



Annex A: General Contract Conditions (GCC)

PART I. GENERAL PROVISIONS

1. Preliminary provisions

- 1.1. This 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 and the context 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 the 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* and any other applicable laws of Kiribati shall prevail.
- 1.3. The contract constitutes the entire agreement between the Procuring Entity and the Contractor. It supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made before the effective 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

In the contract, the following words and expressions shall have the meanings hereby assigned to them, subject to clause 1 of this GCC and/or except where the context otherwise requires:

- (a) “*Amendment*” means an agreed change or variation, in writing, of the contract or its parts after the effective date of the contract.
- (b) “*Applicable Laws*” refers to laws of the Republic of Kiribati that govern the Contract, which consists of Acts, Regulations, and any statutory requirements, codes, or bylaws stipulated under clause 7 of this GCC as the applicable laws.
- (c) “*Bill of Quantities*” means a statement issued to the Contractor for a lump sum contract or the lump sum part of a partly lump sum contract, partly schedule of rates contract, by the Procuring Entity stating itemized and/or estimated quantities of the execution of works to be done under the contract. This Bill of Quantities shall be listed in the Annexes and form part of the contract documents and shall be enforceable as an integral part of the contract.

Note: The Bill of Quantities may be issued at the tender or bidding stages of the Procurement (before the parties enter into this Contract) but becomes confirmed as issued to the Contractor when this Contract is entered into.

- (d) “*Completion*” means the fulfilment of the execution of works or the contract by the Contractor under the terms of the contract.
- (e) “*Contract Documents*” means the Annexes (which include the SCC and GCC) listed in the contract and/or the documents required from either Party either as part of the Annexes or separately, depending on the circumstances of the execution of works under the contract, and any amendments to such contract documents as agreed upon by the Parties.



(f) “*Contract Price*” means the price payable to the Contractor as specified in the contract, excluding any additions and adjustments or deductions, which may be required due to any amendments made under the contract.

(g) “*Contract Supervisor*” means the architect or engineer or other person stated in the SCC as the Contract Supervisor, or other person that may be from time to time after the effective date of the contract, appointed by the Procuring Entity to be the Contract Supervisor.

(h) “*Contractor*” means any natural or legal person who offers the execution of works and agrees to be a party to the contract.

(i) “*Construction Equipment*” or “*Equipment*” means all appliances and equipment on the site, including but not limited to scaffolding, temporary works, contractors, equipment, and vehicles (owned, rented or otherwise provided by either or both parties) etc..required for the execution of the works under the contract, but not for incorporation in the works.

(j) “*Day*” means twenty-four (24) consecutive hours, and in terms of the timeframes indicated in the contract to require compliance by either Party, it excludes the days prescribed or declared by the Government of Kiribati as the National Public Holiday.

(k) “*Day-work*” means work valued based on time spent by the workmen, materials used, plant employed, and other relevant costs.

(l) “*Design drawings*” means the design specified for the execution of works under the contract, agreed by the parties upon entering into the contract and any modification of such thereafter directed and notified to the Contractor by the Procuring Entity directly by the Authorised Person or through the Contract Supervisor or the use of which has been permitted or instructed by the Contract Supervisor in the duration of the contract, pursuant to terms of the contract. The design drawings shall be listed in the Annexes and form part of the contract documents and shall be enforceable as an integral part of the contract.

Note: The design drawings may be issued at the tender or bidding stages of the Procurement (before the parties enter into this Contract) but become confirmed as agreed design drawings to be complied with under the contract when this Contract is entered into.

(m) “*Execution of Works*” is the same as “*Works*”, which refers to the construction, repair, rehabilitation, demolition, restoration, maintenance of civil work structures or the project for which the contract is made, and includes any related services provided for or implied by the contract.

(n) “*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;

(i) any event which is caused by the negligence or intentional action of a Party or such Party's Subcontractors or agents or employees,

(ii) 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,



(iii) insufficient funds or failure to make any payment required under the contract.

(o) “*General Conditions*” or “*GCC*” means the General Contract Conditions, which shall be listed in the Annexes and form part of the contract documents and shall be enforceable as an integral part of the contract.

(p) “*Materials*” means any raw, manufactured or fabricated materials for the works, goods, machine, equipment, plant (other than the actual works), or thing required for use in the execution of works under the contract or incorporated in the works which the Contractor is permitted to bring on site.

