

Section VI – General Conditions of Contract

Table of Clauses

1. Definitions/ Interpretation.....	3
2. Entire Agreement	4
3. Contract Documents.....	4
4. Severability	4
5. Fraud and Corruption	5
8. Applicable Law	6
9. Language.....	6
10. Notices	6
11. Location	6
12. Authorised Representatives.....	7
13. Inspection and Audit by the Government	7
14. Scope of Supply/Services.....	7
15. Taxes and Duties	7
16. Effectiveness of Contract	7
19. Intended Completion Date	7
20. Modification.....	8
33. Performance Security	16
34. Description of Personnel.....	16
35. Removal and/or Replacement of Personnel	16
36. Assistance and Exemptions.....	17
37. Change in the Applicable Law	17
38. Services and Facilities.....	17
39. Lump-Sum Remuneration.....	17
40. Contract Price.....	17
41. Payment for Additional Services, and Performance Incentive Compensation	17
42. Terms and Conditions of Payment.....	17
43. Interest on Delayed Payments.....	18
44. Price Adjustment.....	18
45. Dayworks	19
46. Identifying Defects.....	19

47. Correction of Defects, and Lack of Performance Penalty	19
48. Compliance with policies, procedures and law	20
49. Settlement of Disputes	20
50. Waiver	21
51. Indemnity	21
52. Assignment and Novation	22
53. Security and Access	22
54. Evidence and Precedence	22
55. Negation of Employment, Partnership and Agency	22
56. Supplier's Acknowledgement	23
57. Counterpart	23

General Provisions

1. Definitions/ Interpretation

- (a) Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (b) The Adjudicator is the person appointed jointly by the procuring entity and the service provider to resolve disputes in the first instance, as provided for in clause 49.
- (c) “Activity Schedule” is the priced and completed list of items of Services to be performed by the service provider forming part of their bid.
- (d) “Completion Date” means the date of completion of the Services by the service provider as certified by the procuring entity.
- (e) “Contract” means the Contract signed by the Parties and **described in SCC**, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in clause 3 of such signed Contract.
- (f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with clause 40.
- (g) “Dayworks” means varied work inputs subject to payment on a time basis for the service provider’s employees and equipment, in addition to payments for associated materials and administration.
- (h) “Principal” means the party who employs the service provider **as described in SCC**.
- (i) “Foreign Currency” means any currency other than the currency of the country of the procuring entity.
- (j) “GCC” means these General Conditions of Contract.
- (k) “Government” means the Government of the Independent State of Samoa.
- (l) “Local Currency” means the currency of the country of the Principal – Samoan Tala.
- (m) “Member” in case the service provider consist of a joint venture of more than one (1) entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity **specified in the SCC** to act on their behalf in exercising all the service provider’ rights and obligations towards the Principal under this Contract.

- (n) “Month” means a calendar month.
- (o) “Party” means the Principal or the service provider, as the case may be, and “Parties” means both of them.
- (p) “Personnel” means persons hired by the service provider or by any subcontractor as employees and assigned to the performance of the Services or any part thereof.
- (q) “Service Provider” is a person or corporate body whose bid to provide the Services has been accepted by the Principal, **as described in SCC.**
- (r) “Service provider’s bid” means the completed tender document submitted by the service provider to the Principal.
- (s) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- (t) “Specifications” means the specifications of the service included in the tender document submitted by the service provider to the Principal.
- (u) “Services” means the work to be performed by the service provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the service provider’s bid.
- (v) “Subcontractor” means any entity to which the service provider subcontracts any part of the Services in accordance with clauses 27, 34 and 35.

If the context so requires it, singular means plural and vice versa.

2. Entire Agreement The Contract constitutes the entire agreement between the Principal and the Service Provider and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

3. Contract Documents Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

4. Severability 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.

5. Fraud and Corruption

If the Principal determines that the Service Provider and/or any of its personnel, or its agents, or its Subcontractors, consultants, service providers, suppliers and/or their employees has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, the Principal may, after giving fourteen (14) days' notice to the Service Provider, terminate the Service Provider's employment under the Contract and cancel the contract, and Clause 22 shall apply as if such cancellation had been made under Clause 22.

For the purposes of this Clause 5:

- (a) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;¹
- (b) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;²
- (c) "collusive practice" is an arrangement between two or more parties³ designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (d) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁴; and
- (e) "obstructive practice" is:
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from

¹ "Another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes Government of Samoa staff and employees of other organizations taking or reviewing procurement decisions.

