Section-III

CONDITIONS OF CONTRACT
Part I – General Conditions of Contract

The Conditions of Contract governing any contract arising from this tender will be the “Conditions of Contract for Construction” First Editions 1999, published by the Federation Internationale des Ingenieurs-Conseils (FIDIC), and shall comprise the General Conditions of Contract.

The full text of these General Conditions may be obtained from:

Federation Internationale des Ingenieurs-Conseils (FIDIC),
World Trade Centre II
P.O. Box 311
1215 Geneva 15
SWITZERLAND
Telephone: +14 22 799 4905
Facsimile: +41 22 799 4901
Email: fidic.pub@fidic.org
Website: http://www.fidic.org

The above General Conditions of Contract (GCC) are to be read in conjunction with the Particular Conditions of Contract which is set out in detail in the following section and which include amendments and additions to these General Conditions.
TENDER FOR SELECTING CONTRACTOR
FOR
Embassy Residence Renovation Project

Section-III

Terms and Conditions of Contract
Part II – Particular Conditions of Contract
[To be read in conjunction with the General Conditions of Contract]

1. CLAUSE I

2. GENERAL PROVISIONS

The following Sub-Clause to be read as:

3. Parties and Persons

Definitions

1.1.2.2 “Employer” is THE INDIAN HIGH COMMISSION OF 6A VICTORIA AVENUE PORT OF SPAIN

1.2.2.4 “Engineer” is JASPAL BHOGAL ASSOCIATES

1.1.3.4 “Day” means ‘Calendar Day’ unless specifically stated otherwise

4. Law and Language

The Contract shall be governed in accordance with the Laws of the Republic of Trinidad and Tobago. The Language in which the Contract Document are drawn up is the English Language and all correspondence, drawings, etc, in connection with contract shall be in the English Language.

Contract Agreement

1.6 The following is deleted from this Sub-Clause:

“The Contract Agreement shall… borne by the Employer.”

Details to be Confidential

1.15 New Sub-Clause added immediately after sub-clause 1.14:

“The Contractor shall treat the details of the Contract as private and confidential except to
the extent necessary to carry out obligations under it or to comply with applicable Laws."

CLAUSE 2

THE EMPLOYER

Permits, Licenses and Approvals 2.2 First sentence deleted and replaced with the following Sub-Clause:

The Employer shall (where it is in a position to do so) provide reasonable assistance to the Contractor at the request of and cost to the Contractor.

Employer's Financial Arrangements 2.4 This Sub-Clause deleted in its entirety.

CLAUSE 3

THE ENGINEER

Instructions of the Engineer 3.3 The following inserted at the end of this Sub-clause:

“The Contractor shall not vary any of the work or carry out extra work without proper instructions from the Engineer. In the event that the Contractor receives instructions from any person other than the Engineer or his duly appointed representatives to vary the work or to carry out extra work, he shall request and obtain the Engineer's instructions to do so prior to proceeding.

Whenever the Contractor considers that additional detailed drawings are required and/or necessary, he shall promptly apply to the Engineer for such additional detailed drawings not less than 14 days from the date on which the detailed drawings are required and scheduled for execution.

The works shall at all times be executed in accordance with the Engineer's detailed drawings except where same has been varied in accordance with Clause 13. Where any discrepancies, disagreement or difference of opinion arises due to errors which may be deemed clerical or draughtsman's errors, detailed drawings shall
take precedence over the general drawings and drawings made to a larger scale or for special instructions shall take precedence over drawings made to a smaller scale or for general instructions, but subject nevertheless in case of dispute or doubt to the summary decision of the Engineer and failure to comply with this instruction shall result in the rejection of any claim arising therefrom.

First sentence deleted from Sub-Clause 3.4.

CLAUSE 4

THE CONTRACTOR
5. **Performance Security** 4.2

Second paragraph deleted from Sub-Clause 4.2 and replaced with the following:

"The Contractor shall deliver the Performance Security to the Employer within fourteen (14) days after receiving the Letter of Acceptance and shall send a copy to the Engineer. The Performance Security shall be issued by a bank, insurance company or a financial institution:

(i) located in; and

(ii) registered and licensed to do business in the country.