(q) “*Month*” means a calendar month.

(r) “*Person*” includes a firm or body corporate or unincorporated as well as an individual.

(s) “*Practical Completion*” is the stage in the execution of the works under the contract when:

- (i) The execution of works is complete except for minor omissions and minor defects;
 - (1) which do not prevent the works from being reasonably capable of being used for their intended purpose; and
 - (2) in relation to which the Contract Supervisor determines that the Contractor has reasonable grounds for not promptly correcting them, and
 - (3) shall be repaired before the final acceptance of the works and final payment; and
 - (4) rectification of which will not prejudice the convenient use of the works.
- (ii) The tests that are required by the contract are to be carried out and passed before the works are handed over to the Procuring Entity and Contract Supervisor. They have been carried out and passed under the GCC.

(t) “*Procuring Entity*” means the Government of the Republic of Kiribati as represented by any of its ministry, department, agency, organ or their unit, or subdivision or multiplicity thereof, as designated by the *Public Procurement Act 2019* and the *Public Procurement Regulations 2020*, and agreed to be a party to the contract.

Note: State Owned Enterprises (SOEs) or Statutory Bodies are also referred to as “*Procuring Entities*” if funding of the Works that they contract for with the Contractor is sourced from Public Funds under the Procurement Act.

(u) “*Project Site*” or “*Site*”, where applicable, means the land(s) or place(s) made or to be made available by the Procuring Entity for the contract. The specifications or details of the Project site shall be stated in the SCC, Annexes or other contract documents made or required under the contract.

(v) “*Services*” means all those services ancillary to the works, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other obligations of the Contractor stated or required under the contract.

(w) “*Specification*” means the specification of the works agreed by the parties upon entering into the contract and any modifications of such specification thereafter directed or permitted by the Contract Supervisor under the contract. The specification shall be listed in the Annexes and form part of the contract documents and shall be enforceable as an integral part of the contract.



Note: The Specification may be issued at the tender or bidding stages of the Procurement (before the parties enter into this Contract) but becomes confirmed as an agreed specification to be complied with under the contract when this Contract is entered into.

(x) "*Specific Conditions*" or the "SCC" means the Specific Contract Conditions which shall form part of the contract documents and be enforceable as an integral part of the contract.

(y) "*Subcontractor*" means any person engaged by the Contractor to execute a part of the works under the contract on behalf of the Contractor, where and if permitted in the contract.

(z) "*Week*" refers to seven consecutive days. The counting will be from the first day to the last day, unless there is a National Public Holiday as defined in subclause (j). In such a case, a deduction will be made for the day(s) prescribed or declared by the Government of Kiribati as a National Public Holiday.

3. Effect of Amendments and Severance

- 3.1 No contract amendment, change or variation shall be valid unless it is in writing endorsed with a signature, is dated, expressly refers to the contract, and is approved by the Contact Person and Authorised Person of the Procuring Entity and the Contractor stated in the SCC.
- 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, contract documents, any correspondence, and any other documents relating to the contract exchanged by the Procuring Entity and the Contractor shall be written in English.
- 4.2 Supporting documents and printed literature that are part of the contract may be in a language that is not English, provided that an accurate translation of such in English is provided and submitted by the party who has the obligation to produce such documents and literature.
- 4.3 The party requesting a translation to another language of that party's convenience or who corresponds or produces documents relating to the contract in a language that is not English that consequently need to be translated into English; shall bear all costs of the translation and all risks of the accuracy of such translation.

5. Joint Venture, Consortium or Association

- 5.1 If the Contractor is a joint venture, consortium, or association, all of the parties of such joint venture, consortium, or association shall be jointly and severally liable to the Procuring Entity for the performance of the Contractor's obligations under the terms of the contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association.
- 5.2 The composition or the constitution of the joint venture, consortium, or association shall be provided to the Procuring Entity before the effective date of the contract and shall not be altered during the contract without the prior consent of the Procuring Entity.



6 Notice

- 6.1 Any notice given by one party to the other under the contract shall be in writing and addressed to the contact and authorised person of the other party stated in the SCC. Subject to clause 4 of this GCC, “*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 electronically.
- 6.2 If verbal instructions are given by the Procuring Entity directly by the Contact and Authorised Person or through the Contract Supervisor, they must be confirmed in writing and endorsed with a signature of such person, within 2 days to be valid.
- 6.3 The written and signed notice shall be effective when delivered to the other party or on the notice’s effective date, whatever the case may be.

