

In case of Reply the number and date of this letter should be, quoted



OFFICE OF THE ATTORNEY GENERAL
& MINISTRY OF JUSTICE
P. O. BOX MB 60
ACCRA

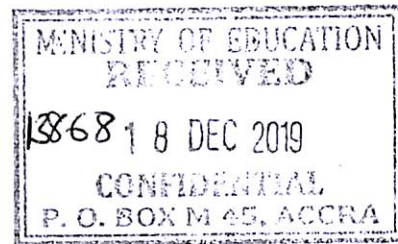
Ref. No.: D14/SF.45

REPUBLIC OF GHANA

17th December, 2019

Fax No.: +233 302 667609
Tel No.: +233 302 665051

DR. MATTHEW OPOKU PREMPEH (MP)
THE HON. MINISTER
MINISTRY OF EDUCATION
MINISTRIES
ACCRA



Dear colleague,

APPLICATION FOR LEGAL REVIEW OF ENGINEERING, PROCUREMENT AND CONSTRUCTION (EPC) CONTRACT

Reference is made to a letter numbered DA9/261/01 dated October 2019 on the above subject matter. The letter requests the advice of the Attorney-General in respect of a draft Engineering, Procurement and Construction (EPC) Agreement between the Government of Ghana acting through the Ministry of Education (MOE) and a Consortium of Sumec Complete Equipment & Engineering Company Limited and Planet One Education Limited.

The Draft EPC Agreement is for the construction of nine Technical and Vocational Education and Training centres.

We have reviewed the draft EPC Agreement and make the following comments and observations for the consideration of the Parties.

General Comments

It is noted that the Agreement under review is between the Government of Ghana and Sumec Complete Equipment & Engineering Company Limited, China and Planet One

Education Limited, Hong Kong therefore making the transaction an international business transaction under Article 181 (5) of the 1992 Constitution of Ghana and as such Parliamentary approval is required to ensure the validity of the Agreement.

There is no evidence of Public Procurement approval and a Value for Money Audit conducted on the Project. We advise that the Public Procurement Authority's approval be sought in accordance with the Public Procurement Act, 2003 (Act 663) and a Value for Money Audit be conducted to ascertain whether or not the Republic of Ghana is receiving value for money under this Agreement if this has not already been done.

We further advise that all financial issues pertaining to this Agreement, particularly issues relating to tax exemptions be referred to the Ministry of Finance for advice and due diligence conducted on Sumec Complete Equipment & Engineering Company Limited and Planet One Education Limited to ascertain the capacity of the companies to execute the Agreement within the specifications of the Project.

Specific Comments

CONTRACT AGREEMENT

1. Commencement Clause

The commencement clause of this Agreement reads as follows:

"This Agreement ("**Contract Agreement**") is made on _____ day of September 2019. ("**Execution Date**")"

The heading "Contract Agreement" is tautologous as "contract" means "agreement". It is therefore advised that the word "contract" be deleted so that the heading should simply read "Agreement" wherever the two words have been used together.

It is suggested that the commencement clause be revised by deleting "September" and leaving a space for insertion of the actual month of execution. The clause should therefore read as follows:

"This Agreement ("**Contract**") is made on thisday of2019. ("**Execution Date**")"

It is noted that the parties refer to the document as a 'Contract Agreement'. It is suggested that the parties refer to the document as either an "Agreement" or a "Contract"

2. Parties Clause

The provisions of the Parties Clause in relation to the Government of Ghana reads as follows:

The Government of the Republic of Ghana acting through the Ministry of Education, represented by the Minister of Education duly authorized by the Government of Ghana and having its office at of K Block Ground Floor, P.O. Box M45, Accra, Ghana (hereinafter referred to as the "Government")

It is suggested that the words "of K Block Ground Floor" on the third line of this clause be deleted and the phrase "of the one part" be added to the clause. It is further suggested that the phrase (hereinafter referred to as the "Government") be revised to read (hereinafter referred to as the "Employer") to ensure consistency with other provisions of the Agreement. The clause should be revised to read as follows:

"The Government of the Republic of Ghana acting through the Ministry of Education, represented by the Minister for Education duly authorized by the Government of Ghana and having its office at Ministries, P.O. Box M45, Accra, Ghana (hereinafter referred to as the "Employer") of the one part"

It is further suggested that the phrase "of the other part" be added to the provisions of the Parties clause relating to the Contractors. The clause should therefore read as follows:

"SUMEC Complete Equipment & Engineering Company Limited, a company incorporated under the laws of China with registration number 913200001347802257 having its registered office at No. 198 Changjiang Road, Nanjing City, China (hereinafter referred to as "SUMEC")

AND

Planet One Education Limited, incorporated with registration number 2845272 under the laws of Hong Kong, having its office at Unit 1606, 16/F Comweb Plaza, 12 Cheung

Yue ST LA1 CH1 KOK KLN Hong Kong (hereinafter referred to as "POE" which expression shall, be deemed to mean and include its successors and permitted assigns) of the other part"

3. Recitals

It is suggested that the word "WHEREAS" be inserted at the beginning of the Recitals and the heading "Recitals" be deleted.

Recital "A" reads as follows:

- (A) The Government is in the process of transforming Ghana's economy from weather and market dependent agricultural economy to a self-sustainable semi-industrial one by the year 2025. For this, it seeks to improve the professional working knowledge and the skill levels of the youth in Ghana making it comparable to the global skill sets. Further, it needs skills upgrading to make an industrial transformation and attain adequacy, quality and modern skill development in the process of transforming Ghana's economy.

It is suggested that Recital A be revised to take out the redundancy provisions. The clause should therefore read as follows:

The Employer is in the process of transforming Ghana's economy to a self-sustainable semi-industrial one by the year 2025 by seeking to improve the professional working knowledge and the skill levels of the youth in Ghana comparable to global skill standards.

- (B) Recital B reads as follows:

SUMEC is one of the core enterprises of China National Machinery Industry Corporation (SINOMACH), which is a large scale, state-owned group under the supervision of the State Assets Supervision and Administration Commission. SUMEC has become a modern manufacturing service group focusing on three fields of trade and service, engineering contracting, and investment and development. SUMEC develops business solutions that integrate trade and service, engineering contracting, and investment development.

It is suggested that Recital B be revised to take out the redundancy provisions. The clause should therefore read as follows:

“SUMEC is a modern manufacturing service group with a focus on engineering contracting, investment and development and is one of the major enterprises of China National Machinery Industry Corporation (SINOMACH), a large-scale state-owned group under the State Assets Supervision and Administration Commission”.

Recital C states as follows:

POE is a global education company having presence across various countries in the world. POE has been at the forefront of partnering with various governments to help them transform their education system as well as create a human capital capable of competing in the technologically driven global environment. The group has been successful in helping various governments achieve their objectives, including implementing eLearning solutions in government run schools, managing special education needs, developing interventions for out of school children, or providing skills training. POE has also been working with various governments to improve the teacher and administration skills and vocational education, innovation through technology and optimum integration between ICT & digital labs, teacher training, vocational training and English language labs to ensure accelerated growth programs.

It is suggested that Recital C be revised to read as follows for the sake of clarity:

POE is a global education company with presence across various countries in the world and has partnered various governments to transform their education systems, created human capital capable of competing in the technologically driven global environment, successfully assisted various governments in implementing eLearning solutions in government schools, managing special education needs, developing interventions for out of school children, providing skills training, for teaching and administration, vocational education, innovation through technology and optimum integration between ICT and digital laboratories for accelerated growth programmes.

The preamble of Recital D reads as follows:

"POE has formed a consortium with SUMEC and the Employer has approved the appointment of POE and SUMEC under the terms of this Contract. The Contractors (as a consortium) and the Employer herein are entering into this Contract for construction and development of 9 Nos. of state of the art Technical and Vocational Education Training Centers ("TVIs") at specified sites set out in the schedule of scope of work, and the Contractors have proposed to complete:"

It is suggested that the preamble of Recital D be revised by deleting "9 Nos of" and replacing same with "Nine (9)" and to read as follows:

POE has formed a consortium with SUMEC and the Employer has approved the appointment of POE and SUMEC under the terms of this Contract. The Contractors (as a consortium) and the Employer herein are entering into this Contract for the construction and development of Nine (9) state of the art Technical and Vocational Education Training Centers ("TVIs") at specified sites set out in the schedule of scope of work, and the Contractors have proposed to complete: ...

The last line of the Recital's reads as follows:

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

It is suggested that the word "bound" on the last line of this clause be revised to read "binding". The clause should therefore read as follows:

"NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:"

4. Clause 1

It is suggested that the word "meanings" on the first line of this clause be revised to read "meaning"

Clause 1 should therefore read as follows:

In this Contract, words and expressions shall have the same meaning as are respectively assigned to them in the Particular Conditions of Contract hereinafter referred to.

