



**THE UNITED REPUBLIC OF TANZANIA**  
**MINISTRY OF FINANCE AND PLANNING**  
**PUBLIC PROCUREMENT REGULATORY AUTHORITY**



## **General Conditions of Contract**

for

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Supply and Installation of Information Systems

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### **National Competitive Tendering**

Public Procurement Regulatory Authority,  
Kambarage Tower, 9<sup>th</sup> Floor, PSPF Road,  
P.O. Box 2865, 41104 Dodoma,  
TANZANIA

February, 2022

## Preface

The General Conditions of Contract for Supply and Installation of Information Systems is part of the Standard Tendering Document (STD) prepared by the Public Procurement Regulatory Authority (PPRA) in collaboration with the Office of the Attorney General (OAG) and other professional bodies, primarily for use by Procuring Entities (PEs) in the procurement of Supply and Installation of Information Systems through International and National Competitive Tendering (ICT & NCT) and other procedures as appropriate.

The General Conditions of Contract presented in this document have been developed through broad national and international experience, and are mandatory for use in contracts for Supply and Installation of Information Systems that are financed in whole or in part by public funds, and whose Supplier has been obtained in accordance with the provisions of the Public Procurement Act, Cap 410 and the Public Procurement Regulations, 2013.

To obtain further information on the use of these General Conditions of Contract, contact:

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# GENERAL CONDITIONS OF CONTRACT (GCC) FOR THE SUPPLY AND INSTALLATION OF INFORMATION SYSTEMS

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### A. Contract and Interpretation

<p><b>1. Definitions</b></p>	<p>1.1</p>	<p>The following words and expressions shall have the meanings hereby assigned to them:</p> <ul style="list-style-type: none"> <li>(a) <b>“Completion”</b> means that the Facilities (or a specific part thereof where specific parts are specified in the <b>SCC</b>) have been completed operationally and structurally and put in a tight and clean condition, and that all work in respect of Pre-commissioning of the Facilities or such specific part thereof has been completed; in other words, that the Facilities or specific part thereof are ready for Commissioning as provided in <b>GCC 23</b> [Completion of Facilities] hereof;</li> <li>(b) <b>“Commissioning”</b> means operation of the Facilities or any part thereof by the Supplier following Completion, which operation is to be carried out by the Supplier as provided in <b>GCC 24.1</b> [Commissioning and Operational Acceptance-Commissioning] hereof, for the purpose of carrying out Guarantee Test(s);</li> <li>(c) <b>“Contract”</b> means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein; they shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly;</li> <li>(d) <b>“Contract Documents”</b> means the documents listed in Article 1.1 (Contract Documents) of the Form of Agreement (including any amendments thereto);</li> <li>(e) <b>“Contract Price”</b> means the sum specified in Article 2.1 (Contract Price) of the Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract;</li> <li>(f) <b>“Country of Origin”</b> means the countries and territories eligible under the PPA,Cap.410 and its corresponding Regulations as specified in the <b>SCC</b>;</li> <li>(g) <b>“Effective Date”</b> means the date of fulfillment of all conditions stated in Article 3 (Effective Date for Determining Time for Completion) of the Form of Agreement, for the purpose of determining the Time for Completion;</li> <li>(h) <b>“Facilities”</b> means the Goods to be supplied and installed, as well as all the Installation Services to be carried out by the Supplier under the Contract</li> <li>(i) <b>“Day”</b> means calendar day;</li> <li>(j) <b>Defect Liability Period”</b> means the period of validity of the warranties given by the Supplier commencing at Completion of the Facilities or a part thereof, during which the Supplier is responsible for defects with respect to the Facilities (or the relevant part thereof) as</li> </ul>
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		<p>provided in <b>GCC 26</b> [Defect Liability] hereof;</p> <p>(k) <b>“Dispute Avoidance and Resolution Board”</b> (DARB) means the person or persons named as such in the <b>SCC</b> appointed by agreement between the Purchaser and the Supplier to make a decision with respect to any dispute or difference between the Purchaser and the Supplier referred to him or her by the Parties pursuant to Sub-Clause 46.1 [Dispute Avoidance and Resolution Board];</p> <p>(l) <b>“Force Majeure”</b> shall mean any event beyond the reasonable control of the Purchaser or of the Supplier, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected. 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 its origin is not due to negligence or lack of care on the part of a Party, and which makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances. and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood, epidemics, or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies;</p> <p>(m) <b>“GCC”</b> means the General Conditions of Contract hereof;</p> <p>(n) <b>“Goods”</b> means permanent plant, equipment, machinery, apparatus, articles and things of all kinds to be provided and incorporated in the Facilities by the Supplier under the Contract (including the spare parts to be supplied by the Supplier under <b>GCC 6.3</b> [Scope of Facilities] hereof but does not include Supplier’s Equipment;</p> <p>(o) <b>“Guarantee Test(s)”</b> means the test(s) specified in the Technical Specifications to be carried out to ascertain whether the Facilities or a specified part thereof is able to attain the Functional Guarantees specified in the Technical Specifications in accordance with the provisions of <b>GCC 24.2</b> [Commissioning and Operational Acceptance-Guarantee Test];</p> <p>(p) <b>“Installation Services”</b> means all those services ancillary to the supply of the Goods for the Facilities, to be provided by the Supplier under the Contract; e.g., transportation and provision of marine or other similar insurance, inspection, expediting, site preparation works (including the provision and use of Supplier’s Equipment and the supply of all construction materials</p>
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		<p>required), installation, testing, pre-commissioning, commissioning, operations, maintenance, the provision of operations and maintenance manuals, training, etc;</p> <p>(q) <b>“Month”</b> means calendar month;</p> <p>(r) <b>“Operational Acceptance”</b> means the acceptance by the Purchaser of the Facilities (or any part of the Facilities where the Contract provides for acceptance of the Facilities in parts), which certifies the Supplier’s fulfillment of the Contract in respect of Functional Guarantees of the Facilities (or the relevant part thereof) in accordance with the provisions of <b>GCC 27</b> [Functional Guarantees] hereof and shall include deemed acceptance in accordance with <b>GCC 24</b> [Commissioning and Operational Acceptance] hereof; and</p> <p>(s) <b>“Pre-commissioning”</b> means the testing, checking and other requirements specified in the Technical Specifications that are to be carried out by the Supplier in preparation for Commissioning as provided in <b>GCC 23</b> [Completion of Facilities] hereof;</p> <p>(t) <b>“Project Manager”</b> means the person appointed by the Purchaser in the manner provided in Sub-<b>Clause 16.1</b> [Representatives -Project Manager] hereof and named as such in the <b>SCC</b> to perform the duties delegated by the Purchaser;</p> <p>(u) <b>“Purchaser”</b> means the person named as such in the <b>SCC</b> and includes the legal successors or permitted assigns of the Purchaser;</p> <p>(v) <b>“SCC”</b> means the Special Conditions of Contract;</p> <p>(w). <b>“Site” means the land</b> and other places upon which the Facilities are to be installed, and such other land or places as may be specified in the <b>Contract as</b> forming part of the Site</p> <p>(x) <b>“Supplier”</b> means the person(s) whose tender to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement and <b>SCC</b> and includes the legal successors or permitted assigns of the Supplier;</p> <p>(y) <b>“Supplier’s Representative”</b> means any person nominated by the Supplier and named as such in the <b>SCC</b> and approved by the Purchaser in the manner provided in <b>GCC 16.2</b> [Supplier’s Representative and Construction Manager] hereof to perform the duties delegated by the Supplier;</p> <p>(z) <b>“Subcontractor,”</b> including vendors, means any person to whom execution of any part of the Facilities, including preparation of any design or supply of any Goods, is sub-contracted directly or indirectly by the Supplier, and includes its legal successors or permitted</p>
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		<p>assigns;</p> <p>(aa) ;“<b>Supplier’s Equipment</b>” means all plant, facilities, equipment, machinery, tools, apparatus, appliances or things of every kind required in or for installation, completion and maintenance of Facilities that are to be provided by the Supplier, but does not include Goods, or other things intended to form or forming part of the Facilities;</p> <p>(bb) “<b>Time for Completion</b>” means the time within which Completion of the Facilities as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications in the <b>SCC</b> and the relevant provisions of the Contract;</p>
<b>2. Interpretation</b>	2.1	In interpreting these Conditions of Contract headings and marginal notes are used for convenience only and shall not affect their interpretations unless specifically stated; references to singular include the plural and vice versa; and masculine include the feminine. Words have their ordinary meaning under the language of the Contract specified in the <b>SCC</b> , unless specifically defined.
	2.2	If any of the Contract Documents, correspondence or communications are prepared in any language other than the governing language under <b>GCC</b> 2.1 above, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.
	2.3	<p>The documents forming the Contract shall be interpreted in the following order of priority:</p> <ul style="list-style-type: none"> <li>(a) Form of Agreement;</li> <li>(b) Letter of Acceptance;</li> <li>(c) Negotiation Minutes;</li> <li>(d) Form of Tender;</li> <li>(e) Special Conditions of Contract;</li> <li>(f) General Conditions of Contract;</li> <li>(g) Specifications;</li> <li>(h) Drawings;</li> <li>(i) Bills of Quantities;</li> <li>(j) Completed Schedules (including Price Schedules); and</li> <li>(k) Any other document listed in the Special Conditions of Contract as forming part of the Contract.</li> </ul>
	2.4	<p><u>Persons</u></p> <p>Words importing persons or parties shall include firms, corporations and government entities.</p>



	2.5	<p><u>Incoterms</u></p> <p>Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by <i>Incoterms</i>.</p> <p><i>Incoterms</i> means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1<sup>er</sup>, 75008 Paris, France.</p>
	2.6	<p><u>Entire Agreement</u></p> <p>Subject to Sub- <b>Clause</b> 15.4 [Confidential Information] hereof, the Contract constitutes the entire agreement between the Purchaser and Supplier with respect to the subject matter of Contract and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract.</p>
	2.7	<p><u>Amendment</u></p> <p>No amendment or other variation of the Contract shall be effective unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party hereto.</p>
	2.8	<p><u>Independent Supplier</u></p> <p>The Supplier shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.</p> <p>Subject to the provisions of the Contract, the Supplier shall be solely responsible for the manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by the Supplier in connection with the performance of the Contract shall be under the complete control of the Supplier and shall not be deemed to be employees of the Purchaser, and nothing contained in the Contract or in any subcontract awarded by the Supplier shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and the Purchaser.</p>
	2.9	<p><u>Joint Venture or Consortium</u></p> <p>If the Supplier is a joint venture or consortium of two or more persons, all such firms shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one of such persons to act as a leader with authority to bind the joint venture or consortium. The composition or the constitution of the joint venture or consortium shall not be altered without the prior consent of the Purchaser.</p>
	2.10	<p><u>Non-Waiver</u></p> <p>2.10.1 Subject to GCC 2.10.2 below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the</p>

		<p>other shall prejudice, affect or restrict the rights of that party under the Contract, nor shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.</p> <p>2.10.2 Any waiver of a party’s rights, powers or remedies under the Contract must be in writing, must be dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.</p>
	2.11	<p><u>Severability</u></p> <p>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.</p>
	2.12	<p><u>Country of Origin</u></p> <p>“Origin” means the place where the materials, equipment and other supplies for the Facilities are mined, grown, produced or manufactured, and from which the services are provided.</p>
<b>3. Conditions Precedent</b>	3.1	The Contract shall come into effect after the Supplier fulfilling the conditions precedent stated in the <b>SCC</b> .
	3.2	If the Condition precedent stipulated on GCC 3.1 is not met by the date specified in the <b>SCC</b> this contract shall not come into effect;
	3.3	If the Purchaser is satisfied that each of the conditions precedent in this contract has been satisfied (except to the extent waved by him, but subject to such conditions as he shall impose in respect of such waiver) he shall promptly issue to the contractor a certificate of Contract commencement, which shall confirm the start date.
<b>4. Notices</b>	4.1	Any notice, request, or consent made pursuant to this Contract shall be in writing or in electronic forms that provide record of the content of communication and shall be deemed to have been made when delivered in person to an authorized 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 <b>SCC</b>
	4.2	Notices shall be deemed to include any approvals, consents, instructions, orders and certificates to be given under the Contract.
<b>5. Language and Law</b>	5.1	The language of the Contract and the law governing the Contract are stated in the <b>SCC</b> .

**B. Subject Matter of Contract**

<b>6. Scope of Facilities</b>	6.1	Unless otherwise expressly limited in the Technical Specifications, the Supplier’s obligations cover the provision of all Goods and the performance of all Installation Services required for the design, the manufacture (including procurement, quality assurance, construction, installation, associated civil works, Pre-commissioning and delivery) of the
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		Goods and the installation, completion and commissioning of the Facilities in accordance with the plans, procedures, specifications, drawings, codes and any other documents as specified in the Technical Specifications. Such specifications include, but are not limited to, the provision of supervision and engineering services; the supply of labour, materials, equipment, spare parts (as specified in <b>GCC</b> 6.3 below) and accessories; Supplier's Equipment; construction utilities and supplies; temporary materials, structures and facilities; transportation (including, without limitation, unloading and hauling to, from and at the Site); and storage, except for those supplies, works and services that will be provided or performed by the Purchaser, as set forth in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement.
	6.2	The Supplier shall, unless specifically excluded in the Contract, perform all such work and/or supply all such items and materials not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Completion of the Facilities as if such work and/or items and materials were expressly mentioned in the Contract.
	6.3	In addition to the supply of Mandatory Spare Parts included in the Contract, the Supplier agrees to supply spare parts required for the operation and maintenance of the Facilities for the period specified in the <b>SCC</b> . However, the identity, specifications and quantities of such spare parts and the terms and conditions relating to the supply thereof are to be agreed between the Purchaser and the Supplier, and the price of such spare parts shall be that given in Price Schedule No. 6, which shall be added to the Contract Price. The price of such spare parts shall include the purchase price therefore and other costs and expenses (including the Supplier's fees) relating to the supply of spare parts.
<b>7. Time for Commencement and Completion</b>	7.1	The Supplier shall commence work on the Facilities within the period specified in the <b>SCC</b> and without prejudice to GCC 25.2 [Completion Time Guarantee] hereof, the Supplier shall thereafter proceed with the Facilities in accordance with the time schedule specified in the corresponding Appendix (Time Schedule) to the Agreement.
	7.2	The Supplier shall attain Completion of the Facilities (or of a part where a separate time for Completion of such part is specified in the Contract) within the time stated in the <b>SCC</b> or within such extended time to which the Supplier shall be entitled under <b>GCC</b> 39 [Extension of Time for Completion] hereof.
<b>8. Supplier's Responsibilities</b>	8.1	The Supplier shall design, manufacture (including associated purchases and/or subcontracting), install and complete the Facilities with due care and diligence in accordance with the Contract.
	8.2	The Supplier confirms that it has entered into this Contract on the basis of a proper examination of the data relating to the

		Facilities (including any data as to boring tests) provided by the Purchaser, and on the basis of information that the Supplier could have obtained from a visual inspection of the Site (if access thereto was available) and of other data readily available to it relating to the Facilities as of the date twenty-eight (28) days prior to tender submission. The Supplier acknowledges that any failure to acquaint itself with all such data and information shall not relieve its responsibility for properly estimating the difficulty or cost of successfully performing the Facilities.
	8.3	The Supplier shall acquire in its name all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the United Republic of Tanzania where the Site is located that are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The Supplier shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under <b>GCC 9.3</b> [Purchaser's Responsibilities] hereof and that are necessary for the performance of the Contract.
	8.4	The Supplier shall comply with all laws in force in the United Republic of Tanzania and local by-laws where the Facilities are installed and where the Installation Services are carried out. The laws will include all local, state, national or other laws that affect the performance of the Contract and bind upon the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to <b>GCC 9.1</b> [Purchaser's Responsibilities] hereof.
	8.5	Any Plant, Material and Services that will be incorporated in or be required for the Facilities and other supplies shall have their origin as specified under <b>Clause 1</b> [Definitions-Country of Origin].
	8.6	The Supplier shall permit the Purchaser to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Purchaser, if so required by the Purchaser
<b>9. Purchaser's Responsibilities</b>	9.1	The Purchaser shall ensure the accuracy of all information and/or data to be supplied by the Purchaser as described in the corresponding <b>Appendix 6</b> [Scope of Works and Supply by the Purchaser] to the Contract, except when otherwise expressly stated in the Contract.
	9.2	The Purchaser shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required for the proper execution of the Contract, including all requisite rights of way, as specified in the corresponding <b>Appendix 6</b> [Scope of Works and Supply by the