7 Applicable Laws Governing the Contract

- 7.1 The contract shall be governed by and interpreted under the applicable laws of Kiribati including, but not limited to, the *Building Act 2024*, *Employment and Industrial Relations Code 2015*, *Environment Act 2021*, *Foreshore and Land Reclamation Ordinance Cap 35*, *Income Tax Act 2023*, *Insurance Ordinance Cap 45A*, *Procurement Act 2019*, *Value Added Tax Act 2013* and *Workmen’s Compensation Ordinance Cap 102* and any relevant Regulations, and any applicable subsequent and/or consequential amendments to these Acts or Regulations.
- 7.2 The Contractor shall perform the execution of works or the contract under the applicable laws and shall take all practicable steps to ensure that its Subcontractor and their personnel comply with the applicable laws and statutory requirements.

8. Taxes and Duties

Unless otherwise specified in the SCC, the Contractor, including its Subcontractor and their personnel, shall pay taxes, duties, fees, and other impositions as may be levied under the applicable laws of Kiribati.

9. Contract Price and Remuneration

- 9.1 The Contractor's remuneration shall constitute the sole remuneration in connection with the contract or the execution of works and is fixed as the contract price and payable in line with the SCC.
- 9.2 Unless otherwise agreed, in line with the SCC, the payments to the Contractor for the execution of the contract shall be made in Australian Dollars (AUD or AU\$), which is the official currency of Kiribati.
- 9.3 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.
- 9.4 The Procuring Entity shall make payments promptly but no later than thirty (30) days after the Contractor submits an invoice or claim.
- 9.5 All payments under the contract shall be made to the Contractor's bank accounts stated in the SCC.

PART II. OBLIGATIONS OF THE CONTRACTOR



10. General Obligations

- 10.1 The Contractor shall always act as a faithful advisor to the Procuring Entity regarding any matter relating to the contract and shall, at all material times during the execution or duration of the contract, be responsible for the correct implementation of the contract and performance of its obligations under it by itself, its Subcontractors, and their personnel.
- 10.2 The Contractor shall perform its obligations and supervise the performance of its obligations by its Subcontractors or their personnel under the contract with all due diligence and efficiency, in accordance with generally accepted professional conduct, etiquette, techniques, and practices.
- 10.3 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 carrying out of the works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor, its Subcontractor, their personnel or any person employed or engaged by the Contractor on or in connection with the works or any part of it.

11. The Contract Supervisor

- 11.1 The Procuring Entity shall appoint and state in the SCC, a Contract Supervisor who, subject to the direction and/or approval made by the Procuring Entity through the Authorised Person stated in the SCC, to be responsible for ensuring the correct performance of the works and fulfilment of the GCC and the SCC of the contract.
- 11.2 The Procuring Entity may from time to time after the effective date of the contract, appoint any other person to substitute the Contract Supervisor initially stated in the SCC and notified the Contractor in writing of such new appointed person.

12. Supplying and Transportation of Materials

12.1 Supply of Materials

Unless otherwise stated in the SCC:

- (a) The Contractor shall supply the materials required for the execution of works as stipulated under the specifications stated in the contract or as instructed by the Procuring Entity directly or through the Contract Supervisor.
- (b) If the materials are to be imported from outside Kiribati, the Contractor shall ensure that they are properly packed to prevent damage or deterioration during transit to their final destination and delivered to the project site within the delivery dates stipulated under the contract.
- (c) Subject to clause 29 of the GCC, upon reaching the project site, the materials supplied, whether domestically or from outside Kiribati, shall not be readily accepted until they have been inspected and confirmed of their compliance with the specification, standard and quality under the contract, and accepted by the Procuring Entity directly or through the Contract Supervisor under the terms of the contract.

12.2 Transportation of Materials

Unless otherwise stated in the SCC:



- (a) The Contractor shall be responsible for loading, transporting, receiving, unloading, storing and protecting all materials required for the works, and
- (b) shall give the Procuring Entity not less than 21 (twenty-one) days' notice of the date on which any materials for use in the execution of the works will be transported and delivered to the project site; and
- (c) 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 the materials and shall negotiate and pay all claims arising from the transportation of the materials.

