment or material.

b) Any suspicion of the authorized person or assignee's decision or instruction shall be reported to the consultant by the contractor. The consultant has the right to reverse, confirm or change such decision or instruction.

12.3. Instruction by consultants

The consultant shall advise the contractor on amendments or addition to the drawings, or defect/error corrections at any time under the contract. The contractor shall follow the instructions provided only by the consultant or authorized person.

The hirer shall comply with instructions on any aspect of the contract provided by the consultant or authorized person. The consultant and authorized person shall provide instructions in writing, where applicable . If the consultant or authorized person

a) gives verbal instructions; or

b) is requested in writing to provide instructions but do not response in writing within.....working days from the date of receipt of the request,

such request shall be considered as the consultant or authorized person's instruction (*specify in the contract*).

12.4. Consultant replacement

The hirer shall send the contractor the consultant candidate's profile at least.....days in advance before the intended date of replacement. Candidates rejected by the contractor with persuasive reasons for rejection submitted to the hirer shall not be employed.

12.5. Decisions by consultants (*apply to the hirer, where the consultant is not employed by the hirer*)

The consultant (*on behalf of the hirer*) shall discuss with both parties before reaching an agreement or decision on any issue. Where they fail to reach an agreement, the consultant shall make an objective decision in accordance with the contract and on the basis of relevant issues.

The consultant shall notify both parties of the agreement or their decision on such issue and reasons for such decision. Each party shall comply with the agreement or decision, unless it is governed by Article 22 hereof [Complaints and settlement of disputes].

Article 13. Rights and obligations of construction supervision consultants (where the construction supervision consultant is employed by the hirer)

13.1. Rights and obligations of the construction supervision consultant

The construction supervision consultant shall:

Carry out tasks designated by the hirer under terms of contract and provisions of laws. The construction supervision consultant may be competent individuals qualified for carry out the construction supervision consulting.

Do not make any amendment to the contract. be entitle to exercise rights defined or implied in the contract. The contract shall specify the case in which the exercise of rights by the consultant is required to be approved by the hirer (if any). The hirer shall commit not to impose the rights of the consultant, unless otherwise agreed by both parties.

Unless otherwise prescribed in the contract, the consultant shall:

a) Do not reduce the obligations or responsibilities of any party under the contract;

c) Notwithstanding the approval, certification, inspection, supervision, request, testing or the similar action by the consultant (including neutral ideas), the hirer shall fulfill their obligations under the contract, including responsibilities for errors, omission, inconsistencies or inobservance of terms of contract.

13.2. Responsibilities of construction supervision consultants

* The consultant shall supervise the construction on the construction site (if the consultant is not employed, the hirer shall be responsible for the supervision).

The scope of supervision shall be conformable to laws on construction quality management.

13.3. Replacement of construction supervision consultants

The hirer shall send the contractor the consultant candidate's profile at least.....days before the intended date of replacement. Candidates rejected by the contractor with persuasive reasons for rejection submitted to the hirer shall not be employed.

Article 14. Subcontractors

14.1. When entering into subcontracts, the contractor shall:

c) Request the hirer to consider approving subcontractors out of the list of subcontractors;

b) Be responsible for the construction progress, quality, HSE, their errors and subcontractor's work towards the hirer.

c) Do not assign their whole work stipulated in the contract to subcontractors .

14.2. Subcontractors designated by hirers (if any)

a) The subcontractor designated by the hirer (hereinafter referred to as “designated subcontractor”) refers to the subcontractor who is appointed by the hirer to help the contractor carry out demanding jobs or where the contractor or contractor fails to meet requirements for quality or construction progress at the hirer’s request.

b) The contractor and prime contractor has the right to refuse the designated contractor if the contractor carries out the work in conformity with terms of the contract or has evidences or proofs of the failure to satisfy the contract requirements by the designated subcontractor.

14.3. Hirers shall directly settle payment to subcontractors according to the proposals of contractors, (unless otherwise stipulated in the contract).

