

**NAM NGIEP 1 POWER COMPANY LIMITED**

**INVITATION FOR BIDS**

**FOR PROCUREMENT OF WORKS**

**“Monitoring Work on Nam Ngiep 1 Hydropower Project 2023”**

Ref. No.: NNP1PC-CF-TD-2023-01

**MARCH 2023**

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**SECTION 1: INSTRUCTION TO BIDDERS**

<b>GENERAL</b>	
1. Scope of bid	<p>1.1 In connection with the Invitation for Bids (IFB), the Employer, as indicated in the Bidding Documents (BDs), issues this Bidding Document for the procurement of the Works as specified in Section 3 (Employer’s Requirements). The name, identification, and number of contracts of this bidding are provided in the BDs. Throughout this Bidding Document,</p> <ul style="list-style-type: none"> <li>a) the term “in writing” means communicated in written form and delivered against receipt;</li> <li>b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and,</li> <li>c) “day” means calendar day.</li> </ul>
2. Eligible Bidders	<p>2.1 An eligible Bidder may be a natural person or a private entity or a joint venture or consortium. To participate in the bid, bidders shall fill in the Acknowledgement Form on page 15.</p>
	<p>2.2 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to be in a conflict of interest with one or more parties in this bidding process if any of, including but not limited to, the following apply:</p> <ul style="list-style-type: none"> <li>a) they have controlling partners in common; or</li> <li>b) they receive or have received any direct or indirect subsidy from any of them; or</li> <li>c) they have the same legal representative for purposes of this bid; or</li> <li>d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to material information about or improperly influence the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or</li> <li>e) a Bidder or any affiliated entity, participated as a Consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or</li> <li>f) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the Contract.</li> </ul>

	<p>2.3 Government-owned enterprises in the Employer’s country shall be eligible only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law.</p>
<p>3. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting</p>	<p>3.1 A prospective Bidder requiring any clarification on the Bidding Document shall contact the Employer in writing at the Employer’s address indicated in the BDs or raise his inquiries during the pre-bid meeting. The Employer will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids.</p> <p>3.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself, on its own risk and responsibility, all information that may be necessary for preparing the Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder’s own expense.</p>
<p>4. Amendment of Bidding Document</p>	<p>4.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Bidding Document by issuing addenda. Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer</p>
<p><b>PREPARATION OF BIDS</b></p>	
<p>5. Cost of Bidding</p>	<p>The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.</p>
<p>6. Language of Bid</p>	<p>The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the BDs. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the BDs, in which case, for purposes of interpretation of the Bid, such translation shall govern.</p>
<p>7. Documents Comprising the Bid</p>	<p>The Bid shall comprise the following:</p> <p>7.1. Technical proposal (one envelope)</p> <ol style="list-style-type: none"> <li>a) Bidder Data,</li> <li>b) Copy of Valid business license,</li> <li>c) Copy of Valid tax certificate,</li> <li>d) Bid Security (original copy in a sealed envelope),</li> <li>e) Written confirmation authorizing signatory of the Bid to commit the Bidder,</li> </ol>

	<p>f) Documentary evidence establishing the bidder's qualifications to perform the contract,  g) Proposed work methodology,  h) Proposed work plan and schedule,  i) Copies of Financial Statement of 2019, 2020 and 2021 which audited by outsourcing, and  j) Any other document required in Section</p> <p>7.2. Financial Proposal (one envelope)  a) Letter of Bid Price Submission, and  b) A signed sealed Bill of Quantity</p>
<p>8. Bid Prices and Discounts</p>	<p>8.1 The prices and discounts quoted by the Bidder in the Letter of Bid Price Submission and in the Schedules shall conform to the requirements specified below;</p> <p>8.2 The Bidder shall submit a bid for the whole of the works by filling in prices per Letter of Bid Price Submission as identified in Section 2 on page 19 for all items of the Works. (. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.</p> <p>8.3 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid</p> <p>8.4 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the Bidder.</p>
<p>9. Bid Security</p>	<p>The Bidder shall furnish as part of its Bid, in original form, the bid security and that shall be in a format of "an unconditional bank guarantee issuance by a local bank or a local branch of international bank" and shall <b>be at least 2% of proposed bid price</b>. The Bid Security shall follow the format and condition as stipulated in Form of Bid Security on page 14.</p>
<p><b>Evaluation and Comparison of Bids</b></p>	
<p>10. Confidentiality</p>	<p>Information relating to the examination, evaluation, comparison, and post-qualification of Bids and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.</p> <p>Any attempt by a Bidder to influence the Employer in the evaluation of the Bids or Contract award decisions may result in the rejection of its Bid.</p>

	<p>To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing.</p> <p>If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.</p>
11. Determination of Responsiveness	<p>The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself,</p> <p>The Employer shall examine the technical aspects of the Bid submitted in accordance with Technical Proposal, in particular, to confirm that all requirements of Section 3 (Scope of Works)</p>
12. Qualification of the Bidder	<p>The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive Bid meets the qualifying criteria specified in below Evaluation and Qualification Criteria.</p> <p>The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder</p>
13. Employer's Right to Accept Any Bid, and to Reject Any or All Bids	<p>The Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders.</p>
14. Performance Security	<p>Within 28 days of the receipt of Letter of Acceptance from the Employer, the successful Bidder shall furnish the Performance Security by a local bank or a local branch of international bank in accordance with the Conditions of Contract</p>
<b>Evaluation and Qualification Criteria</b>	
15. Adequacy of Technical Proposal	<p>Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 3: SCOPE OF WORKS.</p> <p>The evaluation will also include an assessment of the Bidder's capacity to meet the following aggregated requirements as presented in the bid:</p> <ul style="list-style-type: none"> <li>- Completeness of bids,</li> <li>- Bidder's and its staff work experiences,</li> <li>- Proposed methodology, schedule,</li> <li>- Quality and Safety assurance measures</li> <li>- Environmental and Socail management measures</li> </ul>



	<ul style="list-style-type: none"> <li>- Financial Statement such as Average annual turnover, Financial resources, etc,</li> <li>- Equipment, tools and vehicles to be allocated,</li> <li>- Personnel organization to be fielded and so on</li> </ul>
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## SECTION 2: BIDDING FORMS

### 2.1 TECHNICAL PROPOSAL

The Proposal shall contain, but does not need to be limited to, the following documents, and be submitted to the Employer (NNP1PC) in both soft and hard copies in two properly marked sealed bid envelopes: (I) Technical Proposal and (II) Financial Proposal. If the bidder does not submit sufficient information to the Employer as indicated below, the bid can be considered incomplete and therefore rejected without requiring any further explanation from the Employer.

### 2.2 TECHNICAL PROPOSAL (one envelope)

The technical proposal should include, but not necessarily be limited to with supporting documents:

#### 2.2.1 Company General Information/Bidder Data:

- 1) Name of company
- 2) Company address
- 3) Company contact: telephone, fax and email and other (If any)
- 4) Name of authorization
- 5) Name of power attorney person (when applicable)
- 6) Copies of valid Company's Registration License(s) (If any) to date and tax certificates
- 7) Copies of financial statement in 2019, 2020 and 2021 which audited by outsourcing auditors
- 8) Company's organization chart
- 9) Personnel: List of key staff with qualification background proposes to execute the work
- 10) Staffing including curriculum vitae ("CV") of each key staffs with qualification /background certificate proposed to execute the Works. Project manager, Site manager(s), Safety and Health manager(s), Supervisor(s), foremen shall be included in the key staffs.
- 11) Organization Chart proposed to execute the works

#### 2.2.2 Company Works and Experiences:

- Works similar works such as monitoring which had and have been undertaking for the last three years starting from the year 2019 with fully support document and explanation but not limited to the following:
  - Employer(s), project name, project value (in US Dollars), work execution periods, work status, work methodology, nature of the project works, project location(s) and support documents (if any).
  - As mentioned above the example table as below shall be included:

No.	From Year	To Year	Employer	Project name, Country and location	Project Value	Implementation scheme (Main/Sub contractor, Joint venture)	Work status	Work methodology	.....	Quantity of Work
1										

2										
.....										

### 2.2.3 Personnel Capability

Bidders shall be able to dispatch the following Contractor's Personnel who have experienced and qualified to carry out their duties for the Works. The required qualification of such personnel is as follows. The Curriculum Vitae shall be included.

No.	Position	Total Work Experience (years)	Experience in similar works (years)	As Manager in Similar Works (years)
1	Project Manager	≥ 15	≥ 10	≥ 5
2	Site Manager	≥ 10	≥ 5	≥ 5
3	Safety and Health staff	≥ 5	≥ 3	
4	Surveyor	≥ 3	≥ 3	
..	.....			

### 2.2.4 Equipment, Materials and Vehicles

The bidder shall provide a list of equipment, materials and vehicles proposed for the Work operation either by rent, leasing or ownership with fully support documents and photos.

No.	Equipment, Material and Vehicles	Capacity / Specification	Quantity	Remarks
1				
2				
3				
.....				

### 2.2.5 Statement Method

Works execution / methodology, construction detailed schedule including procurement schedule of materials and their mobilization, works procedure diagram, temporary facilities layout, design and others (if any).

### 2.2.6 Company General Information/Bidder Data

Bidder's Information	
Bidder's legal name	

<b>Bidder's country of constitution</b>	
<b>Bidder's year of constitution</b>	
<b>Bidder's legal address in country of constitution</b>	
<b>Bidder's authorized representative</b>  (Name, address, telephone numbers, fax numbers, e-mail address)	
Attached are copies of the following documents.	
<input type="checkbox"/> 1. In case of single entity, articles of incorporation or constitution of the legal entity named above	
<input type="checkbox"/> 2. Authorization to represent the firm or Joint Venture named above.	

### 2.2.7 Joint Venture Information Sheet

Each member of the Joint Venture and Specialist Subcontractor must fill out this form separately.

<b>Joint Venture / Specialist Subcontractor Information</b>	
<b>Bidder's legal name</b>	
Joint Venture Partner's or Specialist Subcontractor's legal name	
Joint Venture Partner's or Specialist Subcontractor's country of constitution	

Joint Venture Partner's or Specialist Subcontractor's year of constitution	
Joint Venture Partner's or Specialist Subcontractor's legal address in country of constitution	
Joint Venture Partner's or Specialist Subcontractor's authorized representative information  (name, address, telephone numbers, fax numbers, e-mail address)	
<b>Attached are copies of the following documents.</b> <input type="checkbox"/> 1. Articles of incorporation or constitution of the legal entity named above <input type="checkbox"/> 2. Authorization to represent the firm named above	

### 2.2.8 Pending Litigation

The bidder shall provide the information related the litigation (if any) as follows.