² "Party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

³ "Parties" refers to participants in the procurement process (including public officials) attempting to establish tender prices at artificial, non-competitive levels.

⁴ "Party" refers to a participant in the procurement process or contract execution.

disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (bb) acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under clause 13.

Should any employee of the Service Provider be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the purchase of the Services, that employee shall be removed.

6. Joint Venture, Consortium or Association

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

7. Eligibility

The Service Provider and its Subcontractors shall have the nationality of an eligible country. A Service Provider or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

8. Applicable Law

The Contract shall be interpreted in accordance with the laws of the Independent State of Samoa.

9. Language

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

10. Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and deemed to have been made when delivered in person to the Party or an authorised representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address **specified in the SCC**.

11. Location

The Services shall be performed at such locations as are specified in Appendix A, in the specifications 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 Principal may approve.

- 12. Authorised Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Principal or the service provider may be taken or executed by the officials **specified in the SCC.**
- 13. Inspection and Audit by the Government** The service provider shall permit the Principal and its other authorised officers to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Government, if so required by the Government. The Supplier's and its Subcontractors and consultants' attention is drawn to clause 5, which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under this Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Government's prevailing sanctions procedures).
- 14. Scope of Supply/Services** The Services to be supplied shall be as **specified in the SCC.**
- 15. Taxes and Duties** The service provider, subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price. Where taxes and duties are not included or correctly calculated such shall be confirmed by the Ministry for Revenue prior to finalisation and signing of the Contract, and such taxes and duties become payable by the service provider, subcontractors, and their Personnel as required.
- 16. Effectiveness of Contract** This Contract shall come into effect on the date the Contract is signed by either parties or such other later date as may be **stated in the SCC.**
- 17. Commencement of Program** Before commencement of the Services, the service provider shall submit to the Principal for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.
- 18. Starting Date** The service provider shall start carrying out the Services within thirty (30) days of the date the Contract becomes effective, or at such other date as may be **specified in the SCC.**
- 19. Intended Completion Date** Unless terminated earlier pursuant to clause 22, or the term of the Contract is extended under, the service provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC.** If the service provider does not complete

the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as clause 30. In this case, the Completion Date will be the date of completion of all activities.

20. Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties and shall not be effective until the consent of the Government has been obtained and variation to the Contract reflecting the same is signed by the Parties.

21. Force Majeure

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances (and includes any change of Government policy or new development involving the Government).

The failure of a Party to fulfil any of its obligations under the contract 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:

- (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract; and
- (b) has informed the other Party as soon as possible about the occurrence of such an event.

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 such Party was unable to perform such action as a result of Force Majeure.

If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Services pursuant to clause 14, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier’s notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier’s time for performance, in which case the extension shall be ratified by the parties by written amendment of the Contract.

Except in case of Force Majeure, as provided under this clause 21, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to clause 30, unless an extension of time is agreed upon, pursuant clause 19.

During the period of their inability to perform the Services as a result of an event of Force Majeure, the service provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

22. Termination

Termination by default

The Principal may terminate this Contract, by not less than fourteen (14) days' written notice of termination to the service provider, to be given after the occurrence of any of the events as follows:

- (a) if the service provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Principal may have subsequently approved in writing;
- (b) if the service provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Services Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the service provider, in the judgment of the Principal has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event the Principal terminates the Contract in whole or in part:

- (a) the Principal may procure, upon such terms and in such manner as it deems appropriate, Services similar to those undelivered or not performed, and the Service Provider shall be liable to the Principal for any additional costs for such similar Services. However, the Service Provider shall continue performance of the Contract to the extent not terminated;

- (b) the Parties shall be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
- (c) the right of the Principal to recover damages against the Contractor shall not be affected;
- (d) the Service Provider indemnifies the Principal in respect of any loss it may incur in getting the Services from other suppliers; and
- (e) where the Principal has made any payment in advance on account of the Contract Price to the Contractor, the total amount of that payment shall be repaid by the Contractor to the Principal on termination and, if not repaid shall be recoverable by the Principal from the Contractor as a debt.

Termination for convenience

The Principal, by notice sent to the Service Provider, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Principal's convenience, the extent to which performance of the Service Provider under the Contract is terminated, and the date upon which such termination becomes effective.

Termination by Principal

The Principal may terminate this Contract, by not less than fourteen (14) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the following events:

- (a) if Service Provider fails to commence performance of the Contract so as to ensure the due and proper completion of the Contract;
- (b) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Principal may have subsequently approved in writing;
- (c) if the Service Provider become insolvent or bankrupt. In such event, termination will be without compensation to the Service Provider, provided that such termination will not

prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Principal;

- (d) if, as the result of Force Majeure, the Services Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (e) if the Service Provider, in the judgment of the Principal has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

Where the Principal terminates this Contract or reduces its scope:

- (a) the Service Provider upon receiving notice must cease or reduce performance of the Services according to the tenor of the notice and forthwith do everything sensible to mitigate losses;
- (b) the Service Provider may submit a claim for compensation and the Principal must pay to the Contractor such sums as are fair and reasonable in respect of the loss or damage resulting directly from the early termination or reduction in scope of the Services;
- (c) the Service Provider will not be entitled to claim compensation in respect of expenditure contrary to this Contract or for loss of anticipated profits; and
- (d) the compensation shall not exceed the Contract Price.

Termination by Service Provider

The service provider may terminate this Contract, by not less than thirty (30) days' written notice to the Principal, such notice to be given after the occurrence of any of the events:

- (a) if the Principal fails to pay any monies due to the service provider pursuant to this Contract and not subject to dispute pursuant to clause 49 within forty-five (45) days after receiving written notice from the service provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the service provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

Suspension of Funding

In the event that the Government suspends funding to the Principal, from which part of the payments to the service provider are being made the Principal is obligated to notify the service provider of such suspension within seven (7) days of having received the Government's suspension notice.

If the service provider has not received sums due to it by the due date **stated in the SCC** in accordance with clause 39, the service provider may immediately issue a fourteen (14) days termination notice.

Upon termination of this Contract pursuant clause 22, the Principal shall make the following payments to the service provider:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination;
- (b) reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

The Service Provider may submit a claim for payment under this Contract for all direct costs incurred under the Contract up to and including the date of termination. The Principal shall pay to the Service Provider such sums as are fair and reasonable in respect of the claim but the Contractor shall not be entitled to claim payment for any costs not directly related to this Contract or for any loss of opportunity or of anticipated profits. The compensation (if any) payable shall under no circumstances exceed the total Contract Price.

23. Obligations of the service provider

The service provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The service provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Principal, and shall at all times support and safeguard the Principal's legitimate interests in any dealings with subcontractors or third parties.

24. Conflict of Interests and conflicting activities

The remuneration of the service provider pursuant to clause 39 shall constitute the service provider's sole remuneration in connection with this Contract or the Services, and the service provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the service provider shall use their best efforts to ensure that the Personnel, any subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

The service provider agree that, during the term of this Contract and after its termination, the service provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing General Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

Neither the service provider nor its subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Contract, any business or professional activities in the Government's country which would conflict with the activities assigned to them under this Contract;
- (b) during the term of this Contract, neither the service provider nor their subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- (c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

25. Confidential Information

The Principal and the Service Provider shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Despite the aforementioned, the Service Provider may furnish to its Subcontractor such documents, data, and other information it receives from the Principal to the extent required for the Subcontractor to perform its work under the Contract, in which event the Service Provider

shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Service Provider.

The Principal shall not use such documents, data, and other information received from the Service Provider for any purposes unrelated to the contract. Similarly, the Service Provider shall not use such documents, data, and other information received from the Principal, for any purpose other than the performance of the Contract.

The obligation of a party under this clause 25 shall not apply to information that:

- (a) the Principal or Service Provider need to share with the Government or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;
- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

This clause 25 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the supply or any part thereof.

This clause 25 shall survive completion or termination, for whatever reason, of the Contract.

26. Insurance to be Taken Out by the Service Provider

The service provider:

- (a) shall take out and maintain, and shall cause any subcontractors to take out and maintain, at its (or the subcontractors', as the case may be) own cost but on terms and conditions approved by the Principal, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and
- (b) at the Principal's request, shall provide evidence to the Principal showing that such insurance has been taken out and maintained and that the current premiums have been paid. Insurance policy must be in place at a time agreed by both Principal and service provider.

Where there is an existing insurance policy with the appropriate coverage the service provider need not take out further insurance provided that the existing cover remains valid for the entire period of the Contract.

27. Service provider's Actions Requiring Principal's Prior Approval

The service provider shall obtain the Principal's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- (c) changing the Program of activities; and
- (d) any other action that may be specified in the SCC.

28. Reporting Obligations

The service provider shall submit to the Principal the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

29. Documents Prepared by the Service Provider to Be the Property of the Principal

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the service provider in accordance with clause 28 shall become and remain the property of the Principal, and the service provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Principal, together with a detailed inventory thereof. The service provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

30. Payments of Liquidated Damages

The service provider shall pay liquidated damages to the Principal at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Principal may deduct liquidated damages from payments due to the service provider. Payment of liquidated damages shall not affect the service provider's liabilities.

31. Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Principal shall correct any overpayment of liquidated damages by the service provider by adjusting the next payment certificate. The service provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the same rates as specified in clause 43.

- 32. Lack of performance penalty** If the service provider has not corrected a Defect within the time specified in the Principal's notice, a penalty for Lack of performance will be paid by the service provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in clause 46 and **specified in the SCC.**
- 33. Performance Security** The service provider shall provide the Performance Security to the Principal no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and in the form of a bank guarantee or surety or any other financial instrument acceptable to the Principal and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until twenty-eight (28) days from the Completion Date of the Contract in case of a bank guarantee and such validity period must be clearly stated in the bank guarantee, and until one (1) year from the Completion Date of the Contract in the case of a Performance Bond and such validity period must be clearly stated in the Performance Bond.
- 34. Description of Personnel** The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the service provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are approved by the Principal.
- 35. Removal and/or Replacement of Personnel** Except as the Principal may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the service provider, it becomes necessary to replace any of the Key Personnel, the service provider shall provide as a replacement a person of equivalent or better qualifications.
- If the Principal finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the service provider shall, at the Principal's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Principal.
- The service provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

- 36. Assistance and Exemptions** The Principal shall use its best efforts to ensure that the Government shall provide the service provider such assistance and exemptions as **specified in the SCC**.
- 37. Change in the Applicable Law** If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the service provider, then the remuneration and reimbursable expenses otherwise payable to the service provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in clause 40(a) or (b), as the case may be.
- 38. Services and Facilities** The Principal shall make available to the service provider the Services and Facilities listed under Appendix F.
- 39. Lump-Sum Remuneration** The service provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all subcontractors' costs, and all other costs incurred by the service provider in carrying out the Services described in Appendix A. Except as provided in clause 37, the Contract Price may only be increased above the amounts stated in clause 40 if the Parties have agreed to additional payments in accordance with clause 20 and 41.
- 40. Contract Price**
- (a) The price payable in local currency is **set forth in the SCC**.
 - (b) The price payable in foreign currency is **set forth in the SCC**.
- 41. Payment for Additional Services, and Performance Incentive Compensation** For the purpose of determining the remuneration due for additional Services as may be agreed under clause 20, a breakdown of the lump-sum price is provided in Appendices D and E.
- If the **SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.
- 42. Terms and Conditions of Payment** Payments will be made to the service provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilisation, Materials and Supplies) shall be made against the provision by the service provider of a bank guarantee for the same amount and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the service provider has submitted an invoice to the Principal specifying the amount due.

43. Interest on Delayed Payments If the Principal has delayed payments beyond fifteen (15) days after the due date **stated in the SCC**, interest shall be paid to the service provider for each day of delay at the rate **stated in the SCC**.

44. Price Adjustment Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients specified in the SCC, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and L_{oc} is the index prevailing twenty-eight (28) days before bid opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing twenty-eight (28) days before bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be

deemed to take account of all changes in cost due to fluctuations in costs.

45. Dayworks

If applicable, the Daywork rates in the service provider's bid shall be used for small additional amounts of Services only when the Principal has given written instructions in advance for additional services to be paid in that way.

All work to be paid for as Dayworks shall be recorded by the service provider on forms approved by the Principal. Each completed form shall be verified and signed by the Principal representative as indicated in clause 12 within two (2) days of the Services being performed.

The service provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated under this clause 45.

46. Identifying Defects

The principle and modalities of Inspection of the Services by the Principal shall be as **indicated in the SCC**. The Principal shall check the service provider's performance and notify him of any Defects that are found. Such checking shall not affect the service provider's responsibilities. The Principal may instruct the service provider to search for a Defect and to uncover and test any service that the Principal considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

47. Correction of Defects, and Lack of Performance Penalty

- (a) The Principal shall give notice to the service provider of any Defects before the end of the Contract or any time after the Contract provided that the defect is a clear result of an omission or act or faulty workmanship of the service provider. The Defects liability period shall be extended for as long as Defects remain to be corrected (whether or not the defect was made known to the service provider before or after end of the Contract).
- (b) Every time notice a Defect is given, the service provider shall correct the notified Defect within the length of time specified by the Principal's notice or until the Principal is satisfied that the Defect has been rectified to satisfaction.
- (c) If the service provider has not corrected a Defect within the time specified in the Principal's notice or to the satisfaction of the Principal, the Principal will assess the cost of having the Defect corrected, the service provider will pay this amount, and a Penalty for Lack of Performance calculated in accordance with clauses 31 and 32.

48. Compliance with policies, procedures and law

The Service Provider shall in performing the Services under this Contract, duly inform himself/herself/itself of and comply with any Acts of Parliament, regulations, ordinances, local laws, and by-laws of any lawful direction of any authority that has jurisdiction over the Services and shall not be entitled to rely upon any direction or other information by the Principal in satisfaction of this requirement, which rests solely on the Contractor.

The Service Provider must, when using the Principal's Premises or facilities, comply with all reasonable directions of the Principal and all procedures and policies of the Principal including those relating to occupational health (including no smoking), safety and security in effect at those premises or in regard to those facilities, as notified by the Principal or as might reasonably be inferred from the use to which the Premises or facilitates are being put.

49. Settlement of Disputes

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

If any dispute arises between the Principal and the service provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to the Adjudicator within fourteen (14) days of the notification of disagreement of one (1) Party to the other.

The Adjudicator shall give a decision in writing within twenty-eight (28) days of receipt of a notification of a dispute.

The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Principal and the service provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within twenty-eight (28) days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above twenty-eight (28) days, the Adjudicator's decision will be final and binding.

The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.

Should the Adjudicator resign or die or should the Principal and the service provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Principal and the service provider. In case of disagreement between the Principal and the service provider, within thirty (30) days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within fourteen (14) days of receipt of such request.

50. Waiver

No relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of this Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of this Contract.

Any waiver of a party's rights, powers, or remedies under this Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

51. Indemnity

The service provider agrees to indemnify the Principal from and against any:

- (a) liability incurred, or any negligent act or omission, by the service provider in the performance of the Services;
- (b) loss of or damage to property of the Principal caused by the service provider, his officers, employees, agents or subcontractors;
- (c) loss or expense incurred by the Principal in dealing with any claim against it including legal costs and expenses resulting from any act or omission by the service provider, his officers, employees, agents or subcontractors in connection with this Contract;
- (d) any breach by the service provider of his obligations under this Contract, including any loss or damage attributable to any such breach; and
- (e) any use or disclosure by the service provider, his officers, employees, agents or subcontractors of Confidential Information held by him or them or controlled by him or them in connection with this Contract.

The service provider's liability to indemnify the Principal under this clause 51 will be reduced proportionately to the extent that any negligent act or omission of the Principal contributed to the relevant liability, loss or damage.

The obligations under this clause 51 shall survive the expiration or termination of this Contract.

52. Assignment and Novation

The service provider shall not assign its obligations, and agrees not to assign its rights, under this contract without, in either case, prior written approval from the Principal.

The service provider agrees not to consult with any other person for the purposes of entering into an agreement that would or could require novation of the contract without first consulting the Principal.

53. Security and Access

The service provider, when using the Principal's premises or facilities, shall comply with all rules, policies, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the service provider by the Principal.

54. Evidence and Precedence

The Contract:

- (a) constitutes the entire agreement between the Parties in this matter; and
- (b) supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

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.

55. Negation of Employment, Partnership and Agency

The relationship of the service provider to the Principal is that of independent contractor and nothing contained in this Contract shall be construed as creating any other relationship. The service provider agrees not to represent, and endeavours to ensure that service provider's officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Principal, or as otherwise able to bind or represent the Principal.

The service provider is not by virtue of this Contract an officer, employee, partner or agent of the Principal, nor does the service

provider have any power or authority to bind or represent the Principal.

56. Supplier's

Acknowledgement

The Supplier acknowledges that before entering into this Contract, the Supplier was given a copy of the Contract and is aware of right to seek independent legal advice on its terms if the supplier so desires, and given reasonable opportunity to take such advice.

The Supplier also warrants that the representative who will be executing this Contract on behalf of the Supplier has all the power authority to execute this Contract.

The Supplier now signs this Contract in agreement to all terms and conditions set out therein.

57. Counterpart

The Parties may execute this Contract in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is acceptable as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. This clause shall not apply if the counterpart is not required.