Article 15. HSE and fire and explosion prevention

15.1. Occupational safety and health

a) The contractor shall introduce safety measures to ensure the safety of human and works on the construction site, including auxiliary works.

b) The safety measure and occupational safety regulation shall be put up on the construction site; and dangerous areas on the construction site shall be guarded by instructors and shall be stuck with caution signs.

c) Relevant parties shall regularly inspect the compliance with occupational safety regulations on the construction site. Once the violation against the safety regulations is found, the construction shall suspended. Every organization and individual under whom the violation is committed shall be legally responsible for the violation.

dd) The contractor shall provide training and instruction on occupational safety and health for their workers. For jobs required to strictly comply with occupational safety and health requirements, the worker shall obtain a Certificate of occupational safety and health.

e) The contractor shall provide adequate protective clothing and equipment for their workers.

The contractor and relevant parties shall tackle the occupational incidents and submit reports on occupational incidents to the State regulatory authority under provisions of laws, and shall compensate for any damage by the contractor’s fault.

15.2. Environmental protection

a) The contractor shall apply noise and dust control measures, debris treatment and construction site cleaning methods.

b) Debris or materials shall be covered to reduce the environmental pollution during the transport.

c) The parties shall supervise and inspect the compliance with the environmental protection and undergo the inspection by the State regulatory authority. Where the contractor disobeys environmental protection regulations, the hirer and State regulatory authority have the right to suspend the construction and request the contractor to comply with environmental protection regulations.

d) Every organization and individual under whom the violation against the environmental protection regulations is committed shall be legally responsible and compensate for the damage incurred by their fault.

15.3. Fire and explosion prevention :

Parties to the contract shall comply with State regulations on fire and explosion prevention.

Article 16. Electricity and water supply, and construction site security

16.1. Electricity and water supply

The contractor shall supply water and electricity and other services to meet their demand unless:

The contractor is entitled to use on-site water or electricity or other services which are specified in the hirer's requirements for the purpose of construction. The contractor shall protect the electricity and water sources. The contractor shall pay for necessary machinery and equipment for the use of such services and measurement of the consumption.

The contractor shall pay for their consumption at the price stipulated in the contract.

16.2. Construction site security

Unless otherwise stipulated, the construction site shall be secured as follows:

a) The contractor shall be responsible for the access of non-mission guests;

b) Only the contractor's staff, hirer's staff and persons (or representatives) designated by the hirer.

Article 17. Suspension and termination of the contract by the hirer

17.1. Contract suspension by the hirer:

Where the contractor fails to fulfill his/her obligations, the hirer may request the contractor to fulfill the obligations under the contract and remedy defects within an acceptable period of time.

The hirer shall request the contractor to suspend his/her work if he/she fails to meet requirements for construction quality and progress and occupational safety as stipulated in the contract.

The hirer shall send the contractor a written notice of suspension at least.....days in advance in which reasons for suspension shall be specified.

17.2. Termination of contracts by the hirer

The hirer has the right to terminate the contract if the contractor:

a) Fail to execute the contract under the contract performance guarantee or fail to comply with the notice under clause 17.2 hereof [Contract suspension by the hirer]; or

b) Give up on the construction works or intend to give up on the contract; or

c) Stop the work forconsecutive days without persuasive reasons;

d) Have subcontractor carry out the whole work, or transfer the contract to another entity without the hirer's consent; or

dd) Go bankrupt, insolvent, shut down or suffer asset restrictions or operate under asset restrictions or under creditor's control or face similar events (under applicable laws);

The hirer may terminate the contract, after a prior notice indays in advance, and request the contractor to leave the construction site. Nevertheless, if the contractor encounters any of events mentioned in point dd, the hirer may immediately release a notice of contract termination.

The contract termination shall not affect rights of the hirer.

The contractor shall leave the construction site and transfer all their materials, documents and design documents to the hirer. The contractor shall make efforts to protect people and property or the site security according to the instructions in the notice.