The Performance Security shall be in a form approved by the Employer."

The following is added to end of the second paragraph of Sub-Clause 4.2:

"Whenever the amount of the Performance Security becomes less than that stated in the Appendix to Tender (where applicable) due to additions to the Contract Amount (as determined by the Engineer) resulting from changes in cost and/or the Laws or a Variation which, in the aggregate, exceeds 15% of the Accepted Contract Price or the Contract Price the Contractor shall at the written instructions of the Engineer increase the value of the Performance Security in the same ratio as the increase in the Contract Price."

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**Setting Out** 4.7

The following sentence is added at the end of the first paragraph:

"Prior to setting out of the Works, the layout of the Works shall be approved by the Engineer."

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**Safety Procedures** 4.8

Sub-paragraph (a) of Sub-Clause 4.8 is replaced with the following:

(a) comply with all applicable Laws and regulations regarding safety including but not limited to those contained in the Factories (Protective Measures) Order 1977, OSH Act of Trinidad and Tobago
and that attached at Appendix 5 of these Tender Documents, which are the approved standards of safety for this Contract and which shall be considered as part of these Conditions of Contract.

The following sub-paragraph is inserted after sub-paragraph (e):

(f) the Contractor shall provide industrial safety helmets for all personnel on site including sub-contractors (nominated or otherwise) staff, representatives of the Employer and the Engineer and all other authorized persons on site and the Contractor shall use all efforts to ensure that helmets are worn, when necessary, by all personnel on site.

**Electricity, Water and Gas**

4.19 Sub-Clause 4.19 deleted and replaced with the following:

The Contractor shall at his own cost and expense be responsible for the provision of all electricity, water, gas and other services be may require for the Works and any fluctuation in their price shall be at the Contractor’s sole risk and expense. The Contractor shall at his own risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed and shall indemnify and keep the Employer indemnified and harmless from all such costs incurred.”

**Employer’s Equipment and Free-Issue Material**

4.20 Sub-Clause deleted in its entirety.

**Progress Reports**

4.21 “...in six copies.” deleted at the end of the first sentence of this sub-clause, and replace with the following:

“...one hard copy and one electronic copy on compact disc.”

The period (“.”) is deleted at the end of sub-paragraph (h) of Clause 4.21 and replace with the following”:“.”}

S III Page | 6
The following sub-paragraphs are added immediately after sub-paragraph (h): -

“(j) details of all claims arising including the Contractor’s estimate of costs and time adjustments required to the Contract Price.

(k) amend the schedule of payments as required under Clause 14.4.”

The Engineer shall read and comment upon the Contractor’s Progress Report and shall meet with the Contractor within 7 days after receipt of the Contractor’s Progress Report to discuss any problems the Contractor has highlighted therein.

CLAUSE 6

STAFF AND LABOUR

Rates of Wages and Conditions of Labour 6.2 Sub-Clause replaced with:

The Contractor must satisfy himself whether there is sufficient skilled and unskilled labour available locally for the carrying out of the work in accordance with his programme and must make arrangements for bringing to the Site all labour not available locally.

The Contractor shall observe hours and conditions of labour not less favorable than:

a. The rates, hours and conditions established under any collective agreement between the Employer and Employer’s association and workers’ organization representative, respectively, of substantial proportions of Employers and workers engaged in the trade or industry, whether or not the Contractor is a party to such agreement.

b. The rates, hours and conditions established in the absence of or subsequent to any collective agreement under any arbitration award for work of the same character in the trade or industry whether or not such award is binding on the Contractor.
c. The minimum rates, hours and conditions prescribed by any Laws of Trinidad and Tobago for the time being in force.

d. Such rates, hours and conditions paid and observed by Government for work of the same character in the trade or industry in the absence of any collective agreement, arbitration award or provision of law.

The Contractor or his sub-contractor shall post notices in conspicuous places at the establishments and work places concerned informing the workers of the rates of pay and other conditions of work.