		Purchaser] to the Agreement. The Purchaser shall give full possession of, and accord all rights of access thereto on or before the date(s) specified in that Appendix.
	9.3	The Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the United Republic of Tanzania. Such authorities or undertakings require the Purchaser to obtain them in the Purchaser's name, are necessary for the execution of the Contract (they include those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract), and are specified in the corresponding <b>Appendix 6</b> [Scope of Works and Supply by the Purchaser] to the Agreement.
	9.4	If requested by the Supplier, the Purchaser shall use its best endeavors to assist the Supplier in obtaining in a timely and expeditious manner all permits, approvals and/or licenses necessary for the execution of the Contract from all local, state or national government authorities or public service undertakings that such authorities or undertakings require the Supplier or Subcontractors or the personnel of the Supplier or Subcontractors, as the case may be, to obtain.
	9.5	Unless otherwise specified in the Contract or agreed upon by the Purchaser and the Supplier, the Purchaser shall provide sufficient, properly qualified operating and maintenance personnel; shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and shall perform all work and services of whatsoever nature, including those required by the Supplier to properly carry out Pre-commissioning, Commissioning and Guarantee Tests, all in accordance with the provisions of the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement at or before the time specified in the programme furnished by the Supplier under <b>GCC 17.2</b> [Work Program] hereof and in the manner thereupon specified or as otherwise agreed upon by the Purchaser and the Supplier.
	9.6	The Purchaser shall be responsible for the continued operation of the Facilities after Completion, in accordance with <b>GCC 23.8</b> [Completion of the Facilities], and shall be responsible for facilitating the Guarantee Test(s) for the Facilities, in accordance with <b>GCC 26.2</b> [Defects Liability Period].
	9.7	All costs and expenses involved in the performance of the obligations under this <b>GCC 9</b> [Purchasers Responsibility] shall be the responsibility of the Purchaser, save those to be incurred by the Supplier with respect to the performance of Guarantee Tests, in accordance with Sub- <b>GCC 26.2</b> [Defects Liability Period]

C. Payment

<b>10. Contract Price</b>	10.1	The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Form of Agreement.
	10.2	Unless indicated otherwise in the <b>SCC</b> , the Contract Price shall be a firm lump sum not subject to any alteration, except in the event of a Change in the Facilities or as otherwise provided in the Contract.
	10.3	Subject to <b>GCC</b> 8.2 [Supplier’s Responsibilities], <b>GCC</b> 9.1 [Purchaser’s Responsibilities] and Clause 34 [Unforeseen Conditions] hereof, the Supplier shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price, which shall, except as otherwise provided for in the Contract, cover all its obligations under the Contract.
<b>11. Terms of Payment</b>	11.1	The Contract Price shall be paid as specified in the corresponding <b>Appendix 1</b> [Terms and Procedures of Payment] to the Agreement. The procedures to be followed in making application for and processing payments shall be those outlined in the same Appendix.
	11.2	No payment made by the Purchaser herein shall be deemed to constitute acceptance by the Purchaser of the Facilities or any part(s) thereof.
	11.3	In the event that the Purchaser fails to make any payment by its respective due date or within the period set forth in the Contract, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate(s) shown in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.
	11.4	The currency or currencies in which payments are made to the Supplier under this Contract shall be specified in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, subject to the general principle that payments will be made in the currency or currencies in which the Contract Price has been stated in the Supplier’s Tendering.
	11.5	All payments shall be made in the currency or currencies specified in the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, pursuant to <b>GCC</b> 11.4.
<b>12. Securities</b>	12.1	<u>Issuance of Securities</u> The Supplier shall provide the securities specified below in favor of the Purchaser at the times, and in the amount, manner and form specified below.
	12.2	<u>Advance Payment Security</u> 12.2.1 The Supplier shall, within fourteen (14) working days of the notification of contract award, provide a security in an amount equal to the advance payment calculated in accordance with the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, and in

		<p>the same currency or currencies.</p> <p>12.2.2 The security shall be in the form provided in the tendering documents or in another form acceptable to the Purchaser. The amount of the security shall be reduced in proportion to the value of the Facilities executed by and paid to the Supplier from time to time and shall automatically become null and void when the full amount of the advance payment has been recovered by the Purchaser. The security shall be returned to the Supplier immediately after its expiration.</p>
	<p>12.3</p>	<p><u>Performance Security</u></p> <p>12.3.1 The Performance Security, and, if applicable, an ES Performance Security, shall be provided to the Purchaser not later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a bank or surety acceptable to the Purchaser, and denominated in the types and proportions of the currencies in which the Contract Price is payable as specified in the <b>TDS</b> and <b>SCC</b> and in accordance with the conditions of contract.</p> <p>12.3.2 The Performance Security, and, if applicable, an ES Performance Security, shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.</p> <p>12.3.3 Where circumstances necessitate the amendment of the contract after signature, and such amendment is effected, the Purchaser shall require the Supplier to provide additional Performance Security, and, if applicable, an ES Performance Security, to cover any cumulative increase of more than ten percent of the Initial Contract Price.</p> <p>12.3.4 The Performance Security, and, if applicable, an ES Performance Security, shall be denominated in the currency or currencies of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms of bank guarantees provided in the tendering documents, as stipulated by the Purchaser in the <b>SCC</b>, or in another form acceptable to the Purchaser.</p> <p>12.3.5 The Performance Security, and, if applicable, an ES Performance Security shall automatically be reduced by half on the date of the Operational Acceptance and shall become null and void, eighteen (18) months after Completion of the Facilities or twelve (12) months after Operational Acceptance of the Facilities, whichever occurs first; provided, however, that if the Defects Liability Period has been extended on any part of the Facilities pursuant to GCC 26.8 [Defects Liability Period] hereof, the Supplier shall issue an additional</p>

		security in an amount proportionate to the Contract Price of that part. The Performance Security, and, if applicable, an ES Performance Security shall be returned to the Supplier immediately after its expiration, provided, however, that if the Supplier, pursuant to Clause 26.10 [Defects Liability Period], is liable for an extended warranty obligation, the performance security shall be extended for the period and up to the amount specified in the <b>SCC</b> .
<b>13. Taxes and Duties</b>	13.1	Except as otherwise specifically provided in the Contract, the Supplier shall bear and pay all taxes, duties, levies and charges assessed on the Supplier, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the United Republic of Tanzania where the Site is located.
	13.2	Notwithstanding <b>GCC</b> 13.1 above, the Purchaser shall bear and promptly pay all customs and import duties as well as other local taxes like, e.g., a value added tax (VAT), imposed by the law of the United Republic of Tanzania on the Goods specified in Price Schedule No. 1 and that are to be incorporated into the Facilities.
	13.3	If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the United Republic of Tanzania, the Purchaser shall use its best endeavors to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
	13.4	For the purpose of the Contract, it is agreed that the Contract Price specified in Article 2 (Contract Price and Terms of Payment) of the Form of Agreement is based on the taxes, duties, levies and charges prevailing at the date twenty-eight (28) days prior to the date of tender submission in the United Republic of Tanzania (hereinafter called "Tax" in this <b>GCC</b> 13.4). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished, or any change in interpretation or application of any Tax occurs in the course of the performance of Contract, which was or will be assessed on the Supplier, Subcontractors or their employees in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with <b>Clause 35</b> [Change in Laws and Regulations] hereof.

#### **D. Intellectual Property**

<b>14. Patent and Copyright</b>	14.1	The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the United Republic of Tanzania.
	14.2	The copyright in all drawings, documents and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier or, if they are furnished to the Purchaser directly or through the



		Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.
<b>15. Confidential Information</b>	15.1	Purchaser and the Supplier 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 termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Supplier under this <b>Clause 15</b> .
	15.2	The Purchaser shall not use such documents, data and other information received from the Supplier for any purpose other than the operation and maintenance of the Facilities. Similarly, the Supplier shall not use such documents, data and other information received from the Purchaser for any purpose other than the design, procurement of Goods, construction or such other work and services as are required for the performance of the Contract.
	15.3	The obligation of a party under <b>GCC 15.1</b> and <b>GCC 15.2</b> above, however, shall not apply to that information which (a) now or hereafter enters the public domain through no fault of that party (b) 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 hereto (c) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
	15.4	The above provisions of this <b>GCC 15</b> 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 Facilities or any part thereof.
	15.5	The provisions of this <b>GCC15</b> shall survive termination, for whatever reason, of the Contract.

**E. Execution of the Facilities**

<b>16. Representatives</b>	16.1	<u>Project Manager</u> If the Project Manager is not named in the Contract, then within Seven (7) working days of the Effective Date, the Purchaser shall appoint and notify the Supplier in writing of the name of the Project Manager. The Purchaser may from time to time appoint some other person as the Project Manager in place of the person previously so appointed and shall give a notice of the name of such other person to the Supplier without delay. No such appointment shall be made at such a
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		<p>time or in such a manner as to impede the progress of work on the Facilities. Such appointment shall only take effect upon receipt of such notice by the Supplier. The Project Manager shall represent and act for the Purchaser at all times during the currency of the Contract. All notices, instructions, orders, certificates, approvals and all other communications under the Contract shall be given by the Project Manager, except as herein otherwise provided.</p> <p>All notices, instructions, information and other communications given by the Supplier to the Purchaser under the Contract shall be given to the Project Manager, except as herein otherwise provided.</p>
	<p>16.2</p>	<p><b><u>Supplier’s Representative &amp; Project Manager</u></b></p> <p>16.2.1 If the Supplier’s Representative is not named in the Contract, then within Seven (7) working days of the Effective Date, the Supplier shall appoint the Supplier’s Representative and shall request the Purchaser in writing to approve the person so appointed. If the Purchaser makes no objection to the appointment within Seven (7) working days, the Supplier’s Representative shall be deemed to have been approved. If the Purchaser objects to the appointment within Seven (7) working days giving the reason thereof, then the Supplier shall appoint a replacement within Seven (7) working days of such objection, and the foregoing provisions of this <b>GCC</b> 16.2.1 shall apply thereto.</p> <p>16.2.2 The Supplier’s Representative shall represent and act for the Supplier at all times during the currency of the Contract and shall give to the Project Manager all the Supplier’s notices, instructions, information and all other communications under the Contract.</p> <p>16.2.3 All notices, instructions, information and all other communications given by the Purchaser or the Project Manager to the Supplier under the Contract shall be given to the Supplier’s Representative or, in its absence, its deputy, except as herein otherwise provided.</p> <p>16.2.4 The Supplier shall not revoke the appointment of the Supplier’s Representative without the Purchaser’s prior written consent, which shall not be unreasonably withheld. If the Purchaser consents thereto, the Supplier shall appoint some other person as the Supplier’s Representative, pursuant to the procedure set out in <b>GCC</b> 16.2.1.</p> <p>16.2.5 The Supplier’s Representative may, subject to the approval of the Purchaser (which shall not be unreasonably withheld), at any time delegate to any person any of the powers, functions and authorities vested in him or her. Any such delegation may be revoked at any time. Any such delegation or revocation shall be subject to a prior notice signed by the</p>

		<p>Supplier’s Representative, and shall specify the powers, functions and authorities thereby delegated or revoked. No such delegation or revocation shall take effect unless and until a copy thereof has been delivered to the Purchaser and the Project Manager. Any act or exercise by any person of powers, functions and authorities so delegated to him or her in accordance with this GCC 16.2.5 shall be deemed to be an act or exercise by the Supplier’s Representative.</p> <p>16.2.6 From the commencement of installation of the Facilities at the Site until Completion, the Supplier’s Representative shall appoint a suitable person as the construction manager (hereinafter referred to as “the Construction Manager”). The Construction Manager shall supervise all work done at the Site by the Supplier and shall be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance of the Contract. Whenever the Construction Manager is absent from the Site, a suitable person shall be appointed to act as his or her deputy.</p> <p>16.2.7 The Purchaser may by notice to the Supplier object to any representative or person employed by the Supplier in the execution of the Contract who, in the reasonable opinion of the Purchaser, may behave inappropriately, may be incompetent or negligent, or may commit a serious breach of the Site regulations provided under GCC 21.3 [Installation]. The Purchaser shall provide evidence of the same, whereupon the Supplier shall remove such person from the Facilities.</p> <p>16.2.8 If any representative or person employed by the Supplier is removed in accordance with <b>GCC</b> 16.2.5, the Supplier shall, where required, promptly appoint a replacement.</p>
<p><b>17. Work Programme</b></p>	<p>17.1</p>	<p><u>Supplier’s Organization</u></p> <p>The Supplier shall supply to the Purchaser and the Project Manager a chart showing the proposed organization to be established by the Supplier for carrying out work on the Facilities. The chart shall include the identities of the key personnel together with the curricula vitae of such key personnel to be employed within twenty-one (21) days of the Effective Date. The Supplier shall promptly inform the Purchaser and the Project Manager in writing of any revision or alteration of such an organization chart.</p>
	<p>17.2</p>	<p><u>Programme of Performance</u></p> <p>Within twenty-eight (28) days after the date of signing the Agreement, the Supplier shall prepare and submit to the Project Manager a detailed programme of performance of the Contract, made in the form specified in the <b>SCC</b> and showing the sequence in which it proposes to design, manufacture, transport, assemble, install and pre-commission the Facilities,</p>

		<p>as well as the date by which the Supplier reasonably requires that the Purchaser shall have fulfilled its obligations under the Contract so as to enable the Supplier to execute the Contract in accordance with the programme and to achieve Completion, Commissioning and Acceptance of the Facilities in accordance with the Contract. The programme so submitted by the Supplier shall accord with the Time Schedule included in the corresponding Appendix (Time Schedule) to the Agreement and any other dates and periods specified in the Contract. The Supplier shall update and revise the programme as and when appropriate or when required by the Project Manager, but without modification in the Times for Completion given under <b>GCC 7.2</b> [Time for Commencement and Completion] and any extension granted in accordance with <b>Clause 39</b> [Extension of Time for Completion], and shall submit all such revisions to the Project Manager.</p>
	17.3	<p><u>Progress Report</u></p> <p>The Supplier shall monitor progress of all the activities specified in the programme referred to in <b>GCC 17.2</b> above and supply a progress report to the Project Manager every month.</p> <p>The progress report shall be in a form acceptable to the Project Manager and shall indicate: (a) percentage completion achieved compared with the planned percentage completion for each activity; and (b) where any activity is behind the programme, giving comments and likely consequences and stating the corrective action being taken.</p>
	17.4	<p><u>Progress of Performance</u></p> <p>If at any time the Supplier's actual progress falls behind the programme referred to in <b>GCC 17.2</b>, or it becomes apparent that it will so fall behind, the Supplier shall, at the request of the Purchaser or the Project Manager, prepare and submit to the Project Manager a revised programme, taking into account the prevailing circumstances, and shall notify the Project Manager of the steps being taken to expedite progress so as to attain Completion of the Facilities within the Time for Completion under <b>GCC 7.2</b> [Time for Commencement and Completion], any extension thereof entitled under <b>GCC 39.1</b> [Extension of Time for Completion], or any extended period as may otherwise be agreed upon between the Purchaser and the Supplier.</p>
	17.5	<p><u>Work Procedures</u></p> <p>The Contract shall be executed in accordance with the Contract Documents and the procedures given in the section on Sample Forms and Procedures of the Contract Documents.</p> <p>The Supplier may execute the Contract in accordance with its own standard project execution plans and procedures to the extent that they do not conflict with the provisions contained in the Contract.</p>

