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Section I. Instructions to Bidders (ITB)

SECTION I. INSTRUCTIONS TO BIDDERS (ITB)

Notes on the Instructions to Bidders

This section of the Bidding Documents should provide the information necessary for Bidders to prepare responsive Bids, in accordance with the requirements of the Employer. It should also give information on Bid submission, opening and evaluation, and on the award of Contract.

Matters governing the performance of the Contractor, payments under the Contract, or matters affecting the risks, rights and obligations of the parties under the Contract are not normally included in this Section, but rather under Section V, General Conditions of Contract and/or Section VI, Special Conditions of Contract. If duplication of a subject is inevitable in the different sections of the documents, care must be exercised to avoid contradictions between clauses dealing with the same matter.

These Instructions to Bidders shall not be part of the Contract and shall cease to have effect once the Contract is signed.

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INSTRUCTIONS TO BIDDERS (ITB)

A. General

1. Scope of Bid and Source of Funds

- 1.1. The Employer as defined¹⁰ in Section II, Bidding Data Sheet (BDS), invites Bids for the construction of Works, as described in the BDS and Section VI, Special Conditions of Contract (SCC). The name and identification number of the Contract is provided in the BDS and the SCC.
- 1.2. The successful Bidder will be expected to complete the Works by the Intended Completion Date specified in the Special Conditions of Contract.
- 1.3. The Employer as defined in section II, Bidding Data Sheet (BDS) has received a budget from RGoB towards the cost of the Project defined in the BDS and intends to apply a part of the funds to cover eligible payments under the contract for this works.

2. Fraud and Corruption

- 2.1. It is RGoB's policy to require that Employers, Bidders, Suppliers, Contractors and their Subcontractors observe the highest standards of ethics during the procurement and execution of contracts.¹¹ In pursuance of this policy, the Employer:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice"¹² is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value¹³ to influence improperly the actions of another party;
 - (ii) "fraudulent practice"¹⁴ is any intentional 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;
 - (iii) "collusive practice"¹⁵ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

¹⁰ See also definitions in Section V, General Conditions of Contract (GCC).

¹¹ In this context, any action taken by a Bidder, Supplier, Contractor or a Subcontractor to influence the procurement process or contract execution for undue advantage is improper.

¹² "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes staff and employees of any organizations (including any institutions providing finance for the Works) taking or reviewing procurement decisions.

¹³ "anything of value" includes, but is not limited to, any gift, loan, fee, commission, valuable security or other asset or interest in an asset; any office, employment or contract; any payment, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; any other services, favor or advantage, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary or penal nature, whether or not already instituted and including the exercise or the forbearance from the exercise of any right or any official power or duty.

¹⁴ a "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

¹⁵ "parties" refers to participants in the procurement process (including public officials) and an "improper purpose" includes attempting to establish bid prices at artificial, non competitive levels.

Section I. Instructions to Bidders (ITB)

- (i) “coercive practice”¹⁶ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (i) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (bb) acts intended to materially impede the exercise of the inspection and audit rights of the Employer or any organization or person appointed by the Employer and/or any relevant RGoB agency provided for under ITB Sub-Clause 2.1 (d) below.
- (b) will reject a Bid for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question.
- (c) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing contract;
- (d) will have the right to require that a provision be included in the Contract and/or any sub-contracts involving the Bidders, requiring Bidders, Suppliers, Contractors and their Subcontractors to permit the Employer, any organization or person appointed by the Employer and/or any relevant RGoB agency to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Employer;
- (e) requires that Bidders, as a condition of admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in Section IV, Bidding Forms. Failure to provide a duly executed Integrity Pact Statement shall result in disqualification of the Bid; and
- (f) will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to the relevant RGoB agencies, including but not limited to the Anti-Corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

16. a “party” refers to a participant in the procurement process or contract execution.

2.2. Furthermore, Bidders shall be aware of the provision stated in GCC Sub-Clause 60.1

3. Eligible Bidders

3.1. A Bidder may be a private entity, a government-owned entity, subject to ITB sub-clause 3.4, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to bind all members of the JV and conduct all business for and on behalf of any and all the members of the JV during the Bidding process and, in the event the JV is awarded the Contract, during contract execution. Unless specified **in the BDS**, there is no limit on the number of members in a JV.

3.2. A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 3.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services

3.3. A Bidder shall not have a conflict of interest with the Employer, another Bidder or other party in the bidding process. All Bidders found to have a conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding

- (a) they have at least one controlling partner in common; or
- (b) they receive or have received any direct or indirect subsidy from either party; or
- (c) they have the same authorized legal representative for purposes of this Bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- (e) a Bidder participates in more than one Bid in this bidding process. Participation by a Bidder in more than one Bid shall result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one Bid; or

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- (f) a Bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Works that are the subject of the Bid or in any other way provided consulting services in any aspect of the preparatory stages leading up to the issue of these Bidding Documents; or
 - (g) a Bidder or any of its affiliates has been hired (or is proposed to be hired) by the Employer as Project Manager for the Contract implementation; or
 - (h) a Bidder or any of its affiliates employs or otherwise engages a close relative of a civil servant who either is employed by the Employer or has an authority over the bidder or its affiliates or over the bid. For the purposes of this Sub-Clause a close relative is defined as immediate family which includes father, mother, brother, sister, spouse and own children.
- 3.4. A Bidder that is determined to be ineligible pursuant to any of the provisions of this Bidding Document shall not be eligible to be awarded a Contract.
- 3.5. Government-owned enterprises in Bhutan shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Employer.
- 3.6. Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer as the Employer may reasonably request.
- 3.7. A firm shall be excluded if:
- (a) as a matter of law or official regulation, Bhutan prohibits commercial relations with the country in which the firm is constituted, incorporated or registered; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Bhutan prohibits any import of goods or contracting of Works or services from that country in which the firm is constituted, incorporated or registered or any payments to persons or entities in that country.
- 3.8. A Bidder shall also be excluded if:
- (a) he is insolvent or is in receivership or is a bankrupt or is in the process of being wound up, or has entered into an arrangement with his creditors; or
 - (b) his business affairs are being administered by a court, judicial officer or appointed liquidator; or
 - (c) he has suspended business or is in any analogous situation arising from similar procedures under the laws and regulations of his country of establishment; or

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- (d) he has been found guilty of professional misconduct by a recognized tribunal or professional body; or
- (e) he has not fulfilled his obligations with regard to the payment of taxes, social security or other payments due in accordance with the laws of the country in which he is established or of the Kingdom of Bhutan; or
- (f) he is or has been guilty of serious misrepresentation in supplying information required for any prior registration with the Employer or the Construction Development Board of Bhutan; or
- (g) he has been convicted of fraud and/or corruption by a competent authority; or
- (h) he has not fulfilled his contractual obligations with the Employer in the past; or
- (i) he has been debarred from participation in public procurement by any competent authority as per law.

4. One Bid per Bidder

4.1. Each Bidder shall submit only one Bid, either individually or as a partner in a JV/C/A. A Bidder who submits or participates in more than one Bid (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the proposals with the Bidder's participation to be disqualified.

5. Cost of Bidding

5.1. The Bidder shall bear all costs associated with the preparation and submission of his Bid, and the Employer shall in no case be responsible or liable for those costs.

6. Site Visit

6.1. The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine the Site of Works and its surroundings and obtain 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. The Bidder shall be deemed to have made all necessary investigations and obtained all necessary information relating to the Site conditions when submitting its Bid.

B. Bidding Documents

7. Content of Bidding Documents

7.1. The set of Bidding Documents comprises the documents listed in the table below and addenda issued in accordance with ITB Clause 9:

- Section I: Instructions to Bidders
- Section II: Bidding Data Sheet
- Section III: Section III: Eligible Countries
- Section IV: Evaluation and Qualification Criteria
- Section V: Bidding Forms
- Section VI: General Conditions of Contract
- Section VII: Special Conditions of Contract
- Section VIII: Specifications and Performance Requirements
- Section IX: Drawings

Section I. Instructions to Bidders (ITB)

Section X: Bill of Quantities¹⁷ - This (or the Activity Schedule in the case of lump sum Contracts) comprises a paper hard copy and an electronic copy.

Section XI: Forms of Securities and Invitation for Bids

8. Clarification of Bidding Documents

- 8.1. A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing, including by cable, facsimile, telex or electronic mail, at the Employer's address indicated in the BDS. The Employer shall respond to any request for clarification received earlier than fifteen (15) days¹⁸ prior to the deadline for submission of bids. Copies of the Employer's response shall be forwarded to all prospective Bidders, including a description of the inquiry, but without identifying its source. Should the clarification result in changes to the Bidding Documents, the Employer shall amend the Bidding Documents, following the procedure in ITB Clause 9 and ITB Sub-Clause 20.2.
- 8.2. The Bidders and/or their official representatives are invited to attend a pre-bid meeting, which will take place at the place and time stated in BDS.
- 8.3. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.4. Bidders are requested to submit any questions in writing or by facsimile or email to reach the Employer not later than one week before the meeting.
- 8.5. Minutes of the meeting, including the text of the questions raised (without identifying the source of inquiry) and the responses given will be transmitted without delay to all purchasers of the bidding documents. Any modification of the Bidding Documents listed in Sub-Clause 7.1 which may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to Clause 9 and not through the minutes of the pre-bid meeting.
- 8.6. Non-attendance of the pre-bid meeting will not be a cause for disqualification of a bidder.

9. Amendment of Bidding Documents

- 9.1. Before the deadline for submission of Bids, the Employer may modify the Bidding Documents by issuing addenda.

17. In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule".

18. It may be necessary to extend the deadline for submission of bids if the Employer's response results in substantial changes to the Bidding Documents. See ITB Clause 9 below.

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- 9.2. Any addendum thus issued shall be part of the Bidding Documents, shall be binding on all Bidders and shall be communicated in writing, including by cable, facsimile, telex or electronic mail, to all purchasers of the Bidding Documents.¹⁹ Prospective Bidders shall acknowledge receipt of each addendum in writing, including by electronic mail, to the Employer.
- 9.3. To give prospective Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer shall extend, as necessary, the deadline for submission of Bids, in accordance with ITB Sub-Clause 20.2 below.

C. Preparation of Bids

10. Language of Bid

- 10.1. All documents relating to the Bid shall be in the language specified in the BDS.

11. Documents Comprising the Bid

- 11.1. The Bid submitted by the Bidder shall comprise the following:
 - (a) The Bid form (in the format indicated in Section V);
 - (b) Bid Security in accordance with ITB Clause 15;
 - (c) Priced Bill of Quantities - this must be submitted in paper form, signed by the duly authorized signatory of the Bidder, and also in electronic form, if required by the Employer;
 - (d) Qualifications: documentary evidence in accordance with ITB Clause 17 establishing the Bidder's qualifications to perform the Contract if its Bid is accepted;
 - (e) Written proof confirming that the signatory of the Bid is duly authorized to represent and bind the Bidder in making the Bid, in accordance with ITB Sub-Clause 18.2;
 - (f) Alternative Bids were invited; and
 - (g) any other documents specified in the BDS
- 11.2. In addition to the requirements under ITB Clause 11.1, bids submitted by a Joint Venture, Consortium or Association (JV/C/A) of two or more firms as members shall comply with the following requirements, unless otherwise stated in the BDS:
 - (a) the bid shall include all the information listed in ITB Sub-Clause 17.2 above for each JV/C/A member;
 - (b) the Bid shall be signed so as to be legally binding on all JV/C/A members;
 - (c) all JV/C/A members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

¹⁹ It is therefore important that the Employer maintain a complete and accurate list of recipients of the Bidding Documents and their addresses.

²⁰ No bid will be rejected during the opening except on grounds of non-signing of bid forms and insufficient bid security. Non submission of documents like trade license, CDB certificate along with the bid should not become rejecting criteria. The bidder should be given an opportunity to submit such documents during evaluation within a reasonable time specified by the evaluation committee. Any rejection due to non-responsiveness should be done after preliminary examination of the bids.

²¹ In lump sum contracts, delete "priced Bill of Quantities" and replace with "priced Activity Schedule".

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- (d) one of the members shall be nominated as being the JV/C/A leader, authorized to incur liabilities, and receive instructions for and on behalf of any and all members of the JV/C/A;
- (e) the execution of the entire Contract, including payment, shall be done exclusively with the JV/C/A leader remaining in control of decision making for the JV/C/A; and
- (f) a copy of the JV/C/A Agreement entered into by the members shall be submitted with the Bid; or a letter of intent to execute a JV/C/A Agreement in the event of a successful Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed JV/C/A Agreement.

12. Bid Prices

- 12.1. The Contract shall be for the design, engineering, procurement and construction of the whole Works, as described in ITB Sub-Clause 1.1, based on the priced Bill of Quantities submitted by the Bidder.
- 12.2. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities.²² Items for which no rate or price is entered by the Bidder shall not be paid for by the Employer when executed and shall be deemed to be covered by and included in the other rates and prices in the Bill of Quantities. Corrections, if any, shall be made by crossing out, initialing, dating and rewriting.
- 12.3. The Bidder shall quote its final all-inclusive net price, including all incidental costs and any applicable discounts, for carrying out the Contract. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Bids, shall be specifically identified and included in the rates, prices and total Bid price submitted by the Bidder.²³
- 12.4. The rates and prices²⁴ quoted by the Bidder shall be subject to adjustment during the performance of the Contract²⁵ if provided for in the BDS, the SCC and the provisions of the GCC (in particular, Clause 48 of the GCC). The Bidder shall submit with the Bid all the information required under the SCC and the GCC (in particular, Clause 48 of the GCC).

13. Currencies of Bid and Payment

- 13.1. The unit rates and prices²⁶ shall be quoted by the Bidder entirely in Bhutanese Ngultrum (Nu). Foreign currency requirements shall be indicated as a percentage of the Bid price (excluding provisional sums²⁷) and shall be payable at the option of the Bidder in up to three foreign currencies.

²² In lump sum contracts, delete "described in the Bill of Quantities" and replace with "described in the drawings and specifications and listed in the Activity Schedule".

²³ In lump sum contracts, delete "rates, prices, and".

²⁴ In lump sum contracts, delete "rates and prices" and replace with "lump sum price".

²⁵ For contracts with a duration of more than 18 months the price adjustment normally should be allowed

²⁶ In lump sum contracts, delete "unit rates and prices" and replace with "lump sum price".

²⁷ Provisional sums are monetary sums specified by the Employer in the Bill of Quantities, to be used at his discretion for nominated subcontractors and other specified purposes.

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- 13.2. The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in ITB Sub-Clause 13.1 above shall be the selling rates for similar transactions established by the authority specified in the BDS prevailing on the date 30 days prior to the latest deadline for submission of Bids. These exchange rates shall apply for all payments so that no exchange risk shall be borne by the Bidder. If the Bidder uses other rates of exchange, the provisions of ITB Clause 28.1 shall apply. In any case, payments shall be computed using the rates quoted in the Bid.
- 13.3. Bidders shall indicate details of their expected foreign currency requirements in the Bid.
- 13.4. Bidders may be required by the Employer to clarify their foreign currency requirements and to substantiate that the amounts included in the rates and prices²⁸, if required in the BDS, are reasonable and responsive to ITB Sub-Clause 13.1.
- 13.5. In case of International Procurement from countries other than India, the procuring agency may invite bids in convertible currencies. The bids shall however, be evaluated in accordance with ITB Sub-Clause 13.2 above, but the payment shall be made in the currency of bid.

14. Bid Validity

- 14.1. Bids shall remain valid and open / capable of acceptance by the Employer for the period specified in the BDS.
- 14.2. The Employer may request that the Bidders extend the period of validity for a specified additional period. The request and the Bidders' responses shall be made in writing or by electronic mail. The Bid Security required pursuant to ITB Clause 15 shall be extended to 30 days after the deadline of the extended Bid validity period. A Bidder may refuse the request without forfeiting the Bid Security. The refusal to extend the Bid by the Bidder will make the bid invalid and the Bidder's Bid shall not be further considered for evaluation and award, A Bidder agreeing to the request shall not be required or permitted to modify its Bid, except as provided for in ITB Clause 15.
- 14.3. In the case of contracts in which the Contract Price is fixed (not subject to price adjustment), if the period of Bid validity is extended beyond 60 days, the amounts payable in local and foreign currency to the Bidder selected for award shall be adjusted as specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking the above correction into consideration.

15. Bid Security

- 15.1. The Bidder shall furnish, as part of the Bid, a Bid Security as specified in the BDS.

²⁸ For lump sum contracts, delete "rates and prices" and replace with "Lump Sum".

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- 15.2. The Bid Security shall be in fixed amount as specified in BDS and denominated in Ngultrum (Nu) or the currency of the Bid or in another freely convertible currency, and shall:
- (a) at the Bidder's option, be in any of the following forms:
 - (i) a demand unconditional bank guarantee; or
 - (ii) a account payee demand draft; or
 - (iii) a account payee cash warrant;
 - (b) be issued by a financial institution in Bhutan acceptable to the Employer & selected by the Bidder;
 - (c) in the case of a bank guarantee, be substantially in accordance with the form of Bid Security included in Section X, Security Forms, or other form approved by the Employer prior to Bid submission;
 - (d) be payable promptly upon written demand by the Employer in case the conditions listed in ITB Sub-Clause 15.5 are invoked;
 - (e) be submitted in its original form and copies shall not be accepted;
 - (f) remain valid for a period of at least 30 days beyond the validity period of the Bids, as extended, if applicable, in accordance with ITB Sub-Clause 14.2.
- 15.3. Any Bid not accompanied by a Bid Security compliant with the requirements of ITB Clause 15 shall be rejected by the Employer as non-responsive.
- 15.4. The Bid Securities of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder furnishing the Performance Security and, in any event, not later than 30 days after the expiration of the validity of the unsuccessful Bidder's Bid.
- 15.5. The Bid Security may be forfeited
- (a) if a Bidder withdraws its Bid during the period of Bid validity specified by the Bidder on the Bid Submission Sheet, except as provided for in ITB Sub-Clause 14.2; or
 - (b) if the Bidder that submitted the lowest evaluated Bid does not accept the correction of the Bid price pursuant to Clause 27; or
 - (c) if the successful Bidder fails within the specified time limit to
 - (i) sign the Contract; or
 - (ii) furnish the required Performance Security
- 15.6. The Bid Security of a JV/C/A must be in the name of the JV/C/A that submits the Bid. If the JV/C/A has not been constituted into a JV entity with separate legal personality and against which obligations can be legally enforceable at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent.

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- 16. Alternative Bids by Bidders**
- 16.1. Alternative Bids shall not be considered, unless specifically allowed in the BDS. If so allowed, ITB Sub-Clauses 16.1 and 16.2 shall apply, and the BDS shall specify which of the following options shall be allowed:
- (a) Option One. A Bidder may submit alternative Bids with the base Bid and the Employer shall only consider the alternative Bids offered by the Bidder whose Bid for the base case was determined to be the lowest-evaluated Bid, or
 - (b) Option Two. A Bidder may submit an alternative Bid with or without a Bid for the base case. All Bids received for the base case, as well as alternative Bids meeting the Technical Specifications and Performance Requirements pursuant to Section VII, shall be evaluated on their own merits.
- 16.2. Alternative Bids shall provide all information necessary for a complete evaluation of the alternative by the Employer, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details.
- 17. Documents establishing Eligibility and Qualifications of the Bidder**
- 17.1. To establish Bidder's eligibility in accordance with ITB Clause 3, Bidders shall complete the Letter of Bid, included in Section V, Bidding Forms.
- 17.2. In accordance with Section IV, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract, the Bidder shall provide the information requested in the corresponding information sheets included in Section V, Bidding Forms.
- 17.3. If a margin of preference applies as specified in accordance with ITB Clause 34, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB Clause 34.
- 18. Format and Signing of Bid**
- 18.1. The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11, bound with the volume containing the Form of Bid, and clearly marked "ORIGINAL." In addition, the Bidder shall submit copies of the Bid, in the number specified in the BDS, and clearly marked as "COPIES." In the event of any discrepancy between the original and any copies, or between the original paper form of the Bill of Quantities (or Activity Schedule in the case of lump sum Contracts) and the electronic version, the paper original shall prevail.
- 18.2. The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Bidder, pursuant to ITB Sub-Clause 17.1. In the event that the Form of Bid & Bill of Quantities in a Bid is unsigned, the Bid shall be rejected as non-responsive. All pages of the Bid where entries or amendments have been made shall be initialed by the person or persons signing the Bid.

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18.3. The Bid shall contain no alterations or additions, except as required to comply with instructions issued by the Employer, or as necessary to correct errors made by the Bidder, in which case such corrections shall be initialed by the person or persons signing the Bid.

18.4. The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

D. Submission of Bids

19. Sealing and Marking of Bids²⁹

19.1. Bidders may always submit their Bids by mail or by hand. When so specified in the BDS, Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures specified in the BDS. The Bidder shall seal the original and all copies of the Bid, including alternative Bids if permitted in accordance with ITB Clause 16, in separate inner envelopes contained within one outer envelope. All envelopes shall be sealed with adhesive or other sealant to prevent reopening.