After the contract is terminated, the hirer may hire another contractor to complete the construction. The hirer and new contractors may take use of any material or document prepared by the previous contractor or the previous contractor's representative..

The hirer shall send the contractor a notice of the release if the contractor's equipment and temporary works at the construction site or in the vicinity of the construction site. The contractor shall transport their equipment or temporary works, all expenses and risks shall be paid by the contractor. However, if there is any payable to the hirer needed settling by the contractor, the hirer is entitled to sell such equipment or temporary works. The excessive amount shall be returned to the contractor.

In some special cases, the hirer is entitled to terminate the contract at any time after a prior notice to the contractor. The contract shall be officially terminated after.....days from the date on which the contractor receives the notice from the hirer or the hirer returns the contract performance guarantee to the contractor. Where the contract is terminated under such special cases, the hirer

shall not carry out the construction themselves or hire another contractor to carry out the construction.

17.3. Pricing at the termination date

Once the notice of contract termination under clause 17.2 hereof [Contract termination by the hirer] takes effect, the hirer shall consider approving the pricing or shall price the contract value, material and contractor 's materials and the payable to the contractor for every work done under the contract.

17.4. Payment after the contract termination

After the notice of contract termination under clause 17.2 [Contract termination by the contractor] takes effect, the hirer shall:

a) Refuse to make additional payment to the contractor until the construction cost, repairing fees for defects or damage caused by the delay in the construction (*if any*) and other expenses are certified true;

b) Collect payment for losses or damage and other additional expenses from the contractor. The hirer shall pay the contractor after balancing.

Article 18. Suspension and termination of contracts by contractors

18.1. Rights to suspend the contract execution by the contractor

Where the hirer fails to fulfill his/her payment obligations after.....days under clause 8.4 hereof [Time limits for payment], the contractor, after notifying the hirer not later than.....days, may suspend his/her work (in part or in whole) until the date on which the contractor is paid by the hirer under this contract.

The suspension by the contractor under this clause shall not affect the hirer's rights to financial expenses and termination of the contract under clause 18.2 [Contractor termination by the contractor].

If the contractor receives the hirer's payment prior to the notification of suspension, the contractor shall continue to carry out the construction as soon as possible.

Where any delay or expense is incurred due to the suspension (*reduction of workloads*) under this clause, the contractor shall notify the hirer of that fact. The delay and incurred expense shall be dealt with in accordance with Article 22 hereof [Complaints and settlement of disputes]

18.2. Termination of the contract by the contractor

The contractor has the right to terminate the contract if:

- a) The payment is not made within 45 days from the date on which the contractor submits a complete and valid payment document to the hirer; or
- b) The hirer fails to fulfill his/her obligations to the contract; or
- c) The construction work is suspended more than 45 days;
- d) The hirer goes bankrupt, insolvent, and shutdown or suffers asset restrictions or operates under asset restrictions or under the creditor's control or faces similar events (under applicable laws).

If the contractor encounters any of above mentioned event, he/she may submit a written notice of contract termination to the hirer. If the hirer encounters events specified in point d, he/she may immediately release a notice of contract termination.

18.3. Suspension of the work and relocation of equipment by the contractor

After receiving the notice of contract termination, the contractor shall:

- a) Suspend all additional work, excluding the work under the hirer's instructions to ensure the safety of people and property on the construction site;
- b) Transfer all documents, equipment, materials and the work that the contractor has received payment from the hirer;
- c) Transport all materials out of the construction site, excluding those necessary for the site security

18.4. Payment as the contract termination

After the notice of contract termination under clause 18.2 [Contract termination by the contractor] takes effect, the hirer shall:

- a) Return the contract performance guarantee to the contractor;
- b) Fulfill the payment obligations to the contractor

Article 19. Insurances and warranties

19.1 Insurances

a)The hirer shall buy construction works insurances under provisions of laws. The contractor shall carry out procedure for indemnification for any damage to or loss of construction works within the contractor's scope of work after the construction works insurance is provided by the hirer. The hirer shall not be liable for getting the loss or damage covered if the contractor refuses

to carry out the aforesaid procedure. The indemnification shall be deducted under the insurance contract signed by the hirer and insurer.

b) The contractor shall buy insurances for their equipment and personnel, and the third party.

