

Section 3. General Conditions of Contract

A. General

1. Definitions

1.1 In the Conditions of Contract, which include Particular Conditions and these General Conditions, the following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined terms:

- (a) **Approving Authority** means the authority which, in accordance with the Delegation of Financial powers, approves the award of Contract for the Procurement of Goods, Works and Services.
- (b) **Act means** The Public Procurement Act, 2006 (Act 24 of 2006).
- (c) **Adjudicator** is the expert appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Sub Clause 100.2.
- (d) **Bill of Quantities (BOQ)** means the priced and completed Bill of Quantities forming part of the Contract defined in GCC Clause 63.
- (e) **Compensation Events** are those defined in GCC Clause 72.
- (f) **Competent Authority** means the authority that gives decision on specific issues as per delegation of administrative and/or financial powers.
- (g) **Completion Certificate** means the Certificate issued by the Engineer as evidence that the Contractor has executed the Works and Physical services in all respects as per design, drawing, specifications and Conditions of Contract.
- (h) **Completion Date** is the actual date of completion of the Works and Physical services certified by the Engineer, in accordance with GCC Clause 83.
- (i) **Contract** means the Contract Agreement, the Notification of Award, Tender Submission Letter, these Conditions, the Specification, the Drawings, the Schedules, the Priced Bill of Quantities, and the further Documents (if any) which are listed in the Contract Agreement or in the Notification of Award.
- (j) **Contract Agreement** means the Agreement entered into between the Employer and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein to execute, complete, and maintain the Works.
- (k) **Contract Documents** means the documents listed in GCC Clause 6, including any amendments thereto.
- (l) **Contractor** means the Person under contract with the



Employer for the execution of Works under the Rules and the Act as stated in the PCC.

- (m) **Contract Price** is the price stated in the Notification of Award (**FormPW7-7**) and as specified in the GCC Sub Clause 62.1 and, thereafter as adjusted in accordance with the provisions of the Contract.
- (n) **Contractor's Tender** is the completed Tender Document including the priced Bill of Quantities and the Schedules submitted by the Contractor to the Employer.
- (o) **Cost** means all expenditures reasonably incurred or to be incurred by the Contractor, whether on or off the Site, including overhead, profit, taxes, duties, fees, and such other similar levies.
- (p) **Day** means calendar day unless otherwise specified as working days.
- (q) **Dayworks** means work carried out following the instructions of the Employer or the authorised Engineer and is paid for on the basis of time spent by the Contractor's workers and equipment at the rates specified in the Schedules, in addition to payments for associated Materials and Plant.
- (r) **Defect** is any part of the Works not completed in accordance with the Contract.
- (s) **Defects Correction Certificate** is the certificate issued by the Engineer upon correction of defects by the Contractor.
- (t) **Defects Liability Period** is the period specified in the PCC and calculated from the Completion Date.
- (u) **Drawings** include calculations and other information provided in Section 9 or as approved by the Engineer for the execution and completion of the Contract.
- (v) **Employer (Procuring Entity)** means a Employer having administrative and financial powers to undertake procurement of Works and Physical services using public funds and is as named in the PCC who employs the Contractor to carry out the Works.
- (w) **Engineer** is the person named in the PCC or any other competent person appointed by the Employer and notified to the Contractor who is responsible for supervising the execution and completion of the Works and Physical services and administering the Contract.
- (x) **Equipment** is the Contractor's apparatus, machinery, vehicles and other things required for the execution and completion of the Works and remedying any defects excluding Temporary Works and the Employer's Equipment (if any), Plant, Materials and any other things to form or forming part of the Permanent Works.
- (y) **Force Majeure** means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origins not due to negligence or lack



of care on the part of the Contractor; such events may include, but not be limited to, acts of the Government in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes or more as included in GCC Clause 88.;