19.2. The inner envelopes shall

- (a) be signed across their seals by the person authorized to sign the bid on behalf of the bidder; and
- (b) be marked "ORIGINAL", "ALTERNATIVE" (if any) and "COPIES";

19.3. The outer envelope shall:

- (a) be sealed with adhesive or other sealant to prevent reopening,
- (b) be marked "Confidential";
- (c) be addressed to the Employer at the address³⁰ provided in the BDS;
- (d) bear the name and identification number of the Contract as defined in the BDS and SCC; and
- (e) provide a warning not to open before the specified time and date for bid opening as defined in the BDS.

19.4. In addition to the identification required in ITB Sub-Clause 19.2, the inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it is declared late pursuant to ITB Clause 21.

19.5. If the outer envelope is not sealed and marked as above, the Employer shall assume no responsibility for the misplacement or premature opening of the Bid.

²⁹ Improper marking & sealing of the document cannot result in the rejection of bids

³⁰ The receiving address shall be an office that is staffed during normal working hours by personnel authorized to certify time and date of receipt and assure safe-keeping until Bid opening. A post office address is not to be used. The address must be the same as the receiving address described in the Invitation for Bids.

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- 20. Deadline for Submission of Bids**
- 20.1. Bids shall be delivered to the Employer at the address specified above no later than the time and date specified in the BDS.
- 20.2. The Employer may extend the deadline for submission of Bids by issuing an amendment in accordance with ITB Clause 9, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline shall then be subject to the new deadline.
- 21. Late Bids**
- 21.1. Any bid received by the Employer after the deadline prescribed in ITB Clause 20 shall be returned unopened to the bidder.
- 22. Withdrawal, Substitution and Modification of Bids**
- 22.1. Bidders may withdraw, substitute or modify their Bids by giving notice in writing before the deadline prescribed in ITB Clause 20.
- 22.2. Each Bidder's withdrawal, substitution or modification notice shall be prepared, sealed, marked and delivered in accordance with ITB Clauses 18 and 19, with the outer and inner envelopes additionally marked "WITHDRAWAL", "SUBSTITUTION" or "MODIFICATION" as appropriate.
- 22.3. No Bid may be substituted or modified after the deadline for submission of Bids.
- 22.4. Withdrawal of a Bid between the deadline for submission of Bids and the expiration of the period of bid validity specified in the BDS or as extended pursuant to ITB Sub-Clause 14.2 may result in the forfeiture of the bid security pursuant to ITB Clause 15. If the lowest or the lowest evaluated Bidder withdraws his Bid between the periods specified pursuant to clause 22.4, the bid security of the Bidder shall be forfeited and in addition the Bidder shall pay to the Employer the positive difference of sum, if any with the next lowest bidder within 14 days of his withdrawal. If the Bidder fails to pay the difference within the said date, the Bidder shall be debarred by a Competent Authority as per law.
- 22.5. Bidders may only offer discounts to, or otherwise modify the prices of their Bids, by submitting bid modifications in accordance with this clause or included in the initial bid submission.

E. Bid Opening and Evaluation

- 23. Bid Opening**
- 23.1. The Employer shall open the Bids, including modifications made pursuant to ITB Clause 22, in the presence of the Bidders' representatives who choose to attend at the time and at the place specified in the BDS. Any specific opening procedures required if electronic bidding is permitted in accordance with ITB Sub-Clause 20.1 shall be as specified in the BDS.
- 23.2. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 22 shall not be opened.

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23.3. The Original & Copies will be opened at the bid opening. The Bidders' names, the Bid prices, the total amount of each Bid and of any alternative Bid (if alternatives have been requested or permitted), any discounts, Bid withdrawals, substitutions or modifications, the presence or absence of Bid Security (and any other details the Employer may consider appropriate), responses to any addenda to the Bidding Documents, fulfillment of any such other specific formal requirements as are prescribed in the Bidding Documents and such other details as the Employer may consider appropriate, shall be announced by the Employer at the opening. This information also shall be written on a notice board for the public to copy. Any Bid price, discount or alternative Bid price not announced and recorded shall not be taken into account in bid evaluation.

The bid forms, including the appendices to the bid form, bill of quantities, price schedules, bid securities, any discounts offered, and any other important documents shall be initialed by all members of the Bid Opening Committee. All corrections/overwriting will be noted and recorded on each page of the Bill of Quantities. The bid evaluation will be done using the Copies while the Original will be kept in safe custody. If there are any discrepancies between the Original & Copies, the Original shall prevail.

No bid shall be rejected at bid opening except for late bids pursuant to ITB Clause 21. Substitution Bids and modifications submitted pursuant to ITB Clause 22 that are not opened and read out at Bid opening shall not be considered for further evaluation regardless of the circumstances. Late, withdrawn and substituted Bids shall be returned unopened to Bidders.

23.4. The Employer shall prepare Minutes of the Bid opening, including the information disclosed to those present in accordance with ITB Sub-Clause 23.3. The Minutes shall include, as a minimum:

- (a) the Contract title and reference number;
- (b) the Bid number;
- (c) the Bid deadline date and time;
- (d) the date, time and place of Bid opening;
- (e) Bid prices, per lot if applicable, offered by the Bidders, including any discounts and alternative offers;
- (f) the presence or absence of Bid security and, if present, its amount and validity;
- (g) name and nationality of each Bidder, and whether there is a withdrawal, substitution or modification;
- (h) the names of attendees at the Bid opening, and of the Bidders they represent (if any);
- (i) details of any complaints or other comments made by attendees/representatives attending the Bid opening, including the names and signatures of the attendees/representatives making the complaint(s) and/or comment(s); and

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- (j) the names, designations and signatures of the members of the Bid Opening Committee.

The Bidders' representatives and attendees who are present shall be requested to sign the record. The omission of a Bidder's or other attendee's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

24. Confidentiality

24.1. Information relating to the examination, clarification, evaluation and comparison of bids and recommendations for the award of a contract shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the award to the successful Bidder has been announced pursuant to ITB Sub-Clause 37. Any effort by a Bidder to influence the Employer's processing of bids or award decisions may result in the rejection of his bid. Notwithstanding the above, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should do so in writing, including by electronic mail.

25. Clarification of Bids

25.1. To assist in the examination, evaluation and comparison of bids, the Employer may, at the Employer's discretion, ask any Bidder for clarification of the Bidder's Bid, including breakdowns of unit rates.³¹ The request for clarification and the response shall be in writing, including by electronic mail, but no change in the price or substance of the Bid shall be sought, offered or permitted except as required to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids in accordance with ITB Clause 27.

26. Examination of Bids and Determination of Responsiveness

26.1. Prior to the detailed evaluation of Bids, the Employer shall determine whether each Bid (a) meets the eligibility criteria defined in ITB Clause 3; (b) has been properly signed; (c) is accompanied by the Bid Security; and (d) is substantially responsive to the requirements of the Bidding Documents.

26.2. A substantially responsive Bid is one which conforms to all the terms, conditions and specifications of the bidding documents, without material deviation or reservation. A material deviation or reservation is one (a) which affects in any substantial way the scope, quality or performance of the Works; (b) which limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other Bidders presenting substantially responsive Bids.

³¹ In lump sum contracts, delete "unit rates" and replace with "the prices in the Activity Schedule".

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- 26.3. If a Bid is not substantially responsive, it will be rejected by the Employer, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
- 27. Correction of Errors**
- 27.1. Bids determined to be substantially responsive shall be checked by the Employer for any arithmetic errors. Errors shall be corrected by the Employer as follows:³²
- (a) where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern; and
 - (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted shall govern, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall govern, and the unit rate shall be corrected.
- 27.2. The corrections will be notified in writing to the individual Bidder with a request for written acceptance of the corrections within the specified period as made in the notification. The amount stated in the Bid shall be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid shall be rejected, and the Bid Security may be forfeited in accordance with ITB Sub-Clause 15.5 (b).
- 28. Currency for Bid Evaluation**
- 28.1. Bids shall be evaluated as quoted in Ngultrum (Nu) in accordance with ITB Sub-Clause 13.1, unless a Bidder has used different exchange rates than those prescribed in ITB Sub-Clause 13.2, in which case the Bid shall be first converted into the amounts payable in different currencies using the rates quoted in the Bid and then reconverted to Ngultrum (Nu) using the exchange rates prescribed in ITB Sub-Clause 13.2.
- 29. Evaluation and Comparison of Bids**
- 29.1. The Employer shall evaluate and compare only the Bids determined to be substantially responsive in accordance with ITB Clause 26.
- 29.2. In evaluating the Bids, the Employer shall determine for each Bid the evaluated Bid price by adjusting the Bid price as follows:
- (a) making any correction for errors pursuant to ITB Clause 27;

³² In lump sum contracts, delete from “as follows” to the end, and replace with the following: “as follows: where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.”

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- (b) excluding provisional sums and the provision (unless no rates have been asked from the Bidders), if any, for contingencies in the Bill of Quantities,³³ but including Daywork,³⁴ where priced competitively;
- (c) making an appropriate adjustment for any other acceptable variations, deviations or alternative offers submitted in accordance with ITB Clause 16; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with ITB Sub-Clause 22.5.

29.3. The Bids shall be evaluated by applying the evaluation criteria, sub criteria and points system specified in Section IV, Evaluation and Qualification Criteria. Each responsive Bid will be given a technical score. Financial Bids of only those bidders who score the minimum technical score specified in Section IV, Evaluation and Qualification Criteria will be considered for the second stage of bid evaluation to obtain an overall price preference -financial score. Work will be awarded to the bidder obtaining the highest overall price preference -financial score which will be obtained using the following formula:

$90\% \times (\text{Lowest quoted bid among qualifying tenders/ financial bid quoted by } x) + 10\% \times \text{Price preference score for } x.$

29.4. In the case of joint ventures, the individual credentials of the joint venture members need to be averaged using their stake in the JV for the purpose of evaluation under the parameters of Similar work experience, performance score from previous work, Bid capacity and credit line available. For the parameters of equipment, manpower, Status, Employment of Bhutanese, the resources or information committed / provided by the JV as a single entity will be considered for award of points.

29.5. The Employer reserves the right to accept or reject any variation, deviation or alternative offer. Variations, deviations and alternative offers and other factors which are in excess of the requirements of the bidding documents or otherwise result in unsolicited benefits for the Employer shall not be taken into account in bid evaluation.

29.6. The estimated effect of any price adjustment conditions under GCC Clause 47, during the period of implementation of the Contract, shall not be taken into account in bid evaluation.

³³ In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule".

³⁴ Daywork is work carried out following instructions of the Employer and paid for on the basis of time spent by workers, and the use of materials and the Contractor's equipment, at the rates quoted in the Bid. For Daywork to be priced competitively for Bid evaluation purposes, the Employer must list tentative quantities for individual items to be costed against Daywork (e.g., a specific number of tractor driver staff-days, or a specific tonnage of Portland cement), to be multiplied by the bidders' quoted rates and included in the total Bid price.

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29.7. Domestic bidders and joint ventures, consortia or associations of domestic bidders who may be eligible for a margin of preference in bid evaluation shall supply all information to satisfy the criteria for eligibility as described in ITB Clause 3 of these Instructions to Bidders.

30. Qualifications of the Bidder

30.1. The Employer shall determine to its satisfaction whether the eligible Bidder that is selected as having submitted the lowest evaluated cost and substantially responsive Bid meets the qualifying criteria specified in Section IV, Evaluation and Qualification Criteria.

30.2. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the bidder, pursuant to ITB 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the bidding document), or any other firm(s) different from the Bidder.

31. Abnormally Low Bids

31.1. An Abnormally Low Bid is one where the Bid price, in combination with other constituent elements of the Bid, appears unreasonably low to the extent that the Bid price raises material concerns as to the capability of the bidder to perform the Contract for the offered bid price. Before proceeding to further analysis, the Employer shall revisit their departmental estimate to ensure its realistic compared to the prevailing market rates

31.2. Any Bid price less than twenty percent (20%) from the Employer's departmental estimate shall be scrutinized by seeking written clarifications from the Bidder, including detailed price analyses of its Bid price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities, and any other requirements of the request for Bidding Documents.

31.3. After evaluation of the price analyses, in the event that the Employer determines that the Bidder has failed to demonstrate its capability to perform the Contract for the offered Bid Price, the Employer shall reject the Bid.

31.4. If the Employer decides to accept the Abnormally Low Bid after considering the detailed price analysis, the Employer shall increase the Performance Security from ten percent (10%) up to maximum of 30% of the initial Contract Price, and the Contract shall be amended accordingly; or

Alternatively, the Employer may ask the successful Bidder to deposit the difference between departmental estimate and contract amount in the form of cash warrant in addition to 10% Performance Security. However, the total Performance Security amount shall be limited to maximum of 30% of the initial Contract Price.

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32. Seriously unbalanced Bids or Front Loaded

- 32.1. If the Bid that is evaluated as the lowest evaluated cost is, in the Employer's opinion, seriously unbalanced or front loaded the Employer may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the Bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bidding document.
- 32.2. After the evaluation of the information and detailed price analyses presented by the Bidder, the Employer may as appropriate:
- (a) accept the Bid and increase the Performance Security from ten percent (10%) up to maximum of 30% of the initial Contract Price; or
Alternatively, the Employer may ask the successful Bidder to deposit the difference between departmental estimate and contract amount in the form of cash warrant in addition to 10% Performance Security. However, the total Performance Security amount shall be limited to maximum of 30% of initial Contract Price; or
 - (b) reject the Bid.

33. Specialized Subcontractor

- 33.1. Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by specialized subcontractors selected in advance by the Employer. If permitted, Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the BDS.
- 33.2. Specialized Subcontractors proposed by the Bidder shall be approved by the Employer only if registered as specialized trade / contractors with the CDB for the specific parts of the Works.
- 33.3. However, sub-contracting up to twenty percent (20%) of the initial Contract Price shall not require the prior approval of the Employer but the sub-contractors should be registered as the specialized trade/ contractors of CDB.

34. Preference for Domestic Bidders

- 34.1. As indicated in the BDS, domestic contractors may receive a margin of preference in Bid evaluation, for which this clause shall apply.
- 34.2. A domestic Bidder shall provide all evidence necessary to prove that it meets the following criteria to be eligible for a margin of preference in the comparison of its Bid with those of Bidders who do not qualify for the preference. A domestic Bidder shall:
- (a) be registered within Bhutan, constituted under and governed by the civil, commercial or public law of Bhutan, and have its statutory office, central administration or principal place of business there;

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- (b) have majority ownership by nationals of Bhutan;
 - (c) not subcontract more than twenty percent (20%) of the initial Contract Price, excluding provisional sums, to foreign contractors, suppliers and/or consultants.
- 34.3. Joint Ventures, Consortia and Associations (“**JV/C/A**”) of domestic firms may be eligible for the margin of preference provided that:
- (a) the individual partners satisfy the criteria of eligibility of ITB Sub-Clauses 34.2 (a) and (b);
 - (b) the JV/C/A is registered in Bhutan;
 - (c) the JV/C/A does not subcontract more than ten percent (10%) of the initial Contract Price, excluding provisional sums, to foreign firms; and
 - (d) the JV/C/A satisfies any other criteria specified for the purpose of domestic preference eligibility, as specified in the BDS.
- 34.4. The procedure used to apply the margin of preference shall be as stipulated in the BDS.

F. Award of Contract

- 35. Award Criteria**
- 35.1. Subject to ITB Clause 36, the Employer shall award the Contract to the Bidder whose Bid has been determined to be substantially responsive to the Bidding Documents and who has scored the highest in the price preference – financial score of 100, provided that such Bidder has been determined to be (a) eligible in accordance with the provisions of ITB Clause 3, (b) qualified in accordance with the provisions of ITB Clause 30 (Qualification of Bidder), and (c) complies with the works in-hand ceiling prescribed by the CDB.
- 36. Employer’s Right to Accept any Bid and to Reject any or all Bids**
- 36.1. Notwithstanding ITB Clause 35, the Employer reserves the right to accept or reject any Bid, and to cancel the bidding process and reject all Bids, at any time prior to the award of Contract, without thereby incurring any liability to the affected Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for the Employer’s action.³⁵
- 37. Letter of Intent to Award / Notification of Award and Signing of Contract**
- 37.1. The Employer shall notify the concerned Bidder whose bid has been selected in accordance with ITB 35.1 in writing (using the format in section V-hereafter called the “**Letter of Intent to Award**”) that the Employer has intention to accept its bid and the copy of this information shall be given to all other bidders who submitted the bid. Such notification should be communicated in writing, including by cable, facsimile, telex or electronic mail to all the bidders on the same day of dispatch. The Employer shall ensure that the same information is uploaded on their website on the same day of dispatch.

³⁵ Employers should not reject bids or annul bidding processes, except as permitted in the Procurement Rule and these Bidding Documents.

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- 37.2. If no Bidder submits a complaint pursuant to ITB 42 within a period of ten (10) days of the notice provided under ITB 37.1, the Employer shall accept the successful Bidder's Bid by issuing a written letter. This notification letter (hereinafter and in the General Conditions of Contract called the "**Letter of Acceptance**") shall state the sum that the Employer shall pay the Contractor in consideration of the execution, completion and maintenance of the Works by the Contractor as prescribed by the Contract (hereinafter and in the Contract called the "**Contract Price**").
- 37.3. The issuance of a Letter of Acceptance shall constitute the binding Contract on the part of the successful Bidder to execute, complete and maintain the Works on the terms set out in the Bidding Documents, the Letter of Acceptance and the accepted Bid, until a formal Contract is prepared and executed. The Letter of Acceptance shall be accompanied by two originals of the Contract in the form provided in Section V – Forms of Bid, Qualification Information, Letter of Acceptance, and Contract.
- 37.4. The Contract shall incorporate all agreements between the Employer and the successful Bidder. It shall be signed by the Employer and sent to the successful Bidder with the Letter of Acceptance. Within 15 days of receipt, the successful Bidder shall sign the Contract and deliver it to the Employer.
- 37.5. Upon the furnishing by the successful Bidder of the Performance Security, the Employer shall notify all other Bidders of the results of the bidding and shall publish a notification of award on the Employer's website. The notification to all other Bidders as well as the notification posted on the Employer's website shall include the following information:
- (i) the Bid and lot numbers
 - (ii) name of the winning Bidder, and the Contract Price it offered, as well as the duration and summary scope of the contract awarded; and
 - (iii) the date of the award decision.
- 38. Debriefing by the Employer**
- 38.1. On receipt of the Employer's Letter of Intent to Award referred to in ITB 37.1, an unsuccessful Bidder has three (3) working days to make a written request to the Employer for a debriefing. The Employer shall provide a debriefing to all unsuccessful Bidders whose request is received within this deadline.
- 38.2. Where a request for debriefing is received within the deadline, the Employer shall provide a debriefing within five (5) working days.
- 38.3. The Employer shall discuss only the Bid of the Bidder which requested for the debriefing and shall not discuss the Bids of other Bidders. The debriefing shall not include:

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- (a) point-by-point comparisons with another Bid; and
 - (b) information that is confidential or commercially sensitive to other Bidders.
- 38.4. The purpose of the debriefing is to inform the aggrieved Bidder of the reasons for lack of success, pointing out the specific shortcomings in its
- 39. Performance Security**
 - 39.1. Within fifteen (15) working days after receipt of the Letter of Acceptance the successful Bidder shall deliver to the Employer a Performance Security in the amount stipulated in the GCC and in the form stipulated in the BDS, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the GCC.
 - 39.2. If the Performance Security is provided by the successful Bidder in the form of a Bank Guarantee, it shall be issued by a financial institution located in Bhutan.
 - 39.3. Failure of the successful Bidder to comply with the requirements of ITB Sub-Clauses 37.3 and 39.1 shall entitle the Employer to cancel the award of the Contract, terminate the Contract, and forfeit the Bid Security. If the lowest evaluated Bidder fails to produce the Performance Security and sign the Contract, then apart from forfeiture of Bid Security, the Bidder shall also be required to pay to the Employer the positive difference in contract amount between his Bid and the Bidder to whom the work has been awarded.
 - 39.4. Upon the successful Bidder's signing of the Contract and furnishing of the Performance Security pursuant to ITB Sub-Clause 39.1, the Employer shall promptly notify the name of the winning Bidder to each unsuccessful Bidder in accordance with ITB Sub-Clause 37.4 and shall discharge the Bid Securities of the unsuccessful Bidders pursuant to ITB Sub-Clause 15.4.
- 40. Advance Payment and Security**
 - 40.1. The Employer shall provide an Advance Payment on the Contract Price as stipulated in the GCC, subject to a maximum amount, as stated in the BDS. The advance payment shall be guaranteed by a Security in the form provided for in Section X, Security Forms, the provision of which shall be a condition precedent to the Employer's obligation to make the Advance Payment.
- 41. Adjudicator**
 - 41.1. The Employer may propose the person named in the BDS to be appointed as Adjudicator under the Contract. If the Bidder disagrees with this proposal, the Bidder should so state in the Bid. If, in the Letter of Acceptance, the Employer has not agreed on the bidder's nomination of the Adjudicator, the Adjudicator may be appointed by mutual consent. In the event that the parties are not able to agree on a nomination within 30 days of signing the formal Contract, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party within 14 days of receiving such request.
- 42. Complaint and Review**
 - 42.1. If a Bidder has or is likely to suffer, loss or injury due to breach of a duty imposed on the Employer by the provisions of the Bidding Documents,

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the Bidder shall submit a complaint in writing to the Employer within ten (10) days from the date of Letter of Intent to Award the Contract pursuant to ITB Sub-Clause 37.1.