Each Bidder must fill in this form

Pending Litigation			
<input type="checkbox"/> No pending litigation <input type="checkbox"/> Pending litigation (if yes shall written down as below)			
Year	Matter in Dispute	Value of Pending Claim in US\$ Equivalent	Value of Pending Claim as a Percentage of Net Worth
<b>2020</b>			
<b>2021</b>			
<b>2022</b>			

### 2.2.9 Current Contract Commitments / Works in Progress

Bidders should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Current Contract Commitments <sup>1</sup>				
No.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work [Current US\$ Equivalent]	Estimated Completion Date
1				
2				
3				
4				
5				

### 2.2.10 Contracts of Similar Size and Nature

Fill up one (1) form per contract.

Contract of Similar Size and Nature				
Contract No . . . . . of . . ...		Contract Identification		
Award Date		Completion Date		
Total Contract Amount				US\$
If partner in a Joint Venture or subcontractor, specify participation of total contract amount	Percent of Total	Amount		
Employer's Name Address Telephone/Fax Number E-mail				

<sup>1</sup> Please attach copies of reference

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### 2.2.11 Financial Information

Bidders should provide audited Financial Statement for the past three years starting from 2019, 2020 and 2021, either in Lao or English language.

### 2.2.12 Personnel

Proposed Personnel

Bidder should provide the details of the proposed personnel and their experience record in the relevant Information Forms below for each candidate:

<b>1.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>2.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>3.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>4.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>5.</b>	<b>Title of position*</b>
	<b>Name</b>
<b>etc.</b>	<b>Title of position*</b>
	<b>Name</b>

\*Required input

### 2.2.13 Resume of Proposed Personnel

Bidders shall provide all the information requested below. Use one form for each position.

<b>Position</b>		
<b>Personnel information</b>	<b>Name</b>	<b>Date of birth</b>
	<b>Professional qualifications</b>	
<b>Present employment</b>	<b>Name of Employer</b>	
	<b>Address of Employer</b>	
	<b>Telephone</b>	<b>Contact (manager / personnel officer)</b>
	<b>Fax</b>	<b>E-mail</b>
	<b>Job title</b>	<b>Years with present Employer</b>

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>From</b>	<b>To</b>	<b>Company, Project, Position and Relevant Technical and Management Experience</b>

#### 2.2.14 Equipment

Bidders shall provide adequate information and details to demonstrate clearly that it has the capability to meet the equipment requirements indicated in "Employer's Requirements", using the Forms below. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Bidder with fully support documents and photo.

<b>Type of Equipment</b>		
<b>Equipment Information</b>	<b>Name of manufacturer</b>	<b>Model and power rating</b>

	Capacity	Year of manufacture
Current Status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Bidder.

<b>Employer</b>	<b>Name of Employer</b>	
	<b>Address of Employer</b>	
	<b>Telephone</b>	<b>Contact name and title</b>
	<b>Fax</b>	<b>Tel:</b>
<b>Agreements</b>	<b>Details of rental / lease / manufacture agreements specific to the project</b>	

### 2.2.15 Others

Bidder shall propose including, but not limited to the followings:

- Site organization
- Method statement
- Work schedule including procurement and mobilization schedule
- Bidder's staffing plan and manpower plan
- Temporary facility plan (Layout and section)
- Quality assurance policy and measure



-Safety assurance measure policy and measure

-Environmental and social management policy and measure

**2.2.16 Form of Bid Security**

*Please put original copy of bid security in a separate envelope*

**Bid Security**  
**Bank Guarantee**

*Bank's name, and address of issuing branch or office*

**Beneficiary:** .....*name and address of Employer* .....

**Date:** .....

**Bid Security No.:** .....

We have been informed that . . . . *name of the bidder*. . . . (hereinafter called "the Bidder") has submitted to you its bid dated *Date/Month/Year* (hereinafter called "the Bid") for the execution of "**Monitoring Work on Nam Ngiep 1 Hydropower Project 2023**" under Invitation for Bids No.: NNP1PC-CF-TD-2023-01 ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Bidder, we . . . . *name of bank*. . . . hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of . . . . . *amount in figures* . . . . . . ( . . . . . *amount in words* . . . . . ) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Letter of Bid; or
- (b) does not accept the correction of errors in accordance with the Instructions to Bidders; or
- (c) having been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement, or (ii) fails or refuses to furnish the performance security, in accordance with the bidding document.

This guarantee will expire (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract Agreement signed by the Bidder and the Bid Security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder, or (ii) 28 days after the expiration of the Bidder's bid.

Consequently, any demand for payment under this guarantee must be received by us at the office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.<sup>2</sup>

.....*Bank's seal and authorized signature(s)* .....

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<sup>2</sup> Or 758 as applicable.

### 2.2.17 Acknowledgement Form

#### ACKNOWLEDGEMENT FORM

*Please fill in this form  
and return to us by  
Email or hard copy*

[Insert]: \_\_\_\_/\_\_\_\_/\_\_\_\_ (Date/Month/Year)

**To:** Mr. Somsavath PHANTHADY  
Manager - Administration, Administration Division  
Nam Ngiep 1 Hydropower Company Ltd, Address: 2<sup>nd</sup> Floor of Sky City Building, P.O.  
Box 5503, Sibounheuang Village, Chanthabouly District, Vientiane Capital, Lao PDR,  
Telephone: +856-21 261251. Facsimile number: +856-21 261252,  
E-mail: [somsavath.phanthady@namngiep1.com](mailto:somsavath.phanthady@namngiep1.com)

**Objective:** Invitation for Bids of **Monitoring Work on Nam Ngiep 1 Hydropower Project 2023**

**Ref:** NNP1PC-CF-TD-2023-01.

Dear Sir,

We acknowledge receipt of the above referenced the INVITATION FOR BIDS on \_\_\_\_/\_\_\_\_/\_\_\_\_/  
[insert: Date/Month/Year] together with the attachments mentioned therein.

**We will (please tick):**

- Attend the pre-bid (Q&A) meeting for explanation of works (Q&A) to be conducted at the Employer's construction office.
- Not attend the pre-bid (Q&A) meeting in the Employer's construction office.

Yours faithfully,

For and on behalf of \_\_\_\_\_

\_\_\_\_\_  
Seal & Signature of Authorized Person

Name of Invited Firm / JV: \_\_\_\_\_

Address: \_\_\_\_\_

Contract: \_\_\_\_\_

Email: \_\_\_\_\_

### 2.3 FINANCIAL PROPOSAL

Price shall consist of all direct and indirect costs of the bidder to achieve obligations and execute the Works as a contractor. Avoidance of double, all tax payments and liabilities shall include in the price. The contract price shall be paid on a bill of quantities basis. The bidder shall provide price proposal by the following the Letter of Bid Price Submission on page 17 and as per **Attachment No. 01: Bill of Quantities**

The contract shall be prepared in **US Dollars** but the payment is in **Lao Kip** based on the **Banque Pour Le Commerce Extérieur Lao Public (BCEL)** exchange rate and per the amount as specified in the invoice issued by the contractor.

Price proposal (\*The quantity would be updated before making a contract).

Blank Bill of Quantities sheet please refer to the Attachment No. 01 in Employer's Requirements.

Monitoring Work on Nam Ngiep 1 Hydropower Project 2023 BOQ (Bill of Quantity)				From Jan to Dec 2023			
No	Monitoring Item	Monitoring Frequency	Unit	QTY	Unit Price	PRICE	Remark
					USD	USD	
<b>A</b>	<b>Monitoring Work at Main Dam - Main Body and Downstream abutment</b>						
1.1	Uplift inside Gallery (73 locations), Leakage from drain( 259 locations), Leakage from Joint (40 locations)	Weekly	Week	65		-	Weekly (+13 times for temporary in case of emergency)
1.2	Leakage from abutment( 97 locations), Leakage of well (1 location), Crack gauge(47 locations), Inclinator at abutment (8 location).						
1.3	Dam displacement measurement (35 location)						
1.4	Water level measurement of monitoring well 26 locations (18 location by automatic gauge, 8 location by manual measurement).						
1.5	Right bank downstream slope displacement measurement (16 points) at which fixed points for monitoring has been installed (Temporary).						
1.6	Leakage from right bank drainage adit (10 points)						
1.7	Leakage from cross galleries, diversion conduit and drainage adit (5 locations)						
<b>B</b>	<b>Monitoring Work at Power House and Diversion Tunnel</b>						
2.1	Water depth measurement 4 locations around power house	Weekly	Week	65		-	Weekly (+13 times for temporary in case of emergency)
2.2	Water leakage (Diversion tunnel using boat 24 locations and tailraces 4 locations)						
<b>C</b>	<b>Re-Regulation Dam - Gallery and Dyke</b>						
3.1	Water and pressure gauge measurement (1 Location), V-Notch overflow 1 location, Measurement of Contraction Joint expanding (7 points), Visual inspection for structural concrete crack and abnormal seepage	Weekly	Week	65		-	Weekly (+13 times for temporary in case of emergency)
3.2	Displacement measurement at RRD left and right wing (4 location)						
3.3	Water level measurement of monitoring well (3 locations), Displacement measurement of monitoring point (12 locations), V-notch overflow 1 location.						
3.4	Water level at downstream of dyke (1 location)						
3.5	Water flow from pipe culvert at downstream of dyke (1 location)						
3.6	Water depth measurement at Hat Gniun (1 location)						
<b>D</b>	<b>Repairing of monitoring items</b>						
4.1	Manpower for minor repairing	In case minor repairing is necessary	Man * Day	20		-	
4.2	Skilled manpower for minor repairing including minor materials and tool	In case minor repairing by skill worker is necessary	Man * Day	10		-	
4.3	Supporting of repairing instrument	In case monitoring instrument is broken	Time	2		-	1 time = ship to and ship back
4.4	Repairing of optic fiber cable	In case optic fiber cable is cut	Time	3		-	
4.5	Supply and installation of automatic water sensor	In case automatic water sensor is broken	Nos	1		-	
4.6	Check the monitoring instrument	In case the monitoring instrument has problem	Time	1		-	
4.7	Total station rental	In case Owner requests	Day	30		-	
<b>E</b>	<b>Mobilization, Demobilization, office, accommodation</b>		LS	1		-	
<b>Total Amount (including direct, indirect cost, overhead profit and tax):</b>						-	

### 2.3.1 Letter of Bid Price Submission

#### Letter of Bid Price Submission

**Contract Reference No:**

“please insert contract id”

**Date:**

To:

Nam Ngiep 1 Power Company Limited, 2<sup>nd</sup> Floor of Sky City Building,  
PO. Box.5530, Sibounheuang Village, Chanthabouly District,  
Vientiane Capital, Lao PDR, Tel: +856-21 261251

Having examined the Bidding Documents (including addendum). We offer to execute the “**Monitoring Works on Nam Ngiep 1 Hydropower Project 2023**” in accordance with the Conditions of Contract accompanying this bid for the Contract Price of US Dollar .....{please insert your bid price in number here}, (Please insert your bid price in words here)

Our Bid shall be valid for the period of **90 days** and it shall remain binding upon us and may be accepted at any time before the expiration of that period. A Bid Security in the amount required is attached in the form of a [*state pay order, bank draft, bank guarantee*] valid for a period of no of days as required in the bidding document after the date of the bid submission deadline.