- (z) **GCC** means the General Conditions of Contract.
- (aa) **Government** means the Government of the People's Republic of Bangladesh.
- (bb) **Goods** mean the Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- (cc) **"Head of the Procuring Entity"** means the Secretary of a Ministry or a Division, the Head of a Government Department or Directorate; or the Chief Executive, by whatever designation called, of a local Government agency, an autonomous or semi-autonomous body or a corporation, or a corporate body established under the Companies Act;
- (dd) **Intended Completion Date** is the date calculated from the Commencement Date as specified in the PCC, on which it is intended that the Contractor shall complete the Works and Physical services as specified in the Contract and may be revised only by the Engineer by issuing an extension of time or an acceleration order.
- (ee) **Materials** means things of all kinds other than Plant intended to form or forming part of the Permanent Works, including the supply-only materials, if any, to be supplied by the Contractor under the Contract.
- (ff) **Month** means calendar month.
- (gg) **Original Contract Price** is the Contract Price stated in the Employer's Notification of Award and further clearly determined in the PCC.
- (hh) **Permanent works** means the permanent works to be executed by the Contractor under the Contract.
- (ii) **PCC** means the Particular Conditions of Contract.
- (jj) **Plant** means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction of the Works and Physical services.
- (kk) **Provisional Sums means** amounts of money specified by the Employer in the Bill of Quantities which shall be used, at its discretion, for payments to Nominated Subcontractor(s) and for meeting other essential expenditures under the Contract pursuant to GCC Sub Clause 80.
- (ll) **Retention Money** means the accumulated retention moneys which the Employer retains under GCC Clause 75.



- (mm) **Schedules** means the document(s) entitled schedules, completed by the Contractor and submitted with the Tender Submission Letter, as included in the Contract. Such document may include the data, lists and schedules of rates and/or prices.
- (nn) **Site** means the places where the Permanent Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the PCC as forming part of the Site.
- (oo) **Site Investigation Reports** are those that were included in the Tender Document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (pp) **Specification** means the Specification of the Works included in the Contract and any modifications or additions to the specifications made or approved by the Engineer in accordance with the Contract.
- (qq) **Start Date** is the date defined in the PCC and it is the last date when the Contractor shall commence execution of the Works under the Contract.
- (rr) **Subcontractor** means a person or corporate body, who has a contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ss) **Taking-Over** means a certificate issued by the Employer under GCC Clause 84.
- (tt) **Temporary Works** means all temporary works of every kind other than Contractor's Equipment required on the Site for the execution and completion of the Permanent Works and remedying of any defects.
- (uu) **Variation** means any change to the Works directly procured from the original Contractor under some specific conditions and circumstances following approved procedures, which is instructed as a Variation under GCC Clause 65 by the Engineer that varies the Works.
- (vv) **Works** means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance or renovation of railways, roads, highways, or a building, an infrastructure or structure or an installation or any construction work relating to excavation, installation of equipment and materials, decoration, as well as physical services ancillary to works as detailed in the PCC, if the value of those services does not exceed that of the Works themselves.
- (ww) **Writing** means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail.

2. Interpretation

2.1 In interpreting the GCC, singular also means plural, male also means female or neuter, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construance of the



Contract. Words have their normal meaning under the language of the Contract unless specifically defined.

2.2 Entire Agreement

The Contract constitutes the entire agreement between the Employer and the Contractor and supersedes all communications, negotiations and agreements (whether written or verbal) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 6.1(j).

2.3 Non waiver

- (a) Subject to GCC Sub Clause 2.3(b), no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

2.4 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

2.5 Sectional completion

If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

3. Communications and Notices

- 3.1 Communications between Parties such as notice, request or consent required or permitted to be given or made by one party to the other pursuant to the Contract shall be in writing to the addresses specified in the PCC.
- 3.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.
- 3.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address.

4. Governing Law

- 4.1 The Contract shall be governed by and interpreted in accordance with the laws of the People's Republic of Bangladesh.



5. Governing Language

5.1 The Contract shall be written in English. All correspondences and documents relating to the Contract may be written in English. Supporting documents and printed literature that are part of the Contract may be in another language, provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Contract, such translation shall govern.

5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

6. Documents Forming the Contract and Priority of Documents

6.1 The following documents forming the Contract shall be interpreted in the following order of priority:

- (a) the signed Contract Agreement (**Form PW7-8**);
- (b) the Notification of Award (**PW7-7**);
- (c) the completed Tender and the **Appendix to the Tender**;
- (d) the Particular Conditions of Contract;
- (e) the General Conditions of Contract;
- (f) the Technical Specifications;
- (g) the General Specifications;
- (h) the Drawings;
- (i) the priced Bill of Quantities and the Schedules; and
- (j) any other document listed in the PCC forming part of the Contract.

7. Contract Agreement

7.1 The parties shall enter into a Contract Agreement within twenty eight (28) days from the date of issuance of the Notification of Award (NOA). The costs of stamp duties and similar charges, if any, designated by the applicable law in connection with entry into the Contract Agreement, shall be borne by the Employer.