- 42.2. The head of the Employer shall, within 7 days after the submission of the complaint, issue a written decision.
- 42.3. The Bidder may appeal to the Independent Review Body (IRB), MoF within 5 days of the decision of the head of the Employer or, where no such decision has been taken, within 15 days of the original complaint, with a copy of the appeal being given to Employer on the same day.
- 42.4. Once a copy of the appeal is received by the Employer, it shall not proceed further with the procurement process until receipt of notification from the Independent Review Body Secretariat.
- 42.5. The Bidders' right to make a complaint and lodge an appeal under this paragraph 42 shall be the sole and exclusive for any breach of duty by the Employer arising out of or in relation to the Bidding Documents. Apart from the Bidders' rights and recourse under this paragraph 42, the Employer shall not be liable to the Bidders, whether in contract, tort or otherwise, for any loss, damage or injury that has been or may be suffered by the Bidders arising out of or relating to the Bidding Documents.

SECTION II. BIDDING DATA SHEET

A. General	
ITB 1.1	<p>The Employer is</p> <p>Project Secretariat,</p> <p>Department of Engineering Services (DES),</p> <p>Ministry of Works and Human Settlement (MoWHS) for the Construction of 2500 bedded fully self -contained permanent quarantine centers.</p> <p>The name and identification of the contract are: “Manufacture, Supply, Installation/Erection, Construction and Finishing of 500 bedded Fully Self-Contained Quarantine Centre at Amochhu, Phuentsholing.”</p> <p>The Scope of Works are: as per the Term of Reference (ToR) attached</p>
ITB 1.2	<p>The Intended Completion Date is Eight (8) months from the date of award of the contract.</p>
ITB 3.1	<p>The national large construction company registered in W3 category with Construction Development Board (CDB) of Bhutan in association with an International Principal Manufacturer of PEB Structures and Components is eligible to participate in the bidding process.</p> <p>The lead partner for the association should be the national large contractor and should be declared legally by the association. Moreover, international PEB Principal Manufacturer should produce legal evidence of its establishment in its country of origin.</p> <p>Additionally, the proposal from the association shall be considered responsive if following pre-eligibility criteria are met;</p> <ol style="list-style-type: none"> 1. The association has an international partner registered as Principal manufacturer of PEB structures and component from the relevant government agencies in its country. 2. The international partner has average annual turnover equivalent to Nu. 350 million or more for last three years. 3. The international partner has experience of executing similar turn key projects of same or higher value than the current proposal. 4. The average annual turnover for national large construction company (lead partner) should be more than Nu. 200 million for last three years.

Section I. Instructions to Bidders (ITB)

<p>ITB 3.6</p>	<p>Bidders shall provide evidence of their continued eligibility satisfactory to the Employer by submitting the following valid historical documents:</p> <ol style="list-style-type: none"> 1) Copy of valid trade license 2) Copy of valid CDB registration certificate 3) Copy of tax clearance certificate 4) JV agreement mentioning the JV leader and its share percentage. 5) Legal evidence of its establishment for international principal PEB manufacturer in its country of origin.
<p>ITB 3.8 (h)</p>	<p>Without prejudice to the generality of ITB Sub-Clause 3.8(h), a Bidder would be deemed not to have fulfilled its contractual obligations, by the date of bid opening, with the Employer in the past in the following circumstances:</p> <ol style="list-style-type: none"> 1) A contractor individually or as a consortium who has failed to complete the contract works within the maximum Liquidated Damage Period (LDP) but has ultimately completed the work and is under active exclusion from participating in tenders for a period of One Year on submission of bid, the bid shall be excluded in this tender. 2) If a contract has been terminated by the Employer due to fundamental breach of contract by the contractor individually or as a consortium and is under active exclusion from participating in tenders for a period of Two Years on submission of the bid, the bid shall be excluded in this tender. 3) A consortium failing to complete the contract works within the maximum Liquidated and individual contractor shall be excluded from participating in tenders for a period of One Damage Period (LDP) but ultimately complete the work, the consortium Year. 4) If the contract is terminated by the Employer due to fundamental breach of contract by the Bidder individually or as a consortium, the consortium and the individual contractor shall be excluded from participating in tenders for a period of Two Years. <p>The list of Contractors which have not fulfilled their contractual obligations with MoWHS in the past is maintained and updated by the Ministry. Those Contractors who had not fulfilled their contractual obligations are advised not to participate in the bidding process.</p>
<p>Bidding Documents</p>	
<p>ITB 8.1</p>	<p>The Employer’s address for clarification is: Project Secretariat for the Construction of 2500 bedded fully self-contained permanent quarantine centers. Chief Engineer, Engineering Service Division, Department of Engineering Services, MoWHS, Thimphu.</p>
<p>ITB 8.2</p>	<p>Pre-bid Meeting shall be: Not Applicable.</p>
<p>C. Preparation of Bids</p>	
<p>ITB 10.1</p>	<p>The language of the bid is: English</p>
<p>ITB 11.1(g)</p>	<p>Any additional requirements to be completed and submitted by the Bidders are: the list of proposed Bhutanese workforce along with their valid CID copy.</p>
<p>ITB 12.4</p>	<p>The Contract “is not” subject to price adjustment in accordance with GCC Clause 48.</p>

Section I. Instructions to Bidders (ITB)

ITB 13.2	The authority for establishing the rates of exchange shall be the Royal Monetary Authority of Bhutan.
ITB 13.4	Bidders “are not” required to substantiate the rates and prices.
ITB 14.1	The Bid shall be valid and remain irrevocably open for acceptance by the Employer for “90 days” from the deadline for submission of Bids stipulated in ITB Clause 20.1
ITB 15.1 & 15.2	The Bid Security amount is: Nu. 7.35 million
ITB 16.1	Alternative Bids “shall not be” considered.
ITB 18.1	In addition to the original Bid, the number of copies is: One(1)
D. Submission of Bids	
ITB 19.1	Bidders may submit their Bids electronically: No
ITB 19.3 (c)	The Employer’s address for the purpose of Bid submission is: Project Secretariat for Construction of 2500 bedded fully self-contained permanent quarantine Centre Department of Engineering Services, MoWHS, Thimphu.
ITB 19.3 (d)	The name and Identification number of the contract as given in ITB 1.1 above in this sheet.
ITB 19.3 (e)	The warning shall read “DO NOT OPEN BEFORE: 14:30 HRS, 02/09/ 2022
ITB 20.1	The deadline for submission of Bids shall be: on or before 10:30 HRS on 02/09/2022
E. Bid Opening and Evaluation	
ITB 23.1	The Bid opening (Technical Proposal-Envelope A) shall take place on the same day as the closing day of the bid submission at: Conference Hall of Director, DES, MoWHS, Thimphu, Date: 02/09/2022; Time: 14:30 HRS (Bhutan Standard Time)
ITB 32.2	The Additional Performance Security if required shall be in the form of Cash Warrant as per ITB 32.2 (a) and (b) under client’s discretion.
ITB 33.1	The parts of works which the Employer permits bidders to propose specialized subcontractor are designated as follows:
ITB 34.1	Margin of domestic preference of ten percent (10%) “shall not” apply
ITB 34.3 (d)	Other criteria to be used for the purpose of assessing domestic preference eligibility are: None
ITB 34.4	The procedure used to apply the margin of preference shall be: Not Applicable
F. Award of Contract	

Section I. Instructions to Bidders (ITB)

ITB 35.1	The Best Evaluated Bid (BEB) will be given the letter of intent and if accepted, the work will be awarded to it. The Best Evaluated Bid means the responsive bid which offers the best value for money, evaluated on the basis of various objective criteria set out in the bidding documents. BEB does not necessarily mean the lowest quoted price (price shall be only one criterion for evaluation).
ITB 39.1	The Performance Security issued by a reputed financial institution in Bhutan shall be provided in any one of the following forms: (a) Demand guarantee in the form provided for in Section X, Security Forms, or (b) Banker’s certified cheque / cash warrant, or (c) Demand draft.
ITB 40	The payment shall be made strictly in accordance with the payment schedule reflected in Section XIV of Terms of Reference (ToR) for PEB, PRR-2019 for civil works and day work schedule.
ITB 41	The Adjudicator proposed by the Employer: “shall not” apply.

SECTION IV. EVALUATION AND QUALIFICATION CRITERIA

This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders through post-qualification. No other factors, methods or criteria shall be used other than specified in this bidding document. **The Bidder shall provide all the information requested in the forms included in Section V, Bidding Forms.**

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Section IV. Evaluation and Qualification Criteria

1. Margin of Preference

If BDS specifies, the Employer will grant a margin of preference of ten percent (10%) to domestic contractors, in accordance with, and subject to, the following provisions:

- (a) Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Construction Development Board and accepted by the employer, a particular contractor or group of contractors qualifies for a domestic preference. The bidding document shall clearly indicate the preference and the method that will be followed in the evaluation and comparison of Bids to give effect to such preference.
- (b) After Bids have been received and reviewed by the Employer, responsive Bids shall be classified into the following groups:
 - (i) Group A: Bids offered by domestic contractors eligible for the preference.
 - (ii) Group B: Bids offered by other contractors.

All evaluated Bids in each group shall, as a first evaluation step, be compared to determine the Bid with lowest evaluated cost, and the Bid with the lowest evaluated cost in each group shall be further compared with each other. If a result of this comparison, a Bid from Group A is the lowest, it shall be selected for the award as the Most Advantageous Bid, if the Bidder is qualified. If a Bid from Group B is the lowest, as a second evaluation step, all Bids from Group B shall then be further compared with the lowest evaluated cost from Group A. For the purpose of this further comparison only, an amount equal to ten percent (10) of the respective Bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated cost offered in each Bid from Group B. If the Bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated cost from Group B based on the first evaluation step shall be selected.

The Employer shall use the criteria and methodologies listed in this Section to evaluate Bids. By applying these criteria and methodologies, the Employer shall determine the Most Advantageous Bid. This is the Bid that has been determined to be:

- (a) substantially responsive to the bidding document, and
- (b) the lowest evaluated cost.

2. Evaluation

In addition to the criteria listed in ITB 29.2 (a) – (d) the following criteria shall apply:

3. Qualification

3.1. Eligibility

Assess the eligibility as per the ITB clause 3 requirements

3.2. CAPABILITY (70 points)

3.2.1. Similar Work Experience (0-10 points): The Employer shall consider the aggregate size of similar works (maximum three) or size of the largest similar work in the last five (5) calendar years.

The evaluation score for this parameter shall be auto-generated from e-tool based on the following scoring criteria and similar work experience information updated in the e-tool/ CiNET maintained by CDB. **However, bidders are requested to submit the copies of similar work experience certificate for the principal PEB manufacturer for technical evaluation purposes.**

Section IV. Evaluation and Qualification Criteria

Parameter	Levels of Achievement	Score
Aggregate size of similar contracts (max 3) in the last 5 calendar years OR	<ul style="list-style-type: none"> • 175% of current project size • 125-175% of the current project size • 75-125% of the current project size • <75% of the current project size 	<ul style="list-style-type: none"> • 10 • 8 • 4 • 0
Size of the largest similar contract executed in the last 5 calendar years	<ul style="list-style-type: none"> • 100% of current project size • 70-100% of the current project size • 50-70% of the current project size • <50% of the current project size 	<ul style="list-style-type: none"> • 10 • 8 • 4 • 0

The bidder shall be responsible for updating the similar work experience information in the e-tool/ CiNET to secure accurate score on this parameter.

3.2.2. Access to adequate equipment (0-20 points): The association should demonstrate that it will have access to the key Contractor’s equipment listed below:

Tier	Sl. No.	Equipment	Number Required	Max. Marks
Tier I	1	Service Crane (3 ton to 5 tons capacity)	1.0	10.00
	2	Mobile concrete batching plant (10 to 50 m ³ /hr)	1.0	10.00
	3	Portable concrete pumps (10 to 50 m ³ /hr)	1.0	10.00
	4	Concrete Mixer trucks (5 to 8 m ³)	2.0	10.00
	5	Steel scaffolding system (5000sq.m)	1.0	10.00
Tier II	1	Concrete vibrator	5.0	6.00
	2	Welder machine	2.0	6.00
	3	Tripper/Truck	2.0	6.00
	4	Excavator	1.0	6.00
	5	Backhoe loader	1.0	6.00
Tier III	1	Total station	1.0	5.00
	2	Hand Roller compactor machine	1.0	5.00
	3	Hand held machines	1.0	5.00
	4	Air compressor	1.0	5.00
			Total	100.00

Following are the rules that govern the scoring on equipment:

The 100 points shall be allocated as follows:

Tier I importance: 50 points

Tier II importance: 30 points

Tier III importance: 20 points

Total marks out of 100 will be scaled down to 20

Bidder shall get 100% marks if the equipment is owned and 75% marks if hired.

Section IV. Evaluation and Qualification Criteria

The Bidder shall provide following details of proposed items of equipment using the relevant Form in Section V:

1. Copy of the registration certificate of each equipment committed
2. Copy of Insurance policy for each equipment where applicable
3. In case of hiring, copy of the lease agreement (specific to the project) in addition to 1 & 2 above
4. In case of equipment that do not require registration with RSTA copy of cash memos stamped by RRCO if newly imported or copy of sale deeds or verification letter issued by a Government Engineer.

3.2.3. Access to skilled manpower (0-20 points): The skilled and experienced manpower required for the timely and quality execution of the work to be made available for the Contract by the Consortium shall be as specified below:

Tier	Position	Qualification & Experience	Score
Tier I	Project Manager (1 number)	Bachelor Degree with more than five (>5) years of professional experience in construction/project management	40
		Bachelor Degree with three to five (3 to 5) years of professional experience in construction/project management	30
		Bachelor Degree with two to three (2 to 3) years of professional experience in construction/project management	15
		Bachelor Degree with less than two (<2) years of professional experience in construction/project management	0
Tier II	Structural/Project Engineer (1 number)	Master's Degree in civil engineering (structures) with more than five (>5) years of professional experience in structural design of similar projects	30
		Master's Degree in civil engineering (structures) with three to five (3 to 5) years of professional experience in structural design of similar projects	10
		Master's Degree in civil engineering (structures) with two to three (2 to 3) years of professional experience in structural design of similar projects	5
		Master's Degree in civil engineering (structures) with less than two (<2) years of professional experience in structural design of similar projects	0
Tier III	Site Engineer (2 numbers)	Bachelor's Degree in Civil Engineering from a recognized University with more than two (>2) years of professional experience in similar construction projects. OR Diploma in Civil Engineering from a reputed institution with more than five (>5) years of professional experience in similar construction projects.	15
		Bachelor's Degree in Civil Engineering from a recognized University with less than two (<2) years of professional experience. OR Diploma in Civil Engineering from a reputed institution with less than five (<5) years of professional experience.	0
Tier III	Electrical Engineer (1 number)	Bachelor Degree in Electrical Engineering from a recognized University with more than two (>2) years of professional experience in similar projects. OR Diploma in Electrical Engineering from a reputed institution with more than five (>5) years of professional experience in similar projects.	5
		Bachelor Degree in Electrical Engineering from a recognized University with more than two (<2) years of professional experience in similar projects. OR Diploma in Electrical Engineering from a reputed institution with more than five (<5) years of professional experience in similar projects.	0

Section IV. Evaluation and Qualification Criteria

Tier IV	Fresh Civil Engineer Graduate (1 number)	Fresh civil engineer graduate trained and certified in CMS, OHS, e-GP & CDB refresher courses	10
		Fresh civil engineer graduate not trained and certified in CMS, OHS, e-GP & CDB refresher courses	0
Total			100

Following are the rules that govern the scoring on skilled and experienced manpower:
The 100 points shall be allocated as follows:

Tier I importance: 40 points

Tier II importance: 30 points

Tier III importance: 20 points

Tier IV importance: 10 points

Total marks out of 100 will be scaled down to 20

The association shall provide following details of the proposed manpower and their experience records in the relevant Forms included in Section V, Bidding Forms:

1. Copy of academic certificate and Signed CVs of technical manpower committed.
2. Copies of Citizenship ID Cards or work permit/ Passport/ Election/Voter ID cards (for foreign workers) of all manpower committed.
3. Copies of contract agreements with all personnel if they have been hired on contract by the contractor.
4. Copies of Provident Fund Account Documents for all regular personnel or payrolls or Copies of monthly remittance schedule of Health Contribution and Tax Deducted at Source for all regular personnel committed for this project.
5. Copy of Certificate for skilling of engineers (CMS, OHS) in addition to the above applicable documents.

Note:

Non submission of above supporting documents or evidence for key personnel and equipment's by Bidder shall affect the scoring of points in evaluation purpose. Translations in English must be submitted along with the copy of original if the certificates are not in English.

3.2.4. Average performance score from previous works (0-10 points): The Employer shall consider the performance of contractor in the last 5 calendar years.

The evaluation score for this parameter is auto-generated from e-tool based on the following scoring criteria and performance score information updated with e-tool / CiNET.

Parameter	Levels of achievement	Score
Average performance score from previous works (past 5 calendar years)	100%	10
	1 mark lesser for every 5% point decrease in score rounded off to lower 5%	
	<55%	0

The bidder shall be responsible to update the performance score information in e-tool / CiNET.

Section IV. Evaluation and Qualification Criteria

3.2.5 Works (Any category) completed on time in the last five (5) calendar years (0-10 points): The Employer shall consider the works (any category) completed on time in last five (5) calendar years.

The each work completed by % for last five (5) calendar years. The score for this parameter shall be auto-generated from e-tool based on the information updated by the bidder with e-tool/CiNET:

Parameter	Levels of achievement	Score
Works (any category) completed on time in last five (5) calendar years	100-70%	10
	74-50%	5
	<49%	0

3.3. CAPACITY (30 points): list all information requested below

3.3.1. Bid Capacity (0-25 points): The Consortium shall be awarded maximum of 25 points based on following criteria. The score for this parameter shall be auto-generated from e-tool based on the information updated by the bidder with e-tool / CiNET:

Parameter	Levels of achievement	Score
Bid Capacity	• Bid Capacity \geq quoted bid	25
	• Bid Capacity is between 80-100% quoted bid	20
	• Bid Capacity is between 60-80% quoted bid	15
	• Bid Capacity is between 40-60% quoted bid	10
	• Bid Capacity < 40% quoted bid	0

The Bid Capacity is calculated using the following formula;

$$\text{Bid Capacity} = 2.5 * A * N - B$$

- Where A = Average turnover of the contractor over the last 3 calendar years.
 N = Estimated duration of the project to be tendered
 B = Portion of other ongoing works to be completed in the period that overlaps with the current project's duration (that is, N)

The bidder shall be responsible for updating the above information in e-tool/CiNET.

3.3.2. Credit Line available (unused) (0-5 points): The association shall demonstrate that it has access to lines of credit sufficient to meet the construction cash flow requirements estimated as **Nu. 140.00 million**

Section IV. Evaluation and Qualification Criteria

The employer shall award points based on following criteria:

Parameter	Level of achievement	Score
Credit Line Available (unused)	• $\geq 100\%$ of estimated 3 months project cash flow	5
	• 80-100% of estimated 3-month project cash flow	4
	• 60-80% of estimated 3-month project cash flow	2
	• $<60\%$ off estimated 3-month project cash flow	0

The Bidder shall provide following details in the relevant Forms included in Section V, Bidding Forms

1. The Bidder shall submit from the bank or financial institutions in Bhutan showing evidence of access to or availability of credit line for the project using relevant form.

Section IV. Evaluation and Qualification Criteria

4. Minimum Technical Score

The national large contractor (lead partner) should obtain a score of at least 70 points out of 100 on these parameters (Capability & Capacity combined) in order to assess further for the award of contract.

5. Award: The bids scoring minimum qualifying score of 70 points out of 100 will then be considered for the second stage of bid evaluation. 30% of technical score shall be carried forward to the second stage of evaluation. This score will be combined with their financial bid to obtain the overall technical-financial score. The following shall be the score bearing:

- a) Financial Score = 70%
- b) Technical Score = 30%

The bidder scoring highest considering these parameters will be (Score = $0.3 \times \text{technical score from stage - II} + 0.7 \times \text{financial score}$) will be rated as best evaluated bidder. The technical score is the points scored from e-tool which will be used to assess the capability and capacity of lead partner.