The Contractor or his sub-contractor shall keep proper wages and time books and, in the event of work being paid for by results, work sheets shall be kept showing wages paid to, the time and/or the amount of work performed by workmen in and about the execution of the Contract, and the Contractor or his sub-contractor shall be bound whenever required to produce such wages and time books and/or work sheets for the inspection of any person authorized by the Employer's Representative.

The Contractor shall before commencing work under the Contract, notify the principals of the following:

a. The number and categories of workers he proposes to employ.

b. Their rates of pay.

c. The date of commencement of the work.

The Contractor shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any part of this contract without the written permission of the Employer's Representative.
The Contractor shall be responsible for the observance of these stipulations of this Contract by any permitted sub-contractor.

The Contractor shall recognize the freedom of his work people to be members of registered trade unions.

Should the Contractor find that suitably qualified and experienced personnel required for the Works are not available in Trinidad and Tobago in sufficient numbers and should the Contractor wish to employ personnel of nationalities other than Trinidadian, the Contractor must obtain the necessary work permits from the Government of Trinidad and Tobago to permit foreign personnel to enter and work in Trinidad and Tobago.

The Contractor shall keep the Employer fully informed at all times of applications made by him for work permits for foreign staff and approvals given by the Trinidad and Tobago Authorities.

CLAUSE 7

PLANT, MATERIALS AND WORKMANSHIP

Manner of Execution 7.1

The following is added to the end of this Sub-Clause:

The insertion of the name of any firm in the Bills of Quantities is for the purpose of obtaining a class or quality of materials or workmanship and unless specifically stated to the contrary such goods or workmanship may be obtained from any other firm of equal repute subject to the approval of the Engineer. In all cases, such firm or firms shall not be held to be a “Nominated Supplier” or “Nominated Sub-contractor” under the Contract Conditions.

All materials specified shall be used and fixed strictly in accordance with the manufacturer’s instructions, or where no such instructions exist, then in accordance with the best trade practice.

Where reference is made to British Standards (BS) or equivalent Codes of Practice (CP) the latest editions shall apply. Materials complying
with other authoritative standards other than those specified, will be acceptable, provided that the Contractor satisfies the Engineer that the standards are of equal or better standard than those specified.

No materials shall be ordered before applying to and receiving from the Engineer full particulars and details thereof, as no claim will be allowed for variation should the Contractor have wrongly assumed requirements. The Contractor must take the necessary particulars from the drawings and specifications supplied. Measurements must be taken from the building or Site. The Bills of Quantities should not be used for the purpose of ordering materials.

The workmanship shall be of best quality to the entire satisfaction of the Engineer and in accordance with all current Building Regulations and Codes of Practice.

All materials shall be delivered to the site, or to the Engineer, sufficiently in advance to allow samples and tests to be made before the materials are incorporated into the Works. No materials shall be used until approved. Samples of finished work, e.g. samples of blockwork, pointing, colours, finishes, etc., as are requested by the Engineer, shall be retained on site throughout the duration of the Contract.

CLAUSE 8

COMMENCEMENT, DELAYS AND SUSPENSION

6. Commencement of Works 8.1 The second sentence of paragraph one of this Sub-Clause is replaced with:

The commencement of work shall be not later than two (2) weeks from the date of the Letter of Instruction from the Engineer.

Programme 8.3 Clause is replaced in its entirety with the following:

Within seven days of the acceptance of his tender, the Contractor shall submit to the Engineer for his approval, a detailed construction programme showing the order of procedure and method in which he proposes to
carry out the Works and shall whenever required by the Engineer, furnish for his information, particulars in writing of the Contractor’s arrangements for the carrying out of the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construction as the case may be.

The Contractor’s programme shall provide the following basic information:

a. The Contractor’s analysis of the essential components of the Contract. The Engineer’s ruling as to what constitutes an “essential component” shall be final.

b. The Contractor’s proposed time required for completion of each of these components.

c. The Contractor’s analysis of the sequential relationship of each of the components.

d. Such other information as may be required to prepare a network by the Critical Path Method (CPM).

e. The details to be supplied by the Contractor shall include all salient job features including construction activities, procurement of materials, testing, resource allocation, etc.

f. A draft CPM network(s) for review and approval of the Engineer. Time shall be in increments of one (1) week.

The draft shall be in a form acceptable to the Engineer. Three (3) copies of the draft programme shall be supplied.

No payment for work done shall be allowed until the Contractor’s programme has been received and approved by the Engineer.

Three (3) copies of the approved construction programme shall be given to the Engineer within seven (7) days of such approval.
The approved construction programme shall be used to monitor the progress of the Works.

On the fourth working day of each month, the Contractor shall report progress to the end of the previous month. The report shall give accurate estimates of work completed of each activity shown on the original CPM schedule and will be used to update the schedule. The Engineer may change or revise the Contractor's report if he believes it to be incorrect.

Provision of the above-mentioned project progress report by the Contractor will be required prior to issuance of the monthly progress payment certificates by the Engineer.

In the event that any part of the work falls in arrears of the approved programme, the Contractor shall submit proposals on one or more courses of action to be taken by him to accelerate the work programme. Such proposals, if acceptable to the Engineer, shall be implemented and kept in force until such time as the Engineer considers that the degree of completion of the works complies with the original programme.

Should the proposals submitted by the Contractor not be acceptable to the Engineer, the Engineer may require that one or more of the following courses be taken by the Contractor to accelerate the work programme:

1. Increase the number of hours of work per week.

2. Increase the work force.

3. Provide and utilize additional equipment.

4. Any other course of action, which is deemed necessary to recover the schedule.

All extra costs of any recovery work programme shall be for the Contractor's account.
The Employer shall be entitled to terminate the Contract if the Contractor fails to comply with any accelerated work performance required of the Engineer. All costs and damages incurred by the Employer arising out of any of the above, shall be for the Contractor’s account and shall be deducted from any sums due to the Contractor by the Employer or recoverable as a debt due to the Employer by the Contractor.

**CLAUSE 12**

**MEASUREMENT AND EVALUATION**

**Work to be Measured** 12.1 The following is added at the end of this Sub-Clause:

Work not visible in the finished project which is the subject of a variation and in respect of which no drawings are issued shall not be covered up until a record of it, suitable for measuring purposes, has been taken and agreed between the Contractor and Engineer.

**Method of Measurement** 12.2 Sub-Clause deleted and replaced with:

The method of measurement shall be in accordance with the Standard Method of Measurement for Building Works 5th Edition (metric) as authorized by agreement between the Royal Institution of Chartered Surveyors and the National Federation of Building Trades Employer, except where specifically stated to the contrary.

**CLAUSE 13**

**VARIATIONS AND ADJUSTMENTS**

**Right to Vary** 13.1 The following is added to the end of this Sub-Clause:

The Engineer’s instruction shall be sought before executing work, which is described in these Bills of Quantities as ‘Provisional’.

**Daywork** 13.6 Notwithstanding that a Daywork Schedule is not included in the Contract, this Sub-Clause shall still continue to apply. A prime cost sum has been allowed in the Bills of Quantities for such
works, which are to be calculated in accordance with the ‘Definition of Prime Cost of Daywork’ as set out in the Bills of Quantities together with percentage additions to each section of the cost as set out by the Contractor in the Contract Bills.

Daywork sheets are to be signed by the Foreman. The rendering of daywork sheets is to provide a record of work and is not to be taken as deciding that work concerned is an extra or that it will be valued on this basis. These matters are to be agreed with the Engineer.

Sub-clause deleted and replaced with the following:

The contract sum shall be firm except for fluctuations in material prices due to a change in the exchange rate of the Trinidad and Tobago dollar. The following clauses shall be applicable to this contract:

a. The prices for imported materials and/or equipment or for materials with a partial imported content included in the tender sum is based on an exchange rate of Trinidad and Tobago dollar to the US current seven days before the date of tender.

b. If after the date of tender, the prices for the said imported material or equipment or the material with a partial imported content is affected by a fluctuation in the exchange rate at (1) above, then the net increase or decrease as the case may be caused directly by the fluctuation of the exchange rate shall be added or deducted from the accepted tender sum.

c. The Contractor shall be required to give notice of any price in material or equipment caused by a change in the exchange rate and shall make available all information as may be reasonably necessary or as may be requested by the Engineer to verify a claim.
d. No adjustment shall be due unless the Contractor shall have actually incurred an increased or decreased cost arising from the fluctuation of the Trinidad and Tobago dollar and the adjustment shall not include an adjustment in the profit element of the contract sum. Adjustment shall only be due following acceptance by the Engineer of reasonable evidence that the Contractor has incurred an increase or decrease in the cost of the imported component due to the fluctuation of the Trinidad and Tobago dollar.

e. When submitting claims, the Contractor shall provide proof that all reasonable measures have been taken to place orders sufficiently early to mitigate the effects of cost increases. Failure to satisfy this requirement will result in rejection of the claim.

CLAUSE 14

CONTRACT PRICE AND PAYMENT

The Contract Price 14.1 New item (e) added at the end of this Sub-clause:

The sum payable by the Employer to the Contractor in respect of Value Added Tax shall be calculated and paid by the Employer to the Contractor in accordance with the Value Added Tax Act 1989 of the Republic of Trinidad and Tobago or any amendment thereof to this Act.

CLAUSE 18

INSURANCE

Insurance against Injury to Persons and Damage to Property 18.3 The following should be noted in respect of this Sub-clause:

If the Contractor already bears an All Risk and Public Liability Insurance and Workmen’s compensation Insurance covering his liabilities under Clause 18.3, and if such a policy already bears a general principal endorsement automatically
Force Majure and EOT clause:
In the event of force majeure i.e., unforeseeable events such as war, floods, earthquake etc. beyond the reasonable control of the Parties to the contract which prevent either party from meeting their obligations under the contract, the contractual obligations as far as affected by such event shall be suspended for as long as force majeure continues provided that the other party is notified within two weeks after occurrence of the force majeure. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder. In the event of force majeure, either party shall be entitled to prolongation of this Contract equal to the delay caused by such force majeure.

CLAUSE 20

7. CLAIMS DISPUTES AND ARBITRATION

Obtaining Dispute Adjudication Board’s Decision

Sub-Clauses 20.2 and 20.3 deleted.

Second paragraph of Sub-Clause 20.4 is deleted and substitute with:

The Engineer shall act as the Dispute Arbitration Board (DAB) in accordance with this Sub-Clause acting fairly, impartially and at the cost of the Employer. In the event that the Employer intends to replace the Engineer, the Employer’s notice under Sub-Clause 3.4 shall include detailed proposals for the appointment of a replacement DAB.
8. **Arbitration**

**Arbitration:** In the event of any dispute or difference arising at any time between the parties relating to the construction, meaning or effect of this tender or any other cause or any content of the rights and liabilities of the parties or other matters specified herein or with reference to anything arising out of or incidental to this tender or otherwise in relation to the terms whether during the continuance of this tender or thereafter, such disputes or differences shall be endeavoured to be solved by mutual negotiations. If, however, such negotiations are infructuous, Arbitration shall be carried out as per provisions of UNCITRAL (United Nations commission on International Trade Laws) Arbitration Rules, as amended from time to time and the decision of the arbitrators as mentioned above shall be final and binding on the parties.

The venue of arbitration shall be Port of Spain, Trinidad & Tobago.

Any reference to arbitration shall be not relieve either party from the due performance of its obligations under this tender.
APPENDIX TO TENDER

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* To be inserted by the Tenderer

Initial of Signatory of Tender:
Dated:

______________________________

APPENDIX TO TENDER (cont’d) Sub-
Clause

<table>
<thead>
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<th>Percentage of Retention</th>
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<tr>
<td>Arbitration</td>
<td>20.6</td>
<td>One (1) person – in accordance with the “Arbitration Ordinance Laws of the Republic of Trinidad and Tobago”</td>
</tr>
</tbody>
</table>

Initial of Signatory of Tender:

Dated:

______________________________