<p><b>18. Subcontracting</b></p>	<p>18.1</p>	<p>The corresponding Appendix (List of Approved Subcontractors) to the Agreement specifies major items of supply or services and a list of approved Subcontractors against each item, including vendors. Insofar as no Subcontractors are listed against any such item, the Supplier shall prepare a list of Subcontractors for such item for inclusion in such list. The Supplier may from time to time propose any addition to or deletion from any such list. The Supplier shall submit any such list or any modification thereto to the Purchaser for its approval in sufficient time so as not to impede the progress of work on the Facilities. Such approval by the Purchaser for any of the Subcontractors shall not relieve the Supplier from any of its obligations, duties or responsibilities under the Contract.</p>
	<p>18.2</p>	<p>The Supplier shall select and employ its Subcontractors for such major items from those listed in the lists referred to in <b>GCC</b> 18.1.</p>
	<p>18.3</p>	<p>For items or parts of the Facilities not specified in the corresponding <b>Appendix 5</b> [List of Major Items of Plant and Installation Services and List of Approved Subcontractors] to the Agreement, the Supplier may employ such Subcontractors as it may select, at its discretion.</p>
	<p>18.4</p>	<p>Each sub-contract shall include provisions which would entitle the Purchaser to require the sub-contract to be assigned to the Purchaser under <b>GCC</b> 18.5 (if and when applicable), or in event of termination by the Purchaser under <b>GCC</b> 41.2 [Termination].</p>
	<p>18.5</p>	<p>If a sub-contractor's obligations extend beyond the expiry date of the relevant Defects Liability Period and the Project Manager, prior to that date, instructs the Supplier to assign the benefits of such obligations to the Purchaser, then the Supplier shall do so.</p>
<p><b>19. Design and Engineering</b></p>	<p>19.1</p>	<p><u>Specifications and Drawings</u></p> <p>19.1.1 The Supplier shall execute the basic and detailed design and the engineering work in compliance with the provisions of the Contract, or where not so specified, in accordance with good engineering practice.</p> <p>19.1.2 The Supplier shall be responsible for any discrepancies, errors or omissions in the specifications, drawings and other technical documents that it has prepared, whether such specifications, drawings and other documents have been approved by the Project Manager or not, provided that such discrepancies, errors or omissions are not because of inaccurate information furnished in writing to the Supplier by or on behalf of the Purchaser.</p> <p>19.1.3 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designated by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Project Manager.</p>

	19.2	<p><u>Codes and Standards</u></p> <p>Wherever references are made in the Contract to codes and standards in accordance with which the Contract shall be executed, the edition or the revised version of such codes and standards current at the date twenty-eight (28) days prior to date of tender submission shall apply unless otherwise specified. During Contract execution, any changes in such codes and standards shall be applied after approval by the Purchaser and shall be treated in accordance with <b>Clause 38 [Change in the Facilities]</b>.</p>
	19.3	<p><u>Approval/Review of Technical Documents by Project Manager</u></p> <p>19.3.1 The Supplier shall prepare (or cause its Subcontractors to prepare) and furnish to the Project Manager the documents listed in the corresponding Appendix (List of Documents for Approval or Review) to the Agreement for its approval or review as specified and in accordance with the requirements of <b>GCC 17.2 [Work Programme]</b>.</p> <p>19.3.2 Any part of the Facilities covered by or related to the documents to be approved by the Project Manager shall be executed only after the Project Manager’s approval thereof.</p> <p>19.3.3 <b>GCC 19.3.2</b> through 19.3.7 shall apply to those documents requiring the Project Manager’s approval, but not to those furnished to the Project Manager for its review only.</p> <p>19.3.4 Within fourteen (14) days after receipt by the Project Manager of any document requiring the Project Manager’s approval in accordance with <b>GCC 19.3.1</b>, the Project Manager shall either return one copy thereof to the Supplier with its approval endorsed thereon or shall notify the Supplier in writing of its disapproval thereof and the reasons therefore and the modifications that the Project Manager proposes. If the Project Manager fails to take such action within the said fourteen (14) working days, then the said document shall be deemed to have been approved by the Project Manager.</p> <p>19.3.5 The Project Manager shall not disapprove any document, except on the grounds that the document does not comply with some specified provision of the Contract or that it is contrary to good engineering practice.</p> <p>19.3.6 If the Project Manager disapproves the document, the Supplier shall modify the document and resubmit it for the Project Manager’s approval in accordance with <b>GCC 19.3.2</b>. If the Project Manager approves the document subject to modification(s), the Supplier shall make the required modification(s), whereupon the document shall be deemed to have been approved.</p>

		<p>19.3.7 If any dispute or difference occurs between the Purchaser and the Supplier in connection with or arising out of the disapproval by the Project Manager of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period, then such dispute or difference may be referred to Dispute Avoidance and Resolution Board for determination in accordance with <b>GCC</b> 46.1 [Obtaining Dispute Avoidance and Resolution Board’s Decision] hereof. If such dispute or difference is referred to a Dispute Avoidance and Resolution Board, the Project Manager shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Supplier shall proceed with the Contract in accordance with the Project Manager’s instructions, provided that if the Dispute Avoidance and Resolution Board upholds the Supplier’s view on the dispute and if the Purchaser has not given notice under <b>GCC</b> 46.1 [Obtaining Dispute Avoidance and Resolution Board’s Decision] hereof, then the Supplier shall be reimbursed by the Purchaser for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Adjudicator shall decide, and the Time for Completion shall be extended accordingly.</p> <p>19.3.8 The Project Manager’s approval, with or without modification of the document furnished by the Supplier, shall not relieve the Supplier of any responsibility or liability imposed upon it by any provisions of the Contract except to the extent that any subsequent failure results from modifications required by the Project Manager.</p> <p>19.3.8 The Supplier shall not depart from any approved document unless the Supplier has first submitted to the Project Manager an amended document and obtained the Project Manager’s approval thereof, pursuant to the provisions of this <b>GCC</b> 19.3.</p> <p>19.3.9 If the Project Manager requests any change in any already approved document and/or in any document based thereon, the provisions of <b>Clause 38</b> [Change in the Facilities] shall apply to such request.</p>
<p><b>20. Procurement</b></p>	<p>20.1</p>	<p><u>Goods</u></p> <p>Subject to <b>GCC</b> 13.2 [Taxes and Duties], the Supplier shall manufacture or procure and transport all the Goods in an expeditious and orderly manner to the Site.</p>
	<p>20.2</p>	<p><u>Purchaser-Supplied Plant, Equipment, and Materials</u></p> <p>If the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement provides that the Purchaser shall furnish any specific items of machinery, equipment or materials to the Supplier, the following provisions shall apply:</p>

		<p>20.2.1 The Purchaser shall, at its own risk and expense, transport each item to the place on or near the Site as agreed upon by the parties and make such item available to the Supplier at the time specified in the programme furnished by the Supplier, pursuant to GCC 17.2 [Work Programme], unless otherwise mutually agreed.</p> <p>20.2.2 Upon receipt of such item, the Supplier shall inspect the same visually and notify the Project Manager of any detected shortage, defect or default. The Purchaser shall immediately remedy any shortage, defect or default, or the Supplier shall, if practicable and possible, at the request of the Purchaser, remedy such shortage, defect or default at the Purchaser’s cost and expense. After inspection, such item shall fall under the care, custody and control of the Supplier. The provision of this <b>GCC</b> 20.2.2 shall apply to any item supplied to remedy any such shortage or default or to substitute for any defective item, or shall apply to defective items that have been repaired.</p> <p>20.2.3 The foregoing responsibilities of the Supplier and its obligations of care, custody and control shall not relieve the Purchaser of liability for any undetected shortage, defect or default, nor place the Supplier under any liability for any such shortage, defect or default whether under <b>GCC</b> 26 [<b>Defects Liability Period</b>] or under any other provision of Contract.</p>
	<p>20.3</p>	<p><u>Transportation</u></p> <p>20.3.1 The Supplier shall at its own risk and expense transport all the Goods and the Supplier’s Equipment to the Site by the mode of transport that the Supplier judges most suitable under all the circumstances.</p> <p>20.3.2 Unless otherwise provided in the Contract, the Supplier shall be entitled to select any safe mode of transport operated by any person to carry the Goods and the Supplier’s Equipment.</p> <p>20.3.3 Upon dispatch of each shipment of the Goods and the Supplier’s Equipment, the Supplier shall notify the Purchaser by telex, cable, facsimile or Electronic Data Interchange (EDI) of the description of the Goods and of the Supplier’s Equipment, the point and means of dispatch, and the estimated time and point of arrival in the United Republic of Tanzania, if applicable, and at the Site. The Supplier shall furnish the Purchaser with relevant shipping documents to be agreed upon between the parties.</p> <p>23.3.4 The Supplier shall be responsible for obtaining, if necessary, approvals from the authorities for transportation of the Goods and the Supplier’s Equipment to the Site. The Purchaser shall use its best endeavors in a timely and expeditious manner to</p>



		<p>assist the Supplier in obtaining such approvals, if requested by the Supplier. The Supplier shall indemnify and hold harmless the Purchaser from and against any claim for damage to roads, bridges or any other traffic facilities that may be caused by the transport of the Goods and the Supplier's Equipment to the Site.</p>
	20.4	<p><u>Customs Clearance</u></p> <p>The Supplier shall, at its own expense, handle all imported Goods and Supplier's Equipment at the point(s) of import and shall handle any formalities for customs clearance, subject to the Purchaser's obligations under <b>GCC</b> 13.2 [Taxes and Duties], provided that if applicable laws or regulations require any application or act to be made by or in the name of the Purchaser, the Purchaser shall take all necessary steps to comply with such laws or regulations. In the event of delays in customs clearance that are not the fault of the Supplier, the Supplier shall be entitled to an extension in the Time for Completion, pursuant to <b>GCC</b> 39 [Extension of Time for Completion].</p>
21. Installation	21.1	<p><u>Setting Out/Supervision/Labour</u></p> <p>21.1.1 <i>Benchmark</i>: The Supplier shall be responsible for the true and proper setting-out of the Facilities in relation to bench marks, reference marks and lines provided to it in writing by or on behalf of the Purchaser. If, at any time during the progress of installation of the Facilities, any error shall appear in the position, level or alignment of the Facilities, the Supplier shall forthwith notify the Project Manager of such error and, at its own expense, immediately rectify such error to the reasonable satisfaction of the Project Manager. If such error is based on incorrect data provided in writing by or on behalf of the Purchaser, the expense of rectifying the same shall be borne by the Purchaser.</p> <p>21.1.2 <i>Supplier's Supervision</i>: The Supplier shall give or provide all necessary superintendence during the installation of the Facilities, and the Construction Manager or its deputy shall be constantly on the Site to provide full-time superintendence of the installation. The Supplier shall provide and employ only technical personnel who are skilled and experienced in their respective callings and supervisory staff who are competent to adequately supervise the work at hand.</p> <p>21.1.3 <i>Labour</i>:</p> <p>(a) The Supplier shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract. The Supplier is encouraged to use local labour that has the necessary skills.</p>

		<p>(b) Unless otherwise provided in the Contract, the Supplier shall be responsible for the recruitment, transportation, accommodation and catering of all labour, local or expatriate, required for the execution of the Contract and for all payments in connection therewith.</p> <p>(c) The Supplier shall be responsible for obtaining all necessary permit(s) and/or visa(s) from the appropriate authorities for the entry of all labour and personnel to be employed on the Site into the United Republic of Tanzania and in the exact region where the Site is located.</p> <p>(d) The Supplier shall at its own expense provide the means of repatriation to all of its and its Subcontractor's personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Contract to the date programmed for their departure. In the event that the Supplier defaults in providing such means of transportation and temporary maintenance, the Purchaser may provide the same to such personnel and recover the cost of doing so from the Supplier.</p> <p>(e) The Supplier shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its employees and the labour of its Subcontractors.</p> <p>(f) The Supplier shall, in all dealings with its labour and the labour of its Subcontractors currently employed on or connected with the Contract, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labour.</p> <p><b>21.1.4 Rates of Wages and Conditions of Labor</b></p> <p>The Supplier shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Supplier shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Purchasers whose trade or industry is similar to that of the Supplier.</p> <p>The Supplier shall inform the Supplier's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the</p>
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		<p>time being in force, and the Supplier shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.</p> <p><b>21.1.5 Working Hours</b></p> <p>No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the <b>SCC</b>, unless:</p> <ul style="list-style-type: none"> <li>(a) otherwise stated in the Contract,</li> <li>(b) the Project Manager gives consent, or</li> <li>(c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Supplier shall immediately advise the Project Manager.</li> </ul> <p>If and when the Supplier considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Project Manager's consent thereto, the Project Manager shall not unreasonably withhold such consent.</p> <p>This <b>GCC</b> shall not apply to any work which is customarily carried out by rotary or double-shifts.</p> <p><b>21.1.6 Facilities for Staff and Labor</b></p> <p>Except as otherwise stated in the Specification, the Supplier shall provide and maintain all necessary accommodation and welfare facilities for the Supplier's Personnel. The Supplier shall also provide facilities for the Purchaser's Personnel as stated in the Specification.</p> <p>The Supplier shall not permit any of the Supplier's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.</p> <p><b>21.1.7 Health and Safety</b></p> <p>The Supplier shall at all times take all reasonable precautions to maintain the health and safety of the Supplier's Personnel. In collaboration with local health authorities, the Supplier shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Supplier's and Purchaser's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.</p> <p>The Supplier shall appoint an accident prevention officer at the Site, responsible for maintaining safety</p>
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		<p>and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the performance of the Contract, the Supplier shall provide whatever is required by this person to exercise this responsibility and authority.</p> <p>The Supplier shall send to the Project Manager, details of any accident as soon as practicable after its occurrence. The Supplier shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.</p> <p>The Supplier shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Supplier's employees, all Sub-Contractors and Purchaser's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labor as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.</p> <p>The Supplier shall include in the program to be submitted for the execution of the Facilities under <b>GCC</b> 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Supplier plans to satisfy the requirements of this <b>GCC</b> and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Supplier for preparation and implementation this program shall not exceed the Provisional Sum dedicated for this purpose.</p> <p><b>21.1.8 Funeral Arrangements</b></p> <p>In the event of the death of any of the Supplier's personnel or accompanying members of their families,</p>
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		<p>the Supplier shall be responsible for making the appropriate arrangements for their return or burial, unless otherwise specified in the <b>SCC</b>.</p> <p>21.1.9 Records of Supplier’s Personnel</p> <p>The Supplier shall keep accurate records of the Supplier’s personnel, including the number of each class of Supplier’s Personnel on the Site and the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis in a form approved by the Project Manager and shall be available for inspection by the Project Manager until the Supplier has completed all work.</p> <p>21.1.10 Supply of Foodstuffs</p> <p>The Supplier shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Supplier’s Personnel for the purposes of or in connection with the Contract.</p> <p>21.1.11 Supply of Water</p> <p>The Supplier shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Supplier’s Personnel.</p> <p>21.1.12 Measures against Insect and Pest Nuisance</p> <p>The Supplier shall at all times take the necessary precautions to protect the Supplier’s Personnel employed on the Site from insect and pest nuisance, and to reduce their danger to health. The Supplier shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.</p> <p>21.1.13 Alcoholic Liquor or Drugs</p> <p>The Supplier shall not, otherwise than in accordance with the Laws of the Country, import, sell, give barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift barter or disposal by Supplier's Personnel.</p> <p>21.1.14 Arms and Ammunition</p> <p>The Supplier shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Supplier's Personnel to do so.</p> <p>21.1.15 Prohibition of All Forms of Forced or Compulsory Labor</p> <p>The contractor shall not employ “forced or compulsory labor” in any form. “Forced or compulsory labor”</p>
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		<p>consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.</p> <p>21.1.16 Prohibition of Harmful Child Labor</p> <p>The Supplier shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development</p>
	21.2	<p><u>Supplier's Equipment</u></p> <p>21.2.1 All Supplier's Equipment brought by the Supplier onto the Site shall be deemed to be intended to be used exclusively for the execution of the Contract. The Supplier shall not remove the same from the Site without the Project Manager's consent that such Supplier's Equipment is no longer required for the execution of the Contract.</p> <p>21.2.2 Unless otherwise specified in the Contract, upon completion of the Facilities, the Supplier shall remove from the Site all Equipment brought by the Supplier onto the Site and any surplus materials remaining thereon.</p> <p>21.2.3 The Purchaser will, if requested, use its best endeavors to assist the Supplier in obtaining any local, state or national government permission required by the Supplier for the export of the Supplier's Equipment imported by the Supplier for use in the execution of the Contract that is no longer required for the execution of the Contract.</p>
	21.3	<p><u>Site Regulations and Safety</u></p> <p>The Purchaser and the Supplier shall establish Site regulations setting out the rules to be observed in the execution of the Contract at the Site and shall comply therewith. The Supplier shall prepare and submit to the Purchaser, with a copy to the Project Manager, proposed Site regulations for the Purchaser's approval, which approval shall not be unreasonably withheld.</p> <p>Such Site regulations shall include, but shall not be limited to, rules in respect of security, safety of the Facilities, gate control, sanitation, medical care, and fire prevention.</p>
	21.4	<p><u>Opportunities for Other Contractors</u></p> <p>21.4.1 The Supplier shall, upon written request from the Purchaser or the Project Manager, give all reasonable opportunities for carrying out the work to any other contractors employed by the Purchaser on or near the Site.</p> <p>21.4.2 If the Supplier, upon written request from the Purchaser or the Project Manager, makes available to other contractors any roads or ways the maintenance for</p>