5.2. Status (Incorporated, JV or Proprietorship) (0-40 points): The contractor shall be evaluated based on the following criteria:

Parameter	Level of achievement	Score
Status (incorporated, JV or Proprietorship)	▪ Incorporated Company bidding alone	<input type="checkbox"/> 40
	▪ Incorporated Company bidding as lead partner (>50% stake) in a bid by a joint venture	<input type="checkbox"/> 20
	▪ Incorporated Company as non-lead partner (<50% stake) in a bid by a joint venture	<input type="checkbox"/> 10
	▪ Any other (proprietorship, partnership, etc)	<input type="checkbox"/> 0

The Bidder shall provide following details in the relevant Forms included in Section V, Bidding Forms:

1. Copy of the certificate of incorporation along with updated CDB registration certificate, in case an incorporated company bidding alone.
2. Joint-venture agreement between the contractor involved and copy of the certificate of incorporation along with updated CDB registration certificate for the incorporated partner, in case two or more contractors are bidding together in a joint venture.

5.3. Employment of Bhutanese (0-60 points): The contractor shall be evaluated based on the following criteria.

Parameter	Level of achievement	Score
Employment of Bhutanese	• $\geq 100\%$ Project workforce to be Bhutanese	60
	• 80-100% Project workforce to be Bhutanese	40
	• 60-80% Project workforce to be Bhutanese	20
	• <60% Project workforce to be Bhutanese	0

The employments of Bhutanese referred in this Clause 5.2 are in addition to the key and non-key

The association shall provide following details in the relevant Forms included in Section V, Bidding Forms:

1. Provide a list of proposed Bhutanese along with valid CID copy to be committed for the Project.

5.4. Award of Work:

The overall Technical – financial score is obtained by using the following formula for any qualified contractor (x): -

$$\frac{70\% \times (\text{Lowest quoted bid among qualifying bids})}{\text{Financial bid quoted by } x} + 30\% \text{ of the Technical Score of } x$$

The contractor getting the highest overall Technical-financial score shall be recommended for the award of the work.

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Section V. Bidding Forms

1. Contractor's Bid

Notes on Form of Contractor's Bid
The Bidder shall fill in and submit this Bid form with the Bid.

Date: _____

Identification No. and Title of Contract: _____

[insert identification number and title of Contract]

To:

[name and address of Employer]

Having examined the all the Bidding Documents (with reference ITB 7), including addenda _____ *[insert list]*, we offer to execute and complete the scope of work set out in

_____ *[name and identification number of Contract]* and remedy any defects therein in conformity with this Bid (which includes all the Bidding Documents and the Conditions of Contract for the Contract Price of

_____ *[insert amount in numbers]*, _____ *[insert amount in words]* _____ *[insert name of currency]*

as the same may be determined and/or adjusted in accordance with the Contract.

We agree to abide by this Bid until _____ *[date]*, being *[number]* days after the date of our Bid, and it shall remain binding upon us and may be accepted at any time before that date.

If this offer is accepted, we will provide the required Performance Security (if any), commence performance of the Contract works as soon as is reasonably practicable after the issuance of the Employer's Letter of Acceptance, and complete the Contract works in accordance with the above-named documents by the Intended Completion Date.

Unless and until a formal written contract is prepared and executed, this Bid and your written acceptance of it shall constitute a binding Contract between us. We understand that you are not bound to accept the lowest or any Bid you receive.

We hereby confirm that this Bid complies with the Bid validity requirements and Bid Security required by the Bidding Documents and specified in the Bidding Data Sheet.

We, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries in accordance with ITB Sub-Clause 3.1;

We have no conflict of interest in accordance with ITB Sub-Clause 3.3;

Section V. Bidding Forms

Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the Contract—has not been declared ineligible under the laws or official regulations of Bhutan, in accordance with ITB Sub-Clause 3.4.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency
---------------------------	------------------------

Purpose of Commission or gratuity

Section V. Bidding Forms

(if none, state “none”).”

In the event that we withdraw our bid within the bid validity period or after opening where our Bid has been accepted for award, for whatsoever reasons, we agree to the forfeiture of the EMD/Bid Security and also we shall be bound to pay the cost difference (positive) between our bid with that of the next lowest evaluated Bidder and failure on our part to do so within a month will result in my firm being debarred from consideration for contracts by the Royal Government of Bhutan for a period of 2 years.

Our duly executed Integrity Pact Statement is attached herewith as Appendix A.

Authorized Signature:

(Affix Legal Stamp)

Name and Title of Signatory: _____

duly authorized to sign bids for and on behalf of:

Name of Bidder: _____

Address: _____

Date: _____

Section V. Bidding Forms

2. (a) **Bill of Quantities**

1. Attached the BoQ for PEB structures proposed for 500 BEDDED fully self-contained permanent Quarantine Center at Amochu, Phuentsholing.

2. Attached the BoQ for Civil works and other miscellaneous works.

Section V. Bidding Forms

Note: This is not part of bill of quantities (BoQ) but it is mandatory to be filled up by successful bidder as a provisional data, if deemed necessary.

Location:

Phuentsho Rabtenling (Motanga), Samdrup Jongkhar.

Basic Labour, Materials and Machineries Cost (Day work)				
Sl. No.	Description of items	Unit	Rate	Remarks
1	LABOUR			
	aCategory -1	day		
	bCategory -2	day		
	cCategory -3	day		
	dCategory -4	day		
	eCategory -5	day		
2	MATERIALS			
	aSteel items/MS angles/MS flat/Built up sections	kg		
	bCement	tone		
	cRiver Sand	Cu.m		
	dQuarry sand	Cu.m		
	eStone/boulders	Cu.m		
	fCrushed stone chips (aggregate)			
	g50mm	Cu.m		
	h40mm	Cu.m		
	i25mm	Cu.m		
	j20mm	Cu.m		
	k12.5mm	Cu.m		
	l10mm	Cu.m		
	m6mm	Cu.m		
3	Sawn Timbers			
	aMixed conifer	cft		
	bBlue pine	cft		
	cHard wood	cft		
4	Base course materials			
	aGranular Materials	cu.m		
	bMetalled Aggregates 63mm and down gauge	cu.m		
	cRed mud	cu.m		
5	GI Pipes (Heavy duty)			
	a15mm	mtr		
	b20mm	mtr		
	c25mm	mtr		
	d32mm	mtr		

Section V. Bidding Forms

	e40mm	mtr		
	f50mm	mtr		
	g65mm	mtr		
	h80mm	mtr		
	i100mm	mtr		
	j150mm	mtr		
6	HDPE Pipe (Druk pipe)			
	a20mm (10kg/sq.cm)	mtr		
	b25mm (10kg/sq.cm)	mtr		
	c32mm (6kg/sq.cm)	mtr		
	d40mm (6kg/sq.cm)	mtr		
	e50mm (6kg/sq.cm)	mtr		
	f63mm (6kg/sq.cm)	mtr		
	g75mm (6kg/sq.cm)	mtr		
	h90mm (6kg/sq.cm)	mtr		
	i110mm (4kg/sq.cm)	mtr		
	j140mm (4kg/sq.cm)	mtr		
	k160mm (4kg/sq.cm)	mtr		
	l180mm (4kg/sq.cm)	mtr		
	m225mm (4kg/sq.cm)	mtr		
7	RCC Pipe NP2			
	a300mm dia.	mtr		
	b450mm dia.	mtr		
	c600mm dia.	mtr		
	d750mm dia.	mtr		
	e900mm dia.	mtr		
	f1050mm dia.	mtr		
	g1200mm dia.	mtr		
8	GI sheet roofing			
	aCGI sheet-0.63mm (24G)	sq.m		
	bPre-painted GI sheet 0.50mm	sq.m		
	cGI ridging-0.63mm (24g)	mtr		
	dPre-painted GI ridging-0.50mm	mtr		
9	Reinforcement bar (TMT) FE-500			
	a8mm	kg		
	b10mm	kg		
	c12mm	kg		
	d16mm	kg		
	e20mm	kg		
	f25mm	kg		
	g32mm	kg		
10	Solid concrete brick (240x115x80mm)	pcs		

Section V. Bidding Forms

11	PEB Components			
a	Structural steel	kgs		
b	90 mm PUF panel	sqm		
c	75mm PUF Panel	sqm		
d	10 mm thick compressed heavy-duty fiber cement boards	sqm		
e	7.5mm Fiber cement siding board	sqm		
f	50 mm thick rock wool insulation of density 48kg/m ³	kg		
g	(595 x 595 x 8) mm Pre - Laminated Gypsum Tiles	nos		
h	13mm XLPE Insulation sheets	sqm		
i	18mm polished granite or double charged	sqm		
j	(8-10mm)600 x 600mm mat finish porcelain vitrified floor tiles	sqm		
k	(3-6mm) 300 x 600mm ceramic wall tiles	sqm		
l	110 x 63.5mm WPC door frames	nos		
m	75 x 50mm WPC door frames	nos		
n	32mm thick WPC door shutters	sqm		
o	5mm clear glass	sqm		
11	Bitumen Product			
a	Bitumen 80/100	tone		
b	Bitumen Emulsion	tone		
12	MACHINERIES AND EQUIPMENTS			
a	Excavator (PC-200)	hour		
b	Backhoe Loader (CASE 580 super M)	hour		
c	Wheel loader	hour		
d	Road roller (Vibratory) SV91 SAKAI	hour		
e	Asphalt Paver (Apollo /WM6-HES)	hour		
f	Tripper (6-8cu.m capacity)	hour		
g	Service Crane (3 ton to 5 tons capacity)	hour		
h	Mobile concrete batching plant (10 to 50 m ³ /hr)	hour		
i	Portable concrete pumps (10 to 50 m ³ /hr)	hour		
j	Concrete Mixer trucks (5 to 8 m ³)	hour		
k	Concrete vibrator	hour		
l	Welder machine	hour		
m	Total station	hour		
n	Hand Roller compactor machine	hour		
o	Air compressor	hour		
p	Road broom (TD96)	hour		
q	Welding machine	hour		

Section V. Bidding Forms

3. Form of Bid Security (Bank Guarantee)

[The Bank/Bidder shall fill in this Bank Guarantee form in accordance with the instructions indicated in brackets.]

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[Name and Address of Employer]*

Date: _____

BID GUARANTEE No.: _____

1. We have been informed that *[name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its Bid dated (hereinafter called "the Bid") for the execution of *[name of contract]* under Invitation for Bids No. *[IFB number]* ("the IFB").
2. Furthermore, we understand that, according to your conditions, Bids must be supported by an unconditional, on-demand Bid Guarantee.
3. At the request of the Bidder and in consideration of you, the Employer, agreeing to consider the Bidder's Bid for award, we *[name of Bank]* hereby irrevocably and unconditionally undertake, covenant and bind ourselves to pay to you any sum or sums which may from time to time be demanded by you up to the maximum aggregate amount of *[amount in figures]* (*[amount in words]*) (the "**Sum**") immediately upon receipt by us of your first and all subsequent demands in writing, accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the IFB without proof of actual default on the part of the Bidder and without any need to satisfy any other condition.
4. Such demand(s) shall be conclusive evidence of our liability and of the amount of the sum or sums which we are liable to pay you.
5. We shall not be discharged or released from this Bid Guarantee by any arrangement between you and the Bidder with or without our consent or by any other or further arrangement between the Bidder and us with or without your consent, or by any alteration in the obligations undertaken or to be undertaken by the Bidder or by any waiver, compromise, indulgence or forbearance on your part whether as to payment, time, performance or otherwise. We further agree that no invalidity in the IFB nor its avoidance, suspension or termination shall discharge, affect or impair our liability hereunder.
6. Our liability under this Advance Payment Guarantee shall continue and this Bid Guarantee shall remain valid and in full effect from *[date]* and will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder of the name of the successful Bidder; or (ii) 30 days after the expiration of the Bidder's Bid.

Section V. Bidding Forms

7. Your demand of the whole or part of the Sum made by you by way of a notice in writing addressed to us and sent to *[bank to insert service address]* or at such other address as may be notified by us in writing to you, made at any time on or before the expiry of ninety (90) calendar days after the expiry of the Bid Guarantee (“**Longstop Date**”), we shall immediately, and in any event within thirty (30) days of such demand having been sent to us, pay the sum demanded by you notwithstanding the existence of any disputes or differences which may have arisen in relation to the IFB or any amount payable under the IFB or any differences which the Bidder may have or any request or instruction which may have been given to us by the Bidder not to pay the same, or any objection made by the Bidder or any other person. Consequently, any demand for payment under this Bid Guarantee must be received by us at this office on or before the Longstop Date.
8. We shall not be obliged to and shall not inquire into the reasons, grounds or circumstances of any demand made under the Bid Guarantee by you nor into the respective rights, obligations and/or liabilities between you and the Bidder under the IFB. We shall be entitled to rely upon your written demand as final and conclusive.
9. We accept that you shall not be obliged to exercise any other right or remedy which you may have, including taking legal action against the Bidder, before making any call or demand on this Bid Guarantee. We confirm and agree that except only in a clear case of fraud, we shall not be entitled to or apply to enjoin or restrain you from making any call or demand on this Bid Guarantee or receiving any monies under this Bid Guarantee on any other ground, including but not limited to the ground of unconscionability.
10. You may make more than one demand under this Bid Guarantee so long as the demands are made in the manner set out in Clause 7 hereof and within the period specified therein and the aggregate amount specified in all such demands does not exceed the Sum.
11. This Advance Payment Guarantee is governed by the laws of the Kingdom of Bhutan.

[signature(s)]

Section V. Bidding Forms

4. Bidder Information Form

Date:

RFB No. and title: _____

Bidder's name
In case of Joint Venture (JV), name of each member:
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of incorporation:
Bidder's legal address [in country of registration]:
Bidder's authorized representative information Name: Address: Telephone/Fax numbers: _ E- mail address:
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 3 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 11.2 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITB 3.5, documents establishing: y Legal and financial autonomy y Operation under commercial law y That the Bidder are not dependent agency of the Employer
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Section V. Bidding Forms

5. Bidder's JV Information Form
(to be completed for each member of Bidder's JV)

Date:

RFB No. and title:

Bidder's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: Address: Telephone/Fax numbers: _ E- mail address:
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITB 3. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they the Bidder are not dependent agency of the Employer, in accordance with ITB 3.5.
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Section V. Bidding Forms

8. Access to or Availability of Credit Line

[The Bank/Bidder shall fill in this Bank Certificate form in accordance with the instructions indicated in brackets.]

(Bank Letter Head)

(a) BANK CERTIFICATE

This is to certify that Mr./Mrs.....Promoter of M/s.....is one of our valued Clients and Maintaining account with..... Branch Office their dealing with bank has been satisfactory as on date.

This certificate is issued at the request of M/s..... for the purpose of participating in bidding for tender works(*insert name of works*).The Client can be considered good for line of credit to the extent of Nu.....to meet their working capital requirements for executing the work namely subject to fulfillment of lending norms.

[insert signature(s) of authorized representative(s) of bank]
Address of the Bank

*[The **Bank/Bidder** shall fill in this Bank Certificate form in accordance with the instructions indicated in brackets.]*

❖ *For joint venture change the text as follows*

(Bank Letter Head)

Section V. Bidding Forms

(b) BANK CERTIFICATE (Joint Venture format)

This is to certify that Mr./Mrs..... Promoter of M/s..... who has formed a Joint Venture with M/s..... for participating in this bid is one of our valued Clients and Maintaining account with Branch Office,..... their dealing with bank has been satisfactory as on date.

This certificate is issued at the request of M/s..... for the purpose of participating in bidding for tender works (*insert name of works*).The Client can be considered good for line of credit to the extent of Nu.....to meet their working capital requirements for executing the work namely..... subject to fulfillment of lending norms

[insert signature(s) of authorized representative(s) of bank]
Address of the Bank

[This should be given by each JV members]

Section V. Bidding Forms

9. PRICE PREFERENCE PARAMETERS: list all information requested below.

9.(a) Status (Incorporated, JV, proprietorship)

Particulars	Response
Constitution or legal status of Bidder	<p>.....</p> <p>.....</p> <p>[To be filled by bidders]</p>
Place of registration	<p>.....</p> <p>.....[To be filled by bidders]</p>
Principal place of business	<p>.....</p> <p>.....[To be filled by bidders]</p>

The bidder shall submit the following supporting documents for the above:

- > Copy of the certificate of incorporation issued by the registrar of companies for the bidder in case an incorporated company is bidding alone.
- > Joint-venture agreement between the contractor involved, and copy of the certificate of incorporation issued by the registrar of companies for the incorporated partner in case two or more contractors are bidding together in a joint venture.

9.(b) Employment of Bhutanese

Description	Response
Total Number of project workforce (<i>Bhutanese and Non-Bhutanese key technical Personnel, skilled & non-skilled personnel</i>) to be committed for the project shall not be less than 40 Nos.	<p>.....[To be filled by bidders in numbers]</p>
Number of Bhutanese committed for the project.	<p>.....[To be filled by bidders in Numbers]</p>

The contractor shall provide following details for the above:

- Provide a list of proposed Bhutanese committed for the Project along with their valid CID copy.

10. INTEGRITY PACT

1. General:

Whereas **Mr. Karma Dupchuk, Director, DES** representing the **PROJECT STEERING COMMITTEE, Construction of 500 bedded fully self-contained permanent Quarantine Centre at Amochhu, Phuentsholing, Royal Government of Bhutan**, hereinafter referred to as the “**Employer**” on one part, and(*Name of bidder or his/her authorized representative, with power of attorney*) representing M/s. (*Name of firm*), hereinafter referred to as the “**Bidder**” on the other part hereby execute this agreement as follows:

This agreement shall be a part of the Bidding Documents, which shall be signed by both the parties at the time of purchase of the Bidding Documents and submitted along with the Bid. This IP is applicable only to “**large**” scale works, goods and services, the threshold of which will be announced by the government from time to time. The signing of the IP shall not apply to framework contracting such as annual office supplies etc.

2. Objectives:

Whereas the Employer and the Bidder agree to enter into this agreement, hereinafter referred to as IP, to avoid all forms of corruption or deceptive practice by following a system that is fair, transparent and free from any influence/unprejudiced dealings in the **bidding process**³⁸ and **contract administration**³⁹, with a view to:

- 2.1. Enabling the Employer to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works or goods or services; and
- 2.2. Enabling bidders to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices.

3. Scope:

The validity of this IP shall cover the bidding process and contract administration period.

4. Commitments of the Employer:

The Employer commits itself to the following: -

- 4.1. The Employer hereby undertakes that no officials of the Employer, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favor or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process and contract administration.
- 4.2. The Employer further confirms that its officials shall not favor any prospective bidder in any form that could afford an undue advantage to that particular bidder in the bidding process and contract administration and will treat all Bidders alike.

38 Bidding process, for the purpose of this IP, shall mean the procedures covering tendering process starting from bid preparation, bid submission, bid processing, and bid evaluation.

39 Contract administration, for the purpose of this IP, shall mean contract award, contract implementation, un-authorized sub-contracting and contract handing/taking over.

Section V. Bidding Forms

- 4.3. Officials of the Employer, who may have observed or noticed or have reasonable suspicion shall report to the head of the employing agency or an appropriate government office any violation or attempted violation of clauses 4.1 and 4.2.
- 4.4. Following report on violation of clauses 4.1 and 4.2 by official (s), through any source, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings shall be initiated by the Employer and such a person shall be debarred from further dealings related to the bidding process and contract administration.

5. Commitments of Bidders

The Bidder commits himself/herself/itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of the bidding process and contract administration in order to secure the contract or in furtherance to secure it and in particular commits himself/herself/itself to the following:

- 5.1. The Bidder shall not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favor, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Employer, connected directly or indirectly with the bidding process and contract administration, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding process and contract administration.
- 5.2. The Bidder shall not collude with other parties interested in the contract to manipulate in whatsoever form or manner, the bidding process and contract administration.
- 5.3. If the Bidder has observed or noticed or have reasonable suspicion that the provisions of the IP have been violated by the procuring agency or other bidders, the Bidder shall report such violations to the head of the Employer.

6. Sanctions for Violation:

The breach of any of the aforesaid provisions shall result in administrative charges or penal actions as per the relevant rules and laws.

- 6.1. The breach of the IP or commission of any offence (forgery, providing false information, misrepresentation, providing false/fake documents, bid rigging, bid steering or coercion) by the Bidder, or any one employed by him, or acting on his/her behalf (whether with or without the knowledge of the Bidder), shall be dealt with as per the terms and conditions of the contract and other provisions of the relevant laws, including De-barment Rules.
- 6.2. Breaches of the IP or the commission of any offence by the officials of the Employer shall be dealt with as per the rules and laws of the land in vogue.

7. Monitoring and Administration:

- 7.1. The Employer shall be responsible for administration and monitoring of the IP as per the relevant laws.
- 7.2. The Bidder shall have the right to appeal as per the arbitration mechanism contained in the relevant rules.

