



**CONTRACT FOR THE PROVISION OF CONSULTING
SERVICES BY INDIVIDUAL CONSULTANTS
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 Consultant and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of 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 Consulting Services by the Consultant in accordance with the terms and conditions set forth in the Contract.
 - (d) “Consultant” means any individual consultant that provides Consulting Services under the Contract.
 - (e) “Contract” means the agreement of economic interest concluded in writing between the Consultant and the Procuring Entity that has as its object the obligation to provide Consulting Services.
 - (f) “Contract Documents” means the documents listed in the Contract, including the GCC, the SCC and its annexes and any amendments as agreed upon between the Parties.
 - (g) “Contract Price” means the price payable to the Consultant as specified in the Contract, subject to additions and adjustments or deductions, as may be made pursuant to the Contract.
 - (h) “Day” means calendar day.
 - (i) “Delivery” means the transfer of the Consulting Services from the Consultant to the Procuring Entity in accordance with the terms and conditions set forth in the Contract.
 - (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 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). Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party 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.
 - (k) “GCC” means the General Contract Conditions.
 - (l) “Party” means the Procuring Entity or the Consultant, 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 Public Procurement Regulations, that engages in public procurement.
 - (n) “SCC” means the Specific Contract Conditions.



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 the Consultant or a duly authorized representative of the Consultant 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 Consultant 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 Consultant shall bear all possible costs of translation to the official Contract language and all risks of the accuracy of such translation.

5. Notice

- 5.1. 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.
- 5.2. A notice shall be effective when delivered to the other party or on the notice’s effective date.

6. Governing legislation

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

7. Taxes and Duties

- 7.1. Unless otherwise specified in the SCC, the Consultant shall pay taxes, duties, fees and other impositions as may be levied under Applicable Laws.

II. IMPLEMENTATION OF THE CONTRACT

8. Effectiveness of the Contract

- 8.1. The Contract shall be considered valid following the signature of the parties and shall come into effect on the date of the Procuring Entity’s notice to the Consultant instructing the Consultant to begin carrying out the Consulting Services (the “Effective Date”).

9. Acceptance

- 9.1. The Procuring Entity may reject Consulting Services when they are evaluated to be inadequate or not conforming to the Terms of Reference provided in Annex B. The Procuring Entity shall ask the Consultant to either rectify or modify/improve or replace the Consulting Services, as necessary, and at no cost to the Procuring Entity, to meet the required Terms of Reference. The Consultant must notify the Procuring Entity in writing when it considers practical completion has been reached.
- 9.2. In case the Consulting Services is inadequate or do not satisfy the Terms of Reference in spite of the Consultant’s continual remedying, the Procuring Entity shall, after mutual discussion, be entitled to terminate the Contract as per Clause 14 of the GCC. In this case, the Consultant shall refund the full amount prepaid for any rejected Consulting Services and shall indemnify the Procuring Entity against all losses, damages and any additional expenses that the Procuring Entity incurred to finalise the non-compliant Consulting Services.
- 9.3. Unless otherwise agreed, the ownership of the Consulting Services shall pass to the Procuring Entity upon the Final Acceptance.
- 9.4. Upon transfer of the ownership, in accordance with Clause 9.3, the Procuring Entity shall have the right to a one-year warranty period, during which the Consultant shall, at its own cost, remedy if and to the extent that the Consulting Services, or a major part of the Consulting Services (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 Consultant. This obligation continues until the defect is rectified or the incomplete Consulting Services are finalised and does not come to an end when the warranty period is over.

10. Liquidated damages

- 10.1. If the Consultant fails to provide the Consulting Services on the Delivery 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.
- 10.2. 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 12 of the GCC.

11. Expiration of the Contract

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

12. Force majeure

- 12.1. 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.
- 12.2. 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.
- 12.3. 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.
- 12.4. Not later than twenty (20) days after the Consultant, as the result of an event of Force Majeure, have become unable to perform a material portion of the Consulting Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

13. Suspension

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

14. Termination by the Procuring Entity

- 14.1. The Procuring Entity may terminate the Contract by providing the Consultant with written notice, which shall not be less than twenty (20) days, in the following cases:
- (a) if the Consultant fails to remedy a failure in the performance of its obligations, as specified in a notice of suspension pursuant to Clause 13 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 Consultant fails to comply with any final decision reached as a result of amicable settlement proceedings pursuant to Clause 29 of the GCC;
- (c) if the Consultant 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 Consultant knows to be false;
- (d) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Consulting Services for a period of not less than sixty (60) days; or
- (e) if the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.

15. Termination by the Consultant

15.1. The Consultant 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.

- (f) if the Procuring Entity fails to pay any money due to the Consultant pursuant to the Contract and not subject to dispute pursuant to Clause 29 of the GCC within twenty (20) days after receiving written notice from the Consultant that such payment is overdue;
- (g) 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 Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach;
- (h) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Consulting Services for a period of not less than sixty (60) days; or
- (i) if the Procuring Entity fails to comply with any final decision reached as a result of an amicable settlement resolution pursuant to Clause 29 of the GCC.

15.2. Upon termination of the Contract pursuant to Clauses 14 or 15 of the GCC, or upon expiration of the Contract pursuant to Clause 11 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 19 of the GCC,
- (c) any right which a Party may have under Applicable Laws.

15.3. Upon termination of the Contract by notice of either Party to the other pursuant to Clause 14 or 15 of the GCC, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Consulting 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.

15.4. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clause 20 of the GCC and Clause 21 of the GCC.

