



CONTRACT FOR EXECUTION OF WORKS

GENERAL CONTRACT CONDITIONS



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I. GENERAL PROVISIONS

1. Preliminary provisions

- 1.1. The present General Contract Conditions (GCC) 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 (SCC).
- 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*, the *Public Procurement Regulations 2020*, and any other applicable laws of Kiribati shall prevail.
- 1.3. The Contract constitutes the entire agreement between the Procuring Entity and the Contractor and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of the Contract.
- 1.4. Any rights and obligations under this Contract shall not be transferred to any third Party, without the prior written approval of the other Party.

2. Definitions

- 2.1 The terms provided in the GCC shall have the following meaning
 - (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 laws of the Republic of Kiribati.
 - (c) “Completion” means the fulfilment of the execution of Works by the Contractor 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 Contractor and the Procuring Entity that has as its object the obligation to execute Works.
 - (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 Contractor as specified in the Contract, subject to additions and adjustments or deductions, as may be made pursuant to the Contract.
 - (g) “Contractor” means any natural or legal person, which offers the execution of Works.
 - (h) “Day” means calendar day.
 - (i) "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder 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 hereunder. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
 - (j) “GCC” means the General Contract Conditions.
 - (k) “Party” means the Procuring Entity or the Contractor, as the case may be; and “Parties” means both of them.
 - (l) “Procuring Entity” means any governmental ministry, department, agency, organ or their unit, or any subdivision or multiplicity thereof, as designated by the Public Procurement Regulations, that engages in public procurement.
 - (m) “Project Site,” where applicable, means the place named in the SCC.
 - (n) “SCC” means the Specific Contract Conditions.



- (o) “Services” means all those services ancillary to the execution of Works, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Contractor covered under the Contract.
- (p) “Subcontractor” means any natural or legal person that is proposed by a Contractor to perform part of a Contract.
- (q) “Works” means the construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures, and related services.

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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 If oral instructions are given by the Procuring Entity, such instructions shall be confirmed in writing within 2 Days, to be valid.
- 6.3 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 laws of Kiribati, unless otherwise specified in the SCC.
- 7.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions as established by the legislation of Kiribati when:
 - (a) as a matter of law, the legislation prohibits commercial relations with that country; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the legislation of Kiribati prohibits any import of goods from that country or any payments to any country, person, or entity in that country.



8. Taxes and Duties

- 8.1 Unless otherwise specified in the SCC, the Contractor, including any Subcontractor and their personnel, shall pay such 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 on the date the parties signed the contract (the “Effective Date”).

10. Country of origin

- 10.1 All Goods and Services supplied under the Contract shall have their origin in the countries and territories eligible under Kiribati legislation, as may be further elaborated in the SCC.
- 10.2 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 10.3 The origin of Goods and Services is distinct from the nationality of the Contractor.

11. Standards

- 11.1 The Works executed under the Contract shall conform to the standards mentioned in the Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Works’ country of origin and standards required under Kiribati legislation. Such standards shall be the latest issued by the concerned institution.