5. Clause 2

The preamble of clause 2 reads as follows:

The below mentioned documents shall together constitute "Contract" between the Employer and the Contractors and individually referred to as "Contract Document(s)", and each shall be read and construed as an integral part of the Contract:

It is suggested that clause 2 be revised by deleting the words "below mentioned" and replacing it with the "following" and the word "the" inserted after the word "constitute" on the first line of the clause.

The Preamble of Clause 2 should thus read as follows:

The following documents shall together constitute the "Contract" between the Employer and the Contractors and individually referred to as "Contract Document(s)", and each shall be read and construed as an integral part of the Contract:

It is suggested that "Scope of Works" in clause 2 be revised to read "Scope of Work" to ensure consistency with other portions of the Agreement.

6. Clause 4

Clause 4 reads as follows:

The Employer hereby covenants to pay the Contractors, in consideration of the Contractors jointly and severally providing the necessary services in relation to the

Engineering, Procurement, Construction, Execution and Completion of the Works and the remedying of defects therein, the Contract price shall be a fixed lump sum price of Euro €158,901,273 (Euro One Hundred Fifty Eight Million Nine Hundred One Two Hundred Seventy Three Only). The Contractors shall designate and specify the details of the bank account of the Contractors in which the Employer shall make the payment of the Contract Price. Upon remittance of the payment to the designated bank account as specified by the Contractors the Employer shall have no further liability.

It is suggested that the clause be revised by deleting the word "price" on the fourth line of the clause and by revising the amount in figures (€158,901,273) so as to be consistent with the amount in words. The Clause should therefore be revised to read as follows:

- a) The Employer hereby covenants to pay the Contractors, in consideration of the Contractors jointly and severally providing the necessary services in relation to the Engineering, Procurement, Construction, Execution and Completion of the Works and the remedying of defects therein, the Contract price being a fixed lump sum of One Hundred and Fifty Eight Million Nine Hundred and One Thousand Two Hundred and Seventy Three Euros Only (€158,901,273).
- b) The Contractors shall designate and specify the details of the bank account of the Contractors into which the Employer shall make the payment of the Contract Price.
- c) The Employer shall have no further liability upon remittance of the Contract Price into the designated bank account as specified by the Contractors.

7. Clause 5

The Preamble of Clause 5 reads as follows:

"The respective rights and obligations of the Parties in relation to the Scope of Work shall be subject to the fulfilment of each of the below mentioned conditions to the satisfaction of, or specific waiver (in whole or in part) in writing by, the Party which is entitled to require performance of such condition:"

It is suggested that the clause be revised to read as follows for better reading:

"The respective rights and obligations of the Parties in relation to the Scope of Work shall be subject to the fulfilment of each of the following conditions, the satisfaction, or specific waiver of which shall be in writing by the Party which is entitled to the performance of such condition:"

Clause 5 (b)(i) reads as follows:

(i) the Employer having:

obtained and/or facilitated the grant of all requisite approvals and authorisations to ensure compliance with applicable Laws of Ghana and regulations relating to the implementation of the proposed projects including, but not limited to, cabinet and parliament and submitted evidence of the same in the form and substance acceptable to Contractors;

It is suggested that the clause be revised to read as follows for better reading:

The Employer having:

obtained the grant of all requisite approvals and authorisations required to be obtained by the Employer to ensure compliance with applicable Laws of Ghana and regulations relating to the implementation of the proposed projects including, but not limited to, Cabinet and Parliament and submitted evidence of the same in the form and substance acceptable to Contractors;

Clause 5 (b) (ii) reads as follows:

"...procured and arranged all approvals, permits, authorisations, no-objections, consents, registrations and or waivers as are necessary and requisite for the Project, including without limitation environment clearance;"

It is suggested that the exact approvals required and permits to be obtained by the Employer for effective execution of the Project be also clearly stated to avoid any ambiguity and conflicts.

Clause 5(b) (iv) reads as follows:

"use its best efforts to have obtained and secured from the relevant ministry/agency/department of the Government of Ghana, a formal notification providing for exemption:"

It is suggested that the clause be revised to read as follows:

"used its best efforts to obtain and secure from the relevant Ministry, Agency and Department of the Government of Ghana, a formal notification providing for exemption:"

It is suggested that the word ensure on the first line of Clause 5(b) (v) be revised to read "ensured" and the word provided on the first line of clause 5(b)(vi) which reads "provide" be revised to read "provided" for consistency.

The clauses should therefore read as follows:

(v) "ensured that such access is available at all times, access to the Project Site to Contractors and its officials, employees, consultants, sub-contractors or agents for the purpose of implementing the Project;"

(vi) "through the relevant department, provided the Contractors with the relevant and available technical data and information to facilitate the implementation of the Project; and"

Further we note that there are no Conditions Precedents to be fulfilled on behalf of the Contractors. It is suggested that the necessary Conditions Precedents to be fulfilled by the Contractor be inserted in the Agreement. The following is suggested:

"The Contractor shall satisfy the following conditions prior to the commencement of the Term:

- i. Payment of the Commitment Fee by the Contractor
- ii. Obtain building permit and any other approval(s) required for the commencement of the Works; and
- iii. Subscribe to the insurance policies required for the project described in Clause 19 of this Agreement"

8. Clause 6

It is suggested that "notice to proceed" be capitalized for consistency with the other provisions of the Contract.

It is further suggested that a comma be inserted after the word Employer at clause 6(b) and "Advance Amount" revised to read "Advance payment".

It is further suggested that the word "Contractor" on the first line of the last paragraph of clause 6 and everywhere else it appears in the document be revised to read "Contractors" for consistency with the provisions of the Parties clause and the word "is" revised to read "are"

Clause 6 should therefore read as follows:

"The Employer shall issue A Notice To Proceed ("NTP") for commencement of the Scope of Work upon the later of

- (a) the date when all the conditions precedent as specified in clause 5 above have been completed; or
- (b) the date of receipt from the Employer, the Advance Payment.
- (c) The NTP shall set out the date on which the Contractors are required to commence work for the Scope of Work, which shall be at least 90 days from the date of issue of the NTP, and such date shall be the "Commencement Date".

9. Clause 7

Clause 7 reads as follows:

"In accordance with the terms and conditions set forth in the Contract, the Contractors shall endeavour to complete the Project and Scope of Work within 30 months of the Commencement Date with a grace period of 180 days ("Time for Completion")."

It is suggested that the words "endeavour to" on the second line of this clause be deleted. The Clause should therefore read as follows:

"In accordance with the terms and conditions set forth in the Contract, the Contractors shall complete the Project and Scope of Work within 30 months of the Commencement Date with a grace period of 180 days ("Time for Completion")."

10. Clause 8

Clause 8 reads as follows:

"All Notices to be given under the Contract shall be sent to the Employer or the Contractors as the case may be, at the address set forth below:

To the EMPLOYER:

Address: Ministry of Education, Accra, Ghana

Contact Person: Minister of Education

Email:

To the CONTRACTORS:

Address: Unit 1606, 16/F Comweb Plaza, 12 Cheung Yue ST LA1 CH1 KOK KLN Hong Kong

With CC to: 2102, Vision Tower, Business Bay Dubai, The United Arab Emirates

Contact Person: Mr. Kuljit Ahluwalia

Email: kahluwalia@planetone-group.com

or such other addresses as are notified pursuant to the Contract."

We note that the clause mentions only the address of Planet One as the designated address for all Notices. It is requested that the Parties confirm if this information is accurate and is the position of the Parties. Alternatively, the address of SUMEC should also be provided.

Attestation Clause

It is suggested that the provisions of the Attestation clause with regards to the contractors be revised to begin with "signed for and on behalf of the Contractors". The

Contractors can then be named and the appropriate signature provisions made for them. The clause should read as follows:

Signed for and on behalf of the Contractors:

POE:

_____ Signature of authorised representative	_____ Signature of witness
_____ Authorized Signatory	_____ Name of witness

SUMEC:

_____ Signature of authorised representative	_____ Signature of witness
_____ Authorized Signatory	_____ Name of witness

11. CONTRACT DATA SHEET

It is suggested that the provisions of the Contract Data be listed in a chronological order for ease of reference.

12. Performance Security Clause 4.2

It is suggested that the Performance security be increased from 2% of the contract price to 20% in conformity with industry practice.

13. Advance Payment Clause - 14.2

It is suggested that the Advance Payment be decreased from 35% of the contract price to 20% in conformity with industry practice.

14. Payment of Remaining Contract Price – Clause 14.4

It is suggested that 15 days for the payment of any outstanding contract sum be revised to 45 days to afford the Government of Ghana ample time to meet all payments.

PARTICULAR CONDITIONS OF CONTRACT

15. 1.1 Definitions

Clause 1.1.1 - Advance Payment Security

It is suggested that definition for advance payment security be revised by deleting “and in these Particular Conditions” as the revision to the definition is being made in the Particular Conditions.