19.2 Warranties

After receipt of record of acceptance of the construction works or work item, the contractor shall:

- Provide a warranty for.....months (at least 24 months) for class-1 or special-class construction works and/or.....months (at least 12 months) for the construction works of class 2, 3 or 4;

- Where the withholding warranty fee is returned to contractor, the contractor shall submit a guarantee for warranty obligations to the hirer within 21 days prior to the date of receipt of the acceptance record. The guarantee shall be valid until the warranty period is ended, and shall be issued by a natural person or juridical person using the form in the Annex.....[forms] or other forms approved by the hirer.

- The contractor shall be responsible for the remedy of defects or errors occurring by his/her fault during the warranty period and any incurred expenses related to the correction shall be paid by the contractor. The contractor shall perform the warranty obligation within 21 days from the date of receipt of notice from the hirer during the warranty period; if the contractor refuses to perform their obligation within the set forth period, the hirer is entitled to hire the other organization or individual to remedy and all incurred expenses for the remedy shall be paid by the contractor and shall be deducted from the guarantee;

Article 20. Risks and force majeure

20.1. Risks and force majeure

a) Risk refers to any risk where its outcome has undesired impact on the contract performance.

b) Force majeure refers to any adverse event beyond the control and the anticipation of the parties by the time of concluding contract such as earthquakes, storms, floods, tsunamis, landslide, volcanic eruption, wars or epidemics.

c) Either party encountering force majeure events shall promptly notify the another party in writing as soon as possible.

20.2. Risk consequences

If the risks specified in clause 20.1 hereof damages the construction works, contractor's property, equipment or documents, in some extent, the contractor shall promptly send a written

notification to the hirer and repaired such damaged assets or works within the scope required by the hirer.

20.3. Responsibilities for risks by contractor

The contractor shall be totally responsible for protecting the works and commodities from the date of commencement to the date of issue of acceptance record or the date on which the acceptance record is deemed to be issued under clause 6.5 hereof [Acceptance, transfer of components or construction works]. As the time the record of acceptance of a work item is issued or deemed to be issued, the hirer shall take all responsibilities for protecting that work item.

The contractor shall be responsible for any work that has not been finished yet by the date specified in the acceptance record until the date such work is completed.

In the event of any damage or loss of construction works, material, equipment or contractor's documents within the period that the contractor is undertaking, specified in clause 20.3 of the contract [responsibilities for risks by contractor], the contractor shall be responsible for recovering such damage or loss at their account.

The contractor shall be responsible for the malfunction or losses , within the liability, before or after the acceptance record is issued

20.4.Compensation for risks

The contractor shall compensate and suffer from complaints, malfunction, losses and expenses (including legal fees and charges) in connection with:

a) The damage to people health, disease, sickness or death due to the construction, or remedy against defects other than those occurring by the hirer's fault or hirer's staff or representative's fault;

b)Damage or losses of any asset or property of any individual (other than the construction works) within the following extent:

- Damage or losses incurred from or during the construction or due to the construction or defect remedy;

- Violations or damage or losses accidentally or intentionally caused by the faults of the contractor, contractor's staff or anyone directly or indirectly employed by the contractor

The hirer shall compensate for losses or damage to the contractor and contractor's personnel and suffer from complaints, damage, losses or incurred expenses (including legal fees and charges) in connection with damage to people health, sickness or death as a result of the intentional or negligent act or contract violations by the hirer or their staff.

20.5. Notification of force majeure events

In the event that the contract performance by either parties is prevented by force majeure event, such party shall promptly send another party a written notice of force majeure event in which the work or obligation hindered by force majeure event shall be specified. After the notice, the party encountering force majeure event shall be entitled to delay to perform their obligations during the force majeure.