13. Construction Equipment furnished by the Procuring Entity.

13.1 The Procuring Entity may furnish all or some of the construction equipment to the Contractor for use in the works.

- (a) "*Furnishing by the Procuring Entity*" means that the equipment may be borrowed free of charge by the Contractor, hired by or purchased by the Contractor with funds (not included in the contract price) provided by the Procuring Entity. The arrangement for this furnishing and the equipment to be furnished by the Procuring Entity shall be specified in Annex I of the SCC.
- (b) Any equipment furnished by the Procuring Entity under this clause shall be the property of the Procuring Entity and shall be marked accordingly by the Contractor.

13.2 Upon termination or expiration of the contract, the Contractor shall:

- (a) make an inventory of the equipment furnished by the Procuring Entity under this clause and return the materials to the Procuring Entity, and
- (b) if disposal of such materials is required, dispose of such materials under the instructions issued directly by the Procuring Entity or issued by the Contract Supervisor.

13.3 Compensation for loss or damages to the equipment furnished by the Procuring Entity to the Contractor shall be reimbursed to an amount equal to their full replacement value in line with clause 18 of this GCC, unless otherwise instructed in writing by the Procuring Entity.

14. The Execution of Works

14.1 The Contractor shall perform and supervise the execution of the works by its Subcontractors or their personnel by applying, employing and observing sound management practices and appropriate advanced technology and safe and effective equipment, machinery, materials and methods, as well as maintain satisfactory health and safety for all engaged subcontractors, personnel and visitors to the Project Site.

14.2 (a) The Contractor shall be responsible for taking all necessary steps to ensure the adequacy, stability and safety of all site operations and all construction methods, including the safety of the site and its surroundings, and

(b) promptly notify the Contract Supervisor in writing and seek instructions if it discovers a condition affecting the site which it considers may result in it incurring loss, expense or damage or may affect its ability to bring the works to practical completion by the due date, and



(c) avoid removal, loss or damage, to the equipment, machinery or materials on the site, including avoiding damages to properties within the vicinity of the site.

14.3 (a) The Contractor shall provide the Procuring Entity with a work schedule for the execution of the works within 10 days after the '*Effective Date*' of the contract as defined under clause 27 of the GCC, and whenever required by the Procuring Entity, submit details of the arrangements and methods proposed for the execution of the works.

(b) The work schedule shall become final and applicable to the works upon acceptance and approval of the Procuring Entity. It shall be stipulated under Annex E of the SCC ('*The Work Schedule*') and become integral part of the contract. The work schedule shall not be altered without notice to and approval of the Procuring Entity issued directly or through the Contract Supervisor.

(c) The work schedule shall include the commencement and completion dates of the work milestones stipulated under Annex F of the SCC ('*The Construction Work Milestones*') and may be updated as required upon the approval of the Procuring Entity directly or through the Contract Supervisor during the execution of the works.

(d) The proposal to update the construction work milestones may be made in writing by the Contractor or the Procuring Entity but, subject to clause 36 of the GCC, shall be communicated and approved in writing before it becomes valid and enforceable.

(e) The Contractor warrants that the number of working days and/or the arrangements and methods for the execution of work stipulated in the work schedule (Annex E of the SCC) or construction work milestones (Annex F of the SCC), are guaranteed to complete the works includes a reasonable allowance for delays due to weather conditions or their effects, as well as other delays that are reasonable to allow for.

15. Conflict of interest or conflicting activities

The Contractor shall avoid situations that put its impartiality at risk and conflict with its rights and obligations, as well as those of its Subcontractors or personnel, and the rights and obligations of the Procuring Entity under the contract.

16. Confidentiality

16.1 (a) The Contractor shall not, without the Procuring Entity's prior written consent, disclose the contract, or any of its provision, design drawings, plan, 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.

(b) Disclosure to any such employed person under clause 16.1(a) above, shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance of the contract.

16.2 The Contractor shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in clause 16.1 above, except for purposes of performing the contract.

16.3 Subject to clause 20 of this GCC, any document, other than the contract itself, enumerated in clause 16.1 above, 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.

16.4 The obligation of confidentiality shall be extended up to three (3) years after the expiration or termination of the contract.

17. Patent rights

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 materials that are an integral part of the execution of the contract.

18. Insurance obligation

18.1 The Contractor shall, throughout the execution of the works and the duration of the contract, have the financial capacity for protection and/or reimbursement against losses resulting from accidents, injury, or property damage.