The clause should therefore read as follows:

“Advance Payment Security” means the security as set out in Sub-Clause 14.2.1 [Advance Payment Guarantee]. All references to ‘Advance Payment Guarantee’ as referred to in the General Conditions shall be deemed to be replaced with ‘Advance Payment Security’.

16. Clause 1.1.4 - Commencement Date

It is suggested that the letter “s” between the word “date” and the word “as” be deleted to make the clause meaningful.

17. Clause 1.1.82 - Change in Law

It is suggested that the definition for Change in Law in the Particular Conditions of Contract be revised to introduce into subclause (f) the phrase "not caused by the Contractor" to replace the word "which" on the first line of the clause.

The clause should read as follows:

"(f) any event not caused by the Contractor which (i) results in a material increase in the operating costs or capital expenditure or Works construction cost to be incurred by Contractor in performing its obligations under this Contract, (ii) adversely affects the rights, benefits, concessions available to Contractor under law or under Contract, or (iii) renders a material obligation or right of Contractor under this Contract as void or unenforceable."

18. Clause 1.1.83 - Completion Certificate

It is suggested that the definition of Completion Certificate in the Particular Conditions of Contract be revised by deleting the word "or" on the third of the clause and replacing it with the word "and". The clause should therefore read as follows:

"Completion Certificate" shall mean a certificate of acceptance issued by the Employer or its authorised entity/representative pursuant to either the inspection of the tools and equipment and quarterly inspection or inspection upon completion of the Scope of Work (as the case may be) in accordance with Sub-Clause 7.3 [Inspection].

19. Clause 1.1.85- Facility Agreement

It is suggested that the definition of Facility Agreement in the Particular Conditions of Contract be revised by deleting "and Contractors" on the last line of the clause as the Facility Agreement need not be acceptable to the Contractor. The clause should therefore read as follows:

Facility Agreement" shall mean the agreement signed by the Ministry of Finance on behalf of the Employer with a bank or a financial institution identified by the Contractors and which bank and institution is acceptable to the Employer for such

amount, and on such terms as agreed between the lender and the Employer for the financing of the Works.

20. Clause 1.1.88 - Tax or Taxes

It is advised that all issues relating to taxes and tax exemptions be referred to the Ministry of Finance for advice.

21. Clause 1.1. 89 - Contractor Event of Default

It is suggested that "of the General Conditions of Contract" be inserted after 15.2 for clarity. The clause should therefore read as follows:

"Contractor Event of Default" shall have the meaning set out in Sub-Clause 15.2 of the General Conditions of Contract [Termination for Contractor's Default].

22. Clause 1.1. 90 - Employer Event of Default

It is suggested that "of the General Conditions of Contract" be inserted after 16.2 for clarity. The clause should therefore read as follows:

"Employer Event of Default" shall have the meaning set out in Sub-Clause 16.2 of the General Conditions of Contract [Termination by Contractor].

23. Clause 1.1. 92 - Employer's Representative

It is suggested that "of this Particular Conditions of Contract" be inserted after 3.1 for clarity. The clause should therefore read as follows:

"Employer's Representative" shall have the meaning set out in Sub-Clause 3.1 of this Particular Condition of Contract [Employer's Representative].

24. Clause 1.1. 93 - COTVET

It is suggested that the definition for COTVET be revised by inserting the word "Technical" before the word Vocational to reflect the proper name of the Council. The Clause should therefore read as follows:

"COTVET" shall mean the Council for Technical and Vocational Education and Training which is the body that regulates vocational education and training in Ghana.

25. Clause 1.1. 94 - Implementation Schedule

It is suggested that the provisions of this clause be revised by capitalizing the first letters of "implementing" and "scheduling" and by revising the word "given" to read "provided" and deleting the word "the". The clause should therefore read as follows:

"Implementation Schedule" shall be the Works Implementation Schedule provided in ANNEXURE C to the Particular Conditions".

26. Clause 1.1. 95 - Revised Implementation Schedule

It is suggested that "of this Particular Conditions of Contract" be inserted after 7.1 for clarity. The clause should therefore read as follows:

This clause should be amended to read as follows:

Revised Implementation Schedule" shall have the meaning set out to it in Sub-Clause 7.1 of this Particular Conditions of Contract [Manner of Execution].

27. Clause 1.2 - Interpretation

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

28. Clause 1.3 - Communication

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

29. Clause 1.4 - Law and Language

It is suggested that the provisions of this clause be revised to make the Laws of Ghana the Governing Law as the contract will be executed in Ghana and financed by public funds.

The clause should therefore be revised to read as follows:

The Contract shall be governed by the Laws of the Republic of Ghana.

30. Clause 1.5 - Priority of Documents

It is suggested that "of the General Conditions of Contract" be inserted after 1.5 in the preamble of this clause. The clause should therefore read as follows:

Replace *Sub-Clause 1.5* of the General Conditions of Contract in its entirety as follows:

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the sequence finally determined in the Contract Agreement.

31. Clause 1.6 - [Contract] Agreement

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

It is also suggested that the word "Contract" in the heading be deleted.

32. Clause 1.7- Assignment

The Parties propose an addition to Clause 1.7 to afford the affiliates and subcontractors of the Contractors to assign without the prior approval of the employer.

It is suggested that the provisions of this clause be deleted and the provisions of the General Conditions of Contract maintained to ensure that the works are carried out by persons approved by the Employer.

33. Clause 1.8 – Care and Supply of Documents

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

34. Clause 1.9 – Employer’s use of Contractor’s Documents

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

35. Clause 1.10 – Contractor’s s use of Employer’ Documents

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

36. Clause 1.11 – Confidentiality

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

37. Clause 1.12 – Compliance with Laws

It is suggested that Subclause 1.12(a), (c) and (e) be revised as follows for better reading:

- (a) ensure the grant of approval of all planning, zoning or similar permits, permissions, licences and or approvals (including clearances through customs) for the Works required by the Contractors and or their agents, and any other permits, permissions licences and or approvals described in the Contract as having been (or being) obtained by the Employer;
- (c) ensure tax exemptions for remittance of any part of the Contract price to the Contractors and ensure that such exemptions remain valid until the final payment has been paid;
- (e) be responsible for ensuring the Employer's Representative and other personnel of the Employer on the Site adhere to the same safety, environment and security standards as followed by the Contractor's personnel and do not impede or interfere in the performance of the Scope of Work;

38. Clause 1.13 Joint and Several Liability

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

39. Clause 1.14 - Limitation of Liability

It is suggested that the preamble of clause 1.14 be revised to read as follows:

"Replace paragraph 1 of Subclause 1.14 as follows:"

40. Clause 1.15 - Contract Termination

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

41. Clause 1.16 - Contractor's Entitlements

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

The Employer

42. Clause 2.1 – Right of Access to the Site

It is suggested that the second paragraph of Subclause 2.1 as stated in the Particular Conditions be revised as follows for better reading:

"The Employer shall give the Contractor right of access to, and possession of the Site before the Commencement Date".

43. Clause 2.2 – Assistance

It is suggested that the second paragraph of Subclause 2.2 as stated in the Particular Conditions be revised as follows for better reading:

"The Employer shall carry its obligations as set out in Sub-Clause 1.12 [*Compliance with Laws*] and provide all effort and reasonable assistance to the Contractor in relation to performance of the Scope of Work"

44. Clause 2.3 – Employer's Personnel and other Contractors

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to keep the provisions as it is in the General Conditions of Contract.

45. Clause 2.4 – Employer's Financial Arrangements

It is suggested that the second paragraph of Subclause 2.4 as stated in the Particular Conditions be revised as follows for better reading:

"The Employer shall make financial arrangements for financing the Employer's obligations under the Contract as set out in the Contract Agreement".

46. Clause 2.5 – Site Data and Items of Reference

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to keep the provisions as it is in the General Conditions of Contract.

47. Clause 2.6 –Employer- Supplied Materials and Employer's Equipment

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

48. Clause 3.1 - The Employer's Representative

Subclause 3.1 is revised as follows for better reading:

"Employer designates COTVET as the executing agency with all necessary powers and authorities to represent the Employer and shall be responsible for monitoring the implementation of the Works, including without limitation, examining and approving all the design and working plans and issuance of Certification of Acceptance as provided in Sub-Clause 7.3 [Inspection].

The Employer shall appoint a representative (the "Employer's Representative") to act on his behalf under the Contract. The Employer shall provide to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him, exercise the authority delegated to him, by the Employer and be fluent in the ruling language of the Contract. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have the full authority of the Employer under the Contract to bind the Employer.

If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than 60 days' notice of the replacement's name, address, duties and authority, and of the date of appointment. The Employer's Representative shall, be bound by, implement, give

effect to and at all times ratify the decisions, acts and omissions of the former Employer's Representative".