12. Acceptance and Defects

- 12.1 The Contractor shall notify the Procuring Entity in advance of the expected date of completion.
- 12.2 If the inspection and/or testing confirms that the Works fully meet the Specifications, the Procuring Entity shall accept the Works by issuing a letter signed by the appropriate official certifying that the Works were evaluated and found to be delivered according to the terms of the Contract. Such acceptance (“Final Acceptance”) shall not relieve the Contractor of the guarantee obligations under Clause 12.6.
- 12.3 The Procuring Entity may reject the Execution of Works when they are evaluated to be inadequate or not conforming to the Specifications provided in Annex B. The Procuring Entity shall ask the Contractor to promptly either rectify or modify/improve the Works, as necessary, and at no cost to the Procuring Entity, to meet the required Specifications. The Contractor must notify the Procuring Entity in writing when it considers practical completion has been reached.
- 12.4 In case the Works do not satisfy the Specifications in spite of the Contractor’s continual remedying, the Procuring Entity shall, after mutual discussion, be entitled to terminate the Contract as per Clause 17 of the GCC. In this case, the Contractor shall refund the full amount prepaid for any rejected Work and shall indemnify the Procuring Entity against all losses, damages and any additional expenses that the Procuring Entity incurred to repair or replace the defective Works.
- 12.5 Unless otherwise agreed, the risk of loss and title to the Works is borne by the Contractor and shall pass to the Procuring Entity only upon the Final Acceptance.
- 12.6 Upon transfer of the ownership, in accordance with 12.5, the Procuring Entity shall have the right to a one year warranty period, during which the Contractor shall, at its own cost, remedy if and to the extent that the Works, section or a major item of the Works (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. This obligation continues until the defect is rectified or the incomplete Work is finalised and does not come to an end when the warranty period is over.
- 12.7 If the Contractor fails to correct a defect or finalise incomplete Work within the time nominated or fails to show a reasonable cause for the failure together with a timetable that is acceptable to the



Procuring Entity, the Procuring Entity may use another contractor to correct the problem at the cost of the Contractor.

13. Liquidated damages

- 13.1 If the Contractor fails to execute the Works on the Date or Dates, the Procuring Entity may deduct from the Contract Amount, liquidated damages equivalent to 1%% 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.
- 13.2 Liquidated damages shall be imposed without prejudice to other remedies under the Contract and under applicable laws. Once the maximum allowable deduction for liquidated damages provided above is reached, the Procuring Entity may consider terminating the Contract based on the grounds provided in Clause 17 of the GCC.

14. Expiration of the Contract

- 14.1 The Contract shall come to an end after such time period from the Effective Date as specified in the SCC.

15. Force majeure

- 15.1 The failure of a Party to fulfil any of its 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.
- 15.2 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 such 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.
- 15.3 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.
- 15.4 Not later than twenty (20) days after the Contractor, as the result of an event of Force Majeure, have become unable to perform a material portion of the Execution of Works, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

16. Suspension

- 16.1 The Procuring Entity may, by written notice of suspension to the Contractor, suspend all payments to the Contractor if the Contractor fails to perform any of its obligations under the Contract, including the carrying out of the Execution of Works.
- 16.2 , The suspension noteshall:
- (a) specify the nature of the failure, and
 - (b) request the Contractor to remedy such failure within a period not exceeding twenty (20) days after receipt by the Contractor of such notice of suspension.

17. Termination by the Procuring Entity

- 17.1 The Procuring Entity may terminate the Contract by providing the Contractor with written notice, which shall not be less than twenty (20) days, in the following cases.
- (a) if the Contractor fails to remedy a failure in the performance of its obligations, as specified in a notice of suspension pursuant to Clause 16 of the GCC 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 Contractor becomes (or, if the Contractor 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 Contractor fails to comply with any final decision reached as a result of amicable settlement proceedings pursuant to Clause 42 of the GCC;
- (d) if the Contractor 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 Contractor knows to be false;
- (e) if, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Execution of Works 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.

18. Termination by the Contractor

18.1 The Contractor may terminate the Contract by providing the Procuring Entity with written notice, which shall not be less than twenty (20) days, in the following cases.

- (a) if the Procuring Entity fails to pay any money due to the Contractor pursuant to the Contract and not subject to dispute pursuant to Clause 11 of the GCC within thirty (30) days after receiving written notice from the Contractor 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 thirty (30) days (or such longer period as the Contractor may have subsequently approved in writing) following the receipt by the Procuring Entity of the Contractor's notice specifying such breach;
- (c) if, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Execution of Works 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 amicable settlement pursuant to Clause 42 of the GCC.

18.2 Upon termination of the Contract pursuant to Clauses 17 or 18 of the GCC, or upon expiration of the Contract pursuant to Clause 14 of the GCC, all rights and obligations of the Parties shall cease, except:

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 22 of the GCC,
- (c) the Contractor's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 25 of the GCC, and
- (d) any right which a Party may have under Applicable Laws.