8. Assignment

8.1 Neither the Contractor nor the Employer shall assign, in whole or in part, its obligations under the Contract; except with the Employer's prior written approval.

9. Eligibility

9.1 The Contractor and its Subcontractor(s) shall not have the nationality of a country other than that specified in the PCC.

9.2 All materials, equipment, plant, and supplies used by the Contractor in both permanent and temporary works and services supplied under the Contract shall have their origin in the countries except any specified in the PCC.

10. Gratuities / Agency fees

10.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those included in the Contract, shall be given or received in connection with the procurement process or in the Contract execution.



**11. Confidential
Details**

- 11.1 The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party here to, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Employer to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GCC Clause 11.
- 11.2 The Employer shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the Contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Employer for any purpose other than the design, construction, or other work and services required for the performance of the Contract.
- 11.3 The obligations of a party under GCC Sub Clauses 11.1 and 11.2 above, however, shall not apply to information that: the Employer or Contractor needs to share with institutions participating in the financing of the Contract; now or hereafter enters the public domain through no fault of that party; can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 11.4 The above provisions of GCC Clause 11 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Works or any part thereof.
- 11.5 The provisions of GCC Clause 11 shall survive completion or termination, for whatever reason.

**12. Joint Venture,
Consortium or
Association
(JVCA)**

- 12.1 If the Contractor is a Joint Venture, Consortium, or Association (JVCA.),
- (a) each partner of the JV shall be jointly and severally liable for all liabilities and ethical or legal obligations to the Employer for the performance of the Contract;
 - (b) the JV partners shall nominate a representative who shall have the authority to conduct all business including the receipt of payments for and on behalf of all partners of the JV;
 - (c) in the event of a dispute that results in legal action against all partners of the JV, if they are available and if only one partner is available, then that partner alone shall answer on



behalf of all partners and, if the complaint lodged is proven, the penalty shall be applicable on that lone partner as whatever penalty all the partners would have received.

- (d) the JV shall notify the Employer of its composition and legal status which shall not be altered without the prior approval of the Employer.
- (e) alteration of partners shall only be allowed if any of the partners is found to be incompetent or has any serious difficulties which may impact the overall implementation of the Works, whereby the incoming partner shall require to possess qualifications equal to or higher than that of the outgoing partner.
- (f) if any of the partners of JV has been debarred from participating in any procurement activity due to corrupt, fraudulent, collusive or coercive practices, that JV partner shall be altered following provisions under GCC Sub Clause 12.1 (d) and (e), while in case the Leading Partner has been debarred due to the same reasons stated herein the Contract shall be terminated as stated under GCC Sub Clause 95.1(b).

13. Possession of the Site

- 13.1 The Employer shall give possession of the Site or part(s) of the Site, to the Contractor on the date(s) stated in the PCC. If possession of a part of the Site is not given by the date stated in the PCC, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event as stated under GCC Sub Clause 72.1(a).

14. Access to the Site

- 14.1 The Contractor shall allow the Engineer and any person authorised by the Engineer 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.

15. Employer's Responsibilities

- 15.1 The Employer shall pay the Contractor, in consideration of the satisfactory progress of execution and completion of the Works and Physical services, 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 Agreement.
- 15.2 The Employer shall make its best effort to guide and assist the Contractor in obtaining, if required, any permit, licence, and approvals from local public authorities for the purpose of execution of the Works and Physical services under the Contract.

16. Approval of the Contractor's Temporary Works

- 16.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Engineer, who is to approve them, if they comply with the Specifications and Drawings.
- 16.2 The Contractor shall be responsible for design of Temporary Works.
- 16.3 All Drawings prepared by the Contractor for the execution of the Temporary or Permanent Works, are subject to prior



approval by the Engineer before their use.

16.4 The Engineer's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

16.5 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17. Contractor's Responsibilities

17.1 The Contractor shall execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract Agreement.

18. Taxes and Duties

18.1 The Contractor shall be entirely responsible for all kinds of taxes, duties, fees, levies, and such other charges to be paid under the Applicable Law imposed inside and outside Bangladesh.

19. Contractor's Personnel

19.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the PCC, to carry out the functions stated in the Schedule or other personnel approved by the Engineer.

19.2 The Engineer will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or higher than those of the personnel named in the Schedule.

19.3 If the Engineer asks the Contractor to remove a particular person who is a member of the Contractor's staff or work force from the Site, he or she shall state the reasons, and the Contractor shall ensure that the person leaves the Site within three (3) days and has no further connection with the work in the Contract.