49. Clause 3.2 – Other Employer's Personnel

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

50. Clause 3.3 – Delegated Persons

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

51. Clause 3.4 – Instructions

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

52. Clause 3.5 – Agreement or Determination

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

53. Clause 3.6 – Meetings

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

54. Clause 3.7 – Employer’s Obligation

Clause 3.7(a)(i) reads as follows:

- (i) Employer shall assist the Contractor in procuring accreditation of the new courses in line with guidelines of the regulatory bodies in the Country.

It is requested that COTVET confirms if the Contractor is the rightful person to request for accreditation for courses to be run by COTVET.

Clause 3.7(b) reads as follows:

“Employer further undertakes not to terminate or repudiate this Contract prior to the expiry of the term, otherwise than in accordance with Sub-Clause 15 [Termination by Employer of this Contract].”

It is suggested that the clause be deleted and replaced as follows:

Employer may at any time and for whatever reason, terminate this agreement with or without cause subject to the payment for work satisfactorily performed at the time of the termination.

Clause 3.7(d) reads as follows:

“Employer shall cause the authorities to issue government orders or gazette notifications as may be necessary or desired, for implementing the Works”.

It is suggested that the above clause be deleted as the Government based on the principle of separation of powers is unable to carry out this obligations.

Clause 3.7(f)

It is suggested that the provisions Clause 3.7 (f) be revised to ensure that any extension of the completion date will be for legitimate and unforeseen delays. The clause should therefore read as follows:

"Employer shall assist in procuring all permits, licenses and approvals required by the Contractor or its agents from any local government or any other authority for the purposes of performing its obligations under the Contract. The Contractors represent that they have factored in the time for procuring all permits and licences in the time for completion. Any unforeseen delay in obtaining such permits, licenses and approvals shall automatically allow for extension in the time of completion of the Works as provided in the Implementation Schedule".

Clause 3.7(g)

It is suggested that the words "free of charge" be deleted. The Employer will make available the necessary utilities to the Project Site but it will be at a fee. The clause should therefore be revised to read as follows:

"Employer shall assist the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity, sanitation and telecommunication to Contractor on each Site for the purpose of implementation of the Works".

Clause 3.7(i)

It is suggested that Clause 3.7(i) be revised as follows for better reading:

"Employer shall support and cooperate with the Contractor in the implementation and operation of the Works in accordance with the provisions of this Contract."

Clause 3.7(k)

Clause 3.7(k) states as follows:

"The Employer shall at all times comply with and adhere to the terms and conditions of the relevant Facility Agreement executed with the lender(s)".

It is suggested that clause 3.7 (k) be deleted. The Employer's non-compliance with the terms of the loan agreement should not be a breach of the terms of this Agreement. The Employer will still be liable to pay the Contractors for work satisfactorily completed whether it breaches the terms of the loan agreement or not.

Clause 3.7(l)

Clause 3.7(l)(i) reads as follows:

“assist the Contractor in procuring accreditation of the new courses in line with guidelines of National Vocational Training Institute and other regulatory bodies in Ghana including COTVET;”

It is suggested that COTVET clarifies who will be running the COTVET centres and why they will be assisting the Contractors to procure accreditation.

Clause 3.7(n)

Clause 3.7 (n) reads as follows:

Employer undertakes not to terminate or repudiate this Contract prior to the expiry of the Term, otherwise than in accordance with the Contract.

It is suggested that the provisions of this clause be deleted as it is a repetition of the provisions of clause 3.7(b).

Clause 3.7 (o)(ii)

It is suggested that the provisions of this clause as well as all financial matters in this contract be referred to the Ministry of Finance for their advice as previously indicated in the General Comments.

Clause 3.7 (p)

Clause 3.7 (p) states as follows:

“Employer shall provide timely approvals, support, cooperate with and facilitate the Contractor in the implementation and operation of the Works in accordance with the provisions of the Contract”.

It is suggested that the provisions of this clause be deleted as it is a repetition of the provisions of clause 3.7(i).

Clause 3.7(q)

It is suggested that the provisions of this clause that requires the Employer to take the prior written consent of the contractor should it want to make material changes to the financial arrangements be replaced with the following:

Employer shall submit, within 30 days after receiving any request from the Contractor, evidence that financial arrangements which are necessary to cause and ensure that the Employer shall be able to pay the Contract Price are in place and such financial arrangements shall at all times be adequate and subsisting.

55. Clause 4.1 (c)

It is suggested that "performance guarantee" be revised to read "performance security" to appropriately reflect the provisions of clause 4.2.

56. Clause 4.1 (h)

It is suggested that the words "with the approval of the Employer" be inserted after the word "shall" on the first line of this clause. The clause should therefore read as follows:

"The Contractor shall with the approval of the Employer include any work which is necessary to satisfy the Employer's requirements which (although not mentioned in the Agreement) are absolutely necessary for stability or for the completion, or safe and proper operation, of the Works".

57. Clause 4.1 (i)

It is suggested that the word "to" on the 7th line of this clause be revised to read "in". The clause should therefore read as follows:

"Contractor shall maintain, for each Project Center, such insurance coverage which the Parties have mutually and in good faith agreed to be appropriate. Provided however, that once a Project Center has been handed over to the Employer and a Completion Certificate issued in relation to a Project Center then it shall be the

obligation and responsibility of the Employer to obtain, at its own cost and expense, all insurances which are necessary and requisite in relation to the relevant Project Center as well as all the building, structure, equipment, tools, vehicles and all other assets situated, affixed, lying and or embedded *in* or at (as the case may be) either the Project Center and or a Site on which the relevant Project Center has been developed and constructed. Provided further, in case the lender(s) require any specific insurance in relation to the loans then all such insurance shall be obtained and maintained by the Employer at its own cost and expense”.

58. Clause 4.2.1 and clause 4.2.2

It is suggested that the provisions of clauses 4.2.1 and 4.2.2 in the Particular Conditions of contract be revised by inserting the words “shall be submitted to the Employer” suggested that the performance security amount of 2% of the contract price be revised to 20% of the contract price in conformity with industry practise.

The clause should therefore read as follows:

As security for performance of its obligations under the Contract, the Contractor or any person on behalf of the Contractor, or the relevant sub-contractor (in such case the sub-contractor’s security can also be submitted to the Employer directly), shall issue a performance security in the form mutually acceptable to the Parties. The performance security *shall be submitted to the Employer* within 15 days from the Commencement Date and shall be equal to 20 per cent of the Contract Price. The performance security shall cease to be valid immediately upon the issuance of Taking Over Certificate.

59. Clause 4.3 – Contractor’s Representative

The provisions of clause 4.3 of the particular conditions of contract is revised by deleting the words “shall be” and replacing it with the word “is” for consistency with the other provisions of the Contract.

The clause should therefore read as follows:

“The sixth paragraph in Sub-Clause 4.3 is deleted.”

60. Clause 4.4 – Subcontractors

The provisions of clause 4.4 of the particular conditions of contract is revised by deleting the words “shall be” and replacing it with the word “is” for consistency with the other provisions of the Contract. The clause should therefore read as follows:

“The first paragraph of Sub-Clause 4.4 *is* deleted in its entirety”.

61. Clause 4.5 – Nominated subcontractors

It is suggested that the provisions of subclause 4.5 be revised by deleting the word “subcontractors” at the end of the first line of this clause to appropriately capture the meaning of “Nominated subcontractors”

The clause should therefore read as follows:

“In this Sub-Clause, “nominated Subcontractor” means a Subcontractor whom the Employer, under Clause 13 [*Variations and Adjustments*], instructs the Contractor to employ as a Subcontractor. The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Employer as soon as practicable, with supporting particulars”.

62. Clause 4.6 – Co-operation

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

63. Clause 4.7 – Setting out

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

64. Clause 4.8 – Health and safety Obligations

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

65. Clause 4.9 – Quality Management and Compliance Verification System

The Particular Conditions of Contract revises clause 4.9 by deleting the provisions of this clause in its entirety.

We suggest that the provisions of the General conditions of Contract remain.

66. Clause 4.10 - Use of Site Data

It is suggested that Clause 4.10 be revised by deleting "have made" on the first line of the clause and replacing it with "make" and by deleting "aspects" on the third line of the clause and replacing it with the word "data". The clause should therefore read as follows:

"The Employer shall *make* available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on subsurface and hydrological conditions at the Site, including environmental *data*. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date".

67. Clause 4.11- Sufficiency of the Contract Price

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

68. Clause 4.12- Unforeseeable Difficulties

The provisions of clause 4.12 of Particular Conditions of Contract contradict the provisions of clause 4.10 and must therefore be deleted.

We suggest that the provisions of the General conditions of Contract remain.

69. Clause 4.13 – Right of Way and Facilities.

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

70. Clause 4.14 – Avoidance of Interference

The provisions of clause 4.14 of the particular conditions of contract is revised by deleting the words "shall be" and replacing it with the word "is" for consistency with the other provisions of the Contract.