Section V. Bidding Forms

We, hereby declare that we have read and understood the clauses of this agreement and shall abide by it.

The parties hereby sign this Integrity Pact at (*place*) _____ on (*date*) _____



EMPLOYER

BIDDER/REPRESENTATIVE

CID :

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

CID :

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Witness:

Witness:

Name:

Name:

CID :

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

CID :

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Section V. Bidding Forms

11. Letter of Intent to Award
(Letterhead paper of the Employer)

Notes on standard form of letter of Intent

This issuance of the Letter of Intent to Award (always before the Letter of Acceptance) is the information of the selection of the bid of the successful bidder by the Employer and for providing information to other unsuccessful bidders who participated in the bid as regards the outcome of the procurement process

The Employer shall allow 10 days as described in ITB 37 between this Letter of Intent to Award and Letter of Acceptance to allow aggrieved bidders to complaint the decision if they feel they have treated unfairly.

(Insert date)

To: _____ *[Name and address of the Contractor]*

This is to notify you that, it is our intention to award the contract for your Bid dated *[Insert date]* for t h e execution and completion of the scope of work in *[Insert name of the contract and identification number, as given in the BDS/SCC]* for the Contract Price of..... *[Insert amount and words & name of currency]* as corrected and modified *[if any corrections]* in accordance with the Instructions To Bidders.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Employer: _____

CC:*[Insert name and address of all other bidders who submitted the bids]*

Section VI. General Conditions of Contract (GCC)

SECTION VI. GENERAL CONDITIONS OF CONTRACT (GCC)

Notes on General Conditions of Contract

The General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

The form of General Conditions of Contract that follows has been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The form can be used directly for smaller and measurement (unit prices or unit rates in a Bill of Quantities) contracts and, with the modifications noted in the footnotes, it can be adapted for lump sum contracts.

The use of standard General Conditions of Contract for building and civil works will promote comprehensiveness of coverage, general acceptability of its provisions, savings in cost and time in Bid preparation and review, and the development of a solid background of legal case histories.

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General Conditions of Contract

A. General

1. Definitions

1.1. Boldface type is used to identify defined terms.

- (a) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 25 and 26 hereunder.
- (b) **Bill of Quantities** summary of the units and unit prices of the items proposed under the contract.
- (c) **EOT Events** are those defined in GCC Clause 45 hereunder.
- (d) The **Completion Date** is the date of completion of the Works as certified by the Employer, in accordance with GCC Sub- Clause 55.1.
- (e) The **Contract** is the agreement entered into between the Employer and the Contractor to execute, complete, and maintain the Works, consisting of the documents listed in GCC Sub-Clause 2.3 below.
- (f) The **Contractor** is the individual or legal entity which has entered into the Contract after its Bid to carry out the Works has been accepted by the Employer.
- (g) The **Contractor's Bid** is the bid submitted by the Contractor to the Employer for the carrying out of the Works, which the Employer has accepted by a Letter of Acceptance.
- (h) The **Contract Price** is the Initial Contract Price as may be adjusted in accordance with the provisions of the Contract.
- (i) **Days** are calendar days; **Months** are calendar months.
- (j) **Dayworks** 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.
- (k) A **Defect** is any part of the Works not executed, provided or completed in accordance with the Contract. For the avoidance of doubt and without limiting the generality of the expression the term shall be taken to include any item of Plant, Materials, goods or work incorporated or used in the Works which does not or may not conform to the relevant quality standards or pass the tests prescribed in or to be inferred from the Contract.
- (l) The **Defects Liability Certificate** is the certificate to be issued by the Project Manager under GCC Clause 57 after receiving a complete and correct final accounts from the Contractor and provided that all Defects have been remedied and made good by the Contractor to the Employer's satisfaction.
- (m) The **Defects Liability Period** is the period named in SCC Sub-Clause 36.1 and calculated from the Completion Date.
- (n) **Drawings** means the drawings, calculations and other information referred to in the Contract, provided by the Employer, and/or prepared by the Contractor and accepted by the Employer and approved by the Employer for the execution of the Contract.
- (o) The **Employer** is the government agency which has entered into a

Section VI. General Conditions of Contract (GCC)

Contract with the Contractor to carry out the Works, as specified in the SCC. The terms “**Procuring Agency**”, “**Purchaser**”, or “**Employer**” are synonymous and shall be deemed to refer to the Employer.

- (p) **Equipment** means the all equipment, apparatus, machinery, vehicles and things of similar nature required by the Contractor for the execution and completion of the Works and remedying of any Defects, but does not include Plant, Materials, goods or work or other things intended to be part of the Works.
- (q) **GCC** refers to these General Conditions of Contract.
- (r) The **Initial Contract Price** is the Contract Price stated in the Employer’s Letter of Acceptance.
- (s) The **Intended Completion Date** is the date by which the Contractor is to complete the Works specified in the SCC, as may be extended or varied by the Employer in accordance with the terms of the Contract.
- (t) **In writing** is in any written form, including electronic mail.
- (u) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (v) **Plant** means machinery, apparatus and the like intended to form or forming part of the permanent Works.
- (w) The **Project Manager** is the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Employer) who shall be authorized to give instructions on behalf of the Employer and is responsible for supervising the execution of the Works and administering the Contract.
- (x) **Secured Advance** means advance payments made by the Employer to the Contractor to secure the procurement and delivery of any Materials as contemplated in the Contract. Provided however that Secured Advance may only be given for non- perishable materials only. The Employee shall in no circumstances be obliged to provide Secured Advances on account of perishable Materials, Materials such as cement and bamboo, or on account of Plant and machinery.
- (y) The **Site** is the area defined as such in the SCC where the Works are to be carried out by the Contractor.
- (z) **Site Investigation Reports** are the similarly named SCC is the Special Conditions of Contract.
- (aa) reports provided by the Employer as part of the Bidding Documents, which are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (bb) **Specifications** mean the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

Section VI. General Conditions of Contract (GCC)

- (cc) The **Start Date** is given in the SCC. It is the latest date by which the Contractor is required to commence execution of the Works.
- (dd) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the Works in the Contract, which includes work on the Site.
- (ee) **Temporary Works** are works designed, constructed, installed and removed by the Contractor that are needed for construction or installation of the Works.
- (ff) A **Variation** means a variation to the Works instructed or approved in writing by the Project Manager in accordance with GCC Clause 40.
- (gg) **Working Days** are Days other than Saturdays, Sundays and public holidays in Bhutan.
- (hh) The **Works** are what the Contract requires the Contractor to construct, install and turn over to the Employer as defined in the SCC, which shall include all Temporary Works.

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. If requested by the Contractor, the Project Manager shall provide instructions clarifying queries about these GCC on behalf of the Employer.
 - 2.2. If sectional completion is specified in the SCC, 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 are to be taken as mutually explanatory of one another, but in the event of any conflict, ambiguity or discrepancy between different Contract documents, the Contract documents shall be interpreted in the following order of priority / precedence:
 - (1) Contract Agreement;
 - (2) Letter of Acceptance;
 - (3) Special Conditions of Contract;
 - (4) General Conditions of Contract;
 - (5) Specifications;
 - (6) Drawings;
 - (7) Contractor's Bid;
 - (8) Bill of Quantities;⁴⁰ and
 - (9) Any other document listed in the SCC as forming part of the Contract.

- 3. Language and Law** 3.1. The language of the Contract and the law governing the Contract are stated in the SCC.
- 4. Project Manager as Employer's Representative** 4.1. Except where otherwise specifically stated, any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement Contract by the Employer shall be taken or executed by the Project Manager on behalf of the Employer.
- 4.2 The Employer may by written notice to the Contractor designate a replacement to serve as the Project Manager.
- 4.3 Except as expressly stated in the Contract, the Project Manager shall have no authority to relieve the Contractor of any of its obligations under the Contract.
- 5. Delegation** 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. Any such delegation or cancellation shall be in writing and shall not take effect until a copy of such delegation and/or cancellation has been delivered to the Contractor. Any act done by the Project Manager's delegate in accordance with such delegation shall have the same effect as though it had been done by the Project Manager. Provided that:
- 5.1 any failure of the Project Manager's delegate to disapprove any Plant, Materials, goods or work shall not prejudice the authority of the Project Manager to disapprove such Plant, Materials, goods or work and to give instructions for the rectification of any such Plant, Materials, goods or work; and
- 5.2 if the Contractor disputes any act of the Project Manager's delegate, he shall refer the matter to the Project Manager who shall confirm, reverse or vary (as the case may be) the act or decision of his delegate.
- 6. Communications** 6.1. All communications, certificates, notices or instructions to be given or made pursuant to the Contract shall be effective only when in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission to the address specified in the SCC. A notice shall be effective only when it is delivered.
- 7. Subcontracting** 7.1. The Contractor shall not assign or subcontract, in whole or in part, its obligations under the Contract except with the prior written consent of the Employer, provided that where such consent is granted, the Contractor shall ensure that its Subcontractors are bound by similar confidentiality obligations as those set out in the Contract.
- 7.2 Notwithstanding any such consent, no Subcontracting or consent by the Employer shall operate to alter, relieve, exclude or limit any of the obligations or liability of the Contractor under the Contract.
- 7.3 The Contractor shall be liable for the acts and omissions of any Subcontractor it engages and shall remain solely liable to the Employer for the performance of the Contractor's obligations under the Contract.

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- 8. Setting Out**
- 8.1. The Contractor shall set out the Works and ensure the correctness of the positions, levels, dimensions and alignment of the Works. The Contractor shall be responsible for providing all necessary instruments, equipment, apparatus and labour in connection with such setting out.
- 8.2. If at any time during the execution of the Works, an error appears in the positions, levels, dimensions or alignment of any part of the Works, the Contractor shall correct any such error at his own expense when required to do so by the Employer.
- 8.3. Boreholes, exploratory excavations or soil testing may be done if instructed by the Employer. If the cost of such boreholes or exploratory excavations or soil testing is not included in the Contract Price, the cost shall be borne by the Employer. The Contractor shall provide all facilities like labor and instruments, and shall co-operate with the Engineer-in-Charge to check all alignments, grades, levels and dimensions. Such checking shall not relieve the contractor of his own responsibility of maintaining the accuracy of the work.
- 9. Other Contractors**
- 9.1. The Contractor shall cooperate and share the Site with, and allow appropriate opportunities for carrying out work, services and other activities to other contractors, public authorities, utilities and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the SCC. The Contractor shall also provide facilities and services for them as described in the Schedule of Other Contractors.
- 9.2. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
- 9.3. Such cooperation and coordination work in the Schedule of Other Contractors shall be deemed to be included as part of the Contractor's obligations and the Contractor shall not be entitled to any adjustment to the Contract Price or other relief in relation to the same except to the extent that a modification by the Employer under GCC Sub-Clause 9.2 above results in the Contractor being delayed in the execution of the Works or incurring additional costs.
- 10. Personnel**
- 10.1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule of Key Personnel or other personnel approved by the Project Manager. The Contractor shall not transfer or re-assign any Key Personnel except with the Project Manager's prior approval in writing.
- 10.2. The Project Manager shall approve any proposed replacement of such key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule.
- 10.3. If the Contractor fails to deploy the key and other personnel as committed in the Contractor's Bid, the Employer shall be entitled to suspend the Works if the quality of work is likely to suffer and/or deduct from payments due to the Contractor the salaries of such personnel at a rate stipulated in the SCC per month per personnel for every month of absence of such personnel from the site. Such deductions shall continue till such time that the Contractor deploys the key personnel or other replacement personnel acceptable to the Employer.
- 10.4. If the Contractor fails to deploy such key or replacement personnel

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within one to four months⁴¹, the deductions shall be discontinued and the Contractor's failure to deploy such personnel shall be treated as a fundamental breach of contract entitling the Employer to terminate the Contract and/or claim damages from the Contractor.

- 10.5 This shall also apply to the commitment of employment to Bhutanese. However, in this case Contract may not be terminated but wage rates as mentioned in the SCC shall be deducted for the duration of the contract.
- 10.6 Similarly, if the Equipment committed to the Works in the Contractor's Bid are not available at the Site, the hiring charges of such Equipment shall be deducted at a rate stipulated in the SCC per month for every month of absence for a period of one to four months after which the deductions shall be discontinued and the contractor's failure to produce such Equipment at the Site shall be treated as a fundamental breach of contract entitling the Employer to terminate the Contract and/or claim damages from the Contractor.
- 10.7 The Contractor shall pay rates of wages and observe conditions of labor which are not lower or less favorable than the general level of wages and conditions in Bhutan. The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's personnel. The Contractor shall comply with all relevant labor laws applicable to the Contractor's personnel, including their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor is required, to the extent practicable and reasonable, to employ national staff and labor with appropriate qualifications and experience.
- 10.8 The Contractor shall not engage child labor and shall conform to the labor laws/acts, rules and regulations of Bhutan in the execution of the Contract works. A child who has not attained the age of 18 years shall not be employed in any work as a laborer. During the continuance of the Contract the Contractor and his Subcontractors shall abide at all times with the labor laws/acts, rules and regulations, including child labor, related enactment and rules made there under.

11. Employer's and Contractor's Risks

- 11.1. 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.

12. Employer's Risks

- 12.1. From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (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:
 - (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
 - (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.
 - (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 Bhutan.

13. Contractor's Risks

13.1. From the Start 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.

14. Insurance

14.1. The Contractor shall, before commencing any work under the Contract, provide maintain 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 SCC for the following events:

- (a) loss of or damage to the Works, Plant and Materials to be built into the works;
- (b) personal injuries or death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Works or any subcontracted works;
- (c) injury or damage to property real or personal (other than the Works) arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission, breach of contract or default of the Contractor, his servants or agents or any person employed or engaged upon or in connection with the Works or who may be on site in connection with the Works; and
- (d) injury or damage of any kind to property real or personal (including property of the Employer but not the Works themselves) caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works, except for injury or damage caused by:
 - i. any breach of contract, negligence, omission or default of the Contractor, his servants or agents or of any subcontractor, his servants or agents or any other person responsible for the provisions of any plant, materials, Goods or work for the Works; or
 - ii. Force Majeure.

14.2. Policies, certificates and receipts in respect of premiums paid for and under all insurance policies required under the Contract 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. Payments received from insurers shall be used for the rectification of loss or damage.

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- 14.3. If the Contractor fails to provide any of the policies and certificates required under the Contract, the Employer may (without prejudice to any other rights and remedies available) itself effect the insurance(s) 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, as a debt due from the Contractor to the Employer.
- 14.4. Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
- 14.5. Both parties shall comply with any conditions of the insurance policies.
- 15. Queries about the Special Conditions of Contract** 15.1. The Project Manager shall clarify queries on the SCC.
- 16. Contractor to Construct the Works** 16.1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 17. The Works to Be Completed by the Intended Completion Date** 17.1. The Contractor shall commence execution of the Works by the Start Date and shall thereafter proceed with the execution of the Works with due diligence and expedition and without delay.
- 17.2 The Contractor shall complete the Works by the Intended Completion Date.
- 18. Approval by the Project Manager** 18.1. 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.
- 18.2. The Contractor shall be responsible for the design of Temporary Works.
- 18.3. The Project Manager's approval shall not alter the Contractor's responsibility for the design of the Temporary Works, nor shall the Contractor be relieved of such responsibility by any such approval.
- 18.4. The Contractor shall obtain approval of third parties to design the Temporary Works, where required.
- 18.5. 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 use. The Contractor shall be responsible for the safety of all activities on the Site.
- 19. Safety** 19.1 The Contractor shall be responsible for the safety of all activities on the Site.

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- 19.2 The Contractor shall assume full responsibility and comply with all applicable safety regulations for the adequacy and safety of site operations and methods of construction and he shall adopt measures to prevent injuries to persons or damage to properties or utilities. He shall hold the Employer harmless from any liability for loss or damage resulting from his failures to take the necessary precautions. He shall avoid undue interference with private business, public travel, or with the work of other contractors. He shall take steps to protect the environment and to minimize noise, pollution or other undesirable effects resulting from his method of operation.
- 20. Discoveries of Antiquities**
- 20.1. All fossils, antiquities and/or anything of historical or other interest or of significant value which may be discovered on the Site or in excavating the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Employer's instructions for dealing with them in a careful manner so as to preserve such objects.
- 20.2. All materials obtained during excavation from the Site and that have not been accounted for in the Bid shall be the property of the Employer and the Contractor shall take care of useful materials obtained during the execution of the Works and stack at place designated by the Employer. An arrangement shall be made between the Contractor and the Employer for the use and disposal of such materials according to the laws of the Kingdom of Bhutan.
- 21. Possession of the Site**
- 21.1 Unless otherwise specified in the Contract or agreed between the parties, the Employer shall give possession of all parts of the Site to the Contractor by the date stated in the SCC. In the event that the Employer fails to do so, subject to GCC Clause **Error! Reference source not found.**, the Contractor shall be entitled to an extension of the Intended Completion Date in respect of any delay which has actually been caused
- 21.2. Within 14 days of being granted possession of the Site, the contractor shall erect an information board as specified in SCC.
- 22. Access to the Site**
- 22.1. The Contractor shall allow the Project Manager and any person authorized by the Employer 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.
-
- 23. Instructions, Inspections and Audits**
- 23.1. The Project Manager may issue to the Contractor (at any time) instructions which may be necessary for the execution of the Works or otherwise for the performance of the Contract, all in accordance with the Contract and the applicable laws where the Site is located.
- 23.2. The Contractor shall comply with and carry out all instructions given by the Project Manager on any matter related to the Contract.
- 23.3. If an instruction states that it constitutes a variation, Clause 40 shall apply. If not so stated, and the Contractor considers that the instruction:
- (a) constitutes a variation (or involves work that is already part of an existing variation); or
 - (b) does not comply with applicable laws or will reduce the safety of the

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Works or is technically impossible;

the Contractor shall immediately, and before commencing any work related to the instruction, give a notice in writing to the Project Manager (with a copy to the Employer) stating the Contractor's objections with reasons.

23.4. If the Employer and the Project Manager do not respond within seven (7) days (or such other time as may be agreed between the Parties) after receiving the written notice, by confirming, reversing or varying the instruction, the Project Manager shall be deemed to have revoked the instruction. Otherwise the Contractor shall comply with and be bound by the terms of the Employer's response.

23.5. The Contractor shall give written notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that he does not require to do so. If the Contractor fails to give written notice before covering up, putting out of sight or packaging any such work, the Contractor shall, if and when required by the Project Manager, uncover the work in question for the carrying out of any required tests or inspections, and thereafter reinstate and make good such uncovered work. The cost of such uncovering shall be borne by the Contractor without any entitlement to an extension of the Intended Completion Date or compensation.

23.6. The Contractor shall permit the Employer and/or persons appointed by the Employer to inspect the Site and/or the accounts and records of the Contractor and its Subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer if so required by the Employer. The Contractor's attention is drawn to GCC Sub-Clause 60.1 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended materially to impede the exercise of the Employer's inspection and audit rights provided for under GCC Sub-Clause 23.3 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to ITB Sub- Clause 2.1 (c) of the Instructions to Bidders within the Bidding Documents that preceded the placement of the Contract of which these GCC form a part).

24. Disputes

24.1. Any dispute, controversy or claim arising out of or in connection with the Contract, including any question regarding its existence, validity, breach or termination, shall in the first instance be referred to the Adjudicator within 14 days of either party giving written notice to the other party of such dispute, controversy or claim ("**Dispute Notice**"; the disputes raised in the Dispute Notice being the "**Disputes**").

25. Procedure for Disputes

25.1. The Adjudicator shall give a decision in writing on the Disputes within 30 days of receipt of a notification of a dispute, with a copy of such decision being provided to each of the Parties and the Project Manager.

25.2. Unless otherwise agreed, the parties shall comply with the adjudication procedure published by the appointing authority specified in SCC.

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- 25.3. The Adjudicator shall be paid by the hour at the rate specified in the BDS and the SCC, together with reimbursable expenses of the types specified in the SCC, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. If the rates are not specified in SCC, the parties shall comply with the rates fixed by the appointing authority in its schedule
- 25.4. In the event that either party is dissatisfied with the Adjudicator's decision on the Disputes, that party may refer the Disputes to arbitration within 30 days of receiving the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 30 days, the Adjudicator's decision shall be final and binding. The arbitration shall be conducted in accordance with the arbitration procedure published

26. Replacement of Adjudicator

- 26.1 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 designated in the SCC at the request of either party, within 14 days of receipt of such request.
- 26.2 In the event that the parties are unable to agree on the appointment of an Adjudicator and/or there is no appointing authority designated in the SCC or willing to act, Disputes may be directly referred to arbitration under GCC Clause 25.4 and SCC Clause 25.4 without the need to refer disputes to an Adjudicator.