20. Subcontracting

20.1 Subcontracting the whole of the Works by the Contractor shall not be permissible. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his or her agents or employees, as if they were the acts or defaults of the Contractor.

20.2 The Contractor shall not be required to obtain consent from the Engineer, for suppliers solely of Materials or to a subcontract for which the Specialist Subcontractor(s) is already named in the Contract.

20.3 The prior consent, in writing, of the Engineer shall however be obtained for other proposed Subcontractor(s).

21. Nominated Subcontractor

21.1 Nominated Subcontractor named in the Contract shall be entitled to execute the specific components of the Works stated in the PCC.

21.2 The Contractor shall not be under obligations to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars while there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength, or does not accept to indemnify the Contractor against and from any



negligence or misuse of Goods by the nominated Subcontractor, or does not accept to enter into a subcontract which specifies that, for the subcontracted work including design, if any, the Nominated Subcontractor shall undertake to the Contractor such obligations and liabilities as will enable the contractor to discharge his or her liabilities under the Contract.

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| | 21.3 | Subcontracting shall in no event relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract and all Subcontractors shall comply with the provisions of GCC Clause 38. |
| 22. Other Contractors | 22.1 | The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, the Engineer and the Employer between the dates given in the Schedule of other Contractors. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of other Contractors, and shall notify the Contractor of any such modification. |
| 23. Engineer's Decisions | 23.1 | Except where otherwise specifically stated in the PCC, the Engineer will decide Contractual matters between the Employer and the Contractor in its role as representative of the Employer. |
| 24. Delegation | 24.1 | The Engineer may delegate any of his duties and responsibilities to his representative, after notifying the Contractor, and may cancel any delegation, without retroactivity, after notifying the Contractor. |
| | 24.2 | Any communications to the Contractor in accordance with such delegation shall have the same effect as if it was given by the Engineer. |
| 25. Instructions | 25.1 | The Contractor shall carry out all instructions of the Engineer that comply with the applicable law. |
| 26. Queries about the Contract conditions | 26.1 | The Engineer, on behalf of the Employer, will clarify queries on the Conditions of Contract. |
| 27. Safety, Security and Protection of the Environment | 27.1 | <p>The Contractor shall throughout the execution and completion of the Works and the remedying of any defects therein:</p> <ul style="list-style-type: none"> (a) take all reasonable steps to safeguard the health and safety of all workers working on the Site and other persons entitled to be on it, and to keep the Site in an orderly state; (b) provide and maintain at the Contractor's own cost all lights, guards, fencing, warning signs and watching for the protection of the Works or for the safety on-site; and (c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Contractors methods of operation. |



- 28. Working Hours** 28.1 The Contractor shall not perform any work on the Site on the weekly holidays, or during the night or outside the normal working hours, or on any religious or public holiday, without the prior written approval of the Engineer.
- 29. Welfare of Laborers** 29.1 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's personnel relating to their employment, health, safety, welfare, immigration and shall allow them all their legal rights.
- 29.2 The Contractor, in particular, shall provide proper accommodation to his or her labourers and arrange proper water supply, conservancy and sanitation arrangements at the site for all necessary hygienic requirements and for the prevention of epidemics in accordance with relevant regulations, rules and orders of the government.
- 29.3 The Contractor, further in particular, shall pay reasonable wages to his or her labourers, and pay them in time. In the event of delay in payment the Employer may effect payments to the labourers and recover the cost from the Contractor.
- 29.4 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take appropriate protective measures to prevent accidents that could result in injury. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- 30. Child Labor** 30.1 The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development in compliance with the applicable laws and other relevant treaties ratified by the government.
- 31. Fossils** 31.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.



- 31.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Claims under GCC Clause 99 to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GCC Clause 45, and
 - (b) payment of any such cost, which shall be included in the Contract Price.
- 32. Employer's and Contractor's Risks**
- 32.1 The Employer carries the risks that the Contract states are Employer's risks and the Contractor carries the risks that the Contract states are Contractor's risks.
- 33. Employer's Risks**
- 33.1 From the Start Date until the Defects Correction Certificate has been issued, the following are Employer's risks:
- 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.
- the risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 33.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is Employer's risk, except loss or damage due to:
- (a) a Defect which existed on the Completion Date;
 - (b) an event occurring before the Completion Date, which was not itself Employer's risk; or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 34. Contractor's Risks**
- 34.1 From the Start Date until the Defects Correction 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.
- 35. Copyright**
- 35.1 The copyright/IPR in all drawings, documents, and other materials containing data and information furnished to the Employer by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Employer directly or through the Contractor by any third party, including Suppliers of materials, the copyright in such materials shall remain vested in such third party.