The clause should therefore read as follows:

"The sixth paragraph in Sub-Clause 4.14 is deleted."

71. Clause 4.15 – Access Route

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

72. Clause 4.16 – Transport of Goods

It is suggested that clause 4.16(b) be brought before 4.16 (c) and the word "further" be revised to "insert the following at". It is further suggested that provisions of 2nd and 3rd paragraphs of this clause be deleted.

Clause 14.6 should therefore read as follows:

"Sub-Clause 4.16(b) and Sub-Clause 4.16(c) are deleted in their entirety.

Insert the following at the end of Sub-Clause 4.16:

"The Contractor shall have no responsibility for the transport of Goods procured by the Employer unless otherwise agreed by the Parties".

73. Clause 4.17 – Contractor's Equipment

It is suggested that clause 4.17 be revised by deleting the words "When brought on to the Site" for clarity. The clause should read as follows:

"The Contractor shall be responsible for all Contractors' Equipment. Contractors' Equipment shall be deemed to be exclusively intended for the execution of the Works".

74. Clause 4.18 – Protection of the Environment

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

75. Clause 4.19 – Temporary Utilities

It is suggested that clause 4.19 be revised by deleting the words "free of charge". The clause should read as follows:

"The Employer shall ensure uninterrupted access to all necessary infrastructure facilities and utilities, including water, electricity, sanitation and telecommunication to the Contractor on the Site for the purpose of implementation of the Works".

76. Clause 4.21– Security of the Site

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

77. Clause 4.22–Contractor's operation on Site

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

78. Clause 4.23–Archaeological and Geological Findings

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

Clause 5- Design

79. Clause 5.1–General Design Obligations

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

80. Clause 5.2–Contractor’s Documents

We suggest that the provisions of the General conditions of Contract remain.

81. Clause 5.3–Contractor’s Undertaking

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

82. Clause 5.4–Technical Standards and Regulations

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

83. Clause 5.6–As- Built Records

We suggest that the provisions of the General conditions of Contract remain.

84. Clause 5.7-Operation and Maintenance

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

85. Clause 5.8-Design Error

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions as it is in the General Conditions of Contract.

Clause 6 – Staff and Labour

86. Clause 6.1-Engagement of Staff and Labour

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

87. Clause 6.2-Rates of Wages and Conditions of Labour

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

88. Clause 6.3-Persons in the Service of Employer

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

89. Clause 6.4-Labour Laws

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

90. Clause 6.5– Working Hours

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

91. Clause 6.6– Facilities for staff and Labour

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

92. Clause 6.7– Health and Safety of Personnel

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

93. Clause 6.8– Contractor’s Superintendence

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

94. Clause 6.9– Contractor’s Personnel

It is suggested the provisions of paragraph 2 of the General Conditions of Contract be maintained.

95. Clause 6.10- Records of Contractor’s Personnel and Equipment

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

96. Clause 6.11 – Disorderly Conduct

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

97. Clause 6.12 – key Personnel

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

Clause 7 – Plant, Materials and Workmanship

98. 7.1 Manner of Execution

It is suggested that paragraphs 2 and 3 be revised by deleting the word "further" on the fifth line of paragraph 2 and the words "need to" on the second line of paragraph 3 of the clause. Paragraph 2 and 3 should therefore be revised to read as follows:

2. "Contractor shall give notice to the Employer of any specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In such an event, Contractor shall submit a revised schedule for the implementation of the Works or any particular phase (the "Revised Implementation Schedule") and the Parties shall agree in good faith on any revisions to the Contract Price on account of the Revised Implementation Schedule. The Contractor shall provide periodic reports, to the Employer and, if required, to the lenders.
3. "The Contractor may implement the Works through an affiliated legal entity (owned and controlled by either or both of the Contractors). Provided however, such affiliated legal entity shall be approved by Employer in writing and Employer shall not unreasonably withhold its consent".

99. Clause 7.2 – Samples

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

Clause 7.3 – Inspection

100. Clause 7.3.1 – Inspection of tool and equipment

It is suggested that the provisions of clause 7.3.1 be revised by inserting the words “of the Shipment” after the word “notice” which appears on the sixth line of this clause and the word “notice” on the 9th line of this clause be revised to “report”. It is further suggested that the whole clause be revised to read as follows to give clarity to the clause:

The Contractor shall notify the Employer in writing at least 30 days prior to intended shipment to the Republic of Ghana of any equipment, tool, machinery and or fittings which are to be used by the Contractor in the Works. Upon receipt of the notice, Employer shall appoint an expert or make his services available (at the cost of Employer) to inspect the equipment, tools, machinery and fittings at the site of the nominated supplier of the Contractor and such inspection shall be done within 15 days from the date of the notice of the Shipment from the Contractor. It shall be mandatory for both Parties to ensure presence of both Parties’ representatives at the time of the inspection. Employer shall provide to the Contractor a copy of the inspection report within 14 days from the date of the inspection. The report shall set out whether the inspected equipment, tool, machinery, fitting and or the component(s) thereof are acceptable or not, in which case the notice shall set out the reasons, equipment, tool, machinery, fitting and or component(s) thereof which are not acceptable and hence rejected. ...

It is suggested that clause 7.3.1 (a) and (b) of the clause be revised to take out the “shall be deemed to have” provisions.

Clause (a) is therefore revised as follows:

“Employer fails to appoint an expert and or the expert fails to undertake the inspection within the aforementioned 15 day period then, the Contractor shall notify the Employer and proceed to use the equipment for the purposes intended”.

Clause (b) is therefore revised as follows:

“Employer appoints an expert and such expert has undertaken the inspection but the inspection report is not provided to the Contractor within the aforesaid 14 day period

then, the Contractor shall use the relevant equipment, tool, machinery and or fitting as though it has been approved and declared fit and proper for the intended use. A Completion Certificate of acceptance shall be issued upon approval of such equipment, tool, machinery and or fittings by the expert."

Clause (c) is revised by deleting the word "approves" on the first line of this clause and replacing it with "and his approval of". The clause should therefore read as follows:

"pursuant to the inspection by the Employer's appointed expert and his approval of the relevant equipment, tool, machinery and or fittings to be fit and proper for the intended use then Employer shall issue a Completion Certificate of acceptance in relation to such equipment, tool, machinery and or fittings"

Clause (d) is revised by deleting the words "pursuant to" on the first line of this clause and replacing it with "where upon". The clause should therefore read as follows:

"Where upon the inspection, part of the equipment, tool, machinery, fitting and or components(s) thereof has been rejected and part of the equipment, tool, machinery, fitting and or components(s) thereof has been approved then a Completion Certificate of Acceptance shall be issued in relation to the equipment, tool, machinery, fitting and or components(s) thereof which has been approved"

The preamble of Clause (e) is revised by inserting the words "upon rejection of" at the beginning of this clause and the word "which" after the word "thereof" on the first line of this clause. The clause should therefore read as follows:

"upon rejection of any equipment, tool, machinery, fitting and or components(s) part(s) thereof *which* has been rejected, then the Contractor shall replace such rejected equipment, tool, machinery, fitting and or components(s) thereof within a period of 2 (two) weeks from the receipt of the rejection notice, unless the rejection is disputed by the Contractor. ..."

The last paragraph of clause 7.3.1 is revised to take out the "deemed to have been issued" provisions. The clause should therefore read as follows:

"Once a Completion Certificate of acceptance has been issued in relation to any equipment, tool, machinery, fitting and or components(s) thereof then the Employer shall not at any time thereafter be entitled to reject such equipment, tool, machinery, fitting and or components(s). The use of such approved (or deemed to have been approved) equipment, tool, machinery, fitting and or components(s) thereof in relation to any work shall not be used as a reason for rejection and or non-approval of the work done".

101. Clause 7.3.2 – Quarterly Inspection of work done

Clause 7.3.2 (b) is revised deleting the number 7 and replacing it with 14 to ensure consistency with the provisions of 7.3.2(a). Clause 7.3.2(b) should therefore read as follows:

"does not undertake the inspection within the aforementioned 15 day period or does not issue its inspection report within the aforementioned 14 day period then it shall be deemed that the relevant milestones and or work which ought to have been completed or achieved prior to issuance of the notice by the Contractor have been completed or achieved. In such an event it shall be deemed that a Completion Certificate of acceptance has been issued in relation to the work done".

Clause 7.3.2 (d) (i) is revised by inserting the word "independent expert" after the word "party" on the last of this clause. The last line of the clause should therefore read as follows:

"Both Parties shall bear the costs of such third party independent expert analysis"

7.3.2 (ii) is revised by adding the words "to that effect" after the word "Employer" on the fourth line of this clause to give a clearer meaning to the clause.