Notwithstanding otherwise provisions, the payment obligations shall not be affected by force majeure events.

20.6. Consequences of force majeure events

If the performance of any obligation of the contractor is prevented by the force majeure event that has been noticed to the another party under clause 20.5 hereof [Notice of force majeure] or if the contractor suffers from delay or incurred expenses due to force majeure event, he/she, under the Article 22 hereof [claims and settlement of disputes] shall be entitled to:

a) Be granted an extension if the obligation fulfillment is delayed or forecasted to be delayed, under clause 7.3 [Completion time extension];

b) Be indemnified for incurred expenses if the event is included in point b, clause 20.1 hereof [Risks and force majeure events].

After receipt of the notice, the hirer shall consider resolving such issue.

20.7. Contract termination due to force majeure events, contract settlement or obligation fulfillment

If the fundamental construction in progress is hindered forconsecutive days by the force majeure event that has been noticed to another party under clause 20.5 hereof[Notice of force majeure events] or is hindered for various times with the total period of exceeding.....days by force majeure events that has been noticed to another party, either party is entitled to send another party a notice of contract termination. In this case, the contract shall be terminated after.....days from the date of notice, and the hirer shall pay:

a) costs of every work that has been completed and its cost is included in the contract;

b) costs of equipment or materials sent to the contractor or items that the contractor is delivered (as the time of payment by the hirer, such equipment and materials shall be the hirer's assets (and liabilities) and shall be used by the hirer);

c) Every expense or liability for the works completion suffered by the contractor during the force majeure (if any);

b) Expenses for removing the contractor's temporary works or equipment from the construction site and return of such equipment to the contractor

e) Compensation for staff or workers employed for the whole contract duration by the contractor.

Article 21. Rewards and penalties

21.1. Contract rewards

If the contractor fulfills his/her obligations ahead of schedule prescribed in the contract or brings benefits to the hirer, the contractor may be granted an award of.....% of the contract value for every.... month(s) (period of time) and not exceeding.....% of the benefit; or% of every.....month (period of time

21.2. Penalties

If the contractor falls days behind the schedule, the contractor shall be subject to a penalty of.....% of the contract value for.....delayed days but not exceeding% of the damage by contract violations.

Article 22. Complaints and settlement of disputes

22.1. Complaints

Every complaint shall be lodged in accordance Article 44 of the Decree No.37/2015/ND-CP

22.2 Settlement of disputes

The dispute shall be settled in accordance Article 45 of the Decree No.37/2015/ND-CP

Any dispute arising in connection with the performance of the contract shall be amicably settled

If both parties fail to reach an amicable agreement within.....days from the date of dispute, the dispute shall be settled by the arbitration (or the People's Court) under laws of Vietnam. The Arbitration's decision (or the People's Court) shall be the final decision and bind both parties.

22.3. This Article shall not be affected even if the contract is invalid or terminated.

Article 23. Contract settlement and finalization

23.1. Contract settlement

Within.....days from the date of acceptance, after receipt of the acceptance record and contractor's certificate of obligation fulfillment, the contractor shall submit sets of request for payment to the hirer, the request includes:

- An acceptance records of all completed work under the contract;
- Additional workload price calculation sheets (if any)
- Settlement price calculation sheets in which specify paid elements and receivables;
- As-built documents and construction logbooks;
- Other documents specified in the contract (if any).

The request for payment shall be submitted withindays from the date of acceptance of the whole completed work under the contract, including the additional work (if any).

23.2. Contract finalization

The contract shall be finalized in the following cases:

- Both parties fulfill their obligations under the contract; or
- The contract is terminated (or cancelled) under Article 18 hereof [Contract suspension and termination by contractors], and Article 17 [Contract suspension and termination by hirers]...

The contract shall be finalized withindays from the date on which both parties fulfill their obligations or the contract is terminated (or cancelled) under point a, clause 2 of this Article.