18.3 Upon termination of the Contract by notice of either Party to the other pursuant to Clauses 17 or 18 of the GCC, the Contractor shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Execution of Works to an end in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

18.4 With respect to documents prepared by the Contractor and equipment and materials furnished by the Procuring Entity, the Contractor shall proceed as provided, respectively, by Clauses 26 or 28 of the GCC.

18.5 Upon termination of the Contract pursuant to Clauses 17 or 18 of the GCC, the Procuring Entity shall pay the Contractor only for the executed Works that can be used by the Procuring Entity.

18.6 If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 17.1 of the GCC or in Clause 18 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 resolution pursuant to Clause 42 of the GCC, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.



III. OBLIGATIONS OF THE CONTRACTOR

19. General

- 19.1 The Contractor shall perform and supervise the Works and carry out its obligations in accordance with the Contract and 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, and maintain satisfactory health and safety for all engaged personnel, subcontractors and visitors to the Project Site.
- 19.2 The Contractor shall always act, in respect of any matter relating to the Contract or to the Execution of Works, 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.
- 19.3 The Contractor shall be responsible for the adequacy, stability and safety of all Project Site operations and of all methods of construction. The Contractor must examine the Project Site and its surroundings and must notify the Contract Supervisor in writing and seek instructions if the Contractor discovers a condition affecting the Project Site which the Contractor considers may result in it incurring loss, expense or damage or may affect its ability to bring the Work to practical completion by the due date. The Contractor must take all necessary steps to avoid removal, loss or damage.
- 19.4 The Contractor shall be liable for and indemnify the Procuring Entity against any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage to any property in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Work and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Work or any part of it.
- 19.5 The Contractor shall provide the Procuring Entity with a detailed program for the execution of the Works within 10 Days after the Effective Date of the Contract and, whenever required by the Procuring Entity, submit details of the arrangements and methods proposed for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to and approved by the Procuring Entity. The program shall include the dates of commencement and completion of the major stages of the Works and checkpoints on critical deliverables and shall be updated as relevant during the execution of the Works. The Contractor warrants that the number of working days it has allowed to complete the Work includes a reasonable allowance for delay due to weather conditions or the effect of weather conditions and other delays which it is reasonable to allow for.

20. Law governing the Execution of Works

- 20.1 The Contractor shall perform the Execution of Works in accordance with Applicable Laws and statutory requirements and shall take all practicable steps to ensure that any Subcontractor, as well as the Personnel of the Contractor and any Subcontractor, complies with Applicable Laws and statutory requirements.
- 20.2 The Procuring Entity shall notify the Contractor in writing of relevant local customs, and the Contractor shall, after such notification, respect such customs.

21. Conflict of interest or conflicting activities

- 21.1 The Contractor shall avoid situations that put its impartiality at risk. In case of Subcontractors, the Contractor shall ensure that no Subcontractor is in a situation of conflict of interest.

22. Confidentiality

- 22.1 The Contractor shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any of its provision, specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.



- 22.2 The Contractor shall not, without the Procuring Entity prior written consent, make use of any document or information enumerated in Clause 22.1 of the GCC except for purposes of performing the Contract.
- 22.3 Any document, other than the Contract itself, enumerated in Clause 22.1 of the GCC shall remain the property of the Procuring Entity and shall be returned to the Procuring Entity upon finalisation of the Contract if so required by the Procuring Entity.
- 22.4 The obligation of confidentiality shall be extended up to two (2) years after the expiration of the Contract.

23. Patent rights

- 23.1 The Contractor shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use or misuse of the Works or Goods or any of their parts that are integral part of the execution the Contract.

24. Insurance obligation

- 24.1 The Contractor shall purchase at its own cost but on terms and conditions approved by the Procuring Entity, an insurance against the risks and damages caused during the performance of the Contract and shall provide evidence to the Procuring Entity of the insurance contract conditions and payment. After any inspection required by the insurers in respect of a claim under the insurance has been completed the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged Project Site materials, remove or dispose of any debris and proceed with the carrying out and completion of the Work.