18.2 (a) The Contractor's financial capacity stated in clause 18.1 above can be in the form of a valid insurance policy purchased by the Contractor at its own cost that sufficiently covers the execution of works and the obligations of the Contractor, its Subcontractors and personnel. A Certificate of Insurance or any documents proving the insurance coverage must be provided by the Contractor and stated in Annex G of the SCC.

(b) After any inspection required by the insurers in respect of a claim under the insurance stated in clause 18.2(a) above, 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 works.

18.3 (a) Alternatively, the Contractor's financial capacity stated in clause 18.1 can be in the form of liquid assets owned by the Contractor, but only if the Procuring Entity accepts after being satisfied that the Contractor has and owns the assets and such assets can be attached as reimbursement against any losses or damages arising from the execution of works and the performance of the Contractor's obligation under the contract. In this case, the Contractor can provide a list of its assets and declare that it is ready to convey such assets as reimbursement for any losses and damages that may arise throughout the execution and duration of the contract.

(b) The list of assets and the declaration must be provided in Annex G of the SCC.

19. Accounting, inspection and auditing

19.1 The Contractor shall keep accurate and systematic accounts and records in respect of the execution of works and shall permit the Procuring Entity or its designated representative periodically, and up to two (2) years 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 statutory authority required under the applicable laws of Kiribati, to conduct auditing for the Procurement Entity.

19.2 For clause 19.1 above, the Procuring Entity shall notify the Contractor in writing, on time, of the identity of the designated representatives and facilitate any necessary arrangement with the statutory authority required to conduct auditing for the Procuring Entity.



20. Right to the Design Drawings and other Contract Documents

20.1 (a) If the design drawings are developed and produced for the contract by the Contractor, the Contractor shall retain the copyright and other intellectual property rights over such design drawings and any other documents produced or developed from such design drawings.

(b) For clause 20.1(a) above, the design drawings and documents shall not, without the Contractor's consent, be used, copied or communicated to a third party by the Procuring Entity.

20.2 (a) If the design drawings are developed and made for the contract by the Procuring Entity, the Procuring Entity shall retain the copyright and intellectual property rights over such design drawings and any other documents produced or developed from such design drawings.

(b) For clause 20.2(a) above, the design drawings and documents shall not, without the Procuring Entity's consent, be used, copied or communicated to a third party by the Contractor.

20.3 (a) Whether developed or produced by the Contractor or Procuring Entity under clauses 20.1 or 20.2 above, the design drawings and any other documents produced or developed from such design drawings shall be in duplicate copies, kept in the custody of the Parties for the duration of the contract.

(b) The Contractor may, at its own cost, copy, use, and obtain communication of these documents for the contract, upon written authorisation of the Procuring Entity.

PART III. OBLIGATIONS OF THE PROCURING ENTITY

21. Assistance to the Contractor

Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to assist the Contractor in:

- (a) facilitating prompt clearance through customs of any materials or equipment where applicable, procured from outside Kiribati as required for the execution of the works, and
- (b) liaising with other Government departments, authorities, entities, or stakeholders as required to obtain and secure clearance or instructions necessary for the prompt and effective implementation of the works and the contract as a whole.

22. Payments

22.1 The Procuring Entity shall pay the Contractor under the terms of the contract a total amount of (*the 'Contract Price'*) specified in the SCC.

22.2 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 stated in the SCC and clause 9 of the GCC.

22.3 If the Parties exceptionally agree on advance payments, the Contractor shall request the advance payment by submitting an original invoice for the agreed amount upon signing the contract.



22.4 If the Procuring Entity exceptionally agrees to an advance payment, the payment shall be conditional on the receipt and acceptance by the Procuring Entity of a performance guarantee, unless specifically waived by the Procuring Entity.

PART IV. CONTRACTOR PERSONNEL AND SUBCONTRACTORS

23. The Subcontractor

23.1 The Contractor shall employ and provide qualified and experienced personnel and, as it may require, subcontractors to carry out the execution of works.

23.2 The Contractor shall submit to the Procuring Entity for approval the name of its subcontractor.

(a) If the Procuring Entity does not issue any objection in writing to the Contractor's subcontractor within twenty (20) days after the date of receipt of the name from the Contractor, the subcontractors shall be deemed to have been approved by the Procuring Entity.

(b) If the Procuring Entity objects to the Contractor's subcontractor, the Procuring Entity shall issue its objections stating its reasons for objection, in writing, within twenty (20) days after the date of the name from the Contractor.

23.3 The remuneration of the subcontractor employed by the Contractor shall be the sole responsibility of the Contractor and shall not affect the contract price.

24. List of the Contractor's and Subcontractor's Personnel

The Contractor shall submit to the Procuring Entity for approval a list of personnel, which shall be stated in Annex of the SCC, that it intends to employ, or its subcontractors intend to employ, for the execution of the works.

(a) If the Procuring Entity does not issue any objection in writing to the list of the Contractor's or subcontractor's personnel within twenty (20) days after the date of receipt of the list of personnel from the Contractor, it shall be deemed to have been approved by the Procuring Entity.

(b) If the Procuring Entity objects to the list of Contractor's or subcontractor's personnel, whether all or anyone listed as personnel, the Procuring Entity shall issue its objections stating its reasons for objection, in writing, within twenty (20) days after the date of receipt of the list of personnel from the Contractor.

25. Removal and/or replacement of Subcontractors or Personnel

25.1 Except as the Procuring Entity may otherwise agree, the Contractor shall not change its subcontractors and personnel.

25.2 If, for any reason beyond the reasonable control of the Contractor, it becomes necessary to replace its subcontractor or any personnel, the Contractor shall issue a replacement request to the Procuring Entity in writing and provide the name of a replacement subcontractors or list of replacement personnel along with their qualifications forthwith, stating the reasons for replacement.

25.3 If the Procuring Entity or Contract Supervisor, finds that the Contractor's subcontractor or any of the Contractor's or its subcontractor's personnel has committed serious misconduct or has been charged with having committed a criminal action, or has reasonable cause to be dissatisfied with the performance of their obligations under the contract, the Procuring Entity shall issue a replacement



request to the Contractor in writing and stating the reasons for replacement. The Contractor shall then issue a replacement subcontractor and/or a list of replacement personnel, along with their qualifications, to the Procuring Entity.

25.4 In case of replacement of the subcontractor or any of the personnel of the Contractor and/or its subcontractor, as per clauses 25.2 and 25.3 above, the remuneration of the replacement subcontractor and/or personnel shall be the sole responsibility of the Contractor and shall not affect the contract price.

26. The Project Manager

26.1 The Contractor shall appoint a Project Manager responsible for ensuring the correct performance of the works, efficient communication with the Procuring Entity, and continuous monitoring of the fulfilment of the Contractor's obligations under the contract.

26.2 The person appointed as project manager under clause 26.1 above shall be indicated by the Contractor in Annex J of the SCC, along with the contact details of such person if it is different from the contract details of the Contractor stated in the SCC.

PART V. IMPLEMENTATION OF THE CONTRACT

27. Effectiveness of the Contract

27.1 The contract shall be considered valid and shall come into effect on the date the parties signed the contract (*the "Effective Date"*).

27.2 In line with clause 14 and this clause 27 of this GCC, the Contractor warrants that the number of working days it has been allowed under the work schedule stipulated in Annex E of the SCC or the final construction work milestone stipulated in Annex F of the SCC; includes reasonable allowance for delay due to weather conditions or the effect of weather conditions and other delays which it is reasonable.

28. Standards

The works executed under the contract shall conform to the standards set out in the design drawings stipulated under Annex B of the SCC, and when no applicable standard is specified, to the authoritative standards required under the applicable laws. Such standards shall be the latest issued by the concerned authority and as prescribed under the applicable laws.

29. Acceptance and Defects

29.1 The Contractor shall notify the Procuring Entity in advance of the expected date of completion if the works cannot be completed under the work schedule stipulated in the Annex of the SCC.

29.2 If the inspection and/or testing confirms that the works fully meet the design drawings, the Procuring Entity shall accept the works by issuing a letter signed by the authorised person stated in the SCC, 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 guaranteed obligations under the contract.



29.3 The Procuring Entity may reject the execution of works when they are evaluated to be inadequate or not conforming to the design drawings provided in Annex B of the SCC or the annexes of the contract. In this case;

- (a) 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 design drawings, and
- (b) after rectifying, modifying or improving the works as required, the Contractor shall then notify the Procuring Entity in writing when it considers practical completion of the works has been reached.

29.4 In case the works do not satisfy the design drawings despite the Contractor's continual remedying the works, the Procuring Entity shall, after mutual discussion, be entitled to terminate the contract as per clause 34 of this 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 incurred by the Procuring Entity to repair or replace the defective work.

29.5 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 made under clause 29.2 of this GCC.

29.6 Upon transfer of the ownership, under clause 29.5 of this GCC, 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 because of a defect or because 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.

29.7 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.

30. Liquidated damages

30.1 If the Contractor fails to execute the works under the work schedule or the delivery date stated in Annex E and/or the work milestone stated in Annex F of the SCC, the Procuring Entity may deduct from the contract price liquidated damages equivalent to 1% of the contract price 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 price.

30.2 Liquidated damages shall be imposed without prejudice to other remedies under the contract and under the applicable laws. Once the maximum allowable deduction for liquidated damages provided under clause 30.1 above, is reached, the Procuring Entity may consider terminating the contract based on the grounds provided in clause 34 of the GCC.

31. Expiration of the Contract

The Contract shall come to an end as specified in the SCC.



32. Force majeure

32.1 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.

32.2 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.

32.3 Any period within which a Party shall, under 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.

32.4 Not later than twenty (20) days after the Contractor, as the result of an event of Force Majeure, has become unable to perform a material portion of the execution of works, the Parties shall consult with each other to agree on appropriate measures to be taken in the circumstances.

33. Suspension

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, provided that such notice of suspension shall:

- (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.

34. Termination by the Procuring Entity

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 under clause 33 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 under clause 39 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.

35. Termination by the Contractor

35.1 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 under the contract in line with the SCC and clauses 9 and 22 of this 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 under 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 under clause 39 of the GCC.

35.2 Upon termination of the Contract under clauses 34 or 35 of the GCC, or upon expiration of the Contract under clause 31 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 16 of this GCC,
- (c) the Contractor's obligation to permit inspection, copying and auditing of its accounts and records set forth in clause 19 of this GCC, and
- (d) any right which a Party may have under Applicable Laws.

35.3 Upon termination of the contract by notice of either Party to the other under clauses 34 or 35 of this 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.

35.4 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 13, 16, 17 and 20 of the GCC.

35.5 Upon termination of the Contract under clauses 34 or 35 of the GCC, the Procuring Entity shall pay the Contractor only for the works that can be used by the Procuring Entity.



35.6 If either Party disputes whether an event specified in clauses 34 or 35 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 under clause 39 of the GCC, and the contract shall not be terminated on account of such event except under the terms of any resulting arbitral award.

36. Written Order

36.1 The Procuring Entity may at any time, by a written order in line with clause 6 of this GCC, give to the Contractor a written order to make changes within the general scope of the contract in any one or more of the following non-exhausting examples:

- (a) The Specifications of the materials stipulated in Annex A of the SCC supplied by the Contractor in line with clause 12 of this GCC,
- (b) The design drawings of the works stipulated in Annex B of the SCC, whether produced by the Procuring Entity or the Contractor in line with clause 20 of this GCC,
- (c) The work schedule stipulated in Annex E of the SCC;
- (d) The construction work milestones stipulated in Annex F of the SCC;
- (e) The Project Site stipulated in Annex H of the SCC.
- (f) The List of Equipment furnished by the Procuring Entity stipulated in Annex I;
- (g) The List of the Contractor's Personnel, the Project Manager(s), Subcontractors and others stipulated in Annex J.

36.2 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,

- (a) any time extension that it may be appropriate to grant to the Contractor for the performance of the works,
- (b) how 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.

36.3 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 of the quotation, the contract price shall be adjusted accordingly under the quotation.

36.4 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.

36.5 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.

PART VI. FAIRNESS AND GOOD FAITH

37. Good Faith



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.

38. Operation of the Contract

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 under Part VII of GCC.

PART VII. SETTLEMENT OF DISPUTES

39. Amicable Settlement

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

40. Arbitration Proceeding

40.1 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by mutual consultation, then either the Procuring Entity or the Contractor may notify the other party of its intention to address the dispute through arbitration.

40.2 When the parties agree to settle the dispute through arbitration, they shall make an arbitration agreement in writing and proceed with arbitration under the *Arbitration Act 1990*.

41. Court Proceeding

41.1 If, after the parties fail to resolve their dispute or different through arbitration under clause 40 of this GCC, then either the Procuring Entity or the Contractor may notify the other party of its intention to commence a court proceeding.

41.2 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.