23.3. Responsibilities of the hirer

After the finalization, the hirer shall be free from responsibilities for any issue under or in relation to the contract towards the contractor.

Article 24. Entry into force

24.1. Effective date

This contract comes into effect from.....[date] (negotiable) and after the hirer has received the contract performance guarantee from the contractor.

24.2. Contract legitimacy

a) The valid contract shall be considered as the legal basis under which both hirer and contractor shall comply; and

b) The valid contract shall be a legal basis for settlement of disputes or conflicts between both parties. Disputes or conflicts beyond the scope of contract shall be dealt with in accordance with relevant regulations of laws.

Article 25. Miscellaneous terms

25.1. Both parties hereby commit to comply with terms stipulated in this contract. Either party shall respond to the another party's complaints, proposals or inquiries in writing, using Annex 5.

25.2. This contract includes.....pages and.....Annexes, and is made in.....Vietnamese copies. The hirer and contractor shall keep.....and.....copies, respectively. (If at least two languages are used, the contract shall specify the number of copies in each language).

-

FOR CONTRACTOR

FOR HIRER

-

ANNEX 1

SETTLEMENT PRICE CALCULATION SHEET

.....[date]

Name of project

Contract title/number:

Hirer

Contractor

Payment period/ the number of installments:

According to the approved works, we hereby request the hirer to pay:

No.	Elements	Unit	Value (dong)	Remarks
1	Approved work price			
2	Additional work price			

3	Advance deductible (<i>under the contract</i>)			
4	Required settlement price (1+2-3)			

In letters:

Enclosed documents:

-

Contractor

(Signature, full name, title and seal)

Hirer

(Signature, full name, title and seal)

Consultant's representative (if any)

(Signature, full name, title and seal)

-

ANNEX 2

APPROVED WORK PRICE CALCULATION SHEET

.....[Date]

Name of project

Contract title/number:

Hirer

Contractor

Payment period/ the number of installments:

The list of approved works and its price is presented as follows:

No.	Name of work	Unit	Workloads		Settlement unit price	Amount (dong)		Remarks
			Under contract	Approved		Under contract	Approved	
	Total							

In letters:

-

Contractor

(Signature, full name and title)

Hirer

(Signature, full name and title)

-

ANNEX 3

ADJUSTED UNIT PRICE CALCULATION SHEET

.....[Date]

Name of project

Contract title/number:

Hirer

Contractor

Payment period/ the number of installment :

The adjusted unit price is presented as follows:

No.	Name of work	Unit	Unit price (dong)		Remarks
			Under contract	Adjusted	

-

Contractor
(Signature, full name and title)

Hirer
(Signature, full name and title)

-

ANNEX 4

ADDITIONAL WORK PRICE CALCULATION SHEET
(For any work whose cost not included in the contract)

.....[Date]

Name of project

Contract title/number:

Hirer

Contractor

Payment period/ the number of installments:

The additional work price is presented as follows:

No.	Name of work	Unit	Additional workloads	Unit price (dong)		Amount (dong)		Remarks
				Under contract	According to additional unit price	Under contract	According to additional unit price	
	Total							

In letters:

-

Contractor
(Signature, full name and title)

Hirer
(Signature, full name and title)

ANNEX 5

ENQUIRIES/COMPLAINTS

1. Name of project	
2. Contract title/number:	
3. requesting or complaining party:	(Name of requesting or complaining party)
4. Date of enquiry/complaint:[Date]
5. Responding party:	(Name of responding party)
6. Date of response:	By[Date]
7. Enquiries/complaints:	(Contents of enquiries/complaints)
.....
..	..
8. Costs (increase or decrease due to enquiries/complaints)	(Specify)
.....
.....	..
..	
9. Enclosed documents:	
.....	
.....	

10. Responses:

.....
.....

-

Complaining/requesting party

Responding party

(Signature, full name, title and seal)

(Signature, full name, title and seal)

-