25. Accounting, inspection and auditing

- 25.1 The Contractor shall keep accurate and systematic accounts and records in respect of the Execution of Works, in accordance with the Kiribati legislation, and shall permit the Procuring Entity or its designated representative periodically, and up to one (1) year from the expiration or termination of the Contract, to inspect the accounts and records and to make copies of the relevant documentation as well as to have them audited by the Kiribati Audit Office.
- 25.2 The Procuring Entity shall notify the Contractor in writing, in a timely manner, of the identity of any representatives retained for these purposes.

26. Documents

- 26.1 The Specification and drawings shall be in the custody and care of the Contractor.
- 26.2 The Contractor shall retain the copyright and other intellectual property rights in its own documents. The Contractor's documents shall not, without the Contractor's consent, be used, copied or communicated to a third party by the Procuring Entity.
- 26.3 The Procuring Entity shall retain the copyright and other intellectual property rights in the Specification, the drawings and other of its own documents. The Contractor may, at its own cost, copy, use, and obtain communication of these documents for the purposes of the Contract, upon previous written authorization of the Procuring Entity.

27. Transport of Goods

- 27.1 Unless otherwise stated in the SCC:
- (a) the Contractor shall give the Procuring Entity not less than 21 (twenty-one) days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Project
 - (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
 - (c) the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall negotiate and pay all claims arising from their transport.



28. Equipment and Materials furnished by the Procuring Entity

- 28.1 Equipment and materials made available to the Contractor by the Procuring Entity or purchased by the Contractor with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly.
- 28.2 Upon termination or expiration of the Contract, the Contractor 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.
- 28.3 While in possession of such equipment and materials, the Contractor, 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. CONTRACTOR PERSONNEL AND SUBCONTRACTORS

29. General

- 29.1 The Contractor shall employ and provide such qualified and experienced personnel and Subcontractors as are required to carry out the Execution of Works.

30. Approval of Personnel

- 30.1 The Contractor shall submit to the Procuring Entity for review a list of personnel and subcontractors that it intends to employ for the execution of the Contract. If the Procuring Entity does not object in writing (stating the reasons for the objection) within twenty (20) days from the date of receipt of the list, the personnel and subcontractors shall be deemed to have been approved by the Procuring Entity.

31. Removal and/or replacement of personnel

- 31.1 Except as the Procuring Entity may otherwise agree, no changes shall be made in the personnel or subcontractors. If, for any reason beyond the reasonable control of the Contractor, it becomes necessary to replace any of the personnel, the Contractor shall forthwith provide as a replacement a person of equivalent or better qualifications.
- 31.2 If the Procuring Entity finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action, or has reasonable cause to be dissatisfied with their performance, the Contractor shall, at the Procuring Entity's written request specifying the reasons, provide as a replacement a person with acceptable qualifications and professional experience.
- 31.3 In case of replacement of any of the personnel of the Contractor, as per Clauses 31.1 and 31.2 of the GCC, the remuneration of the replacement personnel or Subcontractor employed by the Contractor shall be the sole responsibility of the Contractor and shall not affect the Contract Amount unless otherwise stated in the SCC.

32. Project manager

- 32.1 If required by the SCC, the Contractor shall appoint a project manager responsible to ensure during the correct performance of the Execution of Works, 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

33. Assistance and exemptions

- 33.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to ensure that the Government:
 - (a) provides the Contractor, including any Subcontractor and their personnel, with work permits and any other document necessary to enable the Contractor to perform the Execution of Works as well as with entry and exit visas, residence permits, exchange permits and any other documents required for their staying in Kiribati;
 - (b) facilitates prompt clearance through customs of any property required for the Execution of Works and of the personal effects of the personnel;



- (c) obtains necessary building permits and approvals, e.g. from concerned neighbouring property owners;
- (d) issues 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 Execution of Works;
- (e) exempts the Contractor, 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; and
- (f) grants to the Contractor, 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 Execution of Works and/or for personal use.