		<p>which the Supplier is responsible, permits the use by such other contractors of the Supplier's Equipment, or provides any other service of whatsoever nature for such other contractors, the Purchaser shall fully compensate the Supplier for any loss or damage caused or occasioned by such other contractors in respect of any such use or service, and shall pay to the Supplier reasonable remuneration for the use of such equipment or the provision of such services.</p> <p>21.4.3 The Supplier shall also so arrange to perform its work as to minimize, to the extent possible, interference with the work of other contractors. The Project Manager shall determine the resolution of any difference or conflict that may arise between the Supplier and other contractors and the workers of the Purchaser in regard to their work.</p> <p>21.4.4 The Supplier shall notify the Project Manager promptly of any defects in the other contractors' work that come to its notice, and that could affect the Supplier's work. The Project Manager shall determine the corrective measures, if any, required to rectify the situation after inspection of the Facilities. Decisions made by the Project Manager shall be binding on the Supplier.</p>
	<p>21.5</p>	<p><u>Emergency Work</u></p> <p>21.5.1 If, by reason of an emergency arising in connection with and during the execution of the Contract, any protective or remedial work is necessary as a matter of urgency to prevent damage to the Facilities, the Supplier shall immediately carry out such work.</p> <p>21.5.2 If the Supplier is unable or unwilling to do such work immediately, the Purchaser may do or cause such work to be done as the Purchaser may determine is necessary in order to prevent damage to the Facilities. In such event the Purchaser shall, as soon as practicable after the occurrence of any such emergency, notify the Supplier in writing of such emergency, the work done and the reasons, therefore. If the work done or caused to be done by the Purchaser is work that the Supplier was liable to do at its own expense under the Contract, the reasonable costs incurred by the Purchaser in connection therewith shall be paid by the Supplier to the Purchaser. Otherwise, the cost of such remedial work shall be borne by the Purchaser.</p>
	<p>21.6</p>	<p><u>Site Clearance</u></p> <p>21.6.1 <i>Site Clearance in Course of Performance:</i> In the course of carrying out the Contract, the Supplier shall keep the Site reasonably free from all unnecessary obstruction, store or remove any surplus materials, clear away any wreckage, rubbish or temporary works from the Site, and remove any Supplier's Equipment no longer</p>

		<p>required for execution of the Contract.</p> <p>24.6.2 <i>Clearance of Site after Completion:</i> After Completion of all parts of the Facilities, the Supplier shall clear away and remove all wreckage, rubbish and debris of any kind from the Site, and shall leave the Site and Facilities clean and safe.</p>
	21.7	<p><u>Watching and Lighting</u></p> <p>The Supplier shall provide and maintain at its own expense all lighting, fencing, and watching when and where necessary for the proper execution and the protection of the Facilities, or for the safety of the owners and occupiers of adjacent property and for the safety of the public.</p>
	21.8	<p><u>Work at Night and on Holidays</u></p> <p>21.8.1 Unless otherwise provided in the Contract, no work shall be carried out during the night and on public holidays of the United Republic of Tanzania without prior written consent of the Purchaser, except where work is necessary or required to ensure safety of the Facilities or for the protection of life, or to prevent loss or damage to property, when the Supplier shall immediately advise the Project Manager, provided that provisions of this <b>GCC</b> 21.8.1 shall not apply to any work which is customarily carried out by rotary or double-shifts.</p> <p>21.8.2 Notwithstanding <b>GCCs</b> 21.8.1 or 21.1.3, if and when the Supplier considers it necessary to carry out work at night or on public holidays so as to meet the Time for Completion and requests the Purchaser's consent thereto, the Purchaser shall not unreasonably withhold such consent.</p>
<b>22. Test and Inspection</b>	22.1	<p>The Supplier shall at its own expense carry out at the place of manufacture and/or on the Site all such tests and/or inspections of the Goods and any part of the Facilities as are specified in the Contract.</p>
	22.2	<p>The Purchaser and the Project Manager or their designated representatives shall be entitled to attend the aforesaid test and/or inspection, provided that the Purchaser shall bear all costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.</p>
	22.3	<p>Whenever the Supplier is ready to carry out any such test and/or inspection, the Supplier shall give a reasonable advance notice of such test and/or inspection and of the place and time thereof to the Project Manager. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser and the Project Manager (or their designated representatives) to attend the test and/or inspection.</p>



	22.4	<p>The Supplier shall provide the Project Manager with a certified report of the results of any such test and/or inspection.</p> <p>If the Purchaser or Project Manager (or their designated representatives) fails to attend the test and/or inspection, or if it is agreed between the parties that such persons shall not do so, then the Supplier may proceed with the test and/or inspection in the absence of such persons, and may provide the Project Manager with a certified report of the results thereof.</p>
	22.5	<p>The Project Manager may require the Supplier to carry out any test and/or inspection not required by the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of work on the Facilities and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Time for Completion and the other obligations so affected</p>
	22.6	<p>If any Goods or any part of the Facilities fails to pass any test and/or inspection, the Supplier shall either rectify or replace such Goods or part of the Facilities and shall repeat the test and/or inspection upon giving a notice under <b>GCC</b> 22.3.</p>
	22.7	<p>If any dispute or difference of opinion shall arise between the parties in connection with or arising out of the test and/or inspection of the Goods or part of the Facilities that cannot be settled between the parties within a reasonable period of time, it may be referred to a Dispute Avoidance and Resolution Board for determination in accordance with <b>Clause</b>46.1 [Obtaining Dispute Avoidance and Resolution Board's Decision].</p>
	22.8	<p>The Supplier shall afford the Purchaser and the Project Manager, at the Purchaser's expense, access at any reasonable time to any place where the Goods are being manufactured or the Facilities are being installed, in order to inspect the progress and the manner of manufacture or installation, provided that the Project Manager shall give the Supplier a reasonable prior notice.</p>
	22.9	<p>The Supplier agrees that neither the execution of a test and/or inspection of Goods or any part of the Facilities, nor the attendance by the Purchaser or the Project Manager, nor the issue of any test certificate pursuant to <b>GCC</b> 22.4, shall release the Supplier from any other responsibilities under the Contract.</p>
	22.10	<p>No part of the Facilities or foundations shall be covered up on the Site without the Supplier carrying out any test and/or inspection required under the Contract. The Supplier shall give a reasonable notice to the Project Manager whenever any such ready or about to be ready for test and/or inspection; such test and/or inspection and notice thereof shall be subject to the requirements of the Contract.</p>

	22.11	<p>The Supplier shall uncover any part of the Facilities or foundations or shall make openings in or through the same as the Project Manager may from time to time require at the Site, and shall reinstate and make good such part or parts.</p> <p>If any parts of the Facilities or foundations have been covered up at the Site after compliance with the requirement of <b>GCC</b> 22.10 and are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating, and making good the same shall be borne by the Purchaser, and the Time for Completion shall be reasonably adjusted to the extent that the Supplier has thereby been delayed or impeded in the performance of any of its obligations under the Contract.</p>
<b>23. Completion of the Facilities</b>	23.1	<p>As soon as the Facilities or any part thereof has, in the opinion of the Supplier, been completed operationally and structurally and put in a tight and clean condition as specified in the Technical Specifications, excluding minor items not materially affecting the operation or safety of the Facilities, the Supplier shall so notify the Purchaser in writing.</p>
	23.2	<p>Within seven (7) working days after receipt of the notice from the Supplier under <b>GCC</b> 23.1 [Completion of the Facilities], the Purchaser shall supply the operating and maintenance personnel specified in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement for Pre-commissioning of the Facilities or any part thereof.</p> <p>Pursuant to the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement, the Purchaser shall also provide, within the said seven (7) day period, the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Pre-commissioning of the Facilities or any part thereof.</p>
	23.3	<p>As soon as reasonably practicable after the operating and maintenance personnel have been supplied by the Purchaser and the raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters have been provided by the Purchaser in accordance with <b>GCC</b> 23.2, the Supplier shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning subject to Clause 24 [Commissioning and Operational Acceptance].</p>
	23.4	<p>As soon as all works in respect of Pre-commissioning are completed and, in the opinion of the Supplier, the Facilities or any part thereof is ready for Commissioning, the Supplier shall so notify the Project Manager in writing.</p>
	23.5	<p>23.5.1 The Project Manager shall, within fourteen (14) days after receipt of the Supplier's notice under <b>GCC</b> 23.4, either issue a Completion Certificate in the form specified in the Sample Forms and Procedures section in the tendering documents, stating that the Facilities or that part thereof have reached Completion as of the date of the Supplier's notice under <b>GCC</b></p>

		<p>23.4, or notify the Supplier in writing of any defects and/or deficiencies.</p> <p>23.5.2 If the Project Manager notifies the Supplier of any defects and/or deficiencies, the Supplier shall then correct such defects and/or deficiencies and shall repeat the procedure described in <b>GCC</b> 23.4.</p> <p>23.5.3 If the Project Manager is satisfied that the Facilities or that part thereof have reached Completion, the Project Manager shall, within seven (7) days after receipt of the Supplier's repeated notice, issue a Completion Certificate stating that the Facilities or that part thereof have reached Completion as of the date of the Supplier's repeated notice.</p> <p>23.5.4 If the Project Manager is not so satisfied, then it shall notify the Supplier in writing of any defects and/or deficiencies within seven (7) days after receipt of the Supplier's repeated notice, and the above procedure shall be repeated.</p>
	23.6	<p>If the Project Manager fails to issue the Completion Certificate and fails to inform the Supplier of any defects and/or deficiencies within fourteen (14) days after receipt of the Supplier's notice under <b>GCC</b> 23.4 or within seven (7) days after receipt of the Supplier's repeated notice under <b>GCC</b> 23.5, or if the Purchaser makes use of the Facilities or part thereof, then the Facilities or that part thereof shall be deemed to have reached Completion as of the date of the Supplier's notice or repeated notice, or as of the Purchaser's use of the Facilities, as the case may be.</p>
	23.7	<p>As soon as possible after Completion, the Supplier shall complete all outstanding minor items so that the Facilities are fully in accordance with the requirements of the Contract, failing which the Purchaser will undertake such completion and deduct the costs thereof from any monies owing to the Supplier.</p>
	23.8	<p>Upon Completion, the Purchaser shall be responsible for the care and custody of the Facilities or the relevant part thereof, together with the risk of loss or damage thereto, and shall thereafter take over the Facilities or the relevant part thereof.</p>
<b>24. Commissioning and Operational Acceptance</b>	24.1	<p><u>Commissioning</u></p> <p>24.1.1 Commissioning of the Facilities or any part thereof shall be commenced by the Supplier immediately after issue of the Completion Certificate by the Project Manager, pursuant to <b>GCC</b> 23.5 [Completion of facilities], or immediately after issue of the deemed Completion, under <b>GCC</b> 23.6.</p> <p>24.1.2 The Purchaser shall supply the operating and maintenance personnel and all raw materials, utilities, lubricants, chemicals, catalysts, facilities, services and other matters required for Commissioning.</p>

	<p>24.2</p>	<p><u>Guarantee Test</u></p> <p>24.2.1 The Guarantee Test (and repeats thereof) shall be conducted by the Supplier during Commissioning of the Facilities or the relevant part thereof to ascertain whether the Facilities or the relevant part can attain the Functional Guarantees specified in the Technical Specifications. The Supplier's and Project Manager's advisory personnel shall attend the Guarantee Test and shall advise and assist the Purchaser. The Purchaser shall promptly provide the Supplier with such information as the Supplier may reasonably require in relation to the conduct and results of the Guarantee Test (and any repeats thereof).</p> <p>24.2.3 If for reasons not attributable to the Supplier, the Guarantee Test of the Facilities or the relevant part thereof cannot be successfully completed within the period from the date of Completion specified in the <b>SCC</b> or any other period agreed upon by the Purchaser and the Supplier, the Supplier shall be deemed to have fulfilled its obligations with respect to the Functional Guarantees, and <b>GCCs</b> 27.2 and 27.3 [Functional Guarantees] shall not apply.</p>
	<p>24.3</p>	<p><u>Operational Acceptance</u></p> <p>24.3.1 Subject to <b>GCC 24.4</b> below, Operational Acceptance shall occur in respect of the Facilities or any part thereof when</p> <ul style="list-style-type: none"> <li>(a) the Guarantee Test has been successfully completed and the Functional Guarantees are met; or</li> <li>(b) the Guarantee Test has not been successfully completed or has not been carried out for reasons not attributable to the Supplier within the period from the date of Completion specified in the <b>SCC</b> or any other agreed upon period as specified in <b>GCC 24.2.2</b> above; or</li> <li>(c) the Supplier has paid the liquidated damages specified in <b>GCC 26.3 [Defects Liability Period]</b> hereof; and</li> <li>(d) any minor items mentioned in <b>GCC 23.7 [Completion of the Facilities]</b> hereof relevant to the Facilities or that part thereof have been completed.</li> </ul> <p>24.3.2 At any time after any of the events set out in <b>GCC 24.3.1</b> have occurred, the Supplier may give a notice to the Project Manager requesting the issue of an Operational Acceptance Certificate in the form provided in the Tendering Documents or in another form acceptable to the Purchaser in respect of the Facilities or the part thereof specified in such notice as of the date of such notice.</p>

		<p>24.3.3 The Project Manager shall, after consultation with the Purchaser, and within seven (7) days after receipt of the Supplier's notice, issue an Operational Acceptance Certificate.</p> <p>24.3.4 If within seven (7) days after receipt of the Supplier's notice, the Project Manager fails to issue the Operational Acceptance Certificate or fails to inform the Supplier in writing of the justifiable reasons why the Project Manager has not issued the Operational Acceptance Certificate, the Facilities or the relevant part thereof shall be deemed to have been accepted as of the date of the Supplier's said notice.</p>
	<p><b>24.4</b></p>	<p><u>Partial Acceptance</u></p> <p><b>24.4.1</b> If the Contract specifies that Completion and Commissioning shall be carried out in respect of parts of the Facilities, the provisions relating to Completion and Commissioning including the Guarantee Test shall apply to each such part of the Facilities individually, and the Operational Acceptance Certificate shall be issued accordingly for each such part of the Facilities.</p> <p><b>24.4.2</b> If a part of the Facilities comprises facilities such as buildings, for which no Commissioning or Guarantee Test is required, then the Project Manager shall issue the Operational Acceptance Certificate for such facility when it attains Completion, provided that the Supplier shall thereafter complete any outstanding minor items that are listed in the Operational Acceptance Certificate.</p>

**F. Guarantees and Liabilities**

<p><b>25. Completion Time Guarantee</b></p>	<p>25.1</p>	<p>The Supplier guarantees that it shall attain Completion of the Facilities (or a part for which a separate time for completion is specified in the <b>SCC</b>) within the Time for Completion specified in the <b>SCC</b> pursuant to <b>GCC 7.2 [Time for Commencement and Completion]</b>, or within such extended time to which the Supplier shall be entitled under <b>GCC 39 [Extension of Time for Completion]</b> hereof.</p>
	<p>25.2</p>	<p>If the Supplier fails to attain Completion of the Facilities or any part thereof within the Time for Completion or any extension thereof under <b>GCC39 [Extension of Time for Completion]</b>, the Supplier shall pay to the Purchaser liquidated damages in the amount specified in the <b>SCC</b> as a percentage rate of the Contract Price, or the relevant part thereof. The aggregate amount of such liquidated damages shall in no event exceed the amount specified as "Maximum" in the <b>SCC</b>. Once the "Maximum" is reached, the Purchaser may consider termination of the Contract, pursuant to <b>GCC 41.2.2 [Termination]</b>.</p> <p>Such payment shall completely satisfy the Supplier's obligation to attain Completion of the Facilities or the relevant part thereof within the Time for Completion or any extension thereof under <b>GCC 39 [Extension of Time for Completion]</b> The Supplier shall</p>

		<p>have no further liability whatsoever to the Purchaser in respect thereof.</p> <p>However, the payment of liquidated damages shall not in any way relieve the Supplier from any of its obligations to complete the Facilities or from any other obligations and liabilities of the Supplier under the Contract.</p> <p>Save for liquidated damages payable under this <b>GCC</b> 25.2 [Completion Time Guarantee], the failure by the Supplier to attain any milestone or other act, matter or thing by any date specified in the corresponding Appendix (Time Schedule) to the Agreement and/or other programme of work prepared pursuant to <b>GCC</b>17.2 [Work Programme] shall not render the Supplier liable for any loss or damage thereby suffered by the Purchaser.</p>
	25.3	<p>If the Supplier attains Completion of the Facilities or any part thereof before the Time for Completion or any extension thereof under <b>GCC</b> 39 [Extension of Time for Completion], the Purchaser shall pay to the Supplier a bonus in the amount specified in the <b>SCC</b>. The aggregate amount of such bonus shall in no event exceed the amount specified as “Maximum” in the <b>SCC</b>.</p>
<b>26. Defect Liability</b>	26.1	<p>The Supplier warrants that the Facilities or any part thereof shall be free from defects in the design, engineering, materials and workmanship of the Goods supplied and of the work executed.</p>
	26.2	<p>The Defect Liability Period shall be eighteen (18) months from the date of Completion of the Facilities (or any part thereof) or twelve (12) months from the date of Operational Acceptance of the Facilities (or any part thereof), whichever occurs first, unless otherwise specified in the <b>SCC</b>.</p> <p>If during the Defect Liability Period any defect should be found in the design, engineering, materials and workmanship of the Goods supplied or of the work executed by the Supplier, the Supplier shall promptly, in consultation and agreement with the Purchaser regarding appropriate remedying of the defects, and at its cost, repair, replace or otherwise make good (as the Supplier shall, at its discretion, determine) such defect as well as any damage to the Facilities caused by such defect. The Supplier shall not be responsible for the repair, replacement or making good of any defect or of any damage to the Facilities arising out of or resulting from any of the following causes:</p> <ul style="list-style-type: none"> <li>(a) improper operation or maintenance of the Facilities by the Purchaser</li> <li>(b) operation of the Facilities outside specifications provided in the Contract</li> <li>(c) normal wear and tear.</li> </ul>
	26.3	<p>The Supplier’s obligations under this <b>GCC</b> 26 shall not apply to</p> <ul style="list-style-type: none"> <li>(a) any materials that are supplied by the Purchaser under <b>GCC</b> 20.2 [Procurement], are normally consumed in</li> </ul>

		<p>operation, or have a normal life shorter than the Defect Liability Period stated herein</p> <p>(b) any designs, specifications or other data designed, supplied or specified by or on behalf of the Purchaser or any matters for which the Supplier has disclaimed responsibility herein</p> <p>(c) any other materials supplied, or any other work executed by or on behalf of the Purchaser, except for the work executed by the Purchaser under <b>GCC 26.7</b>.</p>
	26.4	<p>The Purchaser shall give the Supplier a notice stating the nature of any such defect together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect any such defect.</p>
	26.5	<p>The Purchaser shall afford the Supplier all necessary access to the Facilities and the Site to enable the Supplier to perform its obligations under this <b>GCC 26</b>.</p> <p>The Supplier may, with the consent of the Purchaser, remove from the Site any Goods or any part of the Facilities that are defective if the nature of the defect, and/or any damage to the Facilities caused by the defect, is such that repairs cannot be expeditiously carried out at the Site.</p>
	26.6	<p>If the repair, replacement or making good is of such a character that it may affect the efficiency of the Facilities or any part thereof, the Purchaser may give to the Supplier a notice requiring that tests of the defective part of the Facilities shall be made by the Supplier immediately upon completion of such remedial work, whereupon the Supplier shall carry out such tests.</p> <p>If such part fails the tests, the Supplier shall carry out further repair, replacement or making good (as the case may be) until that part of the Facilities passes such tests. The tests shall be agreed upon by the Purchaser and the Supplier.</p>
	26.7	<p>If the Supplier fails to commence the work necessary to remedy such defect or any damage to the Facilities caused by such defect within a reasonable time (which shall in no event be considered to be less than fifteen (15) days), the Purchaser may, following notice to the Supplier, proceed to do such work, and the reasonable costs incurred by the Purchaser in connection therewith shall be paid to the Purchaser by the Supplier or may be deducted by the Purchaser from any monies due the Supplier or claimed under the Performance Security.</p>
	26.8	<p>If the Facilities or any part thereof cannot be used by reason of such defect and/or making good of such defect, the Defect Liability Period of the Facilities or such part, as the case may be, shall be extended by a period equal to the period during which the Facilities or such part cannot be used by the Purchaser because of any of the aforesaid reasons.</p>

	26.9	Except as provided in this <b>GCC</b> 2 and 31 [Care of Facilities], the Supplier shall be under no liability whatsoever and howsoever arising, and whether under the Contract or at law, in respect of defects in the Facilities or any part thereof, the Goods, design or engineering or work executed that appear after Completion of the Facilities or any part thereof, except where such defects are the result of the gross negligence, fraud, criminal or willful action of the Supplier.
	26.10	In addition, the Supplier shall also provide an extended warranty for any such component of the Facilities and during the period of time as may be specified <b>in the SCC</b> . Such obligation shall be in addition to the defect liability specified under <b>GCC</b> 26.2.
<b>27. Functional Guarantees</b>	27.1	The Supplier guarantees that during the Guarantee Test, the Facilities and all parts thereof shall attain the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement, subject to and upon the conditions therein specified.
	27.2	If, for reasons attributable to the Supplier, the minimum level of the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement are not met either in whole or in part, the Supplier shall at its cost and expense make such changes, modifications and/or additions to the Plant or any part thereof as may be necessary to meet at least the minimum level of such Guarantees. The Supplier shall notify the Purchaser upon completion of the necessary changes, modifications and/or additions, and shall request the Purchaser to repeat the Guarantee Test until the minimum level of the Guarantees has been met. If the Supplier eventually fails to meet the minimum level of Functional Guarantees, the Purchaser may consider termination of the Contract, pursuant to <b>GCC</b> 41.2.2 [Termination].
	27.3	If, for reasons attributable to the Supplier, the Functional Guarantees specified in the corresponding Appendix (Functional Guarantees) to the Agreement are not attained either in whole or in part, but the minimum level of the Functional Guarantees specified in the said Appendix to the Agreement is met, the Supplier shall, at the Supplier's option, either  (a) make such changes, modifications and/or additions to the Facilities or any part thereof that are necessary to attain the Functional Guarantees at its cost and expense, and shall request the Purchaser to repeat the Guarantee Test or  (b) pay liquidated damages to the Purchaser in respect of the failure to meet the Functional Guarantees in accordance with the provisions in the corresponding Appendix (Functional Guarantees) to the Agreement.
	27.4	The payment of liquidated damages under <b>GCC</b> 27.3 up to the limitation of liability specified in the <b>SCC</b> shall completely satisfy the Supplier's guarantees under <b>GCC</b> 27.3 and the



		<p>Supplier shall have no further liability whatsoever to the Purchaser in respect thereof. Upon payment of such liquidated damages by the Supplier, the Project Manager shall issue the Operational Acceptance Certificate for the Facilities or any part thereof in respect of which liquidated damages have been so paid.</p>
<p><b>28. Patent Indemnity</b></p>	<p>28.1</p>	<p>The Supplier shall, subject to the Purchaser’s compliance with <b>GCC</b> 28.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: (a) the installation of the Facilities by the Supplier or the use of the Facilities in the United Republic of Tanzania; and (b) the sale of the products produced by the Facilities in United Republic of Tanzania.</p> <p>Such indemnity shall not cover any use of the Facilities or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, any infringement resulting from the use of the Facilities or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Supplier, pursuant to the Agreement.</p>
	<p>28.2</p>	<p>If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in <b>GCC</b> 28.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser’s name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.</p> <p>The Purchaser shall, at the Supplier’s request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.</p>
	<p>28.3</p>	<p>The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney’s fees and expenses, which the Supplier may suffer as a result of any</p>

		infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.
<b>29. Limitation of Liability</b>	29.1	<p>Except in cases of criminal negligence or willful misconduct,</p> <p>(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and</p> <p>(b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.</p>

**G. Risk Distribution**

<b>30. Transfer of Ownership</b>	30.1	Ownership of the Goods (including spare parts) to be imported into the United Republic of Tanzania shall be transferred to the Purchaser upon loading on to the mode of transport to be used to convey the Goods from the country of origin.
	30.2	Ownership of the Goods (including spare parts) procured in the United Republic of Tanzania where the Site is located shall be transferred to the Purchaser when the Goods are brought on to the Site.
	30.3	Ownership of the Supplier’s Equipment used by the Supplier and its Subcontractors in connection with the Contract shall remain with the Supplier or its Subcontractors.
	30.4	Ownership of any Goods in excess of the requirements for the Facilities shall revert to the Supplier upon Completion of the Facilities or at such earlier time when the Purchaser and the Supplier agree that the Goods in question are no longer required for the Facilities.
	30.5	Notwithstanding the transfer of ownership of the Goods, the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Supplier pursuant to <b>GCC</b> 31 [Care of Facilities] hereof until Completion of the Facilities or the part thereof in which such Goods are incorporated.
<b>31. Care of Facilities</b>	31.1	The Supplier shall be responsible for the care and custody of the Facilities or any part thereof until the date of Completion of the Facilities pursuant to <b>GCC</b> 23 [Completion of the Facilities] or, where the Contract provides for Completion of the Facilities in parts, until the date of Completion of the relevant part, and shall make good at its own cost any loss or damage that may

		<p>occur to the Facilities or the relevant part thereof from any cause whatsoever during such period. The Supplier shall also be responsible for any loss or damage to the Facilities caused by the Supplier or its Subcontractors in the course of any work carried out, pursuant to <b>GCC 26 [Defects Liability Period]</b>. Notwithstanding the foregoing, the Supplier shall not be liable for any loss or damage to the Facilities or that part thereof caused by reason of any of the matters specified or referred to in paragraphs (a), (b) and (c) of <b>GCCs 31.2 and 37.1 [War Risks]</b>.</p>
	<p>31.2</p>	<p>If any loss or damage occurs to the Facilities or any part thereof or to the Supplier’s temporary facilities by reason of</p> <ul style="list-style-type: none"> <li>(a) (insofar as they relate to the United Republic of Tanzania, where the Site is located) nuclear reaction, nuclear radiation, radioactive contamination, pressure wave caused by aircraft or other aerial objects, or any other occurrences that an experienced contractor could not reasonably foresee, or if reasonably foreseeable could not reasonably make provision for or insure against, insofar as such risks are not normally insurable on the insurance market and are mentioned in the general exclusions of the policy of insurance, including War Risks and Political Risks, taken out under <b>GCC 33 [Insurance]</b> hereof</li> <li>(b) any use or occupation by the Purchaser or any third party (other than a Subcontractor) authorized by the Purchaser of any part of the Facilities</li> <li>(c) any use of or reliance upon any design, data or specification provided or designated by or on behalf of the Purchaser, or any such matter for which the Supplier has disclaimed responsibility herein,</li> </ul> <p>the Purchaser shall pay to the Supplier all sums payable in respect of the Facilities executed, notwithstanding that the same be lost, destroyed or damaged, and will pay to the Supplier the replacement value of all temporary facilities and all parts thereof lost, destroyed or damaged. If the Purchaser requests the Supplier in writing to make good any loss or damage to the Facilities thereby occasioned, the Supplier shall make good the same at the cost of the Purchaser in accordance with <b>GCC38 [Change in the Facilities]</b>. If the Purchaser does not request the Supplier in writing to make good any loss or damage to the Facilities thereby occasioned, the Purchaser shall either request a change in accordance with <b>GCC 38</b>, excluding the performance of that part of the Facilities thereby lost, destroyed or damaged, or, where the loss or damage affects a substantial part of the Facilities, the Purchaser shall terminate the Contract pursuant to <b>GCC 41.2 [Termination for Supplier’s Default]</b> hereof.</p>
	<p>31.3</p>	<p>The Supplier shall be liable for any loss of or damage to any Supplier’s Equipment, or any other property of the Supplier used or intended to be used for purposes of the Facilities, except (i) as mentioned in <b>GCC31.2 [Care of the Facilities]</b> (with respect to the Supplier’s temporary facilities), and (ii)</p>

		where such loss or damage arises by reason of any of the matters specified in <b>GCCs</b> 31.2 (b) and (c) and 37.1 [War Risks].
	31.4	With respect to any loss or damage caused to the Facilities or any part thereof or to the Supplier's Equipment by reason of any of the matters specified in <b>GCC 37.1</b> , the provisions of Sub- <b>GCC 37.3</b> shall apply.
<b>32. Loss of or Damage to Property; Accident or Injury to Workers; Indemnification</b>	32.1	Subject to <b>GCC 32.3</b> , the Supplier shall indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and expenses, in respect of the death or injury of any person or loss of or damage to any property (other than the Facilities whether accepted or not), arising in connection with the supply and installation of the Facilities and by reason of the negligence of the Supplier or its Subcontractors, or their employees, officers or agents, except any injury, death or property damage caused by the negligence of the Purchaser, its contractors, employees, officers or agents.
	32.2	<p>If any proceedings are brought or any claim is made against the Purchaser that might subject the Supplier to liability under <b>GCC 32.1</b>, the Purchaser shall promptly give the Supplier a notice thereof and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.</p> <p>If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf. Unless the Supplier has so failed to notify the Purchaser within the twenty-eight (28) day period, the Purchaser shall make no admission that may be prejudicial to the defense of any such proceedings or claim.</p> <p>The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.</p>
	32.3	The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers and Subcontractors from any liability for loss of or damage to property of the Purchaser, other than the Facilities not yet taken over, that is caused by fire, explosion or any other perils, in excess of the amount recoverable from insurances procured under <b>GCC 33</b> [Insurance], provided that such fire, explosion or other perils were not caused by any act or failure of the Supplier.
	32.4	The party entitled to the benefit of an indemnity under this <b>GCC 32</b> shall take all reasonable measures to mitigate any loss or damage which has occurred. If the party fails to take such measures, the other party's liabilities shall be

		correspondingly reduced.
<b>33. Insurance</b>	33.1	<p>To the extent specified in the corresponding Appendix (Insurance Requirements) to the Agreement, the Supplier shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Purchaser, who should not unreasonably withhold such approval.</p> <p>(a) <u>Cargo Insurance During Transport:</u> Covering loss or damage occurring while in transit from the Supplier's or Subcontractor's works or stores until arrival at the Site, to the Goods (including spare parts therefore) and to the Supplier's Equipment.</p> <p>(b) <u>Installation All Risks Insurance:</u> Covering physical loss or damage to the Facilities at the Site, occurring prior to Completion of the Facilities, with an extended maintenance coverage for the Supplier's liability in respect of any loss or damage occurring during the Defect Liability Period while the Supplier is on the Site for the purpose of performing its obligations during the Defect Liability Period.</p> <p>(c) <u>Third Party Liability Insurance:</u> Covering bodily injury or death suffered by third parties (including the Purchaser's personnel) and loss of or damage to property occurring in connection with the supply and installation of the Facilities.</p> <p>(d) <u>Automobile Liability Insurance:</u> Covering use of all vehicles used by the Supplier or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.</p> <p>(e) <u>Workers' Compensation:</u> In accordance with the statutory requirements applicable in United Republic of Tanzania.</p> <p>(f) <u>Purchaser's Liability:</u> In accordance with the statutory requirements applicable in United Republic of Tanzania.</p> <p>(g) <u>Other Insurances:</u> Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said the corresponding Appendix.</p>
	33.2	<p>The Purchaser shall be named as co-insured under all insurance policies taken out by the Supplier pursuant to <b>GCC 33.1</b>, except for the Third-Party Liability, Workers' Compensation and Purchaser's Liability Insurances, and the Supplier's Subcontractors shall be named as co-insured's under all insurance policies taken out by the Supplier pursuant to <b>GCC 33.1</b> except for the Cargo Insurance During Transport, Workers' Compensation and Purchaser's Liability Insurances. All insurer's rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.</p>
	33.3	<p>The Supplier shall, in accordance with the provisions of the corresponding Appendix (Insurance Requirements) to the</p>

		Agreement, deliver to the Purchaser certificates of insurance (or copies of the insurance policies) as evidence that the required policies are in full force and effect. The certificates shall provide that no less than twenty-one (21) days' notice shall be given to the Purchaser by insurers prior to cancellation or material modification of a policy.
	33.4	The Supplier shall ensure that, where applicable, its Subcontractor(s) shall take out and maintain in effect adequate insurance policies for their personnel and vehicles and for work executed by them under the Contract, unless such Subcontractors are covered by the policies taken out by the Supplier.
	33.5	The Purchaser shall at its expense take out and maintain in effect during the performance of the Contract those insurances specified in the corresponding Appendix (Insurance Requirements) to the Agreement, in the sums and with the deductibles and other conditions specified in the said Appendix. The Supplier and the Supplier's Subcontractors shall be named as co-insured under all such policies. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies. The Purchaser shall deliver to the Supplier satisfactory evidence that the required insurances are in full force and effect. The policies shall provide that not less than twenty-one (21) days' notice shall be given to the Supplier by all insurers prior to any cancellation or material modification of the policies. If so requested by the Supplier, the Purchaser shall provide copies of the policies taken out by the Purchaser under this <b>GCC 33.5</b> .
	33.6	If the Supplier fails to take out and/or maintain in effect the insurances referred to in <b>GCC 33.1</b> , the Purchaser may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Supplier under the Contract any premium that the Purchaser shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Supplier. If the Purchaser fails to take out and/or maintain in effect the insurances referred to in <b>GCC 33.5</b> , the Supplier may take out and maintain in effect any such insurances and may from time to time deduct from any amount due the Purchaser under the Contract any premium that the Supplier shall have paid to the insurer, or may otherwise recover such amount as a debt due from the Purchaser. If the Supplier fails to or is unable to take out and maintain in effect any such insurances, the Supplier shall nevertheless have no liability or responsibility towards the Purchaser, and the Supplier shall have full recourse against the Purchaser for any and all liabilities of the Purchaser herein.
	33.7	Unless otherwise provided in the Contract, the Supplier shall prepare and conduct all and any claims made under the policies effected by it pursuant to this <b>GCC 33.7</b> , and all monies payable by any insurers shall be paid to the Supplier.

		<p>The Purchaser shall give to the Supplier all such reasonable assistance as may be required by the Supplier. With respect to insurance claims in which the Purchaser’s interest is involved, the Supplier shall not give any release or make any compromise with the insurer without the prior written consent of the Purchaser. With respect to insurance claims in which the Supplier’s interest is involved, the Purchaser shall not give any release or make any compromise with the insurer without the prior written consent of the Supplier.</p>
<p><b>34. Unforeseen Conditions</b></p>	<p>34.1</p>	<p>If, during the execution of the Contract, the Supplier shall encounter on the Site any physical conditions (other than climatic conditions) or artificial obstructions that could not have been reasonably foreseen prior to the date of the Agreement by an experienced contractor on the basis of reasonable examination of the data relating to the Facilities (including any data as to boring tests) provided by the Purchaser, and on the basis of information that it could have obtained from a visual inspection of the Site (if access thereto was available) or other data readily available to it relating to the Facilities, and if the Supplier determines that it will in consequence of such conditions or obstructions incur additional cost and expense or require additional time to perform its obligations under the Contract that would not have been required if such physical conditions or artificial obstructions had not been encountered, the Supplier shall promptly, and before performing additional work or using additional Goods or Supplier’s Equipment, notify the Project Manager in writing of</p> <ul style="list-style-type: none"> <li>(a) the physical conditions or artificial obstructions on the Site that could not have been reasonably foreseen</li> <li>(b) the additional work and/or Goods and/or Supplier’s Equipment required, including the steps which the Supplier will or proposes to take to overcome such conditions or obstructions</li> <li>(c) the extent of the anticipated delay</li> <li>(d) the additional cost and expense that the Supplier is likely to incur.</li> </ul>
	<p>34.2</p>	<p>On receiving any notice from the Supplier under <b>GCC</b> 34.1, the Project Manager shall promptly consult with the Purchaser and Supplier and decide upon the actions to be taken to overcome the physical conditions or artificial obstructions encountered. Following such consultations, the Project Manager shall instruct the Supplier, with a copy to the Purchaser, of the actions to be taken.</p>
	<p>34.3</p>	<p>Any reasonable additional cost and expense incurred by the Supplier in following the instructions from the Project Manager to overcome such physical conditions or artificial obstructions referred to in <b>GCC</b> 34.1 [Unforeseen Conditions] shall be paid by the Purchaser to the Supplier as an addition to the Contract Price.</p>

	34.4	If the Supplier is delayed or impeded in the performance of the Contract because of any such physical conditions or artificial obstructions referred to in <b>GCC 34.1</b> , the Time for Completion shall be extended in accordance with <b>GCC 39 [Extension of Time for Completion]</b>
<b>35. Change of Laws and Regulations</b>	35.1	If after a date twenty-eight (28) days prior to the deadline for Tender submission, in the United Republic of Tanzania, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the costs and expenses of the Supplier and/or the Time for Completion, the Contract Price shall be correspondingly increased or decreased, and/or the Time for Completion shall be reasonably adjusted to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced costs shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable in accordance with the <b>SCC</b> .
<b>36. Force Majeure</b>	36.1	Force majeure shall include, without limitation, the following: <ul style="list-style-type: none"> <li>(a) war, hostilities or warlike operations (whether a state of war be declared or not), invasion, act of foreign enemy and civil war</li> <li>(b) rebellion, revolution, insurrection, mutiny, usurpation of civil or military government, conspiracy, riot, civil commotion and terrorist acts</li> <li>(c) confiscation, nationalization, mobilization, commandeering or requisition by or under the order of any government or de jure or de facto authority or ruler or any other act or failure to act of any local state or national government authority</li> <li>(d) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague</li> <li>(e) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster</li> <li>(f) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure.</li> </ul>
	36.2	If either party is prevented, hindered or delayed from or in performing any of its obligations under the Contract by an event of Force Majeure, then it shall notify the other in writing of the occurrence of such event and the circumstances thereof within fourteen (14) days after the occurrence of such event.



	36.3	The party who has given such notice shall be excused from the performance or punctual performance of its obligations under the Contract for so long as the relevant event of Force Majeure continues and to the extent that such party's performance is prevented, hindered or delayed. The Time for Completion shall be extended in accordance with <b>GCC39 [Extension of Time for Completion]</b> .
	36.4	The party or parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfill its or their obligations under the Contract, but without prejudice to either party's right to terminate the Contract under <b>GCCs 36.6 and 37.5 [War Risks]</b> .
	36.5	No delay or nonperformance by either party hereto caused by the occurrence of any event of Force Majeure shall (a) constitute a default or breach of the Contract (b) (subject to <b>GCCs 31.2 [Care of Facilities]</b> , and 37.3 and 37.4 [ War Risks] give rise to any claim for damages or additional cost or expense occasioned thereby if and to the extent that such delay or nonperformance is caused by the occurrence of an event of Force Majeure.
	36.6	If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of one or more events of Force Majeure during the currency of the Contract, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the other, but without prejudice to either party's right to terminate the Contract under <b>GCC 37.5 [War Risks]</b> .
	36.7	In the event of termination pursuant to <b>GCC 36.6 [Force Majeure]</b> , the rights and obligations of the Purchaser and the Supplier shall be as specified in <b>GCCs 41.1.2 and 41.1.3 [Termination]</b> .
	36.8	Notwithstanding <b>GCC 36.5</b> , Force Majeure shall not apply to any obligation of the Purchaser to make payments to the Supplier herein.
<b>37. War Risks</b>	37.1	"War Risks" shall mean any event specified in paragraphs (a) and (b) of <b>GCC 36.1 [Force Majeure]</b> and any explosion or impact of any mine, bomb, shell, grenade or other projectile, missile, munitions or explosive of war, occurring or existing in or near the United Republic of Tanzania where the Site is located.
	37.2	Notwithstanding anything contained in the Contract, the Supplier shall have no liability whatsoever for or with respect to (a) destruction of or damage to Facilities, Goods, or any part thereof (b) destruction of or damage to property of the Purchaser

		<p>or any third party</p> <p>(c) injury or loss of life</p> <p>if such destruction, damage, injury or loss of life is caused by any War Risks, and the Purchaser shall indemnify and hold the Supplier harmless from and against any and all claims, liabilities, actions, lawsuits, damages, costs, charges or expenses arising in consequence of or in connection with the same.</p>
	37.3	<p>If the Facilities or any Goods or Supplier's Equipment or any other property of the Supplier used or intended to be used for the purposes of the Facilities shall sustain destruction or damage by reason of any War Risks, the Purchaser shall pay the Supplier for</p> <ul style="list-style-type: none"> <li>(a) any part of the Facilities or the Goods so destroyed or damaged (to the extent not already paid for by the Purchaser)</li> <li>(b) replacing or making good any Supplier's Equipment or other property of the Supplier so destroyed or damaged</li> <li>(c) replacing or making good any such destruction or damage to the Facilities or the Goods or any part thereof so far as may be required by the Purchaser, and as may be necessary for completion of the Facilities.</li> </ul> <p>If the Purchaser does not require the Supplier to replace or make good any such destruction or damage to the Facilities, the Purchaser shall either request a change in accordance with <b>GCC 38</b> [Change in the Facilities], excluding the performance of that part of the Facilities thereby destroyed or damaged or, where the loss, destruction or damage affects a substantial part of the Facilities, shall terminate the Contract, pursuant to <b>GCC 41</b>. [Termination].</p>
	37.4	<p>Notwithstanding anything contained in the Contract, the Purchaser shall pay the Supplier for any increased costs or incidentals to the execution of the Contract that are in any way attributable to, consequent on, resulting from, or in any way connected with any War Risks, provided that the Supplier shall as soon as practicable notify the Purchaser in writing of any such increased cost.</p>
	37.5	<p>If during the performance of the Contract any War Risks shall occur that financially or otherwise materially affect the execution of the Contract by the Supplier, the Supplier shall use its reasonable efforts to execute the Contract with due and proper consideration given to the safety of its and its Subcontractors' personnel engaged in the work on the Facilities, provided, however, that if the execution of the work on the Facilities becomes impossible or is substantially prevented for a single period of more than sixty (60) days or an aggregate period of more than one hundred and twenty (120) days on account of any War Risks, the parties will attempt to develop a mutually satisfactory solution, failing which either party may terminate the Contract by giving a notice to the</p>

		other.
	37.6	In the event of termination pursuant to <b>GCCs</b> .37.3 or 37.5, the rights and obligations of the Purchaser and the Supplier shall be specified in <b>GCCs</b> 41.1.2 and 41.1.3 [Termination].

**H. Change in Contract Elements**

<b>38. Change in the Facilities</b>	38.1	<p><u>Introducing a Change</u></p> <p><b>38.1.1</b> Subject to <b>GCCs</b> 38.2.5 and 38.2.7, the Purchaser shall have the right to propose, and subsequently require, that the Project Manager order the Supplier from time to time during the performance of the Contract to make any change, modification, addition or deletion to, in or from the Facilities (hereinafter called “Change”), provided that such Change falls within the general scope of the Facilities and does not constitute unrelated work and that it is technically practicable, taking into account both the state of advancement of the Facilities and the technical compatibility of the Change envisaged with the nature of the Facilities as specified in the Contract.</p> <p><b>38.1.2</b> The Supplier may from time to time during its performance of the Contract propose to the Purchaser (with a copy to the Project Manager) any Change that the Supplier considers necessary or desirable to improve the quality, efficiency or safety of the Facilities. The Purchaser may at its discretion approve or reject any Change proposed by the Supplier, provided that the Purchaser shall approve any Change proposed by the Supplier to ensure the safety of the Facilities.</p> <p><b>38.1.3</b> Notwithstanding <b>GCCs</b> 38.1.1 and 38.1.2, no change made necessary because of any default of the Supplier in the performance of its obligations under the Contract shall be deemed to be a Change, and such change shall not result in any adjustment of the Contract Price or the Time for Completion.</p> <p><b>38.1.4</b> The procedure on how to proceed with and execute Changes is specified in <b>GCCs</b> 38.2 and 38.3, and further details and sample forms are provided in the Sample Forms and Procedures section in the Tendering Documents.</p>
	38.2	<p><u>Changes Originating from Purchaser</u></p> <p><b>38.2.1</b> If the Purchaser proposes a Change pursuant to <b>GCC</b> 38.1.1, it shall send to the Supplier a “Request for Change Proposal,” requiring the Supplier to prepare and furnish to the Project Manager as soon as reasonably practicable a “Change Proposal,” which shall include the following:</p> <ul style="list-style-type: none"> <li>(a) brief description of the Change</li> <li>(b) effect on the Time for Completion</li> </ul>

		<ul style="list-style-type: none"> <li>(c) estimated cost of the Change</li> <li>(d) effect on Functional Guarantees (if any)</li> <li>(e) effect on any other provisions of the Contract.</li> </ul> <p><b>38.2.2</b> Prior to preparing and submitting the “Change Proposal,” the Supplier shall submit to the Project Manager an “Estimate for Change Proposal,” which shall be an estimate of the cost of preparing and submitting the Change Proposal.</p> <p><b>38.2.3</b> Upon receipt of the Supplier’s Estimate for Change Proposal, the Purchaser shall do one of the following:</p> <ul style="list-style-type: none"> <li>(a) accept the Supplier’s estimate with instructions to the Supplier to proceed with the preparation of the Change Proposal</li> <li>(b) advise the Supplier of any part of its Estimate for Change Proposal that is unacceptable and request the Supplier to review its estimate</li> <li>(c) advise the Supplier that the Purchaser does not intend to proceed with the Change.</li> </ul> <p><b>38.2.4</b> Upon receipt of the Purchaser’s instruction to proceed under <b>GCC 38.2.2 (a)</b>, the Supplier shall, with proper expedition, proceed with the preparation of the Change Proposal, in accordance with <b>GCC 38.2.1</b>.</p> <p><b>38.2.5</b> The pricing of any Change shall, as far as practicable, be calculated in accordance with the rates and prices included in the Contract. If such rates and prices are inequitable, the parties thereto shall agree on specific rates for the valuation of the Change.</p> <p><b>38.2.6</b> If before or during the preparation of the Change Proposal it becomes apparent that the aggregate effect of compliance therewith and with all other Change Orders that have already become binding upon the Supplier under this <b>GCC 38</b> would be to increase or decrease the Contract Price as originally set forth in Article 2 (Contract Price) of the Agreement by more than fifteen percent (15%), the Supplier may give a written notice of objection thereto prior to furnishing the Change Proposal as aforesaid. If the Purchaser accepts the Supplier’s objection, the Purchaser shall withdraw the proposed Change and shall notify the Supplier in writing thereof. The Supplier’s failure to so object shall neither affect its right to object to any subsequent requested Changes or Change Orders herein, nor affect its right to take into account, when making such subsequent objection, the percentage increase or decrease in the Contract Price that any Change not objected to by the Supplier represents.</p> <p><b>38.2.7</b> Upon receipt of the Change Proposal, the Purchaser and the Supplier shall mutually agree upon all matters therein contained. Within fourteen (14) days after such agreement, the Purchaser shall, if it intends to proceed</p>
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		<p>with the Change, issue the Supplier with a Change Order. If the Purchaser is unable to reach a decision within fourteen (14) days, it shall notify the Supplier with details of when the Supplier can expect a decision.</p> <p>38.2.8 If the Purchaser decides not to proceed with the Change for whatever reason, it shall, within the said period of fourteen (14) days, notify the Supplier accordingly. Under such circumstances, the Supplier shall be entitled to reimbursement of all costs reasonably incurred by it in the preparation of the Change Proposal, provided that these do not exceed the amount given by the Supplier in its Estimate for Change Proposal submitted in accordance with <b>GCC 38.2.3</b>.</p> <p><b>38.2.9</b> If the Purchaser and the Supplier cannot reach agreement on the price for the Change, an equitable adjustment to the Time for Completion, or any other matters identified in the Change Proposal, the Purchaser may nevertheless instruct the Supplier to proceed with the Change by issue of a "Pending Agreement Change Order."</p> <p>38.2.10 Upon receipt of a Pending Agreement Change Order, the Supplier shall immediately proceed with effecting the Changes covered by such Order. The parties shall thereafter attempt to reach agreement on the outstanding issues under the Change Proposal.</p> <p>38.2.11 If the parties cannot reach agreement within sixty (60) days from the date of issue of the Pending Agreement Change Order, then the matter may be referred to the Dispute Avoidance and Resolution Board in accordance with the provisions of <b>GCC46</b> [Obtaining Disputes Adjudication Board Decision].</p>
	<p><b>38.3</b></p>	<p><u>Changes Originating from Supplier</u></p> <p><b>38.3.1</b> If the Supplier proposes a Change pursuant to <b>GCC 38.1.2</b>, the Supplier shall submit to the Project Manager a written "Application for Change Proposal," giving reasons for the proposed Change and including the information specified in <b>GCC 38.2.1</b>.</p> <p>38.3.2 Upon receipt of the Application for Change Proposal, the parties shall follow the procedures outlined in <b>GCCs 38.2.6</b> and <b>38.2.7</b>. However, should the Purchaser choose not to proceed, the Supplier shall not be entitled to recover the costs of preparing the Application for Change Proposal.</p>
<p><b>39. Extension of Time for Completion</b></p>	<p>39.1</p>	<p>The Time(s) for Completion specified in the <b>SCC</b> shall be extended if the Supplier is delayed or impeded in the performance of any of its obligations under the Contract by reason of any of the following:</p> <ul style="list-style-type: none"> <li>(a) any Change in the Facilities as provided in <b>GCC 38</b> [Change in the Facilities]</li> <li>(b) any occurrence of Force Majeure as provided in <b>GCC 36</b>,</li> </ul>