B. Time for Completion

27. Program

- 27.1. Within the period stated in the SCC after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a programme in both native format and hardcopy, showing the general methods, arrangements, order and timing for all the activities in the Works ("**Program**"). In particular, all activities in the programme shall be logically linked and showing the earliest and latest start and finish dates for each activity, the float (if any), and the critical path.
- 27.2. The Contractor shall also submit a revised Program to the Project Manager for approval at intervals no longer than the period stated in the SCC or if the actual progress of the Works does not conform with the current accepted Program.
- 27.3. If at any time in the Employer's opinion:
- (a) actual progress is too slow to complete by the Intended Completion Date; and/or
 - (b) progress has fallen behind the current approved Program under GCC Sub-Clause 27.1 [Program], other than as a result of a cause listed in GCC Sub-Clause 45 [EOT Event], then the Project Manager may instruct the Contractor to submit, under Sub-Clause 27.2 [Program], a revised Program as well as a supporting report describing the revised methods and measures which the Contractor proposes to adopt in order to expedite progress and complete by the Intended Completion Date

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("Acceleration Plan").

27.4. Subject to GCC Clause 27.5 and unless the Employer notifies otherwise, the Contractor shall adopt and be bound by the revised methods and measures in the Acceleration Plan, which may require increases in the working hours and/or in the numbers of the Contractor's personnel and/or Goods, at the risk and cost of the Contractor. Nothing stated in an Acceleration Plan, and no consent, comment or approval given by the Employer in respect of an Acceleration Plan, shall relieve the Contractor of its obligations or liabilities under the Contract.

27.5. The Contractor shall be entitled to be paid any additional costs incurred as a result of adopting revised methods and measures instructed by the Project Manager to reduce delays resulting from causes listed under GCC Sub-Clause 45 [EOT Event].

27.6. 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 Employer again at any time. A revised Program shall show the effect of Variations.

28. Progress Reports

28.1. Unless otherwise stated in the SCC, monthly progress reports shall be prepared by the Contractor and submitted to the Project Manager. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. Reporting shall continue until the issuance of the Certificate of Completion under GCC Sub-Clause 55. Such reports shall at a minimum include:

- (a) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.
- (b) copies of quality assurance documents, test results and certificates of Materials;
- (c) charts and detailed descriptions of progress, including each stage of design (if any), delivery to Site, construction, erection and testing; and including the stages for work by subcontractor; and
- (d) any other details specified in SCC.

29. Extension of the Intended Completion Date

29.1. The Project Manager shall extend the Intended Completion Date if 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.

29.2. 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 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.

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- 30. Acceleration** 30.1 If 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, which shall take into account any delays which are caused by or attributable to the Contractor. If the Employer accepts these proposals:
- 30.1 the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor; and
-
- 30.2. the Contractor's priced proposal shall be treated as a Variation and the Contract Price adjusted accordingly.
- 31. Delays Ordered by the Project Manager** 31.1. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 32. Management Meetings** 32.1. 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 in GCC Clause 33.
- 32.2. The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting. 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.
- 33. Early Warning** 33.1. 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 and/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.
- 33.2. The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such events or circumstances can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.
- 33.3. If the Contractor considers himself to be entitled to any extension of Intended Completion Date and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 33.4. If the Contractor fails to give notice of a claim within such period of 30 days, the Employer shall be discharged from all liability in connection with the claim. The giving of such written notice within the said 30-day

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period is a condition precedent to any entitlement on the part of the Contractor to an extension of the Intended Completion Date or additional payment.

C. Quality Control

34. Identifying Defects

34.1. During the course of execution of the Works and the Defects Liability Period, the Project Manager and the Contractor shall immediately notify each other of any Defects which they have found, without affecting the Contractor's responsibilities to ensure the quality of works executed.

34.2 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.

34.3 The Project Manager at the end of the Contract shall issue a Performance score on Quality out of a total of 70 points based on the guidelines issued by Construction Development Board (CDB).

35. Tests

35.1. If the Project Manager instructs the Contractor to uncover work or carry out a test not specified in the Specifications to check whether any work has a Defect and the uncovering or test shows that it does contain a Defect, the Contractor shall pay for the test and cost of reinstating any damage necessitated in obtaining samples for the test. If there is no Defect, the cost of carrying out the test and reinstatement of the work in question shall be borne by the Employer.

36. Correction of Defects

36.1. Until 14 days after the end of the Defects Liability Period as defined in the SCC, the Project Manager shall be entitled to give notice to the Contractor of any outstanding work or Defects, instructing the Contractor to execute all such works of amendment, reconstruction and remedying of such Defects. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

36.2. Every time notice of a Defect is given by the Project Manager, the Contractor shall comply with such notice and instructions, correcting the notified Defect within the length of time specified by the Project Manager's notice at the Contractor's own risk and cost.

37. Uncorrected Defects

37.1. 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 or (where remedying the defect is impracticable or inconvenient) the diminution in the value of the Works due to the Defect, and the Contractor shall pay this amount to the Employer.

37.2 At the option of the Employer, such costs may be deducted from the Retention Money and/or claiming against any bank guarantee provided by the Contractor pursuant to GCC Sub-Clause 49.3 and/or recovered as a debt due from the Contractor to the Employer.

D. Cost Control

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38. Bill of Quantities⁴²

- 38.1. The Bill of Quantities shall contain items for the construction, installation, testing and commissioning work to be done by the Contractor.
- 38.2. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.

39. Changes in the Quantities⁴³

- 39.1. Subject to GCC Sub-Clauses 39.2 – 39.4 below, if the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty percent (20%), provided the cost of variation beyond twenty percent (20%) limit exceeds one percent (1%) of the Initial Contract Value the Employer shall adjust the quoted rate up or down to allow for the change. Only when both conditions are met then the quoted rate shall be changed.
 - (a) If the quantity of work executed exceeds the quantity of the item in BOQ beyond the higher specified limit the Employer shall fix the market rate (which may be lower or higher than the quoted rate) to be applied for the additional quantity of the work executed.
 - (b) If the quantity of work executed is less than the quantity of the item in BOQ lesser than the lower specified limit, the Employer shall fix the market rate based on the submission of the contractor (which may be lower/higher than the quoted rate) to be applied for whole of the quantity of the work so executed for that particular item.
- 39.2. The rates shall not be adjusted from changes in quantities if thereby the Initial Contract Price is exceeded by more than five percent (5%), except with the prior approval of the Employer in consultation with the Tender Committee.
- 39.3. For works up to Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total cost of such deviations exceeds twenty percent (20%) of the initial contract price; prior approval shall be sought from the Employer's Finance Committee.
- 39.4. For works above Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total cost of such deviations exceeds twenty percent (20%) of the initial contract price; the Employer shall seek prior approval of the Public Investment Board/Public Investment Coordination Committee.
- 39.5. 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.

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40. Variations

- 40.1. The term “Variation” means any change to the original Contract intention as deduced from the Contract as a whole describing or defining the Works to be carried out and may include, but is not limited to, any of the following:
- (a) increase or decrease in the quantity of any work included in the Contract,
 - (b) omission of any item of work,
 - (c) change in the character or quality or kind of any such work,
 - (d) change in the levels, lines, position and dimensions of any part of the works,
 - (e) additional work of any kind (not exceeding twenty percent (20%) of the initial contract amount, or the maximum threshold value for the use of Limited Tender whichever is lower), or
 - (f) change in any specification sequence or timing of construction activities.
- 40.2. For works up to Nu. 50 Million, if the value of additional work exceeds twenty percent (20%) of the initial contract price, the Employer shall seek prior approval of the Competent Authority (Finance Committee constituted in respective agency).
- 40.3. For works above Nu. 50 Million, if the value of additional work exceeds twenty percent (20%) of the initial contract price, the Employer shall seek prior approval of the Competent Authority (Public Investment Board/Public Investment Coordination Committee).
- 40.4. The Project Manager may at any time instruct a Variation to the Works and the Contractor shall comply forthwith with any such instruction. All Variations instructed by the Project Manager shall be in writing and signed by the Project Manager, and be accompanied by evidence of any approvals required under GCC Sub-Clauses 40.2 or 40.3 (“**Variation Order**”). The Project Manager shall ensure that such Variation Orders are duly noted in the Site Order Register.
- 40.5. Prior to issuing a Variation Order, the Project Manager may, but is not obliged to, request Contractor to submit a quotation for the proposed Variation. The Project Manager may accept the quotation and confirm the Variation on the terms of the quotation by issuing a Variation Order incorporating the quotation, in which case the Contractor shall be bound by the terms of its quotation. In particular, the Contractor shall not be entitled to seek (and shall be deemed to have waived any right to) additional payment or extension of the Intended Completion Date on account of the Variation, except to the extent set out in its quotation.
- 40.6. Variations shall not, in any way, vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with GCC Clause 41 and subject to the terms of any accepted quotation forming part of the Variation Order.
- 40.7. The Contractor shall execute and be bound by each Variation Order, unless the Contractor promptly gives notice to the Project Manager stating

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(with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence of the progress of the Works. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the Variation Order. The Contractor shall not carry out any Variations without a written Variation Order.

40.8. All Variations shall be included in updated Programs⁴⁴ produced by the Contractor.

41. Payments for Variations

41.1. Prior to instructing a Variation, the Project Manager may request, and the Contractor shall provide the Project Manager with, quotations of the rates for carrying out Variations. The Project Manager shall assess the quoted rates, which shall be given within seven days of the request or within any longer period stated by the Project Manager, in each case before the Variation is ordered.

41.2. If the work in the Variation corresponds with items described in the Bill of Quantities and if, in the opinion of Project Manager, the quantity of work above the limit stated in GCC Sub-Clause 39.1 or the timing of its execution does not cause the cost per unit of quantity to change, the rates 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.⁴⁵

41.3. If the Contractor's quoted rates are 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.

41.4. If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, the Variation may be instructed without requesting for a quotation and the Variation shall be valued in accordance with the following rules:

- (a) If the Bill of Quantities contains rates for the varied work, then such rates shall apply;
- (b) Where the varied work is of a similar character to, is executed under similar conditions as and does not significantly change the quantity of work described in the Contract, the varied work shall be valued at the rates for such similar items set out in the Bill of Quantities;
- (c) Where the varied work is of similar character to work described in the Contract but is not executed under similar conditions of such work described in the Contract or involves significant changes in the quantity of such work described in the Contract, the varied work shall be valued based on the rates for such similar work set out in the Contract but with a fair allowance for any differences in such conditions and/or quantity; and

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(d) In other cases, not covered by the preceding GCC Sub-Clauses 41.4(a) to 41.4(c), the varied work shall be measured and valued at fair market rates and prices then-prevailing, taking into account the general price level expressed in the Contract.

41.3. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

42. Cash Flow Forecasts

42.1. When the Program⁴⁶ 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.

43. Payment Certificates

43.1. The Contractor shall submit to the Project Manager monthly statements of the value of the work executed, based on the Contractor's records, less the cumulative amount certified previously. Such statement shall include the following details and be accompanied by supporting evidence or documentation for the amounts claimed by the Contractor:

- (a) the relevant stage(s) and/or works for which payment is being claimed and show in detail the amounts to which the Contractor considers itself to be entitled up to the end of the period of payment;
- (b) any additions and/or deductions which have become due under the Contract or otherwise;
- (c) any amount to be deducted as Retention Money;
- (d) any amounts to be added and/or deducted for advance payments and repayments;
- (e) any amount to be added for release of retention monies; and
- (f) the deduction of amounts previously paid by the Employer to the Contractor under the Contract.

43.2. The Project Manager shall check the Contractor's monthly statement (running account bills) and certify the amount to be paid to the Contractor latest by 30 working days from the date of receipt of contractor's monthly statement in correct and complete form.

43.3. The value of work executed shall be determined by the Project Manager.

43.4. The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed⁴⁷ and measurement thereof shall be carried out jointly by the Project Manager, or his Representative, and the Contractor. The Project Manager, or his Representative, shall record the value of the work executed in a measurement book for the purposes of verifying the Contractor's monthly statements. The measurement book shall be signed by the Project Manager or his Representative, and countersigned by the Contractor.

43.5. The value of work executed shall include the valuation of Variations and other costs or compensation to which the Contractor is entitled in accordance with the terms of the Contract.

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43.6. The Project Manager may adjust the value given to item certified in a previous certificate, exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in light of information which he has subsequently received after rendering his earlier payment certificate.

44. Payments

44.1. Payments shall be adjusted for deductions for advance payments, taxes, retention money and any other dues. The Employer shall pay the Contractor within 30 working days from the date of receipt of correct and verified bills/invoices in complete form by the Finance Section.

44.2. If the Employer makes a late payment, the Contractor shall be paid interest only on the late payment amount 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 overdraft facilities availed from respective financial institutes.

44.3. 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 not be paid interest upon the delayed payment as set out in this clause.

44.4. Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

44.5. 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.

45. Extensions of Time

45.1. The Contractor shall be entitled subject to the provisions of this GCC Clause 45 to an extension of the Intended Completion Date if and to the extent that, notwithstanding due diligence and the taking of all reasonable steps by the Contractor to avoid or reduce such delay, completion of the Works is or will be delayed by any of the following causes (each an "EOT Event"):

- a. The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 21.1.
- 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 if provided in SCC.
- f. 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.
- g. Other contractors, public authorities, utilities or the Employer do not work within the dates and other constraints stated in the

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Contract, and they cause delay.

- h. Force Majeure.
- i. A Variation instructed or approved by the Employer in accordance with the terms of the Contract.
- j. Other EOT Events described in the SCC or determined by the Employer.
- k. Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel, or the Employer's other contractors on the Site.

PROVIDED always that the Contractor shall not be entitled to any extension of the Intended Completion Date (and such disentitlement shall not set the Intended Completion Date at large) to the extent that the delay was caused or contributed to by:

- a. any default of the Contractor or any other persons under the Contractor's control or direction;
- b. instructions or acts of the Employer necessitated by or intended to cure any default of or breach of contract by the Contractor; and/or
- c. the Employer's interests are adversely affected by the Contractor not having given early warning.

45.2. If the Contractor is of the opinion that completion of the Works is or will be or has been delayed by any of the events or circumstances stated in GCC Sub-Clause 45.1, the Contractor shall immediately notify the Project Manager in writing of such event within 14 days of the occurrence of such event or circumstance, specifying in the written notice:

- (a) the reasons as to why there will or may be delay to completing the Works by the Intended Completion Date together with the appropriate Contract references;
- (b) the length of the delay and of any extension of the Intended Completion Date required;
- (c) the effect of the event on the Program for the Works; and
- (d) the measures which Contractor proposes to take to avoid, recover or limit the effect of any delay to completion.

45.3. The giving of notice and information within the said 14-day period under GCC Sub-Clause 45.2 shall be a condition precedent to any entitlement to an extension of the Intended Completion Date on the part of the Contractor.

45A. Force Majeure

45A.1 **"Force Majeure"** means an exceptional event or circumstance:

- (a) which is beyond a Party's control;
- (b) which such Party could not reasonably have provided against before entering into the Contract;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to

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(d) above are satisfied:

- (e) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (f) rebellion, terrorism, sabotage by persons other than the Contractor's personnel, revolution, insurrection, military or usurped power, or civil war,
- (g) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;
- (h) 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
- (i) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

However, force majeure shall not include the following:

- (j) rainfall;
- (k) snowfall;
- (l) strikes in other countries;
- (m) non-availability of laborer and materials such as timbers, boulders, sand, and other materials; and
- (n) difficulty and risky terrain and remoteness of site.

45A.2 If a Party is prevented or delayed from performing any of its obligations under the Contract by Force Majeure, it shall give notice in writing to the other Party within 14 days after it became aware or should have become aware of the occurrence of the Force Majeure event, setting out the circumstances constituting the Force Majeure event and the obligations which are or will be thereby delayed or prevented.

45A.3 The Party giving such written notice shall thereupon be excused from non-performance of the specified obligations under the Contract for so long as the Force Majeure event continues and insofar as such inability arises from the specified Force Majeure event, **PROVIDED** that the Party affected by such Force Majeure event has:

- (a) taken all reasonable precautions, due care and reasonable alternative measures to overcome such delay or prevention in carrying out the terms and conditions of the Contract; and
- (b) given notice in writing with the stipulated particulars within the 14-day period under GCC Sub-Clause 45A.2, which shall be a condition precedent to obtaining any relief under this Clause 45A.

45A.4 Nothing in this GCC Clause 45A shall relieve either Party of its obligations which have accrued at the date of giving notice of Force Majeure.

45A.5 For the avoidance of doubt, the Contractor shall not be entitled to receive, and the Employer shall not be obliged to pay, any financial compensation for loss and damage arising out of or caused by the occurrence of Force Majeure.

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45A.6 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure.

45A.7 For the avoidance of doubt, notwithstanding anything in the Contract, the Parties agree that any event or circumstance arising from or in connection with the COVID-19 pandemic which the Contractor could reasonably have foreseen, prepared for, avoided or overcome before entering into the Contract, taking into consideration the impact that the COVID-19 pandemic has already had on the Contractor and its business processes, and public announcements regarding the COVID-19 pandemic, shall not entitle the Contractor to any relief under this GCC Clause 45A.

46. Tax

46.1. The rates and prices quoted in the Contractor's Bid shall be deemed to be inclusive of all duties, taxes and levies that may be levied in accordance with the laws and regulations in being as of the date 30 days prior to the closing date for submission of bids.

47. Currencies

47.1. Where payments are made in currencies other than Ngultrum (Nu), the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

48. Price Adjustment

48.1. If during the contract, there is an increase or decrease in the cost of materials as reflected by the Material Index Numbers published by the National Statistical Bureau⁴⁸ (NSB), a corresponding increase or decrease in the payment to the Contractor or recoverable from the Contractor shall be effected on the basis of the following formulae, such calculation being done for every successive period of 3 months after the 12th month of the Contract duration: Adjustment for variation of material prices:

$$V = W \times 0.80 \times 0.75 \times (M - M_0) / M_0$$

where:

V = amount of variation for materials payable to/recoverable from the contractor for the period under review;

W = value of the work done during the period under review minus (amount of secured advance recovered in the same period + value of works executed under variations for which the variations are paid in the new rate);

M₀ = Material Index for the month in which the tender was submitted;

M = the average value of the above Index Number for the 3 months period under review;

⁴⁸ Until NSB comes up with the Material Index for the Royal Government of Bhutan, the Wholesale Price- Index (all commodities) for Materials shall be used for the purpose of this clause. Visit www.eaindustry.nic.in for the Wholesale Price Index.

48.2. For the applications of the above formulae, the appropriate Index Numbers published by the National Statistical Bureau shall be adopted.

48.3. To the extent that full compensation for any rise or fall in costs to the

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Contractor is not covered by the provisions of this or other clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

48.4. Price Adjustment shall apply only for work carried out prior to the elapsing of the Intended Completion Date (as may have been extended by the Employer under the Contract) and shall not apply to work carried out beyond the stipulated time for reasons attributable to the Contractor.

49. Retention

49.1. The Employer shall retain⁴⁹ ten percent (10%) from each payment due to the Contractor in the proportion stated in the SCC until Completion of the whole of the Works as “**Retention Money**”.

49.2. On completion of the whole of the Works, one-half of the retained Retention Money shall be repaid to the Contractor. The balance one-half of the Retention Money will be released only after 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 expiry of 14 days after the end of this period have been corrected to the Employer’s satisfaction.

49.3. On completion of the whole of the Works, the Contractor may substitute the balance half of Retention Money with an unconditional bank guarantee for an equivalent amount. In the case of contracts where the Intended Completion Date is more than 12 months after the Start Date, the substitution of Retention Money with such a bank guarantee may be allowed on completion of 50% of the value of the Contract and duly certified by the Project Manager.

49.4. Such bank guarantees referred to in GCC Sub-Clause 49.3 shall be maintained and remain valid until the issuance of the Defects Liability Certificate by the Project Manager. In the event that the Contractor fails to remedy any Defect reported within the Defect Liability Period within the period stated in the Project Manager’s notice, the Employer shall be entitled to withhold payments and/or make claims on the bank guarantee for amounts which in the opinion of the Employer represents the cost of remedying the Defect(s) which the Contractor has failed to remedy.

50. Liquidated Damages

50.1. The Contractor shall pay liquidated damages to the Employer at the rate per day stated in the SCC for each day that the Completion Date is later than the Intended Completion Date (as may be extended from time to time under the Contract).

5.5.6. The Contractor’s aggregate liability for liquidated damages under this GCC Clause 50 shall not exceed ten percent (10%) of the Initial Contract Price.

50.2 The Parties agree that the liquidated damages set out in GCC Sub-Clause 50.1 and the rates set out in the SCC are genuine pre-estimates of the loss and damage which the Employer is likely to suffer as a result of the Contractor’s delay in completing the Works by the Intended Completion Date. The Parties acknowledge that they have each received independent legal advice in relation to this GCC Clause 50.