- 35.2 The Contractor shall not, except for the purposes of performing the obligations under the Contract, without the written permission of the Employer disclose or make use of any specification, plan, design and drawing, pattern, sample or information furnished by or on behalf of the Employer.

36. Limitation of Liability

- 36.1 Except in cases of criminal negligence or wilful misconduct:
- (a) the Contractor shall not be liable to the Employer, whether in Contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Employer; and
 - (b) the aggregate liability of the Contractor to the Employer, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective Works, or to any obligation of the Contractor to indemnify the Employer with respect to patent infringement.

37. Insurance

- 37.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles specified in the PCC for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death.
- 37.2 The Contractor shall deliver policies and certificates of insurance to the Engineer, for the Engineer's approval, before the Start Date. All such insurances shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 37.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 37.4 Alterations to the terms of insurance shall not be made without the approval of the Engineer.
- 37.5 Both parties shall comply with conditions of the insurance policies.



- (c) **"collusive practice"** means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the Employer, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, non-competitive levels, thereby denying a Employer the benefits of competitive price arising from genuine and open competition; or
- (d) **"coercive practice"** means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in the Procurement proceeding or the execution of the Contract, and this will include creating obstructions in the normal submission process used for Tenders.

39.4 Should any corrupt, fraudulent, collusive or coercive practice of any kind come to the knowledge of the Employer, it will, in the first place, allow the Contractor to provide an explanation and shall, take actions only when a satisfactory explanation is not received. Such decision and the reasons thereof, shall be recorded in the record of the procurement proceedings and promptly communicated to the Contractor. Any communications between the Contractor and the Employer related to matters of alleged fraud or corruption shall be in writing.

39.5 If corrupt, fraudulent, collusive or coercive practices of any kind determined by the Employer against the Contractor alleged to have carried out such practices, the Employer will:

- (a) **exclude the Contractor from further participation in the particular Procurement proceeding; or**
- (b) declare, at its discretion, the Contractor to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.

39.6 The Contractor shall be aware of the provisions on corruption, fraudulence, collusion and coercion in Section 64 of the Public Procurement Act, 2006 and Rule 127 of the Public Procurement Rules, 2008.

B. Time Control

40. Commencement of Works

- 40.1 Except otherwise specified in the PCC, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's instruction recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Contractor:
- (a) signing of the Contract Agreement by both parties upon approval of the by relevant authorities;
 - (b) except if otherwise specified in the PCC, possession of the Site given to the Contractor as required for the commencement of the Works; and



38. Management and Progress Meetings

- 38.1 Either the Engineer or the Contractor may require the other to attend a management and progress meeting. The business of such meeting shall be to review the progress and plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 38.2 The Engineer shall record the business of the meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Engineer either at the management and progress meeting or after the meeting, and stated in writing to all concerned.

39. Corrupt, Fraudulent, Collusive or Coercive Practices

- 39.1 The Government requires that Employer, as well as the Contractor shall observe the highest standard of ethics during the implementation of procurement proceedings and the execution of the Contract under the Contract.
- 39.2 The Government requires that Employer, as well as the Contractor shall, during the Procurement proceedings and the execution of the Contract under public funds, ensure-
- (a) strict compliance with the provisions of Section 64 of the Public Procurement Act, 2006;
 - (b) abiding by the code of ethics as mentioned in the Rule 127 of the Public Procurement Rules, 2008;
 - (c) that neither it, nor any other member of its staff, or any other agents or intermediaries working on its behalf engages in any such practice as detailed in GCC Sub Clause 39.3.
- 39.3 For the purposes of GCC Sub Clause 39.2, the terms set forth below as follows:
- (a) **"corrupt practice"** means offering, giving or promising to give, receiving, or soliciting either directly or indirectly, to any officer or employee of a Employer or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Employer in connection with a Procurement proceeding or Contract execution;
 - (b) **"fraudulent practice"** means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;



- (c) receipt by the Contractor of the Advance Payment under GCC Clause 78 provided that the correspondent Bank Guarantee has been delivered by the Contractor.