"not challenged and or contested by the Contractor or the third party independent expert approves the rejection then the Contractor shall undertake all such acts and steps as may be necessary and requisite to address and or rectify the identified issues and or defects. Once the identified issues and or defects have been addressed and or remedied then the Contractor shall issue a notice to Employer to that effect. Once such a notice has been issued then the process set out in this Sub-Clause shall be carried out again".

The last paragraph of clause 7.3.2 is revised by adding the words "of the" after the word "part" on the last line of this clause to give a clearer meaning to the clause.

"Once a Completion Certificate of acceptance has been issued or deemed to have been issued in relation to the work done or any part thereof then Employer shall not at any time thereafter be entitled to raise any issues in relation to such work or any part of the work".

102. Clause 7.3.3 – Inspection of completion of a work in relation to a particular Project Centre

Paragraph 1 is revised by the capitalization of "scope of work" to properly reflect the definition for the term in the Agreement and by the deletion of the word "of" on the fifth line of the clause. The clause should therefore read as follows:

"Within 10 days from the completion of all the work in relation to a Project Center, the Contractor shall send a notice in writing to Employer intimating Employer about the completion of the relevant Scope of Work and inviting Employer to inspect the relevant Project Center in respect of which all the work has been completed. Employer shall conduct and complete the inspection of the relevant Project Center, in respect of which the completion notice has been issued, within 15 days from the date of receipt of the invitation for inspection from Contractor and notify the Contractor of the results of its inspection within 14 days from the date of the inspection. It shall be mandatory for the Parties to ensure the presence of both Parties' representative at the time of the inspection at each Project Center".

Clause 7.3.3 (a) is revised by the insertion of the word "the" before the word "Employer" on the first line of this clause and after the word "then" on the last line of the clause to give a clearer meaning to the clause. The clause should therefore read as follows:

Pursuant to the inspection the Employer confirms that the relevant Scope of Work in relation to the Project Center has been completed in accordance with the relevant specifications and the Implementation Schedule then the Employer shall issue a Completion Certificate in respect of the Project Center".

Clause 7.3.3 (b) is revised to delete all deemed to have provisions. The clause should therefore read as follows:

"The Employer does not undertake the inspection within the aforementioned 15 day period or fails to issue its inspection report within the aforementioned 14 day period then the Employer shall issue a Completion Certificate in relation to the relevant Project Center which has been approved by the Employer".

Clause 7.3.3 (d) is makes reference to an upgraded or modernized project centre contrary to the provisions in the Recitals.

COTVET is therefore to clarify if the project is for the upgrading and or modernization of already existing COTVET training centres or if it is for the construction and development of new COTVET training centres.

Clause 7.3.3 (d) (i) is revised by the insertion of the word "appointment of the" before the word "independent" on the sixth line of this clause to give a clearer meaning to its provisions. The clause should therefore read as follows:

"the Contractor disagrees with the findings of Employer, then the relevant Project Center and its assets shall be inspected and analysed by a third party independent expert whose findings shall be final and binding on both Parties. The third party independent expert shall be a person or entity of international standing in the same field as the Contractor and having the requisite expertise and experience in monitoring and certification of the projects, and shall have been chosen jointly by the Parties. If there is no consensus on the appointment of the independent expert within 7 days of Employer notifying its inspection report, then a third party independent expert shall be appointed by the International Standard Organisation (ISO) or any other internationally recognised body of similar standing. The Party whose findings are contrary to the findings of the third party independent expert shall pay for the costs of such third party analysis. ..."

Clause 7.3.3 (d)(i)(A) is revised by the insertion of the word "the" before the word "Employer" on the third line of this clause to give a clearer meaning to the clause. The clause should therefore read as follows:

the third party independent expert certifies that the work in relation to a Project Center has been completed as per the agreed specifications and in accordance with the Implementation Schedule then the Employer shall issue a Completion Certificate for such Project Center”.

103. Clause 7.3.4 – Inspection upon completion of Scope of Work

Clause 7.3.4 is revised by the deletion of the word “of” before the word “from” on the fourth line of this clause to give a clearer meaning to the clause.

“Within 10 days from the completion of the Scope of Works, the Contractor shall notify the Employer in writing of the completion of the Scope of Work and inviting the Employer for inspection. The Employer shall conduct and complete the inspection of the Scope of Work, within 15 days from the date of receipt of the invitation for inspection from the Contractor and notify the Contractor of the results of its inspection within 14 days from the date of the inspection. It shall be mandatory for the Parties to ensure the presence of both Parties’ representative at the time of the inspection of the Scope of Work”.

Clause 7.3.4 (b) is revised by the deletion of “shall be deemed to have been”

The clause should therefore read as follows:

“The Employer does not undertake the inspection within the aforementioned 15 day period or fails to issue its inspection report within the aforementioned 14 day period then the Employer shall issue the Completion Certificate”.

104. Clause 7.4 – Testing by the Contractor

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

105. Clause 7.5 – Rejection

The provisions of clause 7.5 of Particular Conditions of Contract indicate a deletion of the provisions of clause 7.5 of the General conditions. The provisions of the General conditions of Contract however contain relevant extensive provisions on repair and remedies for defects.

It is therefore suggested that the provisions of the General conditions of Contract remain.

106. Clause 7.7 – Ownership of Plant and Materials

Paragraph 1 of the clause is revised by the addition of “provided the damage is not caused by the Contractor or the Contractor’s personnel” to the clause to ensure that the risk passes on to only the Employer when the damage is not caused by the Contractor. Additionally it is suggested that the “site for the project centre” on the last line of the clause be revised to read “Project Site” as the Project Site is the same as the project centre and Site is referred to as such in the Contract.

The clause should therefore be revised to read as follows:

“The Parties agree that the risk of loss, damage, destruction, deterioration, cause to the Plant, Materials, equipment, tools, vehicles and materials, which have been inspected and approved by the Employer in accordance with Sub-Clause 7.3 [Inspection] or otherwise shall pass on to the Employer once the relevant equipment, tools, vehicles and materials reach the relevant Project Site provided however that the damage is not caused by the Contractor or the Contractor’s personnel”.

It is suggested that paragraph 3 of the clause be revised by the deletion of the word “dues” on the second line of the clause and replaced it with the word “amount” to adequately reflect the intended meaning of the clause. The clause should therefore read as follows:

“Provided however that it is agreed by the Parties that for as long as any part of the Contract Price or any other amount payable to the Contractor remain outstanding and due to the Contractor by Employer under this Contract, the Contractor shall continue to have a first charge and encumbrance over the Works including the building, structure, equipment, tools, vehicles and all other assets and Plants and Materials”.

Paragraph 5 of the clause 7.7 requires the Employer to create an encumbrance on the Works in favour of the Contractor until full and final payments are made to the Contractor.

It is suggested that the provisions of this Clause be deleted as the Employer is already making a substantial advance payment and is also the Owner of the Project Sites. Such an encumbrance will therefore be detrimental to the Employer. It is suggested that clause be deleted in its entirety.

Commencement, delays and Suspension

107. Clause 8.2 Time for Completion

Paragraph 2 of Clause 8.2 is revised to give a clearer meaning to its provisions. The clause should therefore read as follows:

Notwithstanding anything contained in Sub-Clause 8.5 [*Extension of Time*], the Contractor shall be entitled to a grace period of 180 days which shall be exclusive of and in addition to the time specified in the Time for Completion. In the event of any Exceptional Event or any event which is not under the control of the Contractor *but* affects the Contractor in the performance of its obligations under the Contract, then the Works completion date shall be extended accordingly by both parties in accordance with Sub-Clause 8.5 [*Extension of Time*]. In case of any delay beyond the agreed extended completion date, for every day of delay, a penalty of 0.01% of Contract Price, which is attributable to the Scope of Work which has not been completed within the agreed extended completion date, will be imposed on the Contractor. The Contractor's liability shall however not exceed 5% of the Contract Price.

108. Clause 8.4 – Advance Warning

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

109. Clause 8.5 – Extension of Time for Completion

It is suggested that clause 8.5(b)(ii) be revised to remove “or any other contractor of the Employer;” as the Employer does not have a Contractor.

The clause should therefore read as follows:

“any delay, impediment or prevention caused by or attributable to the Employer or the Employer Representative;”

It is suggested that clause 8.5(b)(vi) be revised to delete “other factor caused or attributable to any” on the first line of the clause to give a better meaning to the Clause.

The clause should therefore read as follows:

“any action or omission of the Government of Ghana, not limited to, Change in Law which may adversely impact the purpose of this Agreement, the rights of the Contractor or the objective of the Works”.

110. Clause 8.6 – Delays caused by Authorities

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

111. Clause 8.9- Employer’s Suspension

The provisions of Clause 8.9 of Particular Conditions of Contract indicate a deletion of the provisions of clause 8.9 of the General conditions which contain relevant provisions on the suspension of the works by the Government of Ghana.

It is therefore suggested that the provisions of the General conditions of Contract remains to allow the Government of Ghana the right to suspend the Works if need be.