We declare that we, and any Subcontractors or Contractors for any part of the Contract have not been declared ineligible by the Government of Lao PDR on charges of engaging in corrupt, fraudulent, collusive or coercive practices. We furthermore, pledge not to indulge in such practices in the duration of the Contract.

If our Bid is accepted, we commit to obtaining a **Performance Security** in the amount stated in the Bidding Document.

We understand that your written Letter of Acceptance shall constitute the acceptance of our Bid and shall become a binding Contract between us, until a formal Contract is prepared and executed.

We understand that you are not bound to accept the lowest evaluated Bid or any other Bid that you may receive.

Signature(s)

Duly authorised to sign the Bid on behalf of the Bidder.

**SECTION 3: Employer's Requirements**

(A separated as attachment)

**Attachment No. 01: Bill of Quantities**

**Attachment No. 02: Scope of Works**

**Attachment No. 03. Technical Specification**

**Attachment No. 04: Code of Conduct**

**Attachment No. 05: Location drawings of monitoring items**

**Attachment No. 06: Site-Specific Environmental & Social Management and Monitoring Plan –  
Construction Phase (ESMMP-OP)**

**SECTION 4: THE PARTICULAR CONDITIONS OF CONTRACT**
**(To be updated prior to contract execution)**
**A. General**

1. Definition	1.1 (a)	The word “defects” shall be deleted and replaced with “Defects”.
	1.1 (c)	GCC 1.1 (c) shall be deleted.
	1.1 (d)	The financing institution is Asian Development Bank.
	1.1 (e)	The word “Bid” shall be deleted and replaced with “Contract”.
	1.1 (i)	GCC 1.1 (i) shall be deleted and replaced with: (i) The <b>Contractor</b> is the party named as contractor in the Contract Agreement.
	1.1 (n)	The words “and includes any damage to the Works caused by any part of the Works not completed in accordance with the Contract” are added to the end of GCC 1.1(n).
	1.1 (o)	GCC 1.1 (o) shall be deleted and replaced with: (o) <b>Defects Liability Certificate</b> means the certificate issued under PCC 43.5.
	1.1 (p)	The word “defects” shall be deleted and replaced with “Defects”.
	1.1 (r)	The Employer is Nam Ngiep 1 Power Company Limited, a company incorporated under the laws of Lao PDR and registered at 2 <sup>nd</sup> Floor, Sky City Building, PO Box: 5530, Sybounheang Village, Chanthabouly District, Vientiane, Lao PDR, Office Tel: +856-21-261251, Fax: +856-21-261252.
	1.1 (t)	GCC 1.1 (t) shall be deleted and replaced with: (t) <b>Force Majeure</b> is defined in GCC 62 [ <i>Definition of Force Majeure</i> ].
	1.1 (w)	The words “in accordance with the Contract” shall be added to the end of GCC 1.1(w). The Intended Completion Date for the whole of the Works shall be from the date of signing the Contract Agreement until December 31 <sup>st</sup> , 2023.
	1.1 (x)	GCC 1.1 (x) shall be deleted and replaced with: Letter of Acceptance means the letter of formal acceptance, signed by the Employer, including any annexed memoranda comprising agreements between and signed by both Parties.
	1.1 (cc)	The Project Manager is: Mr. Somchai PIKUNTHONG, Deputy Managing Director in Technical Division, Nam Ngiep 1 Power Company Limited, Email: somchai.pikunthong@namngiep1.com.
	1.1 (ee)	GCC 1.1 (ee) shall be deleted and replaced with: (ee) <b>Schedules</b> means the document(s) entitled schedules, completed and submitted by the Contractor, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
	1.1 (ff)	The Site is located at Hat Gniun Village, Bolikhamxay Province, Lao PDR and as described in Section 3 (Employer’s Requirements)
	1.1 (ii)	GCC 1.1(ii) shall be deleted and replaced with: (ii) <b>Start Date</b> means the date specified in the Contract Agreement .
1.1 (mm)	The <b>Works</b> consist of all of the items as described in Section 3 (Employer’s Requirements).	
1.1 (nn)	<b>Country</b> means the country in which the Site is located.	

	1.1 (oo)	<b>Laws</b> means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
	1.1 (pp)	<b>Taking-Over Certificate</b> means a certificate issued under GCC 69 [Completion].
	1.1 (qq)	<b>Contractor's Documents</b> means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
	1.1 (rr)	<b>Employer's Personnel</b> means the Project Manager, the person referred to in GCC 11.1 and all other staff, labour and other employees of the Employer; and any other personnel notified to the Contractor, by the Employer or the Project Manager, as Employer's Personnel.
	1.1 (ss)	<b>Contractor's Representative</b> means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under PCC 15.4, who acts on behalf of the Contractor.
	1.1 (tt)	<b>Contractor's Personnel</b> means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
	1.1 (uu)	<b>Section</b> means a part of the Works specified in GCC 2.2 as a Section (if any).
	1.1 (vv)	<b>Cost</b> means all expenditure reasonably and necessarily incurred (or to be incurred) by the Contractor and which have been substantiated to the reasonable satisfaction of the Project Manager, including overheads and similar charges, but does not include profit.
	1.1 (ww)	<b>Punch List Items</b> means items of the Works which, in the opinion of the Project Manager, require completion but are of a minor nature and will not, or the rectification of which will not, affect the safety, reliability, performance or operation of the Works.
	1.1 (xx)	<b>Program</b> means a program which the Contractor submits to the Employer for approval in accordance with GCC 22.1.
	1.1 (yy)	<b>Deleted.</b>
	1.1 (zz)	<b>Employer Supplied Information</b> means any information (whether written or otherwise and including documents and information comprising part of the Contract) supplied or made available to the Contractor by or on behalf of the Employer including any site data, soil report, unexploded ordinance or volcanic cavities and other geotechnical or information on the Site or information relating to applicable Laws and other laws and includes Site Investigation Reports.
2. Interpretation	2.3	<p>GCC 2.3 shall be deleted and replaced with:</p> <p>The documents forming the Contract shall be interpreted in the following order of priority:</p> <ul style="list-style-type: none"> <li>(a) Contract Agreement;</li> <li>(b) Letter of Acceptance;</li> <li>(c) Letter of Bid;</li> <li>(d) Particular Conditions of Contract;</li> </ul>



		<ul style="list-style-type: none"> <li>(e) General Conditions of Contract;</li> <li>(f) Specifications;</li> <li>(g) Drawings;</li> <li>(h) Completed Activity Schedules or Bill of Quantities; and</li> <li>(i) any other Schedule to the Contract not already listed above, which includes Employer Supplied Information.</li> </ul>
3. Language and Law	3.1	The language of the contract is English. The law that applies to the Contract is the law of England and Wales.
	3.2	The words “Employer’s Country” and “Borrower’s country” shall be deleted and replaced with “Country”.
4. Contract Agreement	4.1	GCC 4.1 shall be deleted and replaced with: The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, issuance to the Employer the Performance Security in accordance with GCC 59.1, Detailed Work Program and the Site-Specific Environmental Management and Monitoring Plan.
5. Assignment	5.1	GCC 5.1 shall be deleted and replaced with: Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, <ul style="list-style-type: none"> <li>(a) either Party may assign the whole or any part of the Contract with the prior agreement of the other Party, at the sole discretion of such other Party; and</li> <li>(b) the Employer may assign by way of security or grant a security interest in the whole or any part of the Contract, or all or any part of its rights and interest therein, to the Bank without the prior consent of the Contractor and the Contractor shall do all things reasonably requested by the Employer to give effect to such assignment or grant of security interest.</li> </ul>
6. Care and Supply of Documents	6.2	The word “Engineer” shall be deleted and replaced with “Project Manager”.
	6.5	Except as otherwise expressly provided under the Contract, Employer Supplied Information has been provided to the Contractor for its information on a non-reliance basis and the Employer shall have no responsibility or liability to the Contractor for the accuracy, sufficiency or completeness of the Employer Supplied Information.
8. Compliance with Laws		
11. Delegation	11.1	The words “except to the Adjudicator,” shall be deleted.
12. Communications	12.1	The word “Conditions” shall be deleted and replaced with “Contract”.
13. Subcontracting	13.1	The words “, but may not assign the Contract without the approval of the Employer in writing” shall be deleted.

<p>14. Other Contractors</p>	<p>14.1</p>	<p>GCC 14.1 shall be deleted and replaced with: The Contractor acknowledges that it will be granted non-exclusive access to the Site and it may be required to share the Site with other contractors, public authorities, utilities, and the Employer. The Contractor shall cooperate and coordinate the performance of its Works with such other persons with whom it shares the Site and will not interfere with the works being performed by such other persons. The Employer shall be responsible for ensuring the Employer’s Personnel and other contractors on or near the Site have corresponding obligations. The Contractor will not be entitled to an extension of time or Cost as a result of compliance with its obligations under the Contract.</p>
<p>15. Personnel and Equipment</p>	<p>15.4</p>	<p>The Contractor shall appoint the Contractor’s Representative and shall give him all authority necessary to act on the Contractor’s behalf under the Contract. Unless the Contractor’s Representative is named in the Contract, the Contractor shall, prior to the Start Date, submit to the Project Manager for consent the name and particulars of the person the Contractor proposes to appoint as Contractor’s Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor’s Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment. The Contractor shall not, without the prior consent of the Project Manager, revoke the appointment of the Contractor’s Representative or appoint a replacement. The whole time of the Contractor’s Representative shall be given to directing the Contractor’s performance of the Contract. If the Contractor’s Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Project Manager’s prior consent, and the Project Manager shall be notified accordingly. The Contractor’s Representative shall, on behalf of the Contractor, receive any instructions by the Employer under the Contract. The Contractor’s Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Project Manager has received prior notice signed by the Contractor’s Representative, naming the person and specifying the powers, functions and authority being delegated or revoked. The Contractor’s Representative shall be fluent in the language for communications defined in GCC 3.1. If the Contractor’s Representative’s delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Project Manager.</p>
<p>16. Employer’s and Contractor’s Risks</p>	<p>16.2</p>	<p>The Contractor shall indemnify and hold harmless the Employer, the Employer’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:</p>