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- 50.2 The Employer may recover the amount of such liquidated damages as a debt due from the Contractor and/or by way of deduction or set-off against any monies owed by the Employer to the Contractor. The payment or deduction of such liquidated damages shall not affect or relieve the Contractor from its obligation to complete the Works or any other duties, obligations or responsibilities the Contractor may have under or in connection with the Contract.
- 50.3 In the event that the Employer is for whatever reason not entitled at law to recover liquidated damages, the Employer shall remain entitled to recover such loss, expense, costs or damages as it would have been entitled at law as if the provisions in this GCC Clause 50 relating to the payment of liquidated damages had not formed part of the Contract. The Contractor's liability to pay the Employer such loss, expense, costs or damages shall not be limited in any way whatsoever by the amount of liquidated damages for which it might otherwise have been liable.
- 5.5.5. For the avoidance of doubt, if the Contractor has failed to complete the Works by the relevant Intended Completion Date, and the execution of the Works thereafter is delayed by any of the events set out in GCC Sub-Clause 45.1, the Employer's right to liquidated damages shall not be affected thereby.

51. Advance Payment.

- 51.1.** The Employer shall make an advance payment to the Contractor of the amount stated in the SCC by the date stated in the SCC, 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 ("Advance Payment Guarantee"). The Advance Payment Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Advance Payment Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 51.2. Secured Advances shall be paid to the Contractor as specified in SCC on the following conditions:
- (a) The materials for which Secured Advances are requested shall be in accordance with the specifications and shall not be in excess of the requirements;
 - (b) The materials shall be delivered at the Site, properly stored and protected against loss, damage or deterioration;
 - (c) A declaration shall be given by the Contractor passing on the lien on the rights of the materials to the Employer
 - (d) The amount of the Secured Advance shall not be more than seventy five percent (75%) of the cost of materials delivered at the Site which shall be supported by original invoices/bills from the suppliers. All materials imported from other countries shall be supported by Bhutan Sales Tax Receipts or Customs Clearance. In case of fabrication works off site, Secured Advances may be paid to the Contractor after a site inspection is carried out by the Employer at the cost of the Contractor, submission of proof of payment (work order) and submission of supply order.

Secured Advances shall be recovered from interim progress payments in the months in which these materials are used in the works.

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- 51.3. 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 has been used in this way by supplying copies of invoices or other documents to the Project Manager. The Employer shall be entitled to encash and make a claim on the Advance Payment Guarantee if the Contractor is in breach of its obligation by using the advance payment for purposes other than the costs of mobilization in respect of the Works.
- 51.4. 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. The Mobilization Advance shall be recovered when eighty percent (80%) of the Contract has been executed. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments or liquidated damages.

52. Securities

- 52.1. The Contractor shall provide to the Employer an unconditional and irrevocable on-demand performance bond (“**Performance Security**”) to the Employer by no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC (as may be modified for abnormally low bids or seriously unbalanced and/or frontloaded bids under ITB Clauses 31 and 32) by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Contractor shall ensure that the Performance Security shall remain valid and enforceable until a date 30 days from the date of issue of the Certificate of Completion.
- 52.2. Whenever Variation Orders and/or other adjustments under the Contract result in an accumulative increase of the Contract Price by more than twenty percent (20%) of the Initial Contract Price, the Contractor shall promptly increase the amount of the Performance Security by a percentage equal to the accumulative increase.
- 52.3. The Employer shall return the Performance Security to the Contractor within 14 days of the issuance of the Certificate of Completion.

Maintenance of Performance Security

- 52.4. In the event that the Performance Security or any Advance Payment Guarantee is issued with a fixed expiry date and such expiry date occurs prior to the end of the period of cover required for the relevant security, the Contractor shall (in each such event and repeatedly, if necessary) ensure that the expiry date of the affected security is extended to the end of the relevant period or deliver a replacement for the affected security to cover such period(s).
- 52.5. The extended or replaced security shall be delivered duly executed to the Employer no later than ten (10) days before the relevant expiry date. Any expiry date under any of the securities or an extension or replacement thereof shall be without prejudice to existing claims made under the securities.

52.6. All fees, taxes and expenses associated with procuring, preparing, completing, stamping, maintaining, extending, renewing or replacing any of the securities where applicable shall be paid by the Contractor.

52.7. Without prejudice to its other rights under the Contract, at law or otherwise, the Employer shall be entitled to make claims under the Performance Security in the event of:

(a) failure by the Contractor to extend the validity of a security as required under GCC Sub-Clauses 52.4 and 52.5, in which event the Employer may claim the full amount (or, in the case of previous reduction(s), the full remaining amount) of the security;

(b) failure by the Contractor to pay the Employer an amount due under the Contract within 42 days after the date when the amount became due;

(c) failure by the Contractor to complete its obligations under the Contract.

53. Day works

53.1. 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.

53.2. 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.

53.3. The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms and at the rate quoted for Dayworks.

54. Cost of Repairs

54.1. 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.

E. Completion of the Contract

55. Completion

55.1. When the Contractor considers that the whole of the Works have been substantially completed (including but not limited to the Contractor having obtained a temporary occupation permit for the Works, if required), the Contractor shall give written notice to the Project Manager to that effect.

55.2 Upon receiving such a written notice, the Project Manager shall inspect the Works and shall either:

(a) issue a certificate stating the date on which in his opinion the Works were completed in accordance with the Contract ("**Certificate of Completion**"); or

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- (b) reject the Contractor's request by notice in writing, giving instructions specifying the work required to be done, the defects required to be remedied and/or the documents required to be submitted by the Contractor in order for the Employer to issue the Certificate of Completion.

55.3. An on-time completion out of a total of thirty percent (30%) scoring shall be done by the Program Manager. The contractor shall be penalized under this component if he fails to deliver the project as per the initial time-lines committed in the Program.

The site engineer shall penalize the contractor to an extent of thirty percent (30%). The quantum of penalty could vary as following:

- (i) Ten (10%) percent for a minor default
(if the final completion of the project is delayed by 10 - 15% as compared to original project duration)
- (ii) Twenty percent (20%) for a medium default
(if the final completion of the project is delayed by 15 - 25% as compared to original project duration)
- (iii) Thirty percent (30%) for a major default
(if the final completion of the project is delayed by 25% or more as compared to original project duration)

55.4. At the time of taking over the Works, the Project Manager shall ensure that the Contractor constructs a permanent information board as specified in SCC.

56. Taking Over

56.1. Upon issuance of the Certificate of Completion, the Employer shall take over the Site and the Works and shall issue a Taking Over Certificate within 7 days of taking over the Works. The Taking Over Certificate shall include the following mandatory information:

- (a) Name of Contract firm
- (b) Name of Proprietor
- (c) CDB Registration No.
- (d) Trade License No.
- (e) Contract Amount
- (f) Year of Completion
- (g) Award order No. with Date.

56.2. Notwithstanding GCC Clause 56.1, the Employer shall permit the Contractor to access the Site for the purposes of carrying out any outstanding works or rectification works instructed under GCC Clause 36, except to the extent inconsistent with the Employer's security restrictions / policies.

- (a) At least fourteen (14) days prior to accessing the Site for carrying out any outstanding works or rectification works, the Contractor shall give written notice to the Employer requesting for such access, setting out the reasons why access is desired and stating the Contractor's proposed date(s) for accessing the Site.
- (b) Within seven (7) days after receiving the Contractor's written notice, the Employer shall respond in writing to the Contractor's request, either consenting to the request or proposing reasonable alternative

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dates for such access.

- (c) The Contractor shall only access the Site after receiving the Employer's consent in writing.

57. Final Account

57.1. The Contractor shall supply the Project Manager with a detailed draft final account, setting out 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 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 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.

58. Operating and Maintenance Manuals

58.1. If "as built" Drawings and/or operating and maintenance manuals are required under the Contract, the Contractor shall supply them by the dates stated in the SCC.

58.2. If the Contractor does not supply the "as built" Drawings and/or manuals by the dates stated in the SCC, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the SCC from payments due to the Contractor.

59. Termination

59.1. The Employer may terminate the Contract if the Contractor is in fundamental breach of the Contract.

59.2. Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor abandons the Works or otherwise plainly demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;
- (b) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (c) the Project Manager instructs the Contractor to suspend work and the instruction is not withdrawn within 30 days;
- (d) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (e) The Contractor fails to employ the personnel and Equipment proposed in the Contractor's Bid,
- (f) 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 payment certificate;
- (g) 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;
- (h) the Contractor does not maintain a security required under the Contract such as the Advance Payment Guarantee and the Performance Security;
- (i) the Contractor subcontracts any or whole of the Works without the

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approval of the Employer;

- (j) 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 SCC;
- (k) in case of a joint venture, any or all parties fail to fulfill the contractual obligations;
- (l) the Contractor fails to execute the Contract in accordance with the Contract, such failure being defined in SCC;
- (m) refuses or is unable to execute and complete the Works and Services in the manner specified in the program furnished under GC Clause 27 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain completion of the works and services by the Time for Completion as extended; and/or
- (n) without reasonable excuse, the Contractor fails to perform its obligations and/or to proceed with the Works with due diligence and expedition.

For fundamental breaches of contract by the Contractor, the Employer shall give notice of a breach of contract for causes listed under GCC Sub-Clause 59.2 above, requiring the Contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fifteen (15) days of its receipt of such notice, then the Employer may terminate the Contractor's employment forthwith by giving a notice of termination to the Contractor that refers to this GCC Sub-Clause 59.2.

For fundamental breaches of contract by the Employer, the Contractor shall give a notice to the Employer thereof to remedy the breach within thirty (30) days of such notice and if the Employer is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within thirty (30) days of the said notice, the Contractor may by a further notice to the Employer referring to this GCC Sub-Clause 59.2, forthwith terminate the Contractor's employment.

59.3. 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 Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.

59.4. Notwithstanding the above, the Employer may terminate the Contractor's employment for convenience upon giving the Contractor 30 days' written notice.

59.5. If the Contractor's employment is terminated, the Contractor shall:

- (a) comply immediately with any reasonable instructions included in a notice given by the Employer under this Clause:
 - (i) for the assignment of any subcontract; and
 - (ii) for the protection of life or property or for the safety of the Works;
- (b) deliver to the Employer:
 - (i) any Plant, Materials or goods required by the Employer;

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(ii) all design documents made by or for the Contractor, together with any necessary letter of release to enable the Employer to continue with the design, execution and completion of the Works; and

(c) make the Site safe and secure; and

(d) leave the Site and, if the Contractor does not do so, the Employer shall have the right to expel the Contractor from the Site.

59.6. In the event that the Contractor's employment has been terminated by the Employer for the Contractor's fundamental breach, the Employer may complete the Works and/or arrange for any other entities to do so.

(a) The Employer and/or these entities may use any Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, and unfixed Materials left upon the Site, as well as design documents made by or on behalf of the Contractor, to complete the Works.

(b) Further the Employer shall have a lien over all of the said Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods and unfixed Materials and may sell any of the same and apply the proceeds of sale in or towards the satisfaction of any sums due or becoming due to the Employer from the Contractor under the Contract.

59.7. After such completion of the Works, the Employer shall give notice to the Contractor that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall then promptly arrange for their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold (to the extent permitted by applicable laws) by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

60. Corrupt or Fraudulent Practices

60.1. If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of GCC Sub-Clause 60.4 to 60.8 shall apply.

Section VI. General Conditions of Contract (GCC)

60.2. Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with GCC Sub-Clause 10.2

60.3. For the purposes of this Sub-Clause:

- (a) “corrupt practice”⁵⁰ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value⁵¹ to influence improperly the actions of another party;
- (b) “fraudulent practice”⁵² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

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- (c) “collusive practice”⁵³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (d) “coercive practice”⁵⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (e) “obstructive practice” is
 - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order materially to impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (ii) acts intended materially to impede the exercise of the inspection and audit rights of the Employer and/or any other relevant RGoB agency provided for under GCC Clause 23.

60.4. will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

60.5. will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded an RGoB-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an RGoB-financed contract;

60.6. Will have the right to require that a provision be included in Bidding Documents and in contracts financed by the RGoB, requiring Bidders, Suppliers, Contractors and their Subcontractors to permit the Purchaser, any organization or person appointed by the Purchaser and/or any relevant RGoB agency to inspect their accounts and records and other documents relating to their Bid submission and contract performance and to have them audited by auditors appointed by the Purchaser;

60.7. Requires that Bidders, as a condition of admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in the Bidding Documents which shall also be signed by procuring agencies; and

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60.8. Will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to the relevant RGoB agencies, including but not limited to the Anti-Corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

61. Payment upon Termination

61.1. 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 work not completed, as indicated in the SCC. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor to the Employer.

61.2. 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.

62. Construction Equipment, Temporary Works, Materials and Goods

62.1. All construction Equipment, Temporary Works, Plant, Materials and goods owned by the Contractor, or by any company in which the Contractor has a controlling interest, shall, when on the Site, be deemed to be the property of the Employer.

PROVIDED always that the vesting of such property in the Employer shall not prejudice the right of the Contractor to the sole use of the said construction Equipment, Temporary Works, Plant, Materials and goods for the purpose of the Works nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.

62.2. Upon the removal, with the consent of the Employer, of any such construction Equipment, Temporary Works, or unfixed Materials or goods as have been deemed to have become the property of the Employer under GCC Sub-Clause 62.1, the property therein shall be deemed to revert in the Contractor (except where risk and property have passed to the Employer under Clause 62.5) and further, upon completion of the Works and the making good of all Defects, the property in the remainder of such construction Equipment, Temporary Works and unfixed materials shall, subject to Clause 59, be deemed to revert in the Contractor.

62.3. The Employer shall not at any time be liable for loss or damage to any of the said construction Equipment, Temporary Works, Plant, Materials or goods nor for any loss, expense, costs, damages, liability or claim arising from the presence or use of the said construction equipment, Temporary Works, Plant, Materials or goods.

62.4. With a view to securing, in the event of termination under Clause 9, the

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continued availability, for the purpose of executing the Works, of any hired construction Equipment, the Contractor shall not (and shall ensure the relevant Subcontractors do not) bring on to the Site any hired construction equipment

UNLESS there is an agreement for the hire of such construction Equipment which contains a provision that the owner of such construction Equipment will, on request in writing made by the Employer within 7 days after the date on which the termination has become effective, and on the Employer undertaking to pay all hire charges in respect of such construction Equipment from such date, hire such construction Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor, save that the Employer shall be entitled to permit the use of such construction Equipment by any other contractor employed by the Employer for the purpose of executing and completing the Works and remedying any Defects therein.

- 62.5. Each item of Plant, goods and Materials supplied and delivered by the Contractor under the Contract shall, to the extent consistent with applicable laws, become the property of the Employer when the Contractor is paid the full value of such Plant, goods or Materials in accordance with the Contract.
- 62.6. The risk in the Plant, goods and Materials, whether against loss, damage or any other matter, shall transfer to the Employer at the time mentioned in GCC Sub-Clause 62.5 and the Contractor shall be responsible for ensuring that the terms of its subcontracts with its Subcontractors permit risk to be transferred in the manner set out in GCC Sub-Clauses 62.5 – 62.7.
- 62.7. For the purposes of GCC Sub-Clause 62.5, the full value of Plant, Goods and Materials shall be deemed to have been paid when claimed for by the Contractor in a monthly statement under GCC Sub-Clause 43.1, whether or not the relevant Plant, goods or Materials have been specifically itemised in the monthly statement.
- 62.8. The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this GCC Clause 62 in relation to the construction Equipment, Temporary Works, Plant, Materials or goods brought on to the Site by the Subcontractor.

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SECTION VII. SPECIAL CONDITIONS OF CONTRACT

Except where otherwise indicated, all SCC should be filled in by the Employer prior to issuance of the Bidding Documents. Schedules and reports to be provided by the Employer should be annexed.

A. General	
GCC 1.1 (o)	The Project Secretariat (DES, MoWHS) for Construction of fully self-contained permanent Quarantine Centers.
GCC 1.1 (r)	The Intended Completion Date for the whole of the Works shall be Eight (8) months from the date of award of the contract.
GCC 1.1 (v)	The Project Manager is Chief Engineer Engineering Service Division, Department of Engineering Services, MoWHS, Thimphu.
GCC 1.1 (y)	The Site is located at Amochhu, Phuentsholing.
GCC 1.1 (bb)	The Start Date shall be as specified in the Contract Agreement or Letter of Acceptance.
GCC 1.1 (ff)	The Works consist of: Refer Scope of Works reflected in Term of Reference (ToR)
GCC 2.2	Sectional Completions are: Not Applicable
GCC 2.3 (9)	The following documents also form part of the Contract: <i>Schedule of Other Contractors (GCC 9) Schedule of Key Personnel (GCC 10) Site Investigation Reports (GCC 11) Schedule of Operating and Maintenance Manuals (GCC 57) Milestone Contract Work plan QCAP Installation, Operation and Maintenance Manuals</i>
GCC 3.1	The language of the contract is English. The law that applies to the Contract is the law of the Kingdom of Bhutan.
GCC 6.1	Chief Engineer Engineering Service Division, Department of Engineering Services, MoWHS, Thimphu. Email: dnorbu@mowhs.gov.bt or tdrukpa@mowhs.gov.bt
GCC 9.1	Schedule of other contractors: Applicable wherever required.

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GCC 10.1	The Key Personnel required for the timely and quality execution of the work to be made available for the contract by the successful bidder shall be:			
Tier	Position	Qualification & Experience	Score	
Tier I	Project Manager (1 number)	Bachelor Degree with more than five (>5) years of professional experience in construction/project management	40	
		Bachelor Degree with three to five (3 to 5) years of professional experience in construction/project management	30	
		Bachelor Degree with two to three (2 to 3) years of professional experience in construction/project management	15	
		Bachelor Degree with less than two (<2) years of professional experience in construction/project management	0	
Tier II	Structural/ Project Engineer (1 number)	Master's Degree in civil engineering (structures) with more than five (>5) years of professional experience in structural design of similar projects	30	
		Master's Degree in civil engineering (structures) with three to five (3 to 5) years of professional experience in structural design of similar projects	10	
		Master's Degree in civil engineering (structures) with two to three (2 to 3) years of professional experience in structural design of similar projects	5	
		Master's Degree in civil engineering (structures) with less than two (<2) years of professional experience in structural design of similar projects	0	
Tier III	Site Engineer (2 numbers)	Bachelor's Degree in Civil Engineering from a recognized University with more than two (>2) years of professional experience in similar construction projects. OR Diploma in Civil Engineering from a reputed institution with more than five (>5) years of professional experience in similar construction projects.	10	
		Bachelor's Degree in Civil Engineering from a recognized University with less than two (<2) years of professional experience. OR Diploma in Civil Engineering from a reputed institution with less than five (<5) years of professional experience.	0	
Tier III	Electrical Engineer (1 number)	Bachelor Degree in Electrical Engineering from a recognized University with more than two (>2) years of professional experience in similar projects. OR Diploma in Electrical Engineering from a reputed institution with more than five (>5) years of professional experience in similar projects.	10	
		Bachelor Degree in Electrical Engineering from a recognized University with more than two (<2) years of professional experience in similar projects. OR Diploma in Electrical Engineering from a reputed institution with more than five (<5) years of professional experience in similar projects.	0	
Tier IV	Fresh Graduate Civil Engineer (1 number)	Fresh civil engineer graduate trained and certified in CMS, OHS, e-GP & CDB refresher courses	10	
		Fresh civil engineer graduate not trained and certified in CMS, OHS, e-GP & CDB refresher courses	0	
Total			100	

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The amount to be deducted for the key personnel not employed by the consortium for each personnel per month is as follows:

Sl. No.	Tier	Key personnel	Amount (Nu.)
1	I	Project Manager	50,000.00
2	II	Structural Engineer	45,000.00
		Site Engineer (each)	30,000.00
3	III	Electrical Engineer (each)	30,000.00
4	IV	Fresh Graduate Civil Engineer	30,000.00

Access to Equipment: The essential equipment to be made available for contract by the successful Bidders shall be:

Tier	Sl No.	Equipment	Number Required	Max. Marks
Tier I	1	Service Crane (3 ton to 5 tons capacity)	1.0	10.00
	2	Mobile concrete batching plant (10 to 50 m ³ /hr)	1.0	10.00
	3	Portable concrete pumps (10 to 50 m ³ /hr)	1.0	10.00
	4	Concrete Mixer trucks (5 to 8 m ³)	2.0	10.00
	5	Steel scaffolding system (5000sq.m)	1.0	10.00
Tier II	1	Concrete vibrator	5.0	6.00
	2	Welder machine	2.0	6.00
	3	Tripper/Truck	2.0	6.00
	4	Excavator	1.0	6.00
	5	Backhoe loader	1.0	6.00
Tier III	1	Total station	1.0	5.00
	2	Hand Roller compactor machine	1.0	5.00
	3	Hand held machines	1.0	5.00
	4	Air compressor	1.0	5.00
Total				100.00