		<p>unforeseen conditions as provided in <b>GCC 34</b>, or other occurrence of any of the matters specified or referred to in paragraphs (a), (b) and (c) of <b>GCC 31.2</b> [Care of Facilities]</p> <p>(c) any suspension order given by the Purchaser under <b>GCC 40</b> hereof or reduction in the rate of progress pursuant to <b>GCC 40.2</b> [Suspension]or</p> <p>(d) any changes in laws and regulations as provided in <b>GCC 35</b> [Change in Laws and Regulations] or</p> <p>(e) any default or breach of the Contract by the Purchaser, specifically including failure to supply the items listed in the corresponding Appendix (Scope of Works and Supply by the Purchaser) to the Agreement, or any activity, act or omission of any other contractors employed by the Purchaser or</p> <p>(f) any other matter specifically mentioned in the Contract by such period as shall be fair and reasonable in all the circumstances and as shall fairly reflect the delay or impediment sustained by the Supplier.</p>
	39.2	<p>Except where otherwise specifically provided in the Contract, the Supplier shall submit to the Project Manager a notice of a claim for an extension of the Time for Completion, together with particulars of the event or circumstance justifying such extension as soon as reasonably practicable after the commencement of such event or circumstance. As soon as reasonably practicable after receipt of such notice and supporting particulars of the claim, the Purchaser and the Supplier shall agree upon the period of such extension. In the event that the Supplier does not accept the Purchaser's estimate of a fair and reasonable time extension, the Supplier shall be entitled to refer the matter the Dispute Avoidance and Resolution Board, pursuant to <b>GCC 46.1</b> [Obtaining Dispute Avoidance and Resolution Board's Decision].</p>
	39.3	<p>The Supplier shall at all times use its reasonable efforts to minimize any delay in the performance of its obligations under the Contract.</p>
	39.4	<p>In all cases where the Supplier has given a notice of a claim for an extension of time under <b>GCC 39.2</b>, the Supplier shall consult with the Project Manager in order to determine the steps (if any) which can be taken to overcome or minimize the actual or anticipated delay. The Supplier shall there after comply with all reasonable instructions which the Project Manager shall give in order to minimize such delay. If compliance with such instructions shall cause the Supplier to incur extra costs and the Supplier is entitled to an extension of time under <b>GCC 39.1</b>, the amount of such extra costs shall be added to the Contract Price.</p>
<b>40. Suspension</b>	40.1	<p>The Purchaser may request the Project Manager, by notice to the Supplier, to order the Supplier to suspend performance of any or all of its obligations under the Contract. Such notice shall specify the obligation of which performance is to be suspended, the effective date of the suspension and the reasons thereof.</p>

		<p>The Supplier shall thereupon suspend performance of such obligation (except those obligations necessary for the care or preservation of the Facilities) until ordered in writing to resume such performance by the Project Manager.</p>
	40.2	<p>If, by virtue of a suspension order given by the Project Manager, other than by reason of the Supplier's default or breach of the Contract, the Supplier's performance of any of its obligations is suspended for an aggregate period of more than ninety (90) days, then at any time thereafter and provided that at that time such performance is still suspended, the Supplier may give a notice to the Project Manager requiring that the Purchaser shall, within twenty-eight (28) days of receipt of the notice, order the resumption of such performance or request and subsequently order a change in accordance with <b>GCC 38 [Change in the Facilities]</b>, excluding the performance of the suspended obligations from the Contract.</p>
	40.3	<p>If the Purchaser fails to do so within such period, the Supplier may, by a further notice to the Project Manager, elect to treat the suspension, where it affects a part only of the Facilities, as a deletion of such part in accordance with <b>GCC 38 [Change in the Facilities]</b> or, where it affects the whole of the Facilities, as termination of the Contract under GCC 41.1 [Termination].</p>
	40.4	<p>If:</p> <ul style="list-style-type: none"> <li>(a) the Purchaser has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Agreement, or commits a substantial breach of the Contract, the Supplier may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in <b>GCC 11.3 [Terms of Payment]</b>, requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, or fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier's notice or</li> <li>(b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not limited to the Purchaser's failure to provide possession of or access to the Site or other areas in accordance with GCC9.2 [Purchaser's Responsibilities], or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,</li> </ul> <p>then the Supplier may by fourteen (14) days' notice to the Purchaser suspend performance of all or any of its obligations under the Contract or reduce the rate of progress.</p>

	40.5	If the Supplier’s performance of its obligations is suspended or the rate of progress is reduced pursuant to this <b>GCC40</b> , then the Time for Completion shall be extended in accordance with GCC 39.1 [Extension of Time for Completion], and any and all additional costs or expenses incurred by the Supplier as a result of such suspension or reduction shall be paid by the Purchaser to the Supplier in addition to the Contract Price, except in the case of suspension order or reduction in the rate of progress by reason of the Supplier’s default or breach of the Contract.
	40.6	During the period of suspension, the Supplier shall not remove from the Site any Goods, any part of the Facilities or any Supplier’s Equipment, without the prior written consent of the Purchaser.
<b>41. Termination</b>	41.1	<p><u>Termination for Purchaser’s Convenience</u></p> <p><b>41.1.1</b> The Purchaser may at any time terminate the Contract for any reason by giving the Supplier a notice of termination that refers to this <b>GCC 41.1</b>.</p> <p><b>41.1.2</b> Upon receipt of the notice of termination under <b>GCC 41.1.1</b>, the Supplier shall either immediately or upon the date specified in the notice of termination</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) (ii) below</li> <li>(c) remove all Supplier’s Equipment from the Site, repatriate the Supplier’s and its Subcontractors’ personnel from the Site, remove from the Site any wreckage, rubbish and debris of any kind, and leave the whole of the Site in a clean and safe condition</li> <li>(d) In addition, the Supplier, subject to the payment specified in <b>GCC 41.1.3</b>, shall             <ul style="list-style-type: none"> <li>(i) deliver to the Purchaser the parts of the Facilities executed by the Supplier up to the date of termination</li> <li>(ii) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors</li> </ul> </li> </ul>



		<p>(iii) deliver to the Purchaser all non-proprietary drawings, specifications and other documents prepared by the Supplier or its Subcontractors as at the date of termination in connection with the Facilities.</p> <p><b>41.1.3</b> In the event of termination of the Contract under <b>GCC 41.1.1</b>, the Purchaser shall pay to the Supplier the following amounts:</p> <ul style="list-style-type: none"> <li>(a) the Contract Price, properly attributable to the parts of the Facilities executed by the Supplier as of the date of termination</li> <li>(b) the costs reasonably incurred by the Supplier in the removal of the Supplier's Equipment from the Site and in the repatriation of the Supplier's and its Subcontractors' personnel</li> <li>(c) any amounts to be paid by the Supplier to its Subcontractors in connection with the termination of any subcontracts, including any cancellation charges</li> <li>(d) costs incurred by the Supplier in protecting the Facilities and leaving the Site in a clean and safe condition pursuant to paragraph (a) of <b>GCC 41.1.2</b></li> <li>(e) the cost of satisfying all other obligations, commitments and claims that the Supplier may in good faith have undertaken with third parties in connection with the Contract and that are not covered by paragraphs (a) through (d) above.</li> </ul>
	<p><b>41.2</b></p>	<p><u>Termination for Supplier's Default</u></p> <p><b>41.2.1</b> The Purchaser, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith in the following circumstances by giving a notice of termination and its reasons thereof to the Supplier, referring to this <b>GCC 41.2</b>:</p> <ul style="list-style-type: none"> <li>(a) if the Supplier becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, if the Supplier is a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Supplier takes or suffers any other analogous action in consequence of debt</li> <li>(b) if the Supplier assigns or transfers the Contract or any right or interest therein in violation of the provision of <b>GCC 42</b> [Assignment].</li> <li>(c) if the Supplier, in the judgment of the Purchaser has engaged in corrupt, coercive, obstructive or fraudulent practices in competing for or in</li> </ul>

		<p>executing the Contract.</p> <p>For the purpose of this paragraph:</p> <ul style="list-style-type: none"> <li>i. “corrupt practice” means the offering, giving receiving or soliciting of anything of value to influence the action of a public officer in the procurement process or contract execution;</li> <li>ii. “coercive practice” means impairing or harming, or threatening to impair or harm directly or indirectly, any party or the property of the party for the purpose of influencing improperly the action or that party in connection with public procurement or in furtherance of corrupt practice or fraudulent practice;</li> <li>iii. “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Government or a public body and includes collusive practices among tenderers, prior to or after submission designed to establish tender prices at artificial non-competitive levels and to deprive the Government of the benefits of free and open competition;</li> <li>iv. “obstructive practice” means acts intended to materially impede access to required information in exercising a duty under this Act;</li> </ul> <p><b>41.2.2</b>If the Supplier</p> <ul style="list-style-type: none"> <li>(a) has abandoned or repudiated the Contract</li> <li>(b) has without valid reason failed to commence work on the Facilities promptly or has suspended (other than pursuant to <b>GCC</b> 40.2 [Suspension]) the progress of Contract performance for more than twenty-eight (28) days after receiving a written instruction from the Purchaser to proceed</li> <li>(c) persistently fails to execute the Contract in accordance with the Contract or persistently neglects to carry out its obligations under the Contract without just cause</li> <li>(d) refuses or is unable to provide sufficient materials, services or labour to execute and complete the Facilities in the manner specified in the programme furnished under <b>GCC</b> 17.2 [Work Programme] at rates of progress that give reasonable assurance to the Purchaser that the Supplier can attain Completion of the Facilities by the Time for Completion as extended,</li> </ul> <p>then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the</p>
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		<p>same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the Contract forthwith by giving a notice of termination to the Supplier that refers to this <b>GCC 41.2</b>.</p> <p><b>41.2.3</b> Upon receipt of the notice of termination under <b>GCCs 41.2.1</b> or <b>41.2.2</b>, the Supplier shall, either immediately or upon such date as is specified in the notice of termination,</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as the Purchaser may specify in the notice of termination for the sole purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) below</li> <li>(c) deliver to the Purchaser the parts of the Facilities executed by the Supplier up to the date of termination</li> <li>(d) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its Subcontractors</li> <li>(e) deliver to the Purchaser all drawings, specifications and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the Facilities.</li> </ul> <p><b>41.2.4</b> The Purchaser may enter upon the Site, expel the Supplier, and complete the Facilities itself or by employing any third party. The Purchaser may, to the exclusion of any right of the Supplier over the same, take over and use with the payment of a fair rental rate to the Supplier, with all the maintenance costs to the account of the Purchaser and with an indemnification by the Purchaser for all liability including damage or injury to persons arising out of the Purchaser's use of such equipment, any Supplier's Equipment owned by the Supplier and on the Site in connection with the Facilities for such reasonable period as the Purchaser considers expedient for the supply and installation of the Facilities.</p> <p>Upon completion of the Facilities or at such earlier date as the Purchaser thinks appropriate, the Purchaser shall give notice to the Supplier that such Supplier's Equipment will be returned to the Supplier at or near the Site and shall return such Supplier's Equipment to the Supplier in accordance with such notice. The Supplier shall thereafter without delay and at its cost remove or arrange removal of the same from the Site.</p>
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		<p><b>41.2.5</b> Subject to <b>GCC 41.2.6</b>, the Supplier shall be entitled to be paid the Contract Price attributable to the Facilities executed as of the date of termination, the value of any unused or partially used Goods on the Site, and the costs, if any, incurred in protecting the Facilities and in leaving the Site in a clean and safe condition pursuant to paragraph (a) of <b>GCC 41.2.3</b>. Any sums due the Purchaser from the Supplier accruing prior to the date of termination shall be deducted from the amount to be paid to the Supplier under this Contract.</p> <p><b>41.2.6</b> If the Purchaser completes the Facilities, the cost of completing the Facilities by the Purchaser shall be determined.</p> <p>If the sum that the Supplier is entitled to be paid, pursuant to <b>GCC 41.2.5</b>, plus the reasonable costs incurred by the Purchaser in completing the Facilities, exceeds the Contract Price, the Supplier shall be liable for such excess.</p> <p>If such excess is greater than the sums due the Supplier under <b>GCC 41.2.5</b>, the Supplier shall pay the balance to the Purchaser, and if such excess is less than the sums due the Supplier under <b>GCC 41.2.5</b>, the Purchaser shall pay the balance to the Supplier.</p> <p>The Purchaser and the Supplier shall agree, in writing, on the computation described above and the manner in which any sums shall be paid.</p>
	<p><b>41.3</b></p>	<p><u>Termination by Supplier</u></p> <p><b>41.3.1</b> If</p> <p>(a) the Purchaser has failed to pay the Supplier any sum due under the Contract within the specified period, has failed to approve any invoice or supporting documents without just cause pursuant to the corresponding Appendix (Terms and Procedures of Payment) of the Agreement, or commits a substantial breach of the Contract, the Supplier may give a notice to the Purchaser that requires payment of such sum, with interest thereon as stipulated in <b>GCC 11.3</b> [Terms of Payment], requires approval of such invoice or supporting documents, or specifies the breach and requires the Purchaser to remedy the same, as the case may be. If the Purchaser fails to pay such sum together with such interest, fails to approve such invoice or supporting documents or give its reasons for withholding such approval, fails to remedy the breach or take steps to remedy the breach within fourteen (14) days after receipt of the Supplier’s notice, or</p> <p>(b) the Supplier is unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser, including but not</p>

		<p>limited to the Purchaser’s failure to provide possession of or access to the Site or other areas or failure to obtain any governmental permit necessary for the execution and/or completion of the Facilities,</p> <p>then the Supplier may give a notice to the Purchaser thereof, and if the Purchaser has failed to pay the outstanding sum, to approve the invoice or supporting documents, to give its reasons for withholding such approval, or to remedy the breach within twenty-eight (28) days of such notice, or if the Supplier is still unable to carry out any of its obligations under the Contract for any reason attributable to the Purchaser within twenty-eight (28) days of the said notice, the Supplier may by a further notice to the Purchaser referring to this <b>GCC 41.3.1</b>, forthwith terminate the Contract.</p> <p><b>41.3.2</b> The Supplier may terminate the Contract forthwith by giving a notice to the Purchaser to that effect, referring to this <b>GCC 41.3.2</b>, if the Purchaser becomes bankrupt or insolvent, has a receiving order issued against it, compounds with its creditors, or, being a corporation, if a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction), a receiver is appointed over any part of its undertaking or assets, or if the Purchaser takes or suffers any other analogous action in consequence of debt.</p> <p><b>41.3.3</b> If the Contract is terminated under <b>GCCs 41.3.1</b> or <b>41.3.2</b>, then the Supplier shall immediately</p> <ul style="list-style-type: none"> <li>(a) cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition</li> <li>(b) terminate all subcontracts, except those to be assigned to the Purchaser pursuant to paragraph (d) (ii)</li> <li>(c) remove all Supplier’s Equipment from the Site and repatriate the Supplier’s and its Subcontractors’ personnel from the Site.</li> <li>(d) In addition, the Supplier, subject to the payment specified in <b>GCC 41.3.4</b>, shall             <ul style="list-style-type: none"> <li>(i) deliver to the Purchaser the parts of the Facilities executed by the Supplier up to the date of termination</li> <li>(ii) to the extent legally possible, assign to the Purchaser all right, title and benefit of the Supplier to the Facilities and to the Goods as of the date of termination, and, as may be required by the Purchaser, in any subcontracts concluded between the Supplier and its</li> </ul> </li> </ul>
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		<p>Subcontractors</p> <p>(iii) deliver to the Purchaser all drawings, specifications and other documents prepared by the Supplier or its Subcontractors as of the date of termination in connection with the Facilities.</p> <p><b>41.3.4</b> If the Contract is terminated under <b>Clauses 41.3.1</b> or <b>41.3.2</b>, the Purchaser shall pay to the Supplier all payments specified in <b>GCC 41.1.3</b>, and reasonable compensation for all loss, except for loss of profit, or damage sustained by the Supplier arising out of, in connection with or in consequence of such termination.</p> <p><b>41.3.5</b> Termination by the Supplier pursuant to this <b>GCC 41.3</b> is without prejudice to any other rights or remedies of the Supplier that may be exercised in lieu of or in addition to rights conferred by <b>GCC 41.3</b>.</p>
	<b>41.4</b>	In this <b>GCC 41</b> , the expression “Facilities executed” shall include all work executed, Installation Services provided, and all Goods acquired (or subject to a legally binding obligation to purchase) by the Supplier and used or intended to be used for the purpose of the Facilities, up to and including the date of termination.
	<b>41.5</b>	In this <b>GCC 41</b> , in calculating any monies due from the Purchaser to the Supplier, account shall be taken of any sum previously paid by the Purchaser to the Supplier under the Contract, including any advance payment paid pursuant to the corresponding Appendix (Terms and Procedures of Payment) to the Agreement.
<b>42. Assignment</b>	<b>42.1</b>	Neither the Purchaser nor the Supplier shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that the Supplier shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

**I: Claims, Disputes and Arbitration**

<b>43. Supplier’s Claims</b>	<b>43.1</b>	If the Supplier considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Supplier shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Supplier became aware, or should have become aware, of the event or circumstance.
	<b>43.2</b>	If the Supplier fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Supplier shall not be entitled to additional payment, and the Purchaser shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this GCC shall apply.