112. Clause 8.13- Employer's Suspension

The provisions of Clause 8.13 of Particular Conditions of Contract indicate a deletion of the provisions of clause 8.13 of the General conditions. The provisions of clause 8.13 of the General conditions of Contract however contain relevant provisions on the resumption of work after suspension by the Government of Ghana.

It is therefore suggested that the provisions of the General conditions of Contract remain.

113. Clause 9 - Test on Completion

It is suggested that "shall be deleted" in clauses 9.1, 9.2, 9.3 and 9.4 and everywhere else in the document be revised to read "is deleted".

Clause 10- Employer's Taking Over

114. Clause 10.1 Taking Over the Works and Section

COTVET should confirm if the provisions of clause 10.1 in the Particular Conditions of Contract are a replacement of the provisions of the General conditions of Contract or an addition.

It is further suggested that 28 days on the first line of paragraph 2 of clause 10.1 be revised to 45 days and 28 days on the second line of paragraph 3 of the same clause be revised to 45 days to afford the Government more time to go through the approval processes for the issuance of a Taking Over Certificate.

It is further suggested that the clause be revised to remove "deemed to have been" provisions.

The clause should therefore be revised to read:

"The Employer shall, within 30 days after receiving the Contractor's application, issue the Taking-Over Certificate to the Contractor, stating the date on which the Works were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose (either until or whilst this work is completed and these defects are remedied).

If the Employer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 45 days, and if the Works are substantially in accordance with the Contract, the Taking-Over Certificate shall be issued on the last day of that period.

The whole of the Works shall be taken over by the Employer when:

- i. the Works have been completed in accordance with the Contract, and
- ii. a Taking-Over Certificate for the Works has been issued in accordance with this Sub-Clause".

115. Clause 10.2 – Taking Over of Part of the Works

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

116. Clause 13.1- Right to Vary

The word "equipment" is repeated on line 2 of Paragraph (a) of this sub-clause. It is suggested that the repeated word be deleted. Further the word "relied" on line 2 of the same paragraph (a) should be deleted

117. Clause 13.3- Variation Procedure

Sub-clause 13.3 provides as follows:

"If the parties agree to the terms of the proposed Variation, they shall initiate the execution necessary amendments to this Contract or any other document as may be necessary. ..."

The words "of the" should be inserted after the word "execution" on line 1 of Paragraph 3 of this sub-clause to read as follows:

"If the parties agree to the terms of the proposed Variation, they shall effect the execution of the necessary amendments to this Contract or any other document as may be necessary."

Paragraph 4 of sub-clause 13.3 provides as follows:

"If the Employer does not give its consent for the proposed Variation or if Contractor rejects the Variation further to the above provisions, the Parties shall negotiate in good faith to resolve the difference in opinion. Upon failure to resolve such differences, the provision of Clause 21 [Disputes and Arbitration] may be operative to such difference or dispute"

It is suggested that the words "may be" on the last line of the above paragraph should be replaced with the phrase "shall be invoked" for the agreement to read as follows:

"If the Employer does not give its consent for the proposed Variation or if Contractor rejects the Variation, the Parties shall negotiate in good faith to resolve the difference in opinion. Upon failure to resolve such differences, the provision of Clause 21 [Disputes and Arbitration] shall be invoked to resolve the dispute"

118. Clause 14.1- Contract Price

Paragraph 1 of this sub-clause provides as follows:

"The Contract Price shall be the lump sum Contract Price as set out in the Contract Agreement. A summary wise breakup of the Contract Price is set out in the Price Schedule "

The words "wise break up" in line 2 of the clause should be deleted and the sub-clause be redrafted to read as follows:

“The Contract Price shall be the lump sum Contract Price as set out in the Contract Agreement. A summary of the break-down of the Contract Price is set out in the Price Schedule “

Paragraph 2 of sub clause 14.1 provides as follows:

“The Contract Price is exclusive of any taxes. Employer is to get the necessary exemptions for all goods, materials and equipment, whether imported or procured from the Country, any tax is payable, such tax shall be charged in addition to the Contract Price”

The above sub-clause should be redrafted to make it clear and meaningful. Below is a redraft:

“The Contract Price is exclusive of any taxes. The Employer is to obtain the necessary exemptions for all goods, materials and equipment, whether imported or procured from the Country, all taxes paid by the Contractor shall be reimbursed by the Employer to the Contractor.

The word “equipment” is repeated on line 2 of Paragraph 4 of this sub-clause. It is suggested that the repeated word should be deleted.

The word “relied” on line 3 of the same paragraph 4 should be deleted

119. Clause 14.2.1 –Advance Payment

Sub-clause 14.2.1 of the Particular Conditions provides that the Contractor shall submit an Advance Payment Security to the Employer within 15 days of receipt of Advance Payment from the Employer.

The above mentioned Advance Payment Security is to expire within 6 months of issuance.

In line with industry practice, the Advance Payment Security is to remain valid until the Advance Payment has been repaid. Since the Contractor will not repay the Employer, in this Contract, it is suggested that the Advance Payment Security remains valid only until the percentage of works equivalent to the Advance Payment is completed.

120. Clause 14.4 –Schedule of Payments

This sub-clause provides that quarterly payments to be made by the Employer, should be made within 15 days of the issuance of an inspection report by the Employer to the Contractor.

Considering that the Employer has to go through certain laid down procedure for payment, 15 days is considered a short period for payment. It is suggested that payment should be made within 45 days instead of 15 days.

The word "the" should be inserted between the words "of" and "Contract" on line of sub-clause 14.4 (b)

The word "or" should be placed at the send of sub-clause 14.4 (i) instead of the beginning of sub-clause 14.4 (ii)

The word "deficiency" in paragraphs 3, 4 and 5 of the sub-clause 14.4 should be deleted and replaced with the word "defects"

It is further suggested that 65% on the first line of this clause be revised to read 80% for the sake of consistency and in line with our earlier comment.

121. Clause 14.6.2 - Interim Payment

It is suggested that Sub-Clause 14.6.2 which provides that "Interim payments shall be due quarterly by the Employer as per the Payment Schedule and in the manner set out sub-14.4 (b) [Schedule of Payment]" should be redrafted as follows:

"Interim payments shall be due for quarterly payments by the Employer as per the Payment Schedule and in the manner set out sub-14.4 (b) [Schedule of Payment]"

122. Clause 14. 8 Delayed Payments

This clause provides as follows:

"In the event of delay up to 45 days beyond the due date for each payment to be

payable by the Employer as per the Payment Schedule and /per Sub-Clause 14.4 [Schedule of Payments]. Employer shall be required to pay to the Contractor an interest at the rate 8% per annum. Delay beyond such 45 days shall be deemed as an Event of Default and shall be subject to the provisions of Sub-Clause 16 [Termination by Contractor]. The right to interest and /or invoke Event of Default (as the case may be) right shall be in addition to the right available to the Contractor under law to claim for damages on account of breach of the Employer”

It is suggested that the words “payable” on line 1 between the words “be” and “by” and the word “right” after the parenthesis and the word “shall” on line 6 of sub-clause 14.8 should be deleted to read as follows: Below is a redraft of the sub-clause 14.8

“In the event of a delay up to 45 days beyond the due date for each payment by the Employer as per the Payment Schedule and per Sub-Clause 14.4 [Schedule of Payments], the Employer shall be required to pay to the Contractor interest at the rate 8% per annum. Any Delay beyond 45 days shall be deemed as an Event of Default and shall be subject to the provisions of Sub-Clause 16 [Termination by Contractor]. The right to interest and or invocation of an Event of Default (as the case may be) shall be in addition to the right available to the Contractor under law to claim for damages on account of breach of the Employer”

123. Clause 14.10 – Statement of Completion

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

124. Clause 14.11 – Agreed Final Statement

Clause 14.11.2 - Agreed Final Statement

It is suggested that the last sentence of the preamble of this clause which reads as follows be deleted:

"If there is no response from the Employer, then it shall be deemed that draft Final Statement sent by the Contractor shall be the Final Statement"

The Clause should therefore read as follow:

If there are no amounts under Sub-paragraph (iii) of Sub-Clause 14.11.1 [*Draft Final Statement*], the Contractor shall then prepare and submit to the Employer the final Statement as agreed ("Final Statement"), within 30 days.

125. Clause 14.14 – Cessation of Employer's Liability

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

126. Clause 14.15 – Currencies of Payment

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

127. Clause 14.16- Local Taxation

The Particular Conditions add a new Sub-clause 14.16 which provides that the Employer shall seek tax exemption for the works. However where tax exemption is not granted and the Contractor is required to pay any tax or duty, the Employer is to reimburse the Contractor in full within 21days after the receipt of the relevant document.

It is suggested that the time period within which the Employer is to reimburse the Contractor should be increased to 45 days to enable the Employer (the government of Ghana) go through laid down procedure for payment.