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The amount to be deducted for the equipment not available at site for each equipment monthly charge is as follows:			
Tier	Sl. No.	Equipment	Amount (Nu.)
I	1	Service Crane (3 ton to 5 tons capacity)	100,000.00
	2	Mobile concrete batching plant (10 to 50 m ³ /hr)	100,000.00
	3	Portable concrete pumps (10 to 50 m ³ /hr)	50,000.00
	4	Concrete Mixer trucks (5 to 8 m ³)	50,000.00
	5	Steel scaffolding system (2 sets of 5000sq.m)	50,000.00
II	1	Concrete vibrator	30,000.00
	2	Welder machine	25,000.00
	3	Tripper/Truck	50,000.00
	4	Excavator	75,000.00
	5	Backhoe loader	50,000.00
III	1	Total station	15,000.00
	2	Hand Roller compactor machine	30,000 .00
	3	Hand held machines	15,000.00
	4	Air compressor	30,000.00

GCC 14.1	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) Loss of or damage to the Works, Plant and Materials to be built into the works: Determined or issued by Insurance Company in Bhutan.</p> <p>(b) Insurance against natural calamities like but not limited to fire, cyclone, flood shall be provided.</p>
GCC 15.1	<p>Queries:</p> <p>Chief Engineer, Engineering Service Division Department of Engineering Services MoWHS, Thimphu.</p>
GCC 16.1	<p>The Contractor shall construct and install the Works in accordance with the Specifications and Drawings and;</p> <p>The Contractor shall warrant that its designers have the experience and capability necessary for the design. The Contractor shall undertake that the designers will be available to attend discussions with the Employer’s representative at all reasonable times.</p>

Section VI. General Conditions of Contract (GCC)

GCC 19.2	The Consortium shall be responsible for the adequacy, stability and safety of all site operations, of all the method of construction and of all the works during both the design-build period and service period.
GCC 21.1	The Site Possession Date(s) shall be: Within five (5) days from the issuance of Work order and location is at Amochu, Phuentsholing.
GCC 21.2	The information board shall be 2.0m x 1.5m with 3 mm thick steel plate board fixed to MS angle frame/post of size 45x45x5mm erected on firm stand/support. The following details on the board shall be clearly written with the yellow paints in letters and background of the board shall be red. (i) Name of Work: (ii) Start and Completion Date: (iii) Value of Work: (iv) Name of Contractor: (v) Name of Employer: (vi) Name of Employer Engineer: (vii) Name of Contractor Engineer:
GCC 25.1 & 25.2	The appointment of Adjudicator: shall not apply.
GCC 25.3	Fees and types of reimbursable expenses to be paid to the Adjudicator: Not Applicable
GCC 25.4	The disputes arising from the implementation of this Contract shall be resolved as follows: 1. The parties shall attempt to resolve any disputes arising from the implementation of the provisions of the Contract amicably. 2. If the parties fail to resolve the disputes amicably, it shall be resolved through: a) Arbitration, as per the Bhutan Alternative Dispute Resolution Act, only if agreed by both the parties. OR b) Royal Court of Justice.
GCC 26.1	Appointing Authority for the Adjudicator: Not Applicable
B. Time Control	

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GCC 27.1	<p>The Contractor shall submit for approval a Resource based Program for the Works as per the Term of Reference (ToR).</p> <p>The Program shall include, but not be limited to, the following elements under the conditions stipulated:</p> <p>(a)Quality Control and Assurance Plan (QAP)</p> <p>The Quality Assurance Plan shall specify the work methodology, quality control tests and intervals for such tests in accordance with the work specifications for each item of the Works. If in the opinion of the Project Manager the QAP submitted by the Contractor does not fully represent the spirit of the General Conditions of Contract or the Specifications, he may seek further clarification from the Contractor before his approval. The Contractor shall strictly follow the QAP in the execution of the Works. If the Contractor does not comply with the QAP, he shall not be allowed to proceed further with the Works. Details of all procedures and compliance documents shall be submitted to the Project Manager for information before each execution stage is commenced. Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the contract.</p>
GCC 27.3	<p>The period between Program updates is Fortnightly.</p> <p>The amount to be withheld for late submission of an updated Program is: 2% of the next RA bill.</p>
C. Quality Control	
GCC 36.1	<p>The Defects Liability Period is: Twenty-four (24) months from the date of handing taking over of the works.</p>
D. Cost Control	
GCC 45.1 (h)	<p>Other EOT Events are: None.</p>
GCC 46.1	<p>In case of certain Tax exemptions, such as in foreign assistance projects, this specific exemption(s) should be clearly specified in this clause: Not Applicable.</p>
GCC 48.1	<p>The Contract is not subject to price adjustment in accordance with GCC Clause 48.</p>
GCC 49.1	<p>The proportion of payments retained is: 10% (Ten Percent) from each bill payments.</p>
GCC 50.1	<p>The liquidated damages for the whole of the Works are 0.10 % (percentage) of the Initial Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is 10% (percentage) of the Initial Contract Price.</p>
GCC 51.1	<p>The Advance Payment shall be 10% (Applicable for civil works only) of the civil works component of the Contract Price and shall be paid to the Contractor no later than 30 days after receipt by the Employer of an unconditional Advance Payment Guarantee.</p>
GCC 51.2	<p>Payment schedule reflected in Terms of Reference (TOR)</p>

Section VI. General Conditions of Contract (GCC)

<p>GCC 52.1</p>	<p>The Performance Security amount shall be ten percent (10%) of the Contract Price, in the form of;</p> <ul style="list-style-type: none"> a. Unconditional Bank Guarantee issued by a reputed Financial Institution in Bhutan and acceptable to the procuring agency in the form provided in the bidding document; b. Bankers Cheque/Cash Warrant; c. Demand Draft Account Payee. <p>The Performance Security shall be valid until a date 30 days from the date of issue of the Certificate of Completion.</p>
<p>D. Finishing the Contract</p>	
<p>GCC 55.3</p>	<p>The permanent information board shall be installed as per the instruction of the Employer as per the approved design and drawing (<i>insert appropriate size of the board</i>) and of (<i>specify a durable material example marble, concrete, wood</i>) with following details:</p> <ul style="list-style-type: none"> (i) Name of Work: (ii) Completion Year: (iii) Constructed by: (iv) Name of Employer:
<p>GCC 58.1</p>	<p>The date by which operating and maintenance manuals are required is: Applicable. The date by which “as built” drawings are required is within 15 days after the completion of the project.</p>
<p>GCC 58.2</p>	<p>The amount to be withheld for failing to produce “as built” drawings by the date required in GCC Sub-Clause 58.1, or failing to obtain the Project Manager’s approval of them by the said date, is: Nu. 1.0 million</p>
<p>GCC 59.2 (i)</p>	<p>The maximum number of Liquidated Damage days is: 100 days</p>
<p>GCC 59.2 (k)</p>	<p>Failure to execute two successive milestones as per milestone contract shall lead to termination of the contract at the discretion of the client.</p>
<p>GCC 61.1</p>	<p>The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works is 20% up to a maximum of 10% of the Initial Contract Price.</p>
<p>Supplementary or additional clauses to the Special conditions of contract</p>	
<p>1</p>	<p>The Contractor shall be responsible for parking, loading, transporting, receiving, unloading, storing and protecting all goods and other things required for the works. The establishment/maintenance of site office, labour camps at sites to be the responsibility of the Contractor. The Contractor shall insure the materials and works as deemed necessary by the client.</p>
<p>2</p>	<p>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 transportation of goods.</p>
<p>3</p>	<p>The Contractor shall conduct necessary tests as per the Specifications and submit all test results duly checked and verified by Project Manager. The RA bills will not be verified and paid without the necessary test results as may be deemed necessary by the client. All essential signs and signals shall be installed by the contractor as per technical specification or as directed by the Client.</p>

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4	<p>The Contractor shall design, execute and complete the Works and provide maintenance service for two (2) years and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the works are intended as defined in the contract data, technical specifications and performance requirements.</p>
5	<p>Limitation for claims;</p> <p>Any dispute or claim, except as provided under Section 220 of the Contract Act, arising out of or in connection with this Contract shall be raised no later by the end of the Defects Liability Period (DLP). Any dispute or claim brought after the expiry of the DLP shall waive the rights of the party thereto, or discharge any parties thereto, from any liability under or in respect of the Contract.</p> <p>Contract closure</p> <p>The contract shall come to an end by the end of DLP. The parties are released from the further performance and discharged from any liabilities or claims thereafter.</p>

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**SECTION VIII SPECIFICATIONS AND PERFORMANCE
REQUIREMENTS (TERMS OF REFERENCE ATTACHED)**

SECTION IX. LIST OF DRAWINGS and others

- 1. Architectural drawings**
- 2. Terms of Reference (ToR)**
- 3. Standard Request for Proposal (SRFP).**
- 4. Finishing Schedule**
- 5. Bill of Quantities (BoQ) for PEB and ancillary civil works.**
- 6. List of preferable brands of materials for the project.**

SECTION X. CONTRACT FORMS

Notes on Forms of Securities

*This Section contains forms which, once completed, will form part of the Contract. The forms for **Performance Security and Advance Payment Security**, when required, shall only be completed by the successful Bidder after Contract award.*

TABLE OF FORMS

- 1. Letter of Acceptance 113**
- 2. Contract Agreement 114**
- 3. Performance Demand Bank Guarantee..... 115**
- 4. Bank Guarantee for Advance Payment 116**
- 5. Retention Money Security Demand Guarantee 117**

Letter of Acceptance

[Letterhead paper of the Employer]

Notes on Standard Form of Letter of Acceptance

The Letter of Acceptance shall be the basis for formation of the Contract as described in ITB Clauses 37 of the Instructions to Bidders. This Standard Form of Letter of Acceptance shall be filled in and sent to the successful Bidder only after evaluation of Bids has been completed.

[Insert date]

To: *[name and address of the Contractor]*

We refer to your Bid dated *[insert date]* for the execution and completion of the scope of work set out in the *[insert name of the Contract and identification number, as given in the SCC]* and the remedying of defects therein in accordance with the terms and conditions contained in the IFB / Contract.

We are pleased to notify you that *[name]*, the Employer, hereby accepts your Bid for the Contract Price of the equivalent⁵⁵ of *[insert amount in numbers and words] [insert name of currency]*, as corrected and modified⁵⁶ in accordance with the Instructions to Bidders.

In consideration of you properly and truly performing the IFB/Contract, we agree to pay you the above amount and/or such other sums to which you may become entitled under the terms of the IFB/Contract, at such times set out in and in accordance with the IFB/Contract.

[Insert one of the following (x) or (y) options if applicable]

- (x) We accept that *[insert name proposed by Bidder]* be appointed as the Adjudicator.⁵⁷
- (y) We do not accept that *[insert name proposed by Bidder]* be appointed as Adjudicator, and by sending a copy of this Letter of Acceptance to *[insert name of the Appointing Authority]* we are hereby requesting *[insert name]*, the Appointing Authority, to appoint the Adjudicator in accordance with ITB Clause 41.⁵⁸

The Contract in duplicate is attached hereto. You are hereby instructed to:

- (a) confirm your acceptance of this Letter of Acceptance by signing and dating both copies of it, and returning one copy to us no later than 15 days from the date hereof;
- (b) proceed with the execution of the said Works in accordance with the Contract;
- (c) sign and date both copies of the attached Contract and return one copy to us within 15 days of the date hereof; and
- (d) forward the Performance Security pursuant to ITB Sub-Clause 39.1, i.e., within 15 days after receipt of this Letter of Acceptance, and pursuant to GCC Sub-Clause 52.1

Authorized Signature:

Name and Title of Signatory:

Name of Employer:

Attachment: Contract

Section X. Contract Forms

We, _____ [*insert the name of the Contractor*], acknowledge that this Letter of Acceptance creates a binding contract between us, and we undertake to fulfil all our obligations and duties in accordance with the terms of the IFB / Contract.

Authorized Signature:

Name and Title of Signatory:

Name of Contractor:

55 Delete “of the equivalent” if the Contract Price is expressed wholly in one currency.

56 Delete “corrected and”, or “and modified” or “as corrected and modified” as applicable. See Notes on Standard Form of Contract, next page.

57 To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the Instructions to Bidders, and has accordingly offered another candidate who is acceptable to the Employer.

58 To be used only if the Contractor disagrees in the Bid with the Adjudicator proposed by the Employer in the ITB, has accordingly offered another candidate, and the Employer does not accept the counterproposal.

Contract Agreement

Notes on Standard Form of Contract Agreement

The Contract Agreement should incorporate any corrections or modifications to the Bid resulting from corrections of errors (ITB Clause 27), price adjustment during the evaluation process (ITB Sub-Clause 15.3), selection of an alternative offer (ITB Clause 16), acceptable deviations (ITB Clause 26), or any other mutually-agreeable changes allowed for in the Special Conditions of Contract, such as changes in key personnel, subcontractors, scheduling, and the like.

This Contract is made the *[insert day]* day of *[insert month]*, *[insert year]*

BETWEEN

- (1) *[insert name and address of Employer]* (hereinafter called “**the Employer**”, which expression shall include its legal representatives, successors in title and assigns); and
- (2) *[insert name and address of Contractor]* (hereinafter called “**the Contractor**”, which expression shall include its legal representatives, successors in title and assigns) of the other part.

(each a “**Party**” or collectively the “**Parties**”). **WHEREAS**

- (A) The Employer is desirous that the Contractor execute *[name and identification number of Contract]* (hereinafter called “**the Works**”), as set out in the Contract Documents, and issued an Invitation for Bids dated XXXX calling for interested bidders to submit offers for the execution of the said works.
- (B) The Contractor has submitted a Bid dated XXXX in the sum of amount.....*[insert the contract price in figure and words, expressed in the currency agreed between the Parties]* for the execution and completion of the said Works (including the remedying of any defects therein) to the Employer.
- (C) The Employer has accepted the Bid by the Contractor by issuing a Letter of Acceptance for the execution and completion of such Works and the remedying of any defects therein, pending the negotiation of a formal contract agreement.
- (D) The Parties have now agreed that the said works shall be carried out under and in accordance with the terms and conditions set forth in this Contract and the contract documents referenced therein.

NOW THEREFORE, the Employer and the Contractor agree as follows:

- 1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract hereinafter referred to, and they shall be deemed to form and be read and construed as part of this Contract.
- 2. The following documents shall constitute the “**Contract**” between the Employer and the Contractor:
 - a. *[placeholder for list of documents.]*
- 3. In consideration of the payments to be made by the Employer to the Contractor under this Contract, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any 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.

IN WITNESS WHEREOF, the parties thereto have caused this Contract to be executed the day and year

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first before written.

The Common Seal of *[Witness entity]* _____

was hereunto affixed in the presence of:

Signed, Sealed, and Delivered by the said _ in

the presence of:

Binding Signature of Employer *[signature of an authorized representative of the Employer]*

Binding Signature of Contractor *[signature of an authorized representative of the Contractor]*

Performance Demand Bank Guarantee

(Unconditional)

[The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets.]

[bank's name, and address of issuing branch or office]

Beneficiary: *[name and address of Employer]*

Date: *[date]*

PERFORMANCE GUARANTEE No.: *[Performance Guarantee number]*

We have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the Contract]* dated *[date of Contract]* with you, for the execution of *[name of Contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, 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])*,⁵⁹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without you needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire no later than 30 days from the date of issuance of the Certificate of Completion, calculated based on a copy of such Certificate which shall be provided to us, or on the *[number]* day of *[month]*, *[year]*,⁶⁰ whichever occurs first. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date. The Guarantor agrees to a one-time extension of this Guarantee for a period not to exceed *[6 months] [1 year]*, in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the Guarantee.

[signature(s) of an authorized representative(s) of the bank]

⁵⁹ The Guarantor (bank) shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

⁶⁰ Insert the date 30 days after the expected Completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this Guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the Guarantee.

Bank Guarantee for Advance Payment

*The **bank/successful Bidder** providing the Guarantee shall fill in this form in accordance with the instructions indicated in brackets.*

[bank's name, and address of issuing branch or office]

Beneficiary: *[name and address of Employer]* **Date:**

[date]

ADVANCE PAYMENT GUARANTEE No.: *[number]*

7. We, *[insert legal name and address of bank]*, have been informed that *[name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. *[reference number of the contract]* dated *[date of Contract]* with you, for the execution of *[name of contract and brief description of Works]* (hereinafter called "the Contract").
8. Furthermore, we understand that, according to the conditions of the Contract, an advance payment is to be made against an advance payment guarantee in the sum or sums indicated below.
9. At the request of the Contractor and in consideration of you, the Employer, agreeing to make the advance payment to the Contractor under the Contract, we *[name of Bank]* hereby irrevocably and unconditionally undertake, covenant and bind ourselves to pay you any sum or sums which may from time to time be demanded by you up to the maximum aggregate amount of *[amount in figures]* (*[amount in words]*)⁶¹; the "Sum" immediately upon receipt by us of your first and all subsequent demands in writing declaring that the Contractor is in breach of its obligation under the Contract without proof of actual default on the part of the Contractor and without any need to satisfy any other condition. Such demand(s) shall be conclusive evidence of our liability and of the amount of the sum or sums which we are liable to pay you.
10. We shall not be discharged or released from this Advance Payment Guarantee by any arrangement between you and the Contractor with or without our consent or by any other or further arrangement between the Contractor and us with or without your consent, or by any alteration in the obligations undertaken or to be undertaken by the Contractor or by any waiver, compromise, indulgence or forbearance on your part whether as to payment, time, performance or otherwise. We further agree that no invalidity in the Contract nor its avoidance, suspension or termination shall discharge, affect or impair our liability hereunder.
11. Our liability under this Advance Payment Guarantee shall continue and this Advance Payment Guarantee shall remain valid and in full effect from *[date]* until *[insert date]*, provided always that the expiry date of this Advance Payment Guarantee and our liability thereunder shall be automatically extended for successive periods of 180 days unless we give you 90 days' prior written notice prior to the expiry of our liability of our intention not to extend this Advance Payment Guarantee in respect of any future extension and provided further that you shall be entitled, upon receiving such notice of our intention (and within the period specified in this Clause 5), to:
 - a. make a demand under this Advance Payment Guarantee; or
 - b. direct us to pay such amount (not exceeding the Sum) as you may specify into a suspense account to be governed and disbursed by us; or

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- c. direct us to extend the validity of this Advance Payment Guarantee for a further period not exceeding 180 days.
12. Your demand of the whole or part of the Sum made by you by way of a notice in writing addressed to us and sent to [*bank to insert service address*] or at such other address as may be notified by us in writing to you, made at any time on or before the expiry of ninety (90) calendar days after the expiry of the Advance Payment Guarantee, we shall immediately, and in any event within thirty (30) business days of such demand having been sent to us, pay the sum demanded by you notwithstanding the existence of any disputes or differences which may have arisen in relation to the Contract or any amount payable under the Contract or any differences which the Contractor may have or any request or instruction which may have been given to us by the Contractor not to pay the same, or any objection made by the Contractor or any other person.
13. We shall not be obliged to and shall not inquire into the reasons, grounds or circumstances of any demand made under the Advance Payment Guarantee by you nor into the respective rights, obligations and/or liabilities between you and the Contractor under the Contract. We shall be entitled to rely upon your written demand as final and conclusive.
14. We accept that you shall not be obliged to exercise any other right or remedy which you may have, including taking legal action against the Contractor, before making any call or demand on this Advance Payment Guarantee. We confirm and agree that except only in a clear case of fraud, we shall not be entitled to or apply to enjoin or restrain you from making any call or demand on this Advance Payment Guarantee or receiving any monies under this Advance Payment Guarantee on any other ground, including but not limited to the ground of unconscionability.
15. You may make more than one demand under this Advance Payment Guarantee so long as the demands are made in the manner set out in Clause 6 hereof and within the period specified therein and the aggregate amount specified in all such demands does not exceed the Sum.
16. This Advance Payment Guarantee is governed by the laws of the Kingdom of Bhutan and for this purpose, we irrevocably submit to the exclusive jurisdiction of the Bhutanese courts.

[insert signature(s) of authorized representative(s) of bank]

61 The Guarantor shall insert an amount representing the amount of the Advance Payment and denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.

62 Insert the expected expiration date of the Time For Completion. The Employer should note that in the event of an extension of the Time For Completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

**Retention Money Security
Demand Guarantee**

[bank's name and address of issuing branch or office]

Beneficiary: *[Insert name and Address of Employer]*

Date: _____ *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

We have been informed that _____ *[insert name of Contractor]* (hereinafter called "the Contractor") has entered into Contract No. _____ *[insert reference number of the*

contract] dated _____ with the Beneficiary, for the execution of

[insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if contract duration is beyond 12 months the amount on completion of 50% of the value of the contract and duly certified by the Project Manager]* is to be made against a Retention Money guarantee.

the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security] is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert amount in*

figures] (_____) *[amount in words]*⁶³ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number _____ at _____ *[insert name and address of Applicant's bank]*.

⁶³ The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

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This guarantee shall expire no later than the Day of, 2...⁶⁴, and any demand for payment under it must be received by us at the office indicated above on or before that date.

[signature(s)]

⁶⁴ Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”