40.2 If the Engineer's instruction is not received by the Contractor within one hundred eighty (180) days from the date of signing of the Contract Agreement, the Contractor shall be entitled to terminate the Contract under GCC Sub Clause 93.1.

40.3 The Contractor shall commence the execution of the Works as soon as is reasonably practicable by the Start Date as specified in the GCC Sub Clause 1.1(pp) after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

41. Completion of Works

41.1 The Contractor shall carry out the Works in accordance with the Programme of Works submitted by the Contractor and as updated with the approval of the Engineer as stated under GCC Clause 42 to complete them in all respects by the Intended Completion Date.

42. Programme of Works

42.1 Within the time stated in the PCC, the Contractor shall submit to the Engineer for approval a Programme of Works showing the general methods, arrangements, order, and timing for all the activities in the Works. The programme may be in the form of an Implementation Schedule prepared in any software or other form acceptable to the Engineer.

42.2 The Contractor shall submit to the Engineer for approval of an updated Programme at intervals no longer than the period stated in the PCC. An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

42.3 If the Contractor does not submit an updated Programme of Works at the intervals stated in the PCC, the Engineer may withhold an amount as stated in the PCC from the next payment certificate and continue to withhold this amount until the next due payment after the date on which the overdue Programme of Works has been submitted.

42.4 The Engineer's approval of the Programme of Works shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Engineer again at any time for approval. A revised Programme shall show the effect of Variations and Compensation Events.

43. Pro Rata Progress

43.1 The Contractor shall maintain Pro Rata progress of the Works. Progress to be achieved shall be pursuant to GCC Clause 42 and shall be determined in terms of the value of the works done.

43.2 Failure to achieve the progress in accordance with the updated Programme of Works stated under GCC sub Clause 42.1 and 42.2 by the Contractor may be treated as the fundamental breach of the Contract under GCC Clause 95.1.



- 44. Early Warning**
- 44.1 If at any time during performance of the Contract, the Contractor or its Subcontractors should encounter events, circumstances, conditions that may adversely affect the quality of the work, increase the original Contract Price or delay the execution of the Works, the Contractor shall promptly notify the Engineer in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Engineer shall evaluate the situation, and the Contractor shall cooperate with the Engineer in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced.
- 44.2 The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the original Contract price and Completion Date. The Contractor shall provide the estimate and the Engineer shall further proceed as soon as reasonably possible.
- 45. Extension of Intended Completion Date**
- 45.1 The Contractor shall be entitled to an extension of the Intended Completion Date, if and to the extent that completion of the Works or any part thereof is or will be delayed by Compensation Events or a Variation or Extra Work Order.
- 45.2 If the Contractor considers itself to be entitled to an extension of the Intended Completion Date as stated under GCC Sub Clause 45.1, the Contractor shall give notice, not later than twenty eight (28) days after the Contractor became aware or should have become aware of the event or circumstance, to the Engineer pursuant to GCC Sub Clause 99.1.
- 45.3 The Employer shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the extension of Intended Completion Date.
- 45.4 The Employer may **extend the Intended Completion Date** by twenty (20) percent of the original Contract time as stated under GCC Sub Clause 45.1, if a Compensation Event occurs or a Variation Order is issued which does not make it possible to complete the Works by the Intended Completion Date without incurring additional cost.
- 45.5 In the case an extension of the Intended Completion Date required under GCC Sub Clause 45.3 is or will be more than twenty (20) percent of the original Contract time, approval of the Head of the Procuring Entity for the same shall be required to be obtained.
- 46. Delays**
- 46.1 **If the following conditions apply, namely:**



- Caused by Authorities**
- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities,
 - (b) these public authorities delay or disrupt the Contractor's work, and
 - (c) the delay or disruption was unforeseeable;
- then this delay or disruption will be considered as a cause of delay under GCC Sub Clause 46.1.
- 46.2 The Engineer shall notify the Contractor accordingly keeping the Employer posted.
- 46.3 Except in case of Force Majeure, as provided under GCC Clause 88, a delay by the Contractor in the performance of its Completion obligations shall render the Contractor liable to the imposition of Liquidated Damages pursuant to GCC Clause 76, unless an extension of Intended Completion Date is agreed upon, pursuant to GCC Clause 45.
- 46.4 If the Contractor fails to complete the Works by the Intended Completion Date or as extended by the Employer or Head of the Procuring Entity, as the case may be under GCC Sub Clause 45.4