128. Clause 15. Termination by Employer

Sub-clauses 15.2.1 (c), 15.2.1 (e), 15.2.1 of the Particular Conditions

The phrase "to the Contractor" is repeated in the second paragraph of this clause, it is suggested that the repetition be deleted.

Sub-clause 15.2.1 (b) of the Particular Conditions provides that the Employer shall be entitled to give a notice to the Contractor of the Employer's intention to terminate the Contract in the case of Contractor Event of Default subject to sub-clause 11 provided only that the defects are in such number of sites which in terms of monetary value constitute more than 20% of the Contract Price.

Defects in the works up to 20 % in monetary value is a high percentage of defects in the works, it is therefore suggested that the monetary value of defects in the works should be up to 15% and not 20% of the Contract Price.

129. Clauses 15.5, 15.6 and 15.7- Termination for Convenience by the Employer, Valuation after Termination and Termination for Employer's Convenience.

The Particular Conditions of Contract delete the above sub-clauses 15.5, 15.6 and 15.7 of the General Conditions, however sub-clauses 15. 5, 15.6 and 15.7 provide for Termination for Convenience by the Employer, Valuation after Termination for Employer's Convenience and Payment after Termination for Employer's Convenience.

It is suggested that the above clauses in the General Conditions should be retained to enable the Employer as a Sovereign State terminate the agreement when it deems it necessary to do so.

130. Clause 16.1 - Suspension by Contractor

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

131. Clause 16.2 –Termination by Contractor

Sub-Clause 16.2 (b) the phrase "at any time" in this sub-Sub-Clause should be deleted and replaced with the phrase "within the agreed time" to read as follows:

"The Contractor shall be entitled to give Notice to the Employer (pursuant to Sub-Clause 16.2) to the Employer of the Contractor's intention to terminate the Contract in the case of an Employer Event of Default" as below:

(b) failure to hand over Site(s) in a timely manner to the Contractor or failure to provide safe and secure access to the same within the agreed time:"

Sub-Clause 16.2(d) should be deleted since the Contractor is not a party to the financing document between the Employer and its lenders

The second paragraph of Sub-Clause 16.2 provides as follows:

"However, termination of the Contract by the Contractor shall:

- (a) without prejudice to any other rights accruing to the Parties pursuant to this Contract or by law or equity ;and
- (b) shall not relieve the Parties from any unfulfilled obligation or liability which was accrued or incurred by it pursuant to this Contract prior to the date of such termination"

The word "be" should be inserted before the word "without " in paragraph (a) above and the word "shall" in paragraph (b) should be deleted.

Sub-Clause 16.3 (a)(i)- The word "then" in this Sub-Clause should be deleted.

Sub-Clause 16.3 (c)-The word "such" on line 1 of this Sub-Sub-Clause should be deleted.

132. Clause 16.4 – Payment after Termination by Contractor

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

133. Clause 17.2 – Liability for Care of the Works

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

134. Clause 17.3 – Intellectual and Industrial Property Rights

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

135. Clause 17.4(b)- indemnities by Contractor

The Particular Conditions deletes Sub-Clause 17.4(b) as well as the last paragraph of the Sub-Clause which provides for the indemnity of the Employer by the Contractor in respect of damage to or loss of property which arises out of the execution of the Contractor's work and is attributable to the negligence, willful act or breach of the contract by the Contractor. The effect of the deletion of these provisions from the General Conditions is that the Employer would be responsible for the damage to or loss of property which arises out of the execution of the works or through the Contractor's negligence.

It is suggested that the Parties retain the provisions in the General Conditions of Contract.

136. Clause 17.5 – Indemnities by Employer

It is suggested that the provisions of this clause in the Particular Conditions of Contract be deleted as the Parties intend to maintain the provisions in the General Conditions of Contract.

137. Clause 17.6 - Shared indemnities

The Particular Conditions of Contract deleted this Sub-Clause of the General Conditions of Contract in its entirety, however we suggest that the Sub-Clause in the General Conditions should not be deleted as it ensures that each party is held liable for its contribution to any loss or damage for which a party has to be indemnified.

138. Clause 18 -Exceptional Events

It is suggested that the words “mobilizations” and “requisition” listed as Exceptional Events in Sub-Sub-Clause 18.1(c) should be deleted since they do not fall within the category of Exceptional Events

139. Clause 18.2-Notice of Exceptional Event

The Particular Conditions deletes Sub-Clause 18.2 and replaces it with a Sub-Clause which is not clear and meaningful. We suggest that the parties revert to Sub-Clause 18.2 of the General Conditions which provides better terms for the Parties.

140. Clause 18.3 Duty to Minimize Delay

The Particular Conditions provides that the above Sub-Clause be deleted and replaced with a new clause as follows:

“Parties shall and shall procure that it’s officers, contractors, agents at all times take all reasonable steps within their respective powers and consistent with good operating practices (but without incurring unreasonable additional costs) to :

- (a) Prevent Exceptional Events affecting the performance of the Parties' obligations under this Contract
- (b) ...
- (c) ..."

It is suggested that the newSub-Clause should be amended by deleting the words "and shall procure "on the first line to read as follows:

"Parties shall ensure that its officers, contractors, agents at all times take all reasonable steps within their respective powers and consistent with good operating practices (but without incurring unreasonable additional costs) to:

- (a). Prevent Exceptional Events affecting the performance of the Parties' obligations under this Contract
- (b)...
- (c)..."

141. Clause 19- Insurance to be provided by the Contractor

The Particular Conditions deletes paragraphs 4, 6 and 7 of Sub-Clause 19.1 and Sub-Clause 19.2 of the General Conditions. It is suggested that Sub-Clause 19.2 of the General Conditions be retained to ensure that proper insurance is taken to cover the entire project.

142. Clause 20-Employer's and Contractor's Claims

The Particular Conditions deletes Sub-Clause 20.1(a) of the General Conditions in its entirety, with the effect that, the Employer may be denied the opportunity to seek a reduction in the Contract Price and to extend the Defect Notification Period (DNP) even if the Employer is legitimately entitled to do so.

It is suggested that Sub-Clause 20.1(a) of the General Conditions be retained.

143. Clause 21 - Disputes and Arbitration

The Particular Conditions delete clause 21 of the General Conditions and replaces it with the following:

"In the event of any dispute or disagreement in connection with or arising out of this Contract, the Parties shall endeavor to enter into good faith discussions for a period of sixty (60) days to resolve such dispute amicably. If the disputes or disagreement cannot be resolved amicably within those sixty (60) days the parties agree to submit such dispute to arbitration to be conducted in London under the Rules of London Court of Arbitration."

The above dispute resolution clause is not adequate. We suggest the draft below:

- "
- a. The Parties hereby agree that any dispute arising out of or in connection with this Agreement [including a dispute regarding the existence, validity or termination of this Agreement] shall be resolved amicably through negotiations between senior executives of the Parties, who have authority to settle the same.
 - b. Where there is no amicable settlement, the matter shall be referred to arbitration in accordance with the UNCITRAL Rules (which rules are deemed to be incorporated by reference into this clause).
 - c. The matter shall be heard and decided, and an award rendered by a panel of three arbitrators ("the Arbitration Panel"). The Employer and the Contractor shall each select one arbitrator; provided, however, that in the event that the two arbitrators cannot agree on a third arbitrator, the Secretary-General of the Permanent Court of Arbitration shall select the third arbitrator.
 - d. The seat of the arbitration shall be London, England and the Law of arbitration shall be English Law.

- e. The decision of the arbitrators shall be final and binding upon both Parties, and neither Party shall seek recourse to a law court or other authorities to appeal for revisions of such decision. The Parties shall be entitled to seek, and the arbitrators shall be entitled to grant provisional remedies.
- f. Each Party undertakes to comply with and to carry out any arbitral award made in a dispute to which it is a party fully and without delay and may be enforced in any court having jurisdiction or application may be made to such court for enforcement as the case may require.
- g. Each party shall bear its own cost of arbitration.
- h. Notwithstanding any dispute arising between the parties the Contractor shall, in every case, continue to proceed with the Works with all due diligence and shall not wholly or partly suspend or delay the execution of the Works for any reason."

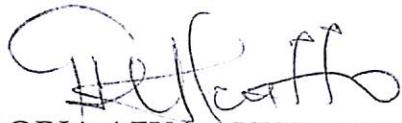
144. Clause 22- Miscellaneous Provisions

Sub-Clause 22.1 Contract (Rights of Third Parties) Act 1999

Sub-Clause 22.1 is an addition to the General Conditions of Contract and makes reference to a UK law. It is suggested that since the project is to be performed in Ghana, the agreement should be governed by Ghana law. Further, we suggest the amendment of the Sub-Clause 22.1 in terms of the draft below:

"Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns."

You may please revert for any further clarification should that become necessary.



PARLIAMENT OF GHANA LIBRARY

GLORIA AFUA AKUFFO (MISS)

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE