



# **CONTRACT FOR THE PROVISION OF STANDARD SERVICES**

## **GENERAL CONTRACT CONDITIONS**



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## **I. GENERAL PROVISIONS**

### **1. Preliminary provisions**

- 1.1. The present General Contract Conditions shall be considered as part of the Contract. Any interpretation of the GCC shall be made in line with the general meaning of the Specific Contract Conditions.
- 1.2. In case of inconsistency of any provision of the Contract, including its GCC and SCC, in terms of meaning of any trade term, rights and obligations of the Parties the meaning, rights and obligations as prescribed by the Public Procurement Act 2019 and the Public Procurement Regulations 2020 shall prevail.
- 1.3. The Contract constitutes the entire agreement between the Procuring Entity and the Service Provider and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

### **2. Definitions**

- (a) “Amendment” means an agreed numbered change, in writing, of a Contract or its parts after the signature of both Parties.
- (b) “Applicable Laws” means the legal acts, regulations, and any other legislative instruments having the force of law in the Kiribati (or in such other country as may be specified in the SCC), as they may be issued and in force from time to time.
- (c) “Completion” means the fulfilment of the Services by the Service Provider in accordance with the terms and conditions set forth in the Contract.
- (d) “Contract” means the agreement of economic interest concluded in writing between the Service Provider and the Procuring Entity that has as its object the obligation to provide Services.
- (e) “Contract Documents” means the documents listed in the Contract, including the GCC, the SCC and its annexes and any amendments to the SCC as agreed upon between the Parties.
- (f) “Contract Price” means the price payable to the Supplier as specified in the Contract, subject to additions and adjustments or deductions, as may be made pursuant to the Contract.
- (g) “Day” means calendar day.
- (h) “Delivery” means the transfer of the Services from the Service Provider to the Procuring Entity in accordance with the terms and conditions set forth in the Contract.
- (i) “Economic Operator” means any natural or legal person, which offers the provision of Services.
- (j) “Force Majeure” means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies. Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party's Subcontractors or agents or employees, nor any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of the Contract and avoid or overcome in the carrying out of its obligations. Force Majeure shall not include insufficiency of funds or failure to make any payment required.
- (k) “GCC” means the General Contract Conditions .
- (l) “Party” means the Procuring Entity or the Service Provider, as the case may be; and “Parties” means both of them.
- (m) “Procuring Entity” means any governmental department, agency, organ or their unit, or any subdivision or multiplicity thereof, as designated by the Regulations, that engages in public procurement.
- (n) “SCC” means the Special Contract Conditions .
- (o) “Services” means the object of Public Procurement of Services, other than Goods, Consulting Services and Works, and , that are contracted on the basis of performance of measurable outputs.
- (p) “Service Provider” means an Economic Operator that is awarded a Contract for Service.
- (q) “Subcontractor” means an Economic Operator that is proposed by a Tenderer to perform part of a Contract.



### **3. Amendments and Severance**

- 3.1. No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of the Service Provider and the Procuring Entity.
- 3.2. If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **4. Language**

- 4.1. The Contract as well as all correspondence and documents relating to the Contract exchanged by the Service Provider and the Procuring Entity, shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English.
- 4.2. The Service Provider shall bear all possible costs of translation to the official Contract language and all risks of the accuracy of such translation.

### **5. Joint Venture, Consortium or Association**

- 5.1. If the Service Provider is a joint venture, a consortium, or an association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

### **6. Notice**

- 6.1. Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means any expression consisting of words and / or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.
- 6.2. A notice shall be effective when delivered to the other party or on the notice’s effective date.

### **7. Governing legislation**

- 7.1. The Contract shall be governed by and interpreted in accordance with the legislation of Kiribati, unless otherwise specified in the SCC.

### **8. Taxes and Duties**

- 8.1. Unless otherwise specified in the SCC, the Service Provider, including any Subcontractor and their personnel, shall pay taxes, duties, fees and other impositions as may be levied under Applicable Laws.

## **II. IMPLEMENTATION OF THE CONTRACT**

### **9. Effectiveness of the Contract**

- 9.1. The Contract shall be considered valid and shall come into effect (the “Effective Date”) following the signatures of the Parties.

### **10. Acceptance**

- 10.1. The Procuring Entity may reject Services when they are evaluated to be inadequate or not conforming to the Specification provided in Annex B. The Procuring Entity shall ask the Service Provider to either rectify or modify/improve or replace the Services, as necessary, and at no cost to the Procuring Entity, to meet the required Specification.

### **11. Liquidated damages**

- 11.1. If the Service Provider fails to provide the Services on the Delivery Date or Dates, the Procuring Entity may deduct from the Contract Amount, liquidated damages equivalent to 0,5% of the



Contract Amount for every week of delay or part thereof until actual delivery or performance. The maximum allowable deduction for such liquidated damages shall be 10% of the Contract Amount.

## **12. Expiration of the Contract**

12.1. The Contract shall terminate at the end of the time period as specified in the SCC.

## **13. Force majeure**

- 13.1. The failure of a Party to fulfil any of Contract obligations shall not be considered to be a breach of the Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Contract.
- 13.2. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations with a minimum of delay. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than ten (10) days following the occurrence of such event, providing evidence of the nature and cause of the event, and shall similarly give notice of the restoration of normal conditions as soon as possible. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 13.3. Any period within which a Party shall, pursuant to the Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- 13.4. Not later than twenty (20) days after the Service Provider, as the result of an event of Force Majeure, have become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## **14. Suspension**

- 14.1. The Procuring Entity may, by written notice of suspension to the Service Provider, suspend all payments to the Service Provider if the Service Provider fails to perform any of its obligations under the Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Service Provider to remedy such failure within a period not exceeding twenty (20) days after receipt by the Service Provider of such notice of suspension.

## **15. Termination by the Procuring Entity**

- 15.1. The Procuring Entity may terminate the Contract by providing the Service Provider with written notice, which shall not be shorter than twenty (20) days, in the following cases.
- (a) if the Service Provider fails to remedy a failure in the performance of its obligations, as specified in a notice of suspension pursuant to Clause 14 above, within twenty (20) days from the notification of such notice or within such further period as the Procuring Entity may have subsequently approved in-writing;
  - (b) if the Service Provider becomes (or, if the Service Provider includes Subcontractors, if any of its members becomes) insolvent or bankrupt or enter into any agreements with its creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
  - (c) if the Service Provider fails to comply with any final decision reached as a result of amicable settlement proceedings pursuant to Clause 33 of the GCC;
  - (d) if the Service Provider submits to the Procuring Entity a statement which has a material effect on the rights, obligations or interests of the Procuring Entity and which the Service Provider knows to be false;
  - (e) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
  - (f) if the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.



## **16. Termination by the Service Provider**

16.1. The Service Provider may terminate the Contract by providing the Procuring Entity with written notice, which shall not be shorter than twenty (20) days, in the following cases.

- (a) if the Procuring Entity fails to pay any money due to the Service Provider pursuant to the Contract and not subject to dispute pursuant to Clause 33 of the GCC within twenty (20) days after receiving written notice from the Service Provider that such payment is overdue;
- (b) if the Procuring Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within twenty (20) days (or such longer period as the Service Provider may have subsequently approved in writing) following the receipt by the Procuring Entity of the Service Provider's notice specifying such breach;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Procuring Entity fails to comply with any final decision reached as a result of an amicable settlement resolution pursuant to Clause 33 of the GCC.

16.2. Upon termination of the Contract pursuant to Clauses 15 or 16 of the GCC, or upon expiration of the Contract pursuant to Clause 12 of the GCC, all rights and obligations of the Parties shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause 20 of the GCC, and (iii) any right which a Party may have under Applicable Laws.

16.3. Upon termination of the Contract by notice of either Party to the other pursuant to Clauses 15 or 16 of the GCC, the Service Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to an end in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Service Provider and equipment and materials furnished by the Procuring Entity, the Service Provider shall proceed as provided, respectively, by Clause 21 of the GCC and Clause 22 of the GCC.

16.4. Upon termination of the Contract pursuant to Clauses 15 or 16 of the GCC, the Procuring Entity shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 28 of the GCC for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to Clause 28 of the GCC for expenditures actually incurred prior to the effective date of termination; and
- (c) except in the case of termination pursuant to paragraphs (a) through (d) of Clause 15.1 of the GCC, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Personnel and their eligible dependents.

16.5. If either Party disputes whether an event specified in Clause 15.1 of the GCC or in Clause 16.1 of the GCC has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to amicable dispute resolution pursuant to Clause 33 of the GCC, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting amicable settlement.

## **III. OBLIGATIONS OF THE SERVICE PROVIDER**

### **17. Standard of performance**

17.1. The Service Provider shall perform the Services and carry out its obligations with all due diligence and efficiency, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Service Provider shall always act, in respect of any matter relating to the Contract or to the Services, as faithful advisers to the Procuring Entity, and shall at all times be considered responsible for the correct implementation of the Contract by its Subcontractors or Third Parties.



## **18. Law governing the Services**

- 18.1. The Service Provider shall perform the Services in accordance with Applicable Laws and shall take all practicable steps to ensure that any Subcontractor, as well as the Personnel of the Service Provider and any Subcontractor, complies with Applicable Laws. The Procuring Entity shall notify the Service Provider in writing of relevant local customs, and the Service Provider shall, after such notification, respect such customs.

## **19. Conflict of interest or conflicting activities**

- 19.1. The Service Provider shall avoid situations that put its impartiality at risk. The remuneration of the Service Provider shall constitute the sole remuneration in connection with the Contract or the Services provided. In case of Subcontractors, the Service Provider shall ensure that none of the Subcontractor is in a situation of conflict of interest.

## **20. Confidentiality**

- 20.1. The Service Provider and any Subcontractor shall not, either during the term or within two (2) years after the expiration of the Contract, disclose any proprietary or confidential information relating to the Services, the Contract or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

## **21. Documents prepared by the Consultants to be the Property of the Procuring Entity**

- 21.1. All plans, drawings, specifications, designs, reports, other documents and software prepared by the Service Provider for the Procuring Entity under the execution of the Contract shall become and remain property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of the Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory. The Service Provider may retain a copy of such documents and software.

## **22. Equipment and Materials furnished by the Procuring Entity**

- 22.1. Equipment and materials made available to the Service Provider by the Procuring Entity, or purchased by the Service Provider with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of the Contract, the Service Provider shall make available to the Procuring Entity an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment and materials, the Service Provider, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

# **IV. SERVICE PROVIDER PERSONNEL AND SUBCONTRACTORS**

## **23. General**

- 23.1. The Service Provider shall employ and provide such qualified and experienced personnel and Subcontractors as are required to carry out the Services.

## **24. Project manager**

- 24.1. If required by the SCC, the Service Provider shall appoint a project manager responsible to ensure during the Service performance and the validity of the Contract the correct performance of the Services, an efficient communication with the Procuring Entity and a continuous monitoring of the fulfilment of GCC and SCC of the Contract.

# **V. OBLIGATIONS OF THE PROCURING ENTITY**

## **25. Assistance and exemptions**

- 25.1. Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to ensure that the Government of Kiribati shall:





- (a) provide the Service Provider, including any Subcontractor and their personnel, with work permits and any other document necessary to enable the Service Provider to perform the Services as well as with entry and exit visas, residence permits exchange permits and any other documents required for their staying in Kiribati;
- (b) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the personnel;
- (c) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services;
- (d) exempt the Service Provider, including any Subcontractors and their personnel, from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to Applicable Laws;
- (e) grant to the Service Provider, including any Subcontractor and their personnel, the privilege, pursuant to Applicable Laws, of bringing into Kiribati reasonable amounts of foreign currency for the purposes of the Services and/or for personal use; and
- (f) provide to the Service Provider any such other assistance as may be specified in the SCC.

## **26. Change in Applicable Laws**

- 26.1. If, after the date of the signature of the Contract, there is any change in Applicable Laws with respect to taxes and duties which increases or decreases the cost incurred by the Service Provider in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under the Contract shall be increased or decreased accordingly by agreement between the Parties.

## **27. Payments**

- 27.1. In consideration of the Services performed by the Service Provider under the Contract, the Procuring Entity shall make to the Service Provider such payments and in such manner as is provided by part VI of the GCC.
- 27.2. If advance payments are agreed by the Parties, the Service Provider shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract.
- 27.3. If an advance payment is agreed by the Procuring Entity, the payment shall be conditional to the receipt and acceptance by the Procuring Entity of a performance guarantee, unless specifically waived by the Procuring Entity.

# **VI. PAYMENTS TO THE SERVICE PROVIDER**

## **28. Remuneration and reimbursable expenditures**

- 28.1. The Service Provider's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Provision of Services and upon fulfilment of other obligations stipulated in the Contract.
- 28.2. Payments shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Service Provider.
- 28.3. All payments under the Contract shall be made to the accounts of the Service Provider specified in the SCC.

## **29. Currency of the Contract**

- 29.1. Unless otherwise agreed, in line with Clause 3 of the GCC, the payments to the Service Provider for the execution of the Services shall be made in Australian Dollars (AUS or AU\$), which is the official currency of Kiribati.

## **30. Mode of Billing and Payment**

- 30.1. Billings and payments in respect of the Services shall be made as follows:
- (a) If exceptionally agreed in line with Clause 27 of the GCC, the Procuring Entity shall pay to the Service Provider an advance payment in line with the provisions of Applicable Laws. The advance payment will be due after provision by the Service Provider to the Procuring Entity of



a bank guarantee by a bank acceptable to the Procuring Entity in an amount specified in the SCC and in the AUD currency;

- (b) The final payment under this Clause shall be made only after the final report and a final statement shall have been submitted by the Service Provider and approved as satisfactory by the Procuring Entity. The Services shall be deemed completed and finally accepted by the Procuring Entity and the final report and final statement shall be deemed approved by the Procuring Entity as satisfactory ninety (30) days after receipt of the final report and final statement by the Procuring Entity unless the Procuring Entity, within such ninety (30)-day period, gives written notice to the Service Provider specifying in detail the deficiencies in the Services, the final report or final statement. The Service Provider shall promptly make any necessary corrections, and upon completion of such corrections, the process shall be repeated. Any amount which the Procuring Entity has paid or authorised to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of the Contract shall be reimbursed by the Service Provider to the Procuring Entity within thirty (30) days after receipt by the Service Provider of notice.
- (c) All payments under the Contract shall be made to the accounts of the Service Provider specified in the SCC.

## **VII. FAIRNESS AND GOOD FAITH**

### **31. Good Faith**

- 31.1. The Parties undertake to act in good faith with respect to each other's rights under the Contract and to adopt all reasonable measures to ensure the realisation of the objectives of the Contract.

### **32. Operation of the Contract**

- 32.1. The Parties recognize that it is impractical in the Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that the Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of the Contract either Party believes that the Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute settlement in accordance with part VIII of the GCC of the Contract.

## **VIII. SETTLEMENT OF DISPUTES**

### **33. Amicable Settlement**

- 33.1. The Procuring Entity and the Service Provider shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

### **34. Dispute Settlement and competent Court**

- 34.1. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Service Provider may give notice to the other party of its intention to commence a court proceeding.
- 34.2. Any dispute arising between the Parties concerning the interpretation and/or execution of the Contract that the Parties fail to solve amicably, in accordance with Clause 33 of the GCC, shall be exclusively submitted to the competent court of Kiribati.
- 34.3. Notwithstanding any reference to the initiation of a court settlement, the Parties shall continue to perform their respective non disputed obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Service Provider any non-contested levy due the Service Provider.