	43.3	The Supplier shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
	43.4	The Supplier shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Purchaser's liability, the Project Manager may, after receiving any notice under this GCC, monitor the record-keeping and/or instruct the Supplier to keep further contemporary records. The Supplier shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
	43.5	<p>Within 42 days after the Supplier became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Supplier and approved by the Project Manager, the Supplier shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:</p> <ul style="list-style-type: none"> <li>(a) this fully detailed claim shall be considered as interim;</li> <li>(b) the Supplier shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and</li> <li>(c) the Supplier shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Supplier and approved by the Project Manager.</li> </ul>
	43.6	Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Supplier, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.
	43.7	The Project Manager shall agree with the Supplier or estimate: (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 39 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Supplier is entitled under the Contract.
	43.8	Each Payment Certificate shall include such additional payment for any claim as have been reasonably substantiated

		as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Supplier shall only be entitled to payment for such part of the claim as he has been able to substantiate.
	43.9	If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer it to the Dispute Avoidance and Resolution Board in accordance with Sub-GCC 46.4 [Obtaining Dispute Avoidance and Resolution Board's Decision].
	43.10	The requirements of this <b>GCC</b> are in addition to those of any other <b>GCC</b> which may apply to a claim. If the Supplier fails to comply with this or another GCC in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this <b>GCC</b> .
<b>44. Appointment of the Dispute Avoidance and Resolution Board</b>	44.1	Disputes shall be referred to a DARB for decision in accordance with <b>GCC</b> 46.4 [Obtaining Dispute Avoidance and Resolution Board's Decision]. The Parties shall appoint a DARB by the date stated <b>in the SCC</b> .
	44.2	The DARB shall comprise, as stated <b>in the SCC</b> , either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of information system in the work and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DARB shall comprise three persons, one of whom shall serve as chairman.
	44.3	If the Parties have not jointly appointed the DARB 21 days before the date stated in the <b>SCC</b> and the DARB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.
	44.4	The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Avoidance and Resolution Board Agreement contained in the Appendix B to these General Conditions, with such amendments as are agreed between them.
	44.5	The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DARB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this



		remuneration.
	44.6	If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this <b>GCC</b> .
	44.7	The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Purchaser or the Supplier acting alone. Unless otherwise agreed by both Parties, the appointment of the DARB (including each member) shall expire when the discharge referred to in <b>GCC</b> 50.1 [Expiry of Dispute Avoidance and Resolution Board's Appointment] shall have become effective.
<b>45. Failure to Agree on the Composition of the Dispute Avoidance and Resolution Board</b>	45.1	<p>If any of the following conditions the Parties fail to agree upon the appointment of the sole member of the DARB by the date stated in the first paragraph of Clause 44 [Appointment of the Dispute Avoidance and Resolution Board],</p> <ul style="list-style-type: none"> <li>a) either Party fails to nominate a member (for approval by the other Party) or fails to approve a member nominated by the other Party, of a DARB of three persons by such date,</li> <li>b) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DARB by such date, or</li> <li>c) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,</li> </ul> <p>then the Appointing authority named in the <b>SCC</b> shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DARB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing authority.</p>
<b>46 Obtaining Dispute Avoidance and Resolution Board's Decision</b>	46.1	If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Project Manager, either Party may refer the dispute in writing to the DARB for its decision, with copies to the other Party and the Project Manager. Such reference shall state that it is given under this <b>GCC</b> .
	46.2	For a DARB of three persons, the DARB shall be deemed to have received such reference on the date when it is received by the chairman of the DARB.
	46.3	Both Parties shall promptly make available to the DARB all such additional information, further access to the Site, and appropriate facilities, as the DARB may require for the

		purposes of making a decision on such dispute. The DARB shall be deemed to be not acting as arbitrator(s).
	46.4	Within 84 days after receiving such reference, or within such other period as may be proposed by the DARB and approved by both Parties, the DARB shall give its decision, which shall be reasoned and shall state that it is given under this GCC. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Supplier shall continue to proceed with the Work in accordance with the Contract.
	46.5	If either Party is dissatisfied with the DARB’s decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DARB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.
	46.6	In either event, this notice of dissatisfaction shall state that it is given under this <b>GCC</b> , and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Clause 44 [Failure to Comply with Dispute Avoidance and Resolution Board’s Decision] and Clause 50 [Expiry of Dispute Avoidance and Resolution Board’s Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Clause.
	46.7	If the DARB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DARB’s decision, then the decision shall become final and binding upon both Parties.
<b>47. Amicable Settlement</b>	47.1	Where notice of dissatisfaction has been given under <b>GCC</b> 46.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the fifty-sixth day after the day on which a notice of dissatisfaction and intention to commence arbitration was given, even if no attempt at amicable settlement has been made.
<b>48. Arbitration</b>	48.1	Unless indicated otherwise in the <b>SCC</b> , any dispute not settled amicably and in respect of which the DARB’s decision (if any) has not become final and binding shall be finally settled by arbitration with proceedings conducted in accordance with the Arbitration Act, Cap.15.
	48.2	The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or

		valuation of the Project Manager, and any decision of the DARB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
	48.3	Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DARB to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DARB shall be admissible in evidence in the arbitration.
	48.4	Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Project Manager and the DARB shall not be altered by reason of any arbitration being conducted during the progress of the work.
<b>49 Failure to Comply with Dispute Avoidance and Resolution Board's Decision</b>	49.1	In the event that a Party fails to comply with a DARB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Clause 48 [Arbitration]. Clause 46 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Clause 47 [Amicable Settlement] shall not apply to this reference.
<b>50. Expiry of Dispute Avoidance and Resolution Board's Appointment</b>	50.1	If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DARB in place, whether by reason of the expiry of the DARB's appointment or otherwise: <ul style="list-style-type: none"> <li>a) Clause 46 [Obtaining Dispute Avoidance and Resolution Board's Decision] and Clause 47 [Amicable Settlement] shall not apply, and</li> <li>b) the dispute may be referred directly to arbitration under Clause 48 [Arbitration].</li> </ul>

## APPENDIX A

### Environmental, Social, Health and Safety (ESHS)

#### Metrics for Progress Reports

*[Note to Purchaser: the following metrics may be amended to reflect the specifics of the Contract. The Purchaser shall ensure that the metrics provided are appropriate for the Works and impacts/key issues identified in the environmental and social assessment]*

*Metrics for regular reporting:*

- a) environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;
- b) health and safety incidents, accidents, injuries that require treatment and all fatalities;
- c) interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d) status of all permits and agreements:
  - i). work permits: number required, number received, actions taken for those not received;
  - ii). status of permits and consents:
    - *list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);*
    - *list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);*
    - *identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);*
    - *for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).*
- e) health and safety supervision:
  - i). safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
  - ii). number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- f) worker accommodations:
  - i). number of expats housed in accommodations, number of locals;
  - ii). date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;

- iii). actions taken to recommend/require improved conditions, or to improve conditions.
- g) Health services: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);
- h) gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);
- i) training:
  - i). number of new workers, number receiving induction training, dates of induction training;
  - ii). number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;
  - iii). number and dates of communicable diseases (including STDs) sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
  - iv). number and date of SEA and SH prevention sensitization and/or training events, including number of workers receiving training on Code of Conduct for Supplier's Personnel (in the reporting period and in the past), etc.
- j) environmental and social supervision:
  - i) environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
  - ii) sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
  - iii) community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.
- k) *Grievances*: list new grievances (e.g. number of allegations of SEA and SH) received in the reporting period and number of unresolved past grievances by date received, complainant's age and sex, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed).
  - i. Worker grievances;
  - ii. Community grievances
- l) Traffic, road safety and vehicles/equipment:
  - i) traffic and road safety incidents and accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;

- ii) traffic and road safety incidents and accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
  - iii) overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m) Environmental mitigations and issues (what has been done):
- i) dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/spoil lorries with covers, actions taken for uncovered vehicles;
  - ii) erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
  - iii) quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
  - iv) blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
  - v) spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
  - vi) waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
  - vii) details of tree plantings and other mitigations required undertaken in the reporting period;
  - viii) details of water and swamp protection mitigations required undertaken in the reporting period.
- n) compliance:
- i) compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
  - ii) compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - iii) compliance status of SEA and SH prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - iv) compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
  - v) other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

## APPENDIX B

### A General Conditions of Dispute Avoidance and Resolution Board Board Agreement

- 1. Definitions** Each “Dispute Avoidance and Resolution Board Agreement” is a tripartite agreement by and between:
- (a) the “Purchaser”;
  - (b) the “Supplier”; and
  - (c) the “Member” who is defined in the Dispute Adjudication Pane Agreement as being
    - i). the sole member of “Dispute Avoidance and Resolution Board” and, where this is the case, all references to the “Other Members” do not apply, or
    - ii). one of the three persons who are jointly called the “DARB” (or “Dispute Avoidance and Resolution Board”) and, where this is the case, the other two persons are called the “Other Members.”

The Purchaser and the Supplier have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Avoidance and Resolution Board Agreement, which incorporates this Appendix. In the DARB Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

- 2. General Provisions** Unless otherwise stated in the DARB Agreement, it shall take effect on the latest of the following dates:
- (a) the Commencement Date defined in the Contract,
  - (b) when the Purchaser, the Supplier and the Member have each signed the DARB Agreement, or
  - (c) when the Purchaser, the Supplier and each of the Other Members (if any) have respectively each signed a Dispute Avoidance and Resolution Board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days’ notice of resignation to the Purchaser and to the Supplier, and the Dispute Agreement shall terminate upon the expiry of this period.

- 3. Warranties** The Member warrants and agrees that he/she is and shall be impartial and independent of the Purchaser, the Supplier and the Project Manager. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Purchaser and the Supplier

relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Supplier is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

**4. General Obligations of the Member**

The Member shall:

- (a) have no interest financial or otherwise in the Purchaser, the Supplier or Project Manager, nor any financial interest in the Contract except for payment under the DARB Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Purchaser, the Supplier or the Project Manager, except in such circumstances as were disclosed in writing to the Purchaser and the Supplier before they signed the DARB Agreement;
- (c) have disclosed in writing to the Purchaser, the Supplier and the Other Members (if any), before entering into the DARB Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Purchaser, the Supplier or the Project Manager, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the DARB Agreement, be employed as a consultant or otherwise by the Purchaser, the Supplier or the Project Manager, except as may be agreed in writing by the Purchaser, the Supplier and the Other Members (if any);
- (e) comply with the annexed procedural rules and with GCC 44.4 of the Conditions of Contract;
- (f) not give advice to the Purchaser, the Supplier, the Purchaser's Personnel or the Supplier's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Purchaser, the Supplier or the Project Manager regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the DARB Agreement;
- (h) ensure his/her availability for all site visits and hearings as are necessary;
- (i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;



- (j) treat the details of the Contract and all the DARB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Purchaser, the Supplier and the Other Members (if any); and
- (k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Purchaser and the Supplier, subject to the agreement of the Other Members (if any).

## **5. General Obligations of the Purchaser and the Supplier**

The Purchaser, the Supplier, the Purchaser's Personnel and the Supplier's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DARB's activities under the Contract and the DARB Agreement. The Purchaser and the Supplier shall be responsible for compliance with this provision, by the Purchaser's Personnel and the Supplier's Personnel respectively.

The Purchaser and the Supplier undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Purchaser, the Supplier, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Purchaser and the Supplier hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Purchaser or the Supplier refers a dispute to the DARB under GCC 46 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Purchaser or the Supplier shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

## **6. Payment**

The Member shall be paid as follows, in the currency named in the DARB Agreement:

- (a) a retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) being available on 28 days' notice for all site visits and hearings;
  - (ii) becoming and remaining conversant with all project

developments and maintaining relevant files;

- (iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
- (iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Adjudication Panel Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the DARB Agreement is otherwise terminated.

- (b) a daily fee which shall be considered as payment in full for:
  - (i) each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the site, or another location of a meeting with the Other Members (if any);
  - (ii) each working day on Site visits, hearings or preparing decisions; and
  - (iii) each day spent reading submissions in preparation for a hearing.
- (c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the DARB Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Purchaser, the Supplier and the Member, at each anniversary of the date on which the DARB Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named **in the SCC** shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly

retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Supplier.

The Supplier shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Purchaser (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Purchaser shall then pay the Supplier in accordance with the Contract.

If the Supplier fails to pay to the Member the amount to which he/she is entitled under the DARB Agreement, the Purchaser shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DARB; and without prejudice to the Purchaser's rights or remedies. In addition to all other rights arising from this default, the Purchaser shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in GCC 11.3 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

## **7. Termination**

At any time: (i) the Purchaser and the Supplier may jointly terminate the DARB Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the DARB Agreement, the Purchaser and the Supplier may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Purchaser or the Supplier fails to comply with the DARB Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Purchaser and the Supplier. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Purchaser, the Supplier and the Member. However, a notice by the Purchaser or the Supplier, but not by both, shall be of no effect.

## **8. Default of the Member**

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Purchaser and the Supplier for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DARB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Purchaser and the Supplier for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DARB which are rendered void or ineffective by the said failure to comply.

**9. Disputes**

Any dispute or claim arising out of or in connection with this DARB Agreement, or the breach, termination or invalidity thereof, shall be finally settled by Arbitration.

## PROCEDURAL RULES

Unless otherwise agreed by the Purchaser and the Supplier, the DARB shall visit the site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Purchaser or the Supplier. Unless otherwise agreed by the Purchaser, the Supplier and the DARB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each site visit shall be as agreed jointly by the DARB, the Purchaser and the Supplier, or in the absence of agreement, shall be decided by the DARB. The purpose of site visits is to enable the DARB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Purchaser, the Supplier and the Project Manager and shall be coordinated by the Purchaser in co-operation with the Supplier. The Purchaser shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and before leaving the site, the DARB shall prepare a report on its activities during the visit and shall send copies to the Purchaser and the Supplier.

The Purchaser and the Supplier shall furnish to the DARB one copy of all documents which the DARB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DARB and the Purchaser or the Supplier shall be copied to the other Party. If the DARB comprises three persons, the Purchaser and the Supplier shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DARB in accordance with GCC 46 of the Conditions of Contract, the DARB shall proceed in accordance with GCC 46 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DARB shall:

- (a) act fairly and impartially as between the Purchaser and the Supplier, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
- (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DARB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Purchaser and the Supplier be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Purchaser and the Supplier, the DARB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Purchaser, the Supplier and the Project Manager, and to proceed in the absence of any party who the DARB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Purchaser and the Supplier empower the DARB, among other things, to:

- (a) establish the procedure to be applied in deciding a dispute,
- (b) decide upon the DARB's own jurisdiction, and as to the scope of any dispute referred to it,

- (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
- (d) take the initiative in ascertaining the facts and matters required for a decision,
- (e) make use of its own specialist knowledge, if any,
- (f) decide upon the payment of financing charges in accordance with the Contract,
- (g) decide upon any provisional relief such as interim or conservatory measures, and
- (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute.

The DARB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DARB shall make and give its decision in accordance with GCC 44.4, or as otherwise agreed by the Purchaser and the Supplier in writing. If the DARB comprises three persons:

- (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Purchaser and the Supplier; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
  - (i) either the Purchaser or the Supplier does not agree that they do so, or
  - (ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.