		<p>(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any Defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, or any of their respective agents; and</p> <p>(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any Defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer’s Personnel, their respective agents, or anyone directly or indirectly employed by any of them.</p> <p>The Employer shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (i) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, or any of their respective agents, and (ii) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of any Employer’s risk under GCC 17 [<i>Employer’s Risks</i>].</p>
16.3		<p>In this sub-clause, “infringement” means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” means a claim (or proceedings pursuing a claim) alleging an infringement. Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this sub-clause.</p> <p>The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:</p> <p>(a) an unavoidable result of the Contractor’s compliance with the Contract; or</p> <p>(b) a result of any Works being used by the Employer:</p> <p>(i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or</p> <p>(ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the date of the Contract.</p> <p>The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Materials, or (ii) any design for which the Contractor is responsible.</p>

		<p>If a Party is entitled to be indemnified under this sub-clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.</p>
	16.4	<p>Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, provided that this exclusion shall not apply to any obligation of the Contractor to pay:</p> <ul style="list-style-type: none"> <li>(a) liquidated damages to the Employer under GCC 56 [<i>Liquidated Damages</i>]; or</li> <li>(b) any amount payable to the Employer under GCC 75.1.</li> </ul> <p>The total liability of a Party to the other Party, under or in connection with the Contract other than PCC 16.2 and PCC 16.3, shall not exceed the Contract Price.</p> <p>This sub-clause shall not limit liability:</p> <ul style="list-style-type: none"> <li>(c) in any case of fraud, deliberate default or reckless misconduct by the defaulting Party or abandonment of the Works by the Contractor; or</li> <li>(d) in respect of any amount payable by the Contractor to the Employer under PCC 43.3 (c).</li> </ul>
17. Employer's Risks	17.1	<p>The item (i) of GCC 17.1 (a) shall be deleted and replaced with:</p> <ul style="list-style-type: none"> <li>(i) use or occupation of the Works by the Employer, except as specified in the Contract, or</li> </ul>
	17.2	<p>The following item (c) shall be added to the end of GCC 17.2.</p> <ul style="list-style-type: none"> <li>(c) the activities of the Contractor on the Site after the Completion Date.</li> </ul>
19. Insurance	19.1	<p>GCC 19.1 shall be deleted and replaced with: The Contractor shall effect and maintain insurances as required by applicable Laws.</p>
	19.2	GCC 19.2 shall be deleted.
	19.3	GCC 19.3 shall be deleted.
	19.4	GCC 19.4 shall be deleted.
	19.5	GCC 19.5 shall be deleted.
20. Site Investigation Reports	20.1	<p>GCC 20.1 shall be deleted and replaced with:</p> <p>To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied as at the date of the Contract as to all relevant matters, including (without limitation):</p> <ul style="list-style-type: none"> <li>(a) the form and nature of the Site, including sub-surface conditions;</li> <li>(b) the hydrological and climatic conditions;</li> </ul>

		<p>(c) the extent and nature of the work and Plant, Materials and Equipment necessary for the execution and completion of the Works and the remedying of any Defects;</p> <p>(d) the Laws, procedures and labour practices of the Country; and</p> <p>(e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.</p>
	20.2	<p>The Contractor shall be deemed to:</p> <p>(a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount; and</p> <p>(b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in PCC 20.1.</p> <p>Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any Defects.</p>
22. The Works to Be Completed by the Intended Completion Date	22.1	<p>GCC 22.1 shall be deleted and replaced with:</p> <p>The Contractor shall not commence execution of the Works at the Site before the Start Date. The Contractor shall carry out the Works on and after the Start Date in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.</p>
23. Designs by Contractor and Approval by the Project Manager	23.1	<p>The items designed by the Contractor are in accordance with Section 3 (Employer's Requirements)</p>
26. Possession of the Site	26.1	<p>GCC 26.1 shall be deleted and replaced with:</p> <p>The Employer shall grant the Contractor non-exclusive access to the Site on and from the Start Date.</p>
28. Instructions, Inspections, and Audits	28.3	<p>The word "ADB" shall be deleted and replaced with "Bank".</p>
	28.4	<p>The word "ADB" shall be deleted and replaced with "Bank".</p>
29. Appointment of the Adjudicator	29.1	<p>GCC 29.1 shall be deleted.</p>
	29.2	<p>GCC 29.2 shall be deleted.</p>

30. Procedure for Disputes	30.1	<p>GCC 30.1 shall be deleted and replaced with:</p> <p>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, 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 ninetieth day after the day on which notice of dissatisfaction was given.</p>
	30.2	GCC 30.2 shall be deleted.
	30.3	GCC 30.3 shall be deleted.
	30.4	<p>Unless settled amicably, any dispute shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:</p> <ul style="list-style-type: none"> <li>(a) the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce;</li> <li>(b) the dispute shall be settled by one arbitrator appointed in accordance with these Rules;</li> <li>(c) the place and seat of the arbitration shall be held in Singapore; and</li> <li>(d) the arbitration shall be conducted in the English language.</li> </ul> <p>The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) the Employer, relevant to the dispute. Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Works.</p> <p>The Parties agree that all determinations of the arbitration:</p> <ul style="list-style-type: none"> <li>(e) shall be final and binding on the Parties and will be promptly implemented and given effect to by them;</li> <li>(f) will not be subject to judicial appeal or review (all rights to which the parties hereby waive); and</li> <li>(g) shall be subject to the confidentiality restrictions in GCC 7 [<i>Confidential Details</i>] and except as provided in GCC 7 or by agreement between the parties, may not be publicized or otherwise disclosed.</li> </ul>

#### B. Staff and Labour

34. Nondiscrimination and Equal Opportunity	34.2	<p>The Contractor shall ensure that its employees and Subcontractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behaviour, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or Subcontractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behaviour is identified.</p> <p>The Contractor shall conduct training programs for its employees and Subcontractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including</p>
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		sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up-to-date record of its employees and Subcontractors who have attended and completed such training programs and provide such records to the Employer or the Project Manager at their first written request.
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### C. Time Control

35. Program	35.1	The Contractor shall submit a Program for the Works within 28 days from the date of the Letter of Acceptance to the Project Manager for approval, showing the general methods, arrangements, order, and timing for all the activities in the Works.
	35.3	The period between Program updates is one month. The amount to be withheld for late submission of an updated Program is USD 5,000. The sentence, “In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.” shall be deleted.
	35.4	GCC 35.4 shall be deleted and replaced with: The Project Manager’s approval of the Program shall not alter the Contractor’s obligations. The Contractor may revise the Program and submit it to the Project Manager for approval again at any time. A revised Program shall show the effect of Variations, Force Majeure and Compensation Events.
36. Extension of the Intended Completion Date	36.1	GCC 36.1 shall be deleted and replaced with: The Contractor shall be entitled subject to PCC 81.1 to an extension of the Intended Completion Date if and to the extent that completion for the purposes of GCC 69 [Completion] is or will be delayed by any of the following causes: (a) a Compensation Event; (b) a Force Majeure; (c) a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work (and except where that Variation is required due to a breach of this Contract by the Contractor, or due to the Contractor’s negligence, wilful misconduct or wilful default).
	36.2	GCC 36.2 shall be deleted and replaced with: The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor submitting a claim in accordance with PCC 81.1, which claim is accompanied by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
40. Early Warning	40.1	The words “and in any event within 7 days of becoming aware of the event or circumstance” shall be added after “the earliest opportunity” and the words “and in any event within the time required by the Project Manager” shall be added at the end of GCC 40.1.

#### D. Quality Control

43. Correction of Defects	43.1	GCC 43.1 shall be deleted.
	43.3	GCC 43.3 shall be deleted.
	43.4	GCC 43.4 shall be deleted.
	43.5	GCC 43.5 shall be deleted.
44. Uncorrected Defects	44.1	GCC 44.1 shall be deleted.

#### E. Cost Control

45. Contract Price	45.1	The words “Subject to PCC 20.2,” shall be added to the top of the third sentence.
	45.2	GCC 45.2 shall be deleted.
46. Changes in the Contract Price	46.2	GCC 46.2 shall be deleted.
47. Variations	47.1	GCC 47.1 shall be deleted and replaced with: The Contractor shall submit the updated Programs when the Contractor receives a Variation.
48. Cash Flow Forecasts	48.1	GCC 48.1 shall be deleted and replaced with: When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
49. Payment Certificates	49.4	The item (b) shall be deleted.
50. Payments	50.1	The words “within 28 days of the date of each certificate” shall be deleted and replaced with: within fifty-six (30 days of the date of each certificate). The words “at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made” shall be deleted and replaced with: at the annual rate of: (a) the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment; (b) where no such rate exists at that place, the same rate in the country of the currency of payment; or (c) in the absence of such a rate at either place, the appropriate rate fixed by the law of the country of the currency of payment.
	50.2	The words “the Adjudicator or” shall be deleted.
	50.5	The Employer shall have no liability to the Contractor for the payment under GCC 50.1 until the Employer has received the Performance Security in accordance with GCC 59 [ <i>Securities</i> ].
51. Compensation Events	51.1	The words “Except to the extent caused or contributed to by any act or omission of the Contractor,” shall be added to the top of



		<p>GCC 51.1 and the words “The following” shall be deleted and replaced with “the following”.</p> <p>The item (b) shall be deleted.</p> <p>The item (f) shall be deleted.</p> <p>The words “other than site conditions” shall be added after “unforeseen condition” in the item (g).</p> <p>The words “Certificate of Completion” shall be deleted and replaced with “Taking-Over Certificate” in the item (k).</p>
52. Tax	52.1	The words “the submission of bids for the Contract” shall be deleted and replaced with “the Contract Agreement”.
53. Currencies	53.1	GCC 53.1 shall be deleted.
54. Price Adjustment	54.1	GCC 54.1 shall be deleted.
	54.2	GCC 54.2 shall be deleted.
55. Retention	55.1	The proportion of payments retained is ten percent (10 %).
	55.2	<p>GCC 55.2 shall be deleted and replaced with:</p> <p>Upon the issue of the Taking-Over Certificate of the Works by the Project Manager in accordance with GCC 69 [<i>Completion</i>], all total amount retained shall be repaid to the Contractor. The Contractor may substitute retention money with an “on demand” bank guarantee.</p>
	55.3	The Employer may have recourse to retention money (or a bank guarantee provided in lieu of retention money) in the circumstances in which the Employer may have recourse to the Performance Security.
56. Liquidated Damages	56.1	<p>GCC 56.1 shall be deleted and replaced with:</p> <p>The Contractor shall pay liquidated damages to the Employer if the Completion Date is later than the Intended Completion Date. The sum of the liquidated damages shall be zero point one percent (0.1 %) of the Accepted Contract Price for each day of delay which elapse between the Intended Completion Date (as extended by any extension of time pursuant to GCC 36 [<i>Extension of the Intended Completion Date</i>]) until and including the date of taking over the Works stated in the Taking-Over Certificate. The aggregate amount of such delay damages shall in no event exceed a maximum sum of ten percent (10 %) of the Accepted Contract Price. Once the total accrued delay damages for which the Contractor is liable to pay is equal to such maximum amount, the Employer may terminate the Contract pursuant to PCC 73.2 (f). Liquidated damages shall accrue and be due from the Contractor to the Employer on a daily basis. The Employer may deduct liquidated damages from payments due to the Contractor or, if no payment is due, the liquidated damages shall be a debt due.</p>
57. Bonus	57.1	GCC 57.1 shall be deleted.
58. Advance Payment	58.1	The advance payment shall be fifteen percent (15 %) of the Accepted Contract Price and shall be paid to the Contractor no later than 30 days after the Employer receives the unconditional bank guarantee for the Advance Payment from the Contractor, certificates for insurance in accordance with GCC 19.2, and satisfies any other preconditions to the Employer’s obligation to make the payment identified in the Contract.

	58.3	GCC 58.3 shall be deleted and replaced with: The advance payment shall be repaid by deducting fifteen percent (15 %) from each payment certificate until the entire balance of the advance payments has been repaid. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, or any liquidated damages.
	58.4	If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate or prior to termination under GCC 67.1, GCC 73.1 or GCC 73.4 (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Employer.
59. Securities	59.1	GCC 59.1 shall be deleted and replaced with: The Performance Security shall be provided to the Employer no later than 28 days after the date of the Letter of Acceptance and as a condition precedent to the Employer's obligation to issue the Contract. The Performance Security shall be issued in an amount of ten percent (10 %) of the Accepted Contract Amount, by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until the date of issue of the Taking-Over Certificate in the case of a bank guarantee.
	59.2	If the terms of the Performance Security specify its expiry date, and the Performance Security is still required to be valid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the date that is at a minimum 28 days after the then current anticipated date for its release.
	59.3	The Employer shall be entitled to make a claim on the Performance Security: <ul style="list-style-type: none"> <li>(a) in the event of failure by the Contractor to extend the validity of the Performance Security as described in PCC 59.2, in which event the Employer may claim the full amount of the Performance Security;</li> <li>(b) for any debt due from the Contractor to the Employer that remains unpaid by the date that is 7 days after the date for payment under the Contract (and where no date for payment is provided for, by the date that is 7 days after the date the Employer has made a written demand for payment of such debt);</li> <li>(c) in circumstances which entitle the Employer to recover amounts from payments due to the Contractor; and</li> <li>(d) in circumstances which entitle the Employer to terminate the Contract under GCC 73.1 irrespective of whether notice of termination has been given.</li> </ul>
60. Dayworks	60.1	The words "Contractor's Bid" shall be deleted and replaced with "Contract".
61. Cost of Repairs	61.1	The words "Without limiting GCC 18 [ <i>Contractor's Risks</i> ]," shall be added to the top of GCC 61.1 and the words "Loss or damage to the Works or Materials" shall be deleted and replaced with "loss or damage to the Works or Materials". The words "Defects

		Correction periods” shall be deleted and replaced with Defects Liability Period”.
	61.2	<p>The Contractor shall take full responsibility for the care of the Works and Materials from the Start Date until the Taking-Over Certificate has been issued, when responsibility for the care of the Works shall pass to the Employer.</p> <p>After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in the Taking-Over Certificate and in respect of any part of the Works at any time when the Contractor is performing repair or rectification activities on such Works.</p> <p>If any loss or damage happens to the Works, Materials or Contractor’s Documents during the period when the Contractor is responsible for their care, from any cause that is not an Employer’s risk under GCC 17 [<i>Employer’s Risks</i>], the Contractor shall rectify the loss or damage at the Contractor’s risk and cost, so that the Works, Materials and Contractor’s Documents conform with the Contract.</p> <p>The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after the Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after the Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.</p>

#### F. Force Majeure

62. Definition of Force Majeure	62.1	<p>GCC 62.1 shall be deleted and replaced with:</p> <p>In this Clause, “Force Majeure” means an exceptional event or circumstance,</p> <ul style="list-style-type: none"> <li>(a) which is beyond a Party’s control;</li> <li>(b) which such Party could not reasonably have provided against before entering into the Contract;</li> <li>(c) which, having arisen, such Party could not reasonably have avoided or overcome;</li> <li>(d) which is not substantially attributable to the other Party; and</li> <li>(e) which prevents the Party from performing its obligations under the Contract.</li> </ul>
	62.2	<p>GCC 62.2 shall be deleted and replaced with:</p> <p>A Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (e) above are satisfied:</p> <ul style="list-style-type: none"> <li>(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;</li> <li>(b) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war;</li> <li>(c) riot, commotion, disorder, strike, or lockout by persons other than the Contractor’s Personnel;</li> <li>(d) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation, or radioactivity; and</li> </ul>

		<p>(e) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.</p> <p>A Force Majeure shall not include:</p> <p>(f) the inability to obtain or late delivery of labour, equipment or other materials for the Work (unless caused by a Force Majeure);</p> <p>(g) equipment failures (unless caused by a Force Majeure);</p> <p>(h) changes in market conditions, or economic hardship, including price escalation;</p> <p>(i) reasonably foreseeable weather conditions taking into account the location of the Site and the climate patterns applicable thereto; or</p> <p>(j) the unavailability or shortage of skilled or unskilled labour.</p>
63. Notice of Force Majeure	63.2	<p>GCC 63.2 shall be deleted and replaced with:</p> <p>The Party shall, provided it has given notice describing such event or circumstance strictly in accordance with GCC 63 [<i>Notice of Force Majeure</i>] and GCC 64 [<i>Duty to Minimize Delay</i>], be excused from performance of such obligations under the Contract so long as the relevant event or circumstance of Force Majeure continues and to the extent that such Party's performance is prevented from performing such obligations under the Contract.</p>
64. Duty to Minimize Delay	64.1	<p>GCC 64.1 shall be deleted and replaced with:</p> <p>A Party affected by Force Majeure shall at all times use all reasonable efforts to reduce to a minimum and mitigate any delay in the performance of the Contract or additional costs arising as a result of Force Majeure, including having recourse to alternative sources of Equipment and Materials and construction equipment that are approved by the Employer.</p>
	64.3	<p>Upon the occurrence of any circumstances of Force Majeure, the Contractor shall continue to perform its obligations under the Contract to the maximum extent practicable.</p>
	64.4	<p>The Contractor shall notify the Employer of the steps it proposes to take to mitigate the effect of any Force Majeure including any reasonable alternative means for performance which is not prevented by Force Majeure. The Contractor shall not take such steps unless directed to do so by the Employer.</p>
65. Consequences of Force Majeure	65.1	<p>GCC 65.1 shall be deleted and replaced with:</p> <p>If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under and strictly in accordance with GCC 63 [<i>Notice of Force Majeure</i>], and suffers delay by reason of such Force Majeure, the Contractor shall be entitled, subject to PCC 81 [<i>Contractor's Claim</i>], to an extension of time for any such delay, if completion is or will be delayed, under GCC 36 [<i>Extension of the Intended Completion Date</i>].</p>
67. Optional Termination, Payment, and Release	67.2	<p>The words "provided that the amount certified under this GCC shall not exceed the unpaid portion of the Contract Price" are added to the end of GCC 67.2.</p>

68. Release from Performance	68.1	The words “impossible or” shall be deleted.
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#### G. Finishing the Contract

69. Completion	69.1	<p>GCC 69.1 shall be deleted and replaced with:</p> <p>The Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract except as allowed in sub-paragraph (a) below, and (ii) the Taking-Over Certificate for the Works has been issued.</p> <p>The Contractor may apply by notice to the Project Manager for the Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor’s opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for the Taking-Over Certificate for each Section.</p> <p>The Project Manager shall, within 28 days after receiving the Contractor’s application:</p> <ul style="list-style-type: none"> <li>(a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for the Punch List Items which shall be prepared jointly by both Parties; or</li> <li>(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this sub-clause.</li> </ul>
	69.2	The Contractor must complete any Punch List Items within such reasonable time following the issue of the relevant Taking-Over Certificate as may be notified by the Project Manager to the Contractor in writing.
70. Taking Over	70.1	The words “certificate of Completion” shall be deleted and replaced with “Taking-Over Certificate”.
71. Final Account	71.1	<p>GCC 71.1 shall be deleted and replaced with:</p> <p>The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the issuance of Taking-over Certificate.</p> <p>The Project Manager shall certify any final payment that is due to the Contractor within 56 days of receiving the Contractor’s account if it is correct and complete.</p>
72. Operating and Maintenance Manuals	72.1	The date by which operating and maintenance manuals are required is that of notice to the Project Manager for the Taking-Over Certificate required in PCC 69.1. The date by which “as built” drawings are required is that of notice to the Project Manager for the Taking-Over Certificate required in PCC 69.1.
	72.2	The amount to be withheld for failing to produce operating and maintenance manuals, and/or “as built” drawings by the date required in GCC 72.1 is five percent (5 %) of the Accepted Contract Price.
73.	73.2	GCC 73.2 shall be deleted and replaced with:

Termination		<p>Fundamental breaches of the Contract by the Contractor shall include, but shall not be limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;</li> <li>(b) the Contractor is made bankrupt or goes into liquidation other than for a solvent reconstruction or amalgamation;</li> <li>(c) the Project Manager gives a notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;</li> <li>(d) the Project Manager gives two consecutive notices to update the Program and accelerate the works to ensure compliance with GCC 22 [<i>The Works to Be Completed by the Intended Completion Date</i>] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager;</li> <li>(e) the Contractor does not provide or maintain the Performance Security in accordance with GCC 59 [<i>Securities</i>];</li> <li>(f) the aggregate amount of the delay damages under GCC 56.1 reaches the maximum amount of the delay damages as set forth in PCC 56.1;</li> <li>(g) if the Contractor, in the judgment of the Employer has engaged in integrity violations in competing for or in executing the Contract, pursuant to PCC 74.1;</li> <li>(h) the Contractor abandons the Works or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;</li> <li>(i) the Contractor, without reasonable excuse, fails to proceed with the Works in accordance with GCC 22.1;</li> <li>(j) the Contractor subcontracts the Works, or assigns the whole or any part of the Contract without the approval by the Employer;</li> <li>(k) the Contractor's aggregate liability reaches or exceeds ninety percent (90 %) of the Contractor's maximum aggregate liability under PCC 16.4; or</li> <li>(l) the Contractor fails to effect or maintain any insurance as is required to effect and maintain under the Contract.</li> </ul> <p>Fundamental breaches of the Contract by the Employer shall be limited to the following:</p> <ul style="list-style-type: none"> <li>(m) the Employer is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation; or</li> <li>(n) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate.</li> </ul>
	73.6	If the Contract is terminated by fundamental breaches of the Contract by the Contractor, the Contractor shall deliver any



		required Plant, Equipment and Materials, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works. After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.
74. Fraud and Corruption	74.1	GCC 74.1 shall be deleted and replaced with: If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, or other integrity violations, including the failure to disclose any required information which constitutes a fraudulent practice, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of GCC 73 [ <i>Termination</i> ] shall apply as if such termination had been made under PCC 73.2 (g).
	74.2	The word "Borrowers" in the first sentence shall be deleted and replaced with "The Employer". The words "Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers" in the first sentence shall be deleted and replaced with "the Contractor". The words "Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers" in the first sentence shall be deleted and replaced with "the Contractor". The word "Bidder" in the item (b) shall be deleted and replaced with "the Contractor". The word "Borrowers" in the item (c) shall be deleted and replaced with "the Employer". The words "Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties" in the item (e) shall be deleted. The words "Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties" in the item (e) shall be deleted and replaced with "the Contractor". The words "particular Bidding Document" in the footnote 1 shall be deleted and replaced with "the Contract".
	74.3	The words "All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties" shall be deleted and replaced with "The Contractor".
	74.4	The words "All Bidders, consultants, contractors and suppliers" shall be deleted and replaced with "The Contractor".
	74.5	The words ", other than those shown in the bid," shall be deleted.
75. Payment upon Termination	75.1	The percentage to apply to the value of the work not completed, representing the Employer's additional cost for completing the Works, is fifty percent (50 %).
	75.2	The following words shall be added to the end of GCC 75.2:

		“provided that the amount certified under this GCC shall not exceed the unpaid portion of the Contract Price”.
76. Property	76.2	All Materials and Plant shall, to the extent consistent with the Laws of the Country, become the property of the Employer on the earlier of when the Employer has paid for the relevant Material or Plant or when it is delivered to the Site.
77. Release from Performance	77.1	GCC 77.1 shall be deleted.
78. Suspension of ADB Loan or Credit	78.1	GCC 78.1 shall be deleted.
79. Eligibility	79.1	GCC 79.1 shall be deleted.
	79.2	GCC 79.2 shall be deleted.
	79.3	GCC 79.3 shall be deleted.

#### H. Miscellaneous Provisions

80. Amendment	80.1	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.
81. Contractor’s Claim	81.1	If the Contractor considers itself to be entitled to any extension of the Intended Completion Date and/or any additional payment in connection with the Contract, the Contractor shall give notice to the Project Manager (with a copy to the Employer), describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 7 days after the Contractor became aware, or should have become aware, of the event or circumstance.
	81.2	If the Contractor fails to give notice of a claim within such period of 7 days, the Intended Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this PCC 81 [ <i>Contractor’s Claim</i> ] shall apply.
	81.3	The Contractor 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 liability, the Project Manager may, after receiving any notice under this PCC 81 [ <i>Contractor’s Claim</i> ], monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager and the Employer to inspect all these records, and shall (if instructed) submit copies to the Project Manager and Employer.
	81.4	Within 28 days after the Contractor 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 Contractor and approved by the Project Manager the Contractor shall send to the Project Manager (with a copy to the Employer) 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.



	81.5	The Project Manager will then determine such claim in accordance with the Contract.
	81.6	The requirements of this PCC 81 [ <i>Contractor's Claim</i> ] are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Subclause 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 PCC 81.2 or another clause of the Contract.
82. Third Party Rights	82.1	A person who is not a party to the Contract will have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract.
83. Transport	83.1	The Contractor shall comply with all applicable Laws with respect to the transportation of Plant, Materials and Equipment.
	83.2	The Contractor shall give the Project Manager not less than 21 days' notice of the date on which any Plant or a major item of Materials and Equipment will be delivered to the Site.
	83.3	The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Plant, Materials and Equipment and other things required for the Works.
	83.4	The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Plant, Materials and Equipment, and shall negotiate and pay all claims arising from their transport.

**Section 5: GENERAL CONDITIONS OF CONTRACT**
**A. General**

1. Definition	1.1	Boldface type is used to identify defined terms.
	1.1 (a)	The <b>Accepted Contract Amount</b> means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
	1.1 (b)	The <b>Activity Schedule</b> is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
	1.1 (c)	The <b>Adjudicator</b> is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 29.1 [Appointment of Adjudicator] hereunder.
	1.1 (d)	<b>Bank</b> means the financing institutions named in the <b>Particular Conditions of Contract (PCC)</b> .
	1.1 (e)	<b>Bill of Quantities</b> means the priced and completed Bill of Quantities forming part of the Bid.
	1.1 (f)	<b>Compensation Events</b> are those defined in GCC 51.1 [Compensation Events] hereunder.
	1.1 (g)	The <b>Completion Date</b> is the date of completion of the Works as certified by the Project Manager, in accordance with GCC 69.1 [Completion].
	1.1 (h)	The <b>Contract</b> is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC 2.3 below.
	1.1 (i)	The <b>Contractor</b> is the party whose Bid to carry out the Works has been accepted by the Employer.
	1.1 (j)	The <b>Contractor's Bid</b> is the completed bidding document submitted by the Contractor to the Employer.
	1.1 (k)	The <b>Contract Price</b> is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
	1.1 (l)	<b>Days</b> are calendar days; months are calendar months.
	1.1 (m)	<b>Dayworks</b> are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
	1.1 (n)	A <b>Defect</b> is any part of the Works not completed in accordance with the Contract.
	1.1 (o)	The <b>Defects Liability Certificate</b> is the certificate issued by the Project Manager upon correction of defects by the Contractor.
	1.1 (p)	The <b>Defects Liability Period</b> is the period calculated from the Completion Date where the Contractor remains responsible for remedying defects.
1.1 (q)	<b>Drawings</b> include calculations and other information provided or approved by the Project Manager for the execution of the Contract.	
1.1 (r)	The <b>Employer</b> is the party who employs the Contractor to carry out the Works, as specified in the PCC.	
1.1 (s)	<b>Equipment</b> is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.	

1.1 (t)	<b>Force Majeure</b> means an exceptional event or circumstance: which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract; which, having arisen, such Party could not reasonably have avoided or overcome; and, which is not substantially attributable to the other Party.
1.1 (u)	<b>In writing</b> or <b>written</b> means handwritten, typewritten, printed, or electronically made, and resulting in a permanent record.
1.1 (v)	The <b>Initial Contract Price</b> is the Contract Price listed in the Employer's Letter of Acceptance.
1.1 (w)	The <b>Intended Completion Date</b> is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is specified in the PCC. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
1.1 (x)	<b>Letter of Acceptance</b> means the formal acceptance by the Employer of the Bid and denotes the formation of the Contract at the date of acceptance.
1.1 (y)	<b>Materials</b> are all supplies, including consumables, used by the Contractor for incorporation in the Works.
1.1 (z)	<b>Party</b> means the Employer or the Contractor, as the context requires.
1.1 (aa)	<b>PCC</b> means Particular Conditions of Contract.
1.1 (bb)	<b>Plant</b> is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
1.1 (cc)	The <b>Project Manager</b> is the person named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
1.1 (dd)	<b>Retention Money</b> means the aggregate of all monies retained by the Employer pursuant to GCC 55.1 [Retention].
1.1 (ee)	<b>Schedules</b> means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Bid, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.
1.1 (ff)	The <b>Site</b> is the area defined as such in the PCC.
1.1 (gg)	<b>Site Investigation Reports</b> are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
1.1 (hh)	<b>Specification</b> means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
1.1 (ii)	The <b>Start Date</b> is given in the PCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
1.1 (jj)	A <b>Subcontractor</b> is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
1.1 (kk)	<b>Temporary Works</b> are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

	1.1 (ll)	A <b>Variation</b> is an instruction given by the Project Manager, which varies the Works.
	1.1 (mm)	The <b>Works</b> are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the PCC.
2. Interpretation	2.1	In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
	2.2	If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
	2.3	The documents forming the Contract shall be interpreted in the following order of priority: <ul style="list-style-type: none"> <li>(a) Contract Agreement,</li> <li>(b) Letter of Acceptance,</li> <li>(c) Letter of Bid,</li> <li>(d) Particular Conditions of Contract,</li> <li>(e) the List of Eligible Countries that was specified in Section 5 of the bidding document,</li> <li>(f) General Conditions of Contract,</li> <li>(g) Specifications,</li> <li>(h) Drawings,</li> <li>(i) Completed Activity Schedules or Bill of Quantities, and</li> <li>(j) any other document listed in the PCC as forming part of the Contract.</li> </ul>
3. Language and Law	3.1	The language of the Contract and the law governing the Contract are stated in the PCC.
	3.2	Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer's country when <ul style="list-style-type: none"> <li>(a) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Employer's Country prohibits any import of goods from, or any payments to, a particular country, person, or entity. Where the Borrower's country prohibits payments to a particular firm or for particular goods by such an act of compliance, that firm may be excluded.</li> </ul>
4. Contract Agreement	4.1	The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the attached Contract forms in Section 8. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.
5. Assignment	5.1	Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party

		<p>(a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party; and.</p> <p>(b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.</p>
6. Care and Supply of Documents	6.1	The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.
	6.2	Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.
	6.3	The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.
	6.4	If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.
7. Confidential Details	7.1	The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.
	7.2	Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
	7.3	Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the under this Clause.
8. Compliance with Laws	8.1	The Contractor shall, in performing the Contract, comply with applicable Laws.
	8.2	Unless otherwise stated in the Particular Conditions, <p>(a) the Employer 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 [Employer's Country or country where the Site is located] which (i) such authorities or undertakings require</p>

		<p>the Employer to obtain in the Employer's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Contractor and the Employer of their respective obligations under the Contract;</p> <p>(b) the Contractor 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 [Employer's Country or country where the Site is located] which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel and entry permits for all imported Contractor's Equipment. The Contractor shall acquire all other permits, approvals, and/or licenses that are not the responsibility of the Employer under Subclause 8.2(a) hereof and that are necessary for the performance of the Contract. The Contractor shall indemnify and hold harmless the Employer 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 Contractor or its personnel, including the Subcontractors and their personnel, but without prejudice to Subclause 8.1 hereof.</p>
9. Joint and Several Liability	9.1	If the Contractor is a Joint Venture of two or more persons, all such persons shall be jointly and severally liable to the Employer 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. The composition or the constitution of the Joint Venture shall not be altered without the prior consent of the Employer.
10. Project Manager's Decisions	10.1	Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
11. Delegation	11.1	The Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
12. Communications	12.1	Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
13. Subcontracting	13.1	The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
14. Other Contractors	14.1	The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.



