

Section-7

General Conditions of Contract (GCC)

Contents

I. General Conditions of Contract	4
A. GENERAL PROVISIONS.....	4
1. Definitions	4
2. Relationship between the Parties	5
3. Law Governing Contract	5
4. Language	5
5. Headings	5
6. Communications.....	5
7. Location.....	6
8. Authority of Member in Charge	6
9. Authorized Representatives	6
10. Corrupt and Fraudulent Practices	6
B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT	6
11. Effectiveness of Contract	6
12. Termination of Contract for Failure to Become Effective	6
13. Commencement of Services	7
14. Expiration of Contract	7
15. Entire Agreement.....	7
16. Modifications or Variations.....	7
17. Force Majeure	7
18. Suspension	8
19. Termination.....	9
C. OBLIGATIONS OF THE CONSULTANT	11
20. General.....	11
21. Conflict of Interests.....	11
22. Confidentiality	12
23. Liability of the Consultant.....	12
24. Insurance to be Taken out by the Consultant	13
25. Accounting, Inspection and Auditing.....	13
26. Reporting Obligations	13
27. Proprietary Rights of the Employer in Reports and Records.....	13
28. Equipment, Vehicles and Materials.....	14

D. CONSULTANT’S EXPERTS AND SUB-CONSULTANTS	14
29. Description and Obligations of Key Experts	14
30. Replacement of Key Experts	15
31. Approval of Additional Key Experts.....	15
32. Removal of Experts or Sub-Consultants.....	15
33. Replacement/ Removal of Experts – Impact on Payments.....	16
34. Working Hours, Overtime, Leave, etc.	16
E. OBLIGATIONS OF THE EMPLOYER	16
35. Assistance and Exemptions	16
36. Access to Project Site.....	17
37. Change in the Applicable Law Related to Taxes and Duties	17
38. Services, Facilities and Property of the Employer.....	17
39. Counterpart Personnel	18
40. Payment Obligation.....	18
F. PAYMENTS TO THE CONSULTANT	18
41. Ceiling Amount	18
42. Remuneration and Other Expenses, Provisional Sums and Contingency.....	18
43. Taxes and Duties	19
44. Currency of Payment.....	19
45. Mode of Billing and Payment	19
46. Interest on Delayed Payments.....	20
G. FAIRNESS AND GOOD FAITH	20
47. Good Faith.....	20
H. SETTLEMENT OF DISPUTES	21
48. Amicable Settlement.....	21
49. Dispute Resolution.....	21
I. ELIGIBILITY	21
50. Eligibility	21

I. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

- (a) Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (b) "Project" means the project/ work named in Special Conditions of Contract (**SCC**).
- (c) "Applicable Law" means the laws and any other instruments having the force of law in the Employer's country, or in such other country as may be specified in the **SCC**, as they may be issued and in force from time to time.
- (d) **Deleted.**
- (e) **Deleted.**
- (f) "Employer" means National Capital Region Transport Corporation Limited (NCRTC) that signs the Contract for the Services with the Selected Consultant and which expression shall also include their legal successors and permitted assigns.
- (g) A "Consultant" is a legally established professional consulting firm or entity selected by the Employer to provide the Services under the signed Contract.
- (h) A "Contract" means the legally binding written agreement signed between the Employer and the Consultant and which includes all the attached documents listed in the Special Conditions (**SCC**). The documents forming the Contract are to be taken as mutually explanatory of one another. The priority of documents shall be as stated in **SCC**.
- (i) A "Day" is a working day unless indicated otherwise.
- (j) "Effective Date" refers to the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- (k) "Experts" are collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-Consultant or Joint Venture (JV) member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- (l) "Foreign Currency" is any currency other than the currency of the Employer's country.
- (m) "GCC" refers to these General Conditions of Contract.
- (n) "Government" refers to the government of the Employer's country.
- (o) "Joint Venture (JV)/ Consortium" is an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the

JV, and where the members of the JV are jointly and severally liable to the Employer for the performance of the Contract.

- (p) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract.
- (q) "Local Currency" is the currency of the Employer's country.
- (r) "Non-Key Expert(s)" is an individual professional provided by the Consultant or its Sub-Consultant to perform the Services or any part thereof under the Contract.
- (s) "Party" refers to the Employer or the Consultant, as the case may be, and "Parties" means both of them.
- (t) The Special Conditions of Contract (SCC) can amend or supplement but not overwrite the GCC.
- (u) "Services" refers to the work to be performed by the Consultant pursuant to this Contract, as described in **SCC** hereto.
- (v) "Sub-Consultant" is an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (w) "Third Party" means any person or entity other than the Government, the Employer, the Consultant or a Sub-Consultant.
- (x) The singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.

2. Relationship between the Parties

2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Employer and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

3. Law Governing Contract

3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law as specified in the **SCC**.

4. Language

4.1. This Contract has been executed in the language specified in the **SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

5.1. The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is

addressed, or when sent to such Party at the address specified in the **SCC**.

6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.

7. Location

7.1. The Services shall be performed at such locations as are specified in **SCC** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Employer may approve.

8. Authority of Member in Charge

8.1. In case the Consultant is a JV, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations toward the Employer under this Contract, including without limitation the receiving of instructions and payments from the Employer.

9. Authorized Representatives

9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Employer or the Consultant may be taken or executed by the officials specified in the **SCC**.

10. Corrupt and Fraudulent Practices

10.1. The Employer requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Clause 3 of Section 1: Instructions to Bidders.

Commissions and Fees

10.2. The Employer requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in rejection of the bid for award or termination of the Contract and/or sanction by the Employer.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

11. Effectiveness of Contract

11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Employer's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.

12. Termination of Contract for Failure to Become Effective

12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than 22 days written notice to the other Party, declare this Contract to be null and void, and in the event of

such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

13. Commencement of Services

13.1. The Consultant shall confirm the availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.

14. Expiration of Contract

14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC** subject to extensions in accordance with the Agreement.

15. Entire Agreement

15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16. Modifications or Variations

16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

16.2. Deleted.

17. Force Majeure

a. Definition

17.1. For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements. Examples include, but are not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, and lockouts or other industrial action confiscation or any other action by Government agencies.

17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Experts, Sub-Consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract 17.4. The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this 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 this Contract.

c. Measures to be Taken 17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than 14 calendar days following its occurrence, providing evidence of the nature and cause the event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Party was unable to perform the action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Employer, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Employer, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 48 and 49.

18. Suspension

18.1. The Employer may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including carrying out of the Services, provided that the notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy the failure within a period not exceeding 30 calendar days after receipt by the Consultant of the notice of suspension.

19. Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Employer

19.1.1 The Employer may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause occurs. In this case, the Employer shall give at least 30 calendar days' written notice of termination to the Consultant for events referred to in (a) to (d); at least 60 calendar days' written notice in case of the event referred to in (e); and at least 5 calendar days' written notice for the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members) becomes insolvent or bankrupt or enter into any agreements with their 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 Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 49.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 calendar days;
- (e) If the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract; or
- (f) If the Consultant fails to confirm the availability of Key Experts as required in Clause GCC 13.

19.1.2 Furthermore, if the Employer determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive *[or obstructive]* practices or other integrity violations, in competing for or in executing the Contract, the Employer may, after giving 14 calendar days' written notice to the Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant may terminate this Contract, by not less than 30 calendar days' written notice to the Employer, in case any of the events specified in paragraphs (a) to (d) of this Clause occurs.

- (a) If the Employer fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clauses GCC 49.1 within 45 calendar days after receiving written notice from the Consultant that the payment is overdue;

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- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 calendar days;
 - (c) If the Employer fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 49.1; or
 - (d) If the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within 45 days (or a longer period that the Consultant may have subsequently approved in writing) following the receipt by the Employer of the Consultant's notice specifying the breach.

 - c. **Cessation of Rights and Obligations**

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right a Party may have under the Applicable Law.

 - d. **Cessation of Services**

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant, the Consultant shall proceed as provided in Clause GCC 27. For equipment and materials furnished by the Employer, the Consultant shall refer to Clause GCC 28.

 - e. **Payment upon Termination**

19.1.6 Upon termination of this Contract, the Employer shall pay the Consultant the following:

 - (a) remuneration for Services satisfactorily performed prior to the effective date of termination, other expenses, provisional sums, and contingency for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause 42; and
 - (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with the third parties.

20.2 The Consultant shall employ and provide such qualified and experienced Experts and Sub-Consultants as are required to carry out the Services.

20.3 The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-Consultants as may be approved in advance by the Employer. Notwithstanding this approval, the Consultant shall retain full responsibility for the Services.

Law Applicable to Services

20.4 The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.5 Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in the Employer's country when

- (a) as a matter of law or official regulations, *[the Borrower's/ Beneficiary's]* country 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 Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

20.6 The Employer shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interests

21.1 The Consultant shall hold the Employer's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

Consultant Not to Benefit from

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 41 to GCC 46) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own

Commissions, Discounts, etc.	<p>benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Experts and agents of either of them, similarly shall not receive any additional payment.</p> <p>21.1.2 If the Consultant, as part of the Services, has the responsibility of advising the Employer on the procurement of goods, works, or services, the Consultant shall comply with the Employer's Guidelines, and shall at all times exercise this responsibility in the best interests of the Employer. Any discounts or commissions obtained by the Consultant in procuring goods, works, or services shall be for the account of the Employer.</p>
Consultant and Affiliates Not to Engage in Certain Activities	<p>21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.</p>
Prohibition of Conflicting Activities	<p>21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-Consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.</p>
Strict Duty to Disclose Conflicting Activities	<p>21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-Consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interests of their Employer, or that may reasonably be perceived as having this effect. Failure to disclose these situations may lead to the disqualification of the Consultant or the termination of its Contract.</p>
22. Confidentiality	<p>22.1 Except with the prior written consent of the Employer, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make the recommendations formulated in the course of, or as a result of, the Services public.</p>
23. Liability of the Consultant	<p>23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.</p>

**24. Insurance to be
Taken out by the
Consultant**

24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at its (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the Employer, insurance against the risks, and for the coverage specified in the **SCC**, and (ii) at the Employer's request, shall provide evidence to the Employer showing that the insurance has been taken out and maintained and that the current premiums have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.

**25. Accounting,
Inspection and
Auditing**

25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-Consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.

25.2. The Consultant shall permit and shall cause its Sub-Consultants to permit, the Employer and/or persons appointed by the Employer to inspect the Site, assets and/or all accounts and records relating to the performance of the Contract and the selection process to provide the Services, and to have such accounts and records audited by auditors appointed by the Employer if requested by the Employer. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Employer's inspection and audit rights provided for under this Clause GCC25.2 constitute an integrity violation subject to contract termination (as well as to a determination of ineligibility under the Employer's policy in regard to corrupt and fraudulent practices as set forth in Clause 3 of Section 1: Instructions to Bidders).

**26. Reporting
Obligations**

26.1 The Consultant shall submit to the Employer the reports and documents specified in Section 6: Scope of Work, in the form, in the numbers and within the time periods set forth in the said Section 6.

**27. Proprietary Rights
of the Employer in
Reports and
Records**

27.1 Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, or supporting records or materials compiled or prepared by the Consultant for the Employer in the course of the Services shall be confidential and become and remain the absolute property of the Employer. The Consultant shall deliver all such documents to the Employer, together with a detailed inventory thereof not later than the date of termination or expiration of this Contract. The Consultant may retain a copy of these documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Employer.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Employer's prior written approval to such agreements, and at its discretion the Employer shall

be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

28. Equipment, Vehicles and Materials

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

28.2 Any equipment or materials brought by the Consultant or its Experts into the Employer's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

29. Description and Obligations of Key Experts

29.1 The title, minimum experience, minimum qualification and minimum indicative period of engagement to carry out the Services of each of the Consultant's Key and Non-Key Experts are described in Section 6: Scope of Work.

29.2 If required to comply with the provisions of Clause GCC 20 'Standard of Performance,' adjustments with respect to the estimated time-input of Key Experts set forth in **Section 6: Scope of Work** may be made by the Consultant by a written notice to the Employer, provided that (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of these adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 41.2.

29.3 If additional work is required beyond the scope of the Services specified in **Section 6: Scope of Work**, the estimated time-input for the Key Experts may be increased by agreement in writing between the Employer and the Consultant. When payments under this Contract exceed the ceilings set forth in Clause GCC 41.1, the Parties shall sign a Contract amendment.

29.4 The Consultant shall require all Experts and Sub-consultants to observe the highest level of ethical and behavioral standards and shall refrain from any form of bullying, harassment, discrimination and misconduct, including sexual harassment and abuse, and shall, at all times, behave in a manner that creates an environment free of bullying, harassment, discrimination and misconduct.

29.5 If the Consultant becomes aware that an Expert or Sub-consultant may have been involved in any form of bullying, harassment, discrimination or misconduct, the Consultant shall immediately inform the Employer of the issue and provide the Employer with (a) as much information concerning the issue as is reasonably available to the Consultant, (b) a description of what investigation, review or other steps the Consultant is taking with respect to such issue, and (c) any additional information that the Employer may require. If the Consultant receives or becomes aware of any allegation or report of possible bullying, harassment, discrimination or misconduct by any Expert or Sub-consultant, the Consultant shall take reasonable and immediate steps to investigate or verify such incident rigorously, diligently and expeditiously, and shall ensure that it has the power and legal authority to suspend or terminate such Expert or Sub-consultant. If the Employer determines in its sole discretion that any possible allegation or report of possible bullying, harassment, discrimination or misconduct by any Expert or Sub-consultant could adversely affect people working at or associated with the project or the reputation of the Employer or Government (or agency of the Government), then the Consultant shall, forthwith at the request of the Employer, suspend or physically separate such Expert or Sub-consultant from the project and such persons.

30. Replacement of Key Experts

30.1 Except as the Employer may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding GCC 30.1, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In this case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

31. Approval of Additional Key Experts

31.1 If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Employer for review and approval a copy of their Curricula Vitae (CVs). If the Employer does not object in writing (stating the reasons for the objection) within 22 days from the date of receipt of the CVs, the additional Key Experts shall be deemed to have been approved by the Employer.

32. Removal of Experts or Sub-Consultants

32.1 If the Employer or the Consultant finds that any of the Experts or Sub-Consultant has breached Clause 29.4 or has been charged with having committed a criminal action, or if the Employer determines that Consultant's Expert or Sub-consultant has engaged in corrupt, fraudulent, collusive or coercive *[or obstructive]* practice while performing the Services, the Consultant shall, at the Employer's written request, provide a replacement.

32.2 In the event that any of Key Experts, Non-Key Experts, or Sub-Consultants is found by the Employer to be incompetent or incapable in discharging assigned duties, the Employer, specifying the grounds therefore, may request the Consultant to provide a replacement.

32.3 Any replacement of the removed Experts or Sub-Consultants shall possess better qualifications and experience and shall be acceptable to the Employer.

**33. Replacement/
Removal of Experts
– Impact on
Payments**

33.1 Except if the Employer agrees otherwise, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the replacement Experts shall not exceed the remuneration that would have been payable to the Experts replaced or removed.

**34. Working Hours,
Overtime, Leave,
etc.**

34.1 Working hours and holidays for Experts are set forth in **SCC**. To account for travel time to and from the Employer's country, experts carrying out Services inside the Employer's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Employer's country as is specified in **SCC**.

34.2 The Experts shall not be entitled to overtime pay nor to paid sick leave or vacation leave except as specified in **SCC**, and the Consultant's remuneration shall be deemed to cover these items.

34.3 Any leaves taken by Key Experts shall be subject to the prior approval of the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

E. OBLIGATIONS OF THE EMPLOYER

**35. Assistance and
Exemptions**

35.1 Unless otherwise specified in the **SCC**, the Employer shall use its best efforts to:

- (a) Assist the Consultant with obtaining work permits and other documents as shall be necessary to enable the Consultant to perform the Services.
- (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in the Employer's country while carrying out the Services under the Contract.
- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (d) Issue all instructions and information to officials, agents and representatives of the Government that may be necessary or

appropriate for the prompt and effective implementation of the Services.

- (e) Assist the Consultant and the Experts and any Sub-Consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Employer's country according to the Applicable Law in the Employer's country.
- (f) Assist the Consultant, any Sub-Consultants, and their Experts with obtaining the privilege, pursuant to the Applicable Law in the Employer's country, of bringing into the Employer's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

36. Access to Project Site

36.1 The Employer warrants that the Consultant shall have, free of charge, unimpeded access to the project site as required to perform the Services. The Employer will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and Experts in respect of liability for any such damage, unless the damage was caused by the willful default or negligence of the Consultant or any Sub-Consultants or their Experts.

37. Change in the Applicable Law Related to Taxes and Duties

37.1 If, after the date of this Contract, there is any change in the Applicable Law in the Employer's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 41.1

38. Services, Facilities and Property of the Employer

38.1 The Employer shall make the services, facilities, and property described in the **Section 6: Scope of Work** available to the Consultant and the Experts, for the purposes of the Services and free of any charge, at the times and in the manner specified in said **Section 6: Scope of Work**.

38.2 In case the services, facilities, and property shall not be made available to the Consultant as and when specified in **Section 6: Scope of Work**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services; (ii) the manner in which the Consultant shall procure any such services, facilities, and property from other sources; and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 41.3.

39. Counterpart Personnel

39.1 The Employer shall make such professional and support counterpart personnel available to the Consultant free of charge. These personnel shall be nominated by the Employer with the Consultant's advice, if specified in **SCC**.

39.2 If counterpart personnel are not provided by the Employer to the Consultant as and when specified in **Section 6: Scope of Work**, the Employer and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Employer to the Consultant as a result thereof pursuant to Clause GCC 41.3.

39.3 Professional and support counterpart personnel, excluding Employer's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to adequately perform any work assigned to the member by the Consultant that is consistent with the position occupied by the member, the Consultant may request the replacement of the member, and the Employer shall not unreasonably refuse to act upon the request.

40. Payment Obligation

40.1 In consideration of the Services performed by the Consultant under this Contract, the Employer shall make the payments to the Consultant as specified in **SCC** and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

41. Ceiling Amount

41.1 The cost of the Services is set forth in **Price Bid**.

41.2 Payments under this Contract shall not exceed the ceilings in foreign and local currencies specified in the **Price Bid**.

41.3 For any payments in excess of the ceilings specified in GCC41.2, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

42. Remuneration and Other Expenses, Provisional Sums and Contingency

42.1 The Employer shall pay the Consultant (i) remuneration determined on the basis of time actually spent by each Expert in the performance of the Services after the date of commencing of Services or such other date as the Parties shall agree in writing and (ii) other expenses, provisional sums, and contingency that are actually and reasonably incurred by the Consultant in the performance of the Services.

42.2 All payments shall be at the rates set forth in **Price Bid**.

42.3 Unless the **SCC** provides for the price adjustment of the remuneration rates, the remuneration shall be fixed for the duration of the Contract.

42.4 The remuneration rates shall cover: (i) salaries and allowances as the Consultant agreed to pay the Experts as well as

factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Section 6: Scope of Work**, (iii) the Consultant's profit, and (iv) any other items as specified in the **SCC**.

42.5 Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Employer, once the applicable remuneration rates and allowances are known.

43. Taxes and Duties

43.1 The Consultant, Sub-Consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

43.2 As an exception to the above and as stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Employer on behalf of the Consultant.

44. Currency of Payment

44.1 Any payment under this Contract shall be made in the currency(ies) specified in the **SCC**.

45. Mode of Billing and Payment

45.1 Billings and payments in respect of the Services shall be made as follows:

- (a) **Advance payment.** Within the number of days after the Effective Date, the Employer provide the Consultant with an advance payment as specified in the **SCC**. Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee acceptable to the Employer in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. This guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Section 9: Contract Forms**, or in such other form as the Employer shall have approved in writing. The advance payments will be set off by the Employer in equal installments against the statements for the number of months of the Services specified in the **SCC** until the advance payments have been fully set off.
- (b) **Itemized invoices.** As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the **SCC**, the Consultant shall submit to the Employer, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 44 and GCC 45 for such interval, or any other period indicated in the **SCC**. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses separately.

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- (c) The Employer shall pay the Consultant's invoices within 60 days after the receipt by the Employer of the itemized invoices and supporting documents. Only the portion of the invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Employer may add or subtract the difference from any subsequent payments.
 - (d) **Final payment.** The final payment under this Clause shall be made only after the final report and a final invoice (identified as such) shall have been submitted by the Consultant and approved as satisfactory by the Employer. The Services shall be deemed completed and finally accepted by the Employer and the final report and final invoice shall be deemed approved by the Employer as satisfactory 90 calendar days after receipt of the final report and final invoice by the Employer unless the Employer gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice within the 90-calendar day period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Employer has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Employer within 30 days after receipt by the Consultant of notice thereof. Any claim by the Employer for reimbursement must be made within 12 calendar months after receipt by the Employer of a final report and a final invoice approved by the Employer in accordance with this clause.
 - (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.
 - (f) With the exception of the final payment under (d), payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

46. Interest on Delayed Payments

46.1 If the Employer had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 45.1 (c), interest shall be paid to the Consultant on any amount due by, not paid on, the due date for each day of delay at the annual rate stated in the **SCC**.

G. FAIRNESS AND GOOD FAITH

47. Good Faith

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

H. SETTLEMENT OF DISPUTES

48. Amicable Settlement

48.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.

48.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GCC 49.1 shall apply.

49. Dispute Resolution

49.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication or arbitration in accordance with the provisions specified in the **SCC**.

I. ELIGIBILITY

50. Eligibility

50.1 Compliance with the Employer's eligibility policy is required throughout the Contract's execution.