15.5. Upon termination of the Contract pursuant to Clause 14 or 15 of the GCC, the Procuring Entity shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause 24 of the GCC for Consulting Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursable expenditures pursuant to Clause 24 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 **Fel! Hittar inte referensköllä.** 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 Consultant and eligible dependents.

15.6. If either Party disputes whether an event specified in Clause **Fel! Hittar inte referensköllä.** of the GCC or in Clause **Fel! Hittar inte referensköllä.** 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 29 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 CONSULTANT

16. Standard of performance

- 16.1. The Consultant shall perform the Consulting 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.
- 16.2. The Consultant shall always act, in respect of any matter relating to the Contract or to the Consulting Services, as faithful advisers to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests.

17. Law governing the Consulting Services

- 17.1. The Consultant shall perform the Consulting Services in accordance with Applicable Laws and shall take all practicable steps to comply with Applicable Laws.
- 17.2. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

18. Conflict of interest or conflicting activities

- 18.1. The Consultant shall avoid situations that put its impartiality at risk.

19. Confidentiality

- 19.1. The Consultant 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 Consulting Services, the Contract or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.
- 19.2. The Consultant shall not, without the Procuring Entity prior written consent, make use of any document or information enumerated in Clause 20 of the GCC except for purposes of performing the Contract.
- 19.3. Any document, other than the Contract itself, enumerated in Clause 20 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.

20. Documents prepared by the Consultants to be the Property of the Procuring Entity

- 20.1. All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under the execution of the Contract shall become and remain property of the Procuring Entity, and the Consultant 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 Consultant may retain a copy of such documents and software.

21. Equipment and Materials furnished by the Procuring Entity

- 21.1. Equipment and materials made available to the Consultant by the Procuring Entity, or purchased by the Consultant with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly.
- 21.2. Upon termination or expiration of the Contract, the Consultant 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.
- 21.3. While in possession of such equipment and materials, the Consultant, 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. OBLIGATIONS OF THE PROCURING ENTITY

22. Assistance and exemptions

22.1. 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 Consultant with work permits and any other document necessary to enable the Consultant to perform the Consulting 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 Consulting 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 Consulting Services;
- (d) exempt the Consultant 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
- (e) grant to the Consultant the privilege, pursuant to Applicable Laws, of bringing into Kiribati reasonable amounts of foreign currency for the purposes of the Consulting Services and/or for personal use.

23. Payments

23.1. In consideration of the Consulting Services performed by the Consultant under the Contract, the Procuring Entity shall make to the Consultant such payments and in such manner as is provided by part V of the GCC.

23.2. If advance payments are exceptionally agreed by the Parties, the Consultant shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract.

V. PAYMENTS TO THE CONSULTANT

24. Remuneration and reimbursable expenditures

24.1. The remuneration of the Consultant shall constitute the sole remuneration in connection with the Contractor or the Consulting Services provided.

24.2. The Procuring Entity shall pay to the Consultant the remuneration as set forth in Clause **Fel! Hittar i nte referenskälla.** of the GCC, and the reimbursable expenditures as set forth in Clause **Fel! Hittar i nte referenskälla.** of the GCC. If specified in the SCC, the said remuneration shall be subject to price adjustment.

24.3. Remuneration for the Consultant shall be determined on the basis of time actually spent by the Consultant in the execution of the Consulting Services after the date determined in accordance with Clause 8 of the GCC and the SCC (or such other date as the Parties shall agree in writing) (including time for necessary travel via the most direct route) at the rates referred to, and subject to such additional provisions as are set forth, in the SCC.

24.4. The Procuring Entity shall pay to the Consultant any reimbursable expenditure actually and reasonably incurred by the Consultant in the performance of the Consulting Services.

25. Currency of the Contract

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

26. Mode of Billing and Payment

26.1. Billings and payments in respect of the Consulting Services shall be made as follows:

- (a) As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Consulting Services, the Consultant shall submit to the Procuring Entity,



in duplicate, itemised statements, accompanied by copies of receipted invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to Clause 24 of the GCC and Clause **Fel! Hittar inte referenskälla.** (b) of the GCC for such month. Each monthly statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenditures;

- (b) The Procuring Entity shall execute the payment of the Consultant's monthly statements within thirty (30) days after the receipt by the Procuring Entity of such statements with the necessary supporting documents. Only the parts of monthly statements that is not satisfactorily supported by adequate proving documentation may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorised to be incurred by the Consultant, the Procuring Entity may add or subtract the difference from any subsequent payments.
- (c) The final payment under this Clause shall be made only after the final report and a final statement shall have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Consulting 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 (90) days after receipt of the final report and final statement by the Procuring Entity unless the Procuring Entity, within such ninety (90)-day period, gives written notice to the Consultant specifying in detail the deficiencies in the Consulting Services, the final report or final statement. The Consultant 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 Consultant to the Procuring Entity within thirty (30) days after receipt by the Consultant of the notice. Any claim by the Procuring Entity for reimbursement must be made within twelve (12) months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with what above.
- (d) All payments under the Contract shall be made to the accounts of the Consultant specified in the SCC.

VI. FAIRNESS AND GOOD FAITH

27. Good Faith

- 27.1. 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.

28. Operation of the Contract

- 28.1. 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 no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to amicable settlement in accordance with part VII of GCC.

VII. SETTLEMENT OF DISPUTES

29. Amicable Settlement

- 29.1. The Procuring Entity and the Consultant 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.

30. Dispute Settlement and competent Court

- 30.1. 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 Consultant may give notice to the other party of its intention to commence a court proceeding.



- 30.2. 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 29 of the GCC, shall be exclusively submitted to the competent court of Kiribati.
- 30.3. 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 Consultant any non-contested levy due to the Consultant.