34. Execution of Works, Facilities and Property of the Procuring Entity

- 34.1 The Procuring Entity shall make available to the Contractor for the purposes of the Execution of Works and free of any charge, the Works, facilities and property described in the SCC, provided that if such Works, facilities and property shall not be made available to the Contractor as and when so specified, the Parties shall agree on
- (a) any time extension that it may be appropriate to grant to the Contractor for the performance of the Works;
 - (b) the manner in which the Contractor shall procure any such Works, facilities and property from other sources, and
 - (c) the additional payments, if any, to be made to the Contractor as a result thereof pursuant to Clause 37.1 of the GCC.

35. Payments

- 35.1 In consideration of the Execution of Works performed by the Contractor under the Contract, the Procuring Entity shall make to the Contractor such payments and in such manner as is provided by art VI of the GCC.
- 35.2 For the avoidance of misunderstanding, the Procuring Entity shall not be obliged to separately pay for any work of Subcontractors, i.e., all costs for such work shall be included in the Contract price.
- 35.3 If advance payments are exceptionally agreed by the Parties, the Contractor shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract.
- 35.4 If an advance payment is exceptionally 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 CONTRACTOR

36. Currency

- 36.1 Unless otherwise agreed, in line with Article 3 of the SCC, the payments to the Contractor for the execution of the Contract shall be made in Australian Dollars (AUS or AU\$), which is the official currency of Kiribati.

37. Prices

- 37.1 Prices charged by the Contractor for the Execution of Works under the Contract shall include everything reasonably required to complete the Works and shall not vary from the prices quoted by the Contractor in its Tender, with the exception of any price adjustments authorized in SCC or in the Procuring Entity's request for Tender validity extension, as the case may be.

38. Remuneration and reimbursable expenditures

- 38.1 The remuneration of the Contractor shall constitute the sole remuneration in connection with the Contract or the Execution of Works.



- 38.2 The Contractor's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Execution of Works and upon fulfilment of other obligations stipulated in the Contract.
- 38.3 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 Contractor.
- 38.4 All payments under the Contract shall be made to the accounts of the Contractor specified in the SCC.

39. Written Order

- 39.1 The Procuring Entity may at any time, by a written order given to the Contractor pursuant to Clause 6 of the GCC, make changes within the general scope of the Contract in any one or more of the following non-exhausting examples:
- (a) Drawings, designs, or specifications, where Works to be executed and Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
 - (b) The methodology or the program;
 - (c) The scope of the Works; and/or
 - (d) The Project Site.
- 39.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. If the change will result in an adjustment to the contract price or require an adjustment to the date for practical completion or both the Contractor must within 20 working days notify the Procuring Entity in writing.
- 39.3 The Procuring Entity shall within 5 working days instruct the Contractor whether or not to proceed and indicate whether the quotation is accepted or rejected. If the instruction to proceed includes acceptance if the quotation the Contract price shall be adjusted in accordance with the quotation.
- 39.4 If the instruction will not adjust the Contract price or require an adjustment to the date for practical completion the Contractor must carry out the instruction promptly.
- 39.5 The Contractor must maintain detailed records of any cost of carrying out the Amendment and notify the Procuring Entity when the Amended Work has been completed.

VII. FAIRNESS AND GOOD FAITH

40. Good Faith

- 40.1 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.

41. Operation of the Contract

- 41.1 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 GCC.

VIII. SETTLEMENT OF DISPUTES

42. Amicable Settlement

- 42.1 The Procuring Entity and the Contractor 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.



43. Dispute Settlement

- 43.1 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 Contractor may give notice to the other party of its intention to commence a court proceeding.
- 43.2 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 42 of the GCC, shall be exclusively submitted to the competent court of Kiribati.
- 43.3 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 Contractor any non-contested payment due.