15. Personnel and Equipment	15.1	The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the functions stated in the Schedule or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
	15.2	If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within 7 days and has no further connection with the work in the Contract.
	15.3	Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the execution of the Works, then that employee shall be removed in accordance with Clause 15.2 above.
16. Employer's and Contractor's Risks	16.1	The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
17. Employer's Risks	17.1	From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks: <ul style="list-style-type: none"> <li>(a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to <ul style="list-style-type: none"> <li>(i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or</li> <li>(ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.</li> </ul> </li> <li>(b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.</li> </ul>
	17.2	From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to <ul style="list-style-type: none"> <li>(a) a Defect which existed on the Completion Date,</li> <li>(b) an event occurring before the Completion Date, which was not itself an Employer's risk, or</li> </ul>
18. Contractor's Risks	18.1	From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment), which are not Employer's risks, are Contractor's risks.
19. Insurance	19.1	The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles stated in the PCC for the following events, which are due to the Contractor's risks:

		<p>(a) loss of or damage to the Works, Plant, and Materials;</p> <p>(b) loss of or damage to Equipment;</p> <p>(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and</p> <p>(d) personal injury or death.</p>
	19.2	Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
	19.3	If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance, which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
	19.4	Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
	19.5	Both parties shall comply with any conditions of the insurance policies.
20. Site Investigation Reports	20.1	The Contractor, in preparing the Bid, shall rely on any Site Investigation Reports referred to in the PCC, supplemented by any information available to the Contractor.
21. Contractor to Construct the Works	21.1	The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
22. The Works to Be Completed by the Intended Completion Date	22.1	The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
23. Designs by Contractor and Approval by the Project Manager	23.1	The Contractor shall carry out design to the extent specified in the PCC. The Contractor shall promptly submit to the Employer all designs prepared by him. Within 14 days of receipt, the Employer shall notify any comments. The Contractor shall not construct any element of the permanent work designed by him within 14 days after the design has been submitted to the Employer or where the design for that element has been rejected. Design that has been rejected shall be promptly amended and resubmitted. The Contractor shall resubmit all designs commented on, taking these comments into account as necessary.
	23.2	The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
	23.3	The Contractor shall be responsible for design of Temporary Works.
	23.4	The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.



	23.5	The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
	23.6	All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
24. Safety	24.1	The Contractor shall be responsible for the safety of all activities on the Site.
25. Discoveries	25.1	Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
26. Possession of the Site	26.1	The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the PCC, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
27. Access to the Site	27.1	The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.
28. Instructions, Inspections, and Audits	28.1	The Contractor shall carry out all instructions of the Project Manager, which comply with the applicable laws where the Site is located.
	28.2	The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
	28.3	The Contractor shall permit ADB or its representative to inspect the Contractor's site, assets, accounts, records, and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by ADB. The Contractor shall maintain all documents and records related to the bid submission and the execution of the Contract for at least 5 years after completing the works contemplated in the relevant contracts or the period prescribed in applicable law, whichever is longer. The Contractor shall provide any documents necessary for the investigation of allegations of corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations and require its employees or agents with knowledge of the Contract to respond to questions from ADB.
	28.4	ADB's right to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract stated in Sub-Clause 28.3 and 74.2(e) shall survive termination and/ or expiration of this Contract.
29. Appointment of the Adjudicator	29.1	The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator within 14 days of receipt of such request.
	29.2	Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in

		accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority at the request of either party, within 14 days of receipt of such request.
30. Procedure for Disputes	30.1	If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
	30.2	The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
	30.3	The Adjudicator shall be paid by the hour at the rate specified in the PCC, together with reimbursable expenses of the types specified in the PCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
	30.4	The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and, in the place, specified in the PCC.

#### B. Staff and Labour

31. Forced Labor	31.1	The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty. This covers any kind of involuntary or compulsory labor, such as indentured labor, bonded labor, or similar labor-contracting arrangements.
32. Child Labor	32.1	The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, 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. Where national laws have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.
33. Workers' Organizations	33.1	In countries where national law recognizes workers' rights to form and to join workers' organizations of their choosing without interference and to bargain collectively, the Contractor shall comply with national law. Where national law substantially restricts workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms

		of employment. In either case described above, and where national law is silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organizations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and bargain collectively. The Contractor shall engage with such workers representatives. Worker organizations are expected to fairly represent the workers in the workforce.
34. Nondiscrimination and Equal Opportunity	34.1	The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where national law provides for nondiscrimination in employment, the Contractor shall comply with national law. When national laws are silent on nondiscrimination in employment, the Contractor shall meet this Subclause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

### C. Time Control

35. Program	35.1	Within the time stated in the PCC, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
	35.2	An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
	35.3	The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the PCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the PCC from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated

		Activity Schedule within 14 days of being instructed to by the Project Manager.
	35.4	The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
36. Extension of the Intended Completion Date	36.1	The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
	36.2	The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
37. Acceleration	37.1	When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
	37.2	If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
38. Delays Ordered by the Project Manager	38.1	The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
39. Management Meetings	39.1	Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
	39.2	The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
40. Early Warning	40.1	The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

	40.2	The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.
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#### D. Quality Control

41. Identifying Defects	41.1	The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
42. Tests	42.1	If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
43. Correction of Defects	43.1	The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the PCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
	43.2	Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
44. Uncorrected Defects	44.1	If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

#### E. Cost Control

45. Contract Price	45.1	In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
	45.2	In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.
46. Changes in the Contract Price	46.1	In the case of an admeasurement contract: (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25%, provided the change exceeds 1% of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.

		<p>(b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15%, except with the prior approval of the Employer.</p> <p>(c) If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.</p>
	46.2	In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.
47. Variations	47.1	All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
	47.2	The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
	47.3	If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
	47.4	If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
	47.5	The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
	47.6	In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC 46.1 [Changes in the Contract Price] or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
48. Cash Flow Forecasts	48.1	When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.
49. Payment Certificates	49.1	The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
	49.2	The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.



	49.3	The value of work executed shall be determined by the Project Manager.
	49.4	The value of work executed shall comprise, (a) in the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or (b) in the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
	49.5	The value of work executed shall include the valuation of Variations and Compensation Events.
	49.6	The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
50. Payments	50.1	Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
	50.2	If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
	50.3	Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
	50.4	Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
51. Compensation Events	51.1	The following shall be Compensation Events: (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC 26.1 [Possession of the Site]. (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract. (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time. (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects. (e) The Project Manager unreasonably does not approve a subcontract to be let. (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to

		<p>Bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.</p> <p>(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.</p> <p>(h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.</p> <p>(i) The advance payment is delayed.</p> <p>(j) The effects on the Contractor of any of the Employer's Risks.</p> <p>(k) The Project Manager unreasonably delays issuing a Certificate of Completion.</p>
	51.2	If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
	51.3	As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.
	51.4	The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.
52. Tax	52.1	The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC 54.1 [Price Adjustment].
53. Currencies	53.1	Where payments are made in currencies other than the currency of the Employer's country specified in the PCC, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.
54. Price Adjustment	54.1	Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:



		$P_c = A_c + B_c I_{mc} / I_{oc}$ <p>where:</p> <p><math>P_c</math> is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.”</p> <p><math>A_c</math> and <math>B_c</math> are coefficients<sup>3</sup> specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and</p> <p><math>I_{mc}</math> is a consolidated index prevailing at the end of the month being invoiced and <math>I_{oc}</math> is the same consolidated index prevailing 28 days before Bid opening for inputs payable; both in the specific currency “c.”</p>
	54.2	If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.
55. Retention	55.1	The Employer shall retain from each payment due to the Contractor the proportion stated in the PCC until Completion of the whole of the Works.
	55.2	Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 69.1 [Completion], half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” bank guarantee.
56. Liquidated Damages	56.1	The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the PCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
	56.2	If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC 50.1 [Payments].
57. Bonus	57.1	The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the PCC for each day (less any days for

<sup>3</sup> The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulas for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.10 ~ 0.20) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency is added to the Contract Price.

		which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.
58. Advance Payment	58.1	The Employer shall make advance payment to the Contractor of the amounts stated in the PCC by the date stated in the PCC, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
	58.2	The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.
	58.3	The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.
59. Securities	59.1	The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the PCC, by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The 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.
60. Dayworks	60.1	If applicable, the Dayworks rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
	60.2	All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within 2 days of the work being done.
	60.3	The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
61. Cost of Repairs	61.1	Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

#### F. Force Majeure

62. Definition of Force Majeure	62.1	In this Clause, “Force Majeure” means an exceptional event or circumstance, <ul style="list-style-type: none"> <li>(a) which is beyond a Party’s control;</li> <li>(b) which such Party could not reasonably have provided against before entering into the Contract;</li> <li>(c) which, having arisen, such Party could not reasonably have avoided or overcome; and</li> <li>(d) which is not substantially attributable to the other Party.</li> </ul>
	62.2	Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied: <ul style="list-style-type: none"> <li>(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;</li> <li>(b) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war;</li> <li>(c) riot, commotion, disorder, strike, or lockout by persons other than the Contractor’s Personnel;</li> <li>(d) munitions of war, explosive materials, ionizing radiation or contamination by radioactivity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation, or radioactivity; and</li> <li>(e) natural catastrophes such as earthquake, hurricane, typhoon, or volcanic activity.</li> </ul>
63. Notice of Force Majeure	63.1	If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
	63.2	The Party shall, having given notice, be excused from performance of its obligations for so long as such Force Majeure prevents it from performing them.
	63.3	Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
64. Duty to Minimize Delay	64.1	Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure.
	64.2	A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
65. Consequences of Force Majeure	65.1	If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Subclause 63 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Subclause 30.1 [Procedure for Disputes] to <ul style="list-style-type: none"> <li>(a) an extension of time for any such delay, if completion is or will be delayed, under GCC Subclause 36 [Extension of the Intended Completion Date]; and</li> </ul>

		(b) if the event or circumstance is of the kind described in subparagraphs (a) to (d) of GCC Subclause 62.2 [Definition of Force Majeure] and, in the case of subparagraphs (b) to (d), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Subclause 19 [Insurance].
	65.2	After receiving this notice, the Project Manager shall proceed in accordance with GCC Subclause 10 [Project Manager's Decisions] to agree or determine these matters.
66. Force Majeure Affecting Subcontractor	66.1	If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader Force Majeure events or circumstances shall not excuse the Contractor's nonperformance or entitle him to relief under this Clause.
67. Optional Termination, Payment, and Release	67.1	If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GCC Subclause 63 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with GCC Subclause 73.5 [Termination].
	67.2	Upon such termination, the Project Manager shall determine the value of the work done and issue a Payment Certificate, which shall include <ul style="list-style-type: none"> <li>(a) the amounts payable for any work carried out for which a price is stated in the Contract;</li> <li>(b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;</li> <li>(c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;</li> <li>(d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and</li> <li>(e) the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with the Works at the date of termination.</li> </ul>
68. Release from Performance	68.1	Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises, which makes it impossible or unlawful for either or both Parties to fulfill its or their

		<p>contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance,</p> <ul style="list-style-type: none"> <li>(a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and</li> <li>(b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under GCC Subclause 67 [Optional Termination, Payment and Release] if the Contract had been terminated under GCC Subclause 67.</li> </ul>
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#### G. Finishing the Contract

69. Completion	69.1	The Contractor shall request the Project Manager to issue a certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the work is completed.
70. Taking Over	70.1	The Employer shall take over the Site and the Works within 7 days of the Project Manager's issuing a certificate of Completion.
71. Final Account	71.1	The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.
72. Operating and Maintenance Manuals	72.1	If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PCC.
	72.2	If the Contractor does not supply the Drawings and/or manuals by the dates stated in the PCC pursuant to GCC 72.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the PCC from payments due to the Contractor.
73. Termination	73.1	The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
	73.2	<p>Fundamental breaches of Contract shall include, but shall not be limited to, the following:</p> <ul style="list-style-type: none"> <li>(a) is shown on the current Program and the stoppage has not been authorized by the Project Manager;</li> <li>(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;</li> <li>(c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;</li> </ul>

		<ul style="list-style-type: none"> <li>(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;</li> <li>(e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;</li> <li>(f) the Project Manager gives two consecutive Notices to update the Program and accelerate the works to ensure compliance with GCC Subclause 22.1 [The Works to Be Completed by the Intended Completion Date] and the Contractor fails to update the Program and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager;</li> <li>(g) the Contractor does not maintain a Security, which is required;</li> <li>(h) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the PCC; and</li> <li>(i) if the Contractor, in the judgment of the Employer has engaged in integrity violations in competing for or in executing the Contract, pursuant to GCC 74.1 [Fraud and Corruption].</li> </ul>
	73.3	Notwithstanding the above, the Employer may terminate the Contract for convenience.
	73.4	When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC 73.2 above, the Project Manager shall decide whether the breach is fundamental or not.
	73.5	If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
74. Fraud and Corruption	74.1	If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, or other integrity violations, including the failure to disclose any required information which constitutes a fraudulent practice, in competing for or in executing the Contract, then the Employer may, after giving 14-days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 73 [Termination] shall apply as if such termination had been made under Sub-Clause 73.2 (i).
	74.2	ADB requires Borrowers (including beneficiaries of ADB financed activity) and their personnel, as well as firms and individuals participating in an ADB-financed activity, including but not limited to, Bidders, Suppliers, and Contractors, agents, subcontractors, subconsultants, service providers, subsuppliers, manufacturers (including their respective officers, directors, employees and personnel) under ADB financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts in accordance with ADB's Anticorruption Policy (1998, as amended from time to time). In pursuance of this policy, ADB



		<p>(a) defines, for the purposes of this provision, the terms set forth below as follows:</p> <ul style="list-style-type: none"> <li>(i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;</li> <li>(ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;</li> <li>(iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;</li> <li>(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;</li> <li>(v) “abuse” means theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;</li> <li>(vi) “conflict of interest” means any situation in which a party has interests that could improperly influence that party’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; and</li> <li>(vii) “integrity violation” is any act, as defined under ADB’s Integrity Principles and Guidelines (2015, as amended from time to time), which violates ADB’s Anticorruption Policy, including (i) to (vi) above and the following: obstructive practice, violations of ADB sanctions, retaliation against whistleblowers or witnesses, and other violations of ADB’s Anticorruption Policy, including failure to adhere to the highest ethical standard.</li> </ul> <p>(b) will reject a proposal for award if it determines that the Bidder recommended for award or any of its officers, directors, employees, personnel, subconsultants, subcontractors, service providers, suppliers or manufacturers has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Contract;</p> <p>(c) will cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, including by</p>
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		<p>failing to inform ADB in a timely manner at the time they knew of the integrity violations;</p> <p>(d) will impose remedial actions on a firm or an individual, at any time, in accordance with ADB’s Anticorruption Policy and Integrity Principles and Guidelines, including declaring ineligible, either indefinitely or for a stated period of time, to participate<sup>4</sup> in ADB- financed, - administered, or -supported activities or to benefit from an ADB-financed, -administered, or -supported contract, financially or otherwise, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; and;</p> <p>(e) will have the right to require that a provision be included in bidding documents and in contracts financed, administered, or supported by ADB, requiring Bidders, suppliers and contractors, consultants, manufacturers, service providers and other third parties engaged or involved in ADB-related activities, and their respective officers, directors, employees and personnel, to permit ADB or its representative to inspect the site and their assets, accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by ADB.</p>
	74.3	<p>All Bidders, consultants, contractors, suppliers, manufacturers, service providers, and other third parties engaged or involved in ADB-related activities and their respective officers, directors, employees and personnel are obliged to cooperate fully in any investigation when requested by ADB to do so. As determined on a case by case basis by ADB, such cooperation includes, but is not limited to, the following:</p> <p>(a) being available to be interviewed and replying fully and truthfully to all questions asked;</p> <p>(b) providing ADB with any items requested that are within the party’s control including, but not limited to, documents and other physical objects;</p> <p>(c) upon written request by ADB, authorizing other related entities to release directly to ADB such information that is specifically and materially related, directly or indirectly, to the said entities or issues which are the subject of the investigation;</p> <p>(d) cooperating with all reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB activities, or that utilizes ADB’s Information and Communication Technology (ICT) resources or systems (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives);</p>

<sup>4</sup> Whether as a Contractor, Subcontractor, Consultant, Manufacturer or Supplier, or Service Provider; or in any other capacity (different names are used depending on the particular Bidding Document).



		<p>(e) limited to, fingerprint identification, handwriting analysis, and physical examination and analysis; and</p> <p>(f) preserving and protecting confidentiality of all information discussed with, and as required by, ADB.</p>
	74.4	All Bidders, consultants, contractors and suppliers shall require their officers, directors, employees, personnel, agents to ensure that, in its contracts with its subconsultants, Subcontractors and other third parties engaged or involved in ADB-related activities, such subconsultants, Subcontractors and other third parties similarly are obliged to cooperate fully in any investigation when requested by ADB to do so.
	74.5	The Contractor undertakes that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution. <sup>5</sup>
75. Payment upon Termination	75.1	If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as indicated in the PCC. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
	75.2	If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.
76. Property	76.1	All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.
77. Release from Performance	77.1	If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterward to which a commitment was made.
78. Suspension of ADB Loan or Credit	78.1	<p>In the event that ADB suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made,</p> <p>(a) the Employer is obligated to notify the Contractor, with copy to the Project Manager, of such suspension within 7 days of having received ADB's suspension notice.</p> <p>(b) if the Contractor has not received sums due it within the 28 days for payment provided for in GCC 50.1</p>

<sup>5</sup> The undertaking also applies during the period of performance of the contract.

		[Payments], the Contractor may immediately issue a 14-day termination notice.
79. Eligibility	79.1	The Contractor shall have the nationality of an eligible country as specified in Section 5 [Eligible Countries] of the bidding document. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed Subcontractors or Suppliers for any part of the Contract including related services.
	79.2	The materials, equipment, and services to be supplied under the Contract shall have their origin in eligible source countries as specified in Section 5 [Eligible Countries] of the bidding document and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment, and services.
	79.3	For purposes of GCC 79.2, "origin" means the place where the materials and equipment are mined, grown, produced, or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

**SECTION 6: DRAFT CONTRACT (To be updated and revised)**

THIS CONTRACT AGREEMENT for “.....” hereinafter called the “Contract” is made and entered on {date of execution.....}.

BETWEEN:

- **Nam Ngiep 1 Power Company Limited (NNP1PC)** hereinafter called “**the Employer**”, a company incorporated under the laws of Lao PDR and registered at 236/16, 2<sup>nd</sup> Floor of Sky City Building, Sibounheuang Village, Chanthabouly District, Vientiane Capital, Lao PDR, P.O Box 5503, Office Tel: +856-21-261251, Fax: +856-21-261252

AND

- **{Contractor name.....}** hereinafter called “**the Contractor**”, a company incorporated under the laws of {address.....}, Office Tel: ....., Fax: .....

The Employer and the Contractor agree as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - 1) The Contract Agreement,
  - 2) The Contract Price and Schedule of Payment;
  - 3) Bill of Quantities
  - 4) The Particular Conditions of Contract,
  - 5) The General Conditions of Contract,
  - 6) The Code of Conduct
  - 7) The Employer’s Requirements including Specifications;
  - 8) the Completed Activity Schedules (to be attached after approval by the Employer)
  - 9) Other documents (if applicable)
3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. The Contract contains the entire agreement of the Parties in relation to its subject matter and supersedes and replaces all prior written and oral understanding, offers and other communications of any kind, including all tender documentation, correspondence, letter and other agreements between the Parties, all of which are hereby terminated.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed as a deed by their authorized representatives.

**Signed for and on behalf of the Employer      Signed for and on behalf the Contractor by:**  
**by:**

**Mr. Masahiko UMESAKI**  
**Managing Director**

Witness, Name, Signature

Witness, Name, Signature

**Mr. Somsavath PHANTHADY**  
**Manager - Administration,**  
**Administration Division**

## **ANNEXES**

- 1) Letter of Acceptance,
- 2) The Contract Price and Schedule of Payment;
- 3) The Particular Conditions of Contract,
- 4) The General Conditions of Contract,
- 5) The Employer's Requirements including Specifications,
- 6) the Completed Activity Schedules (to be attached after approval by the Employer)
- 7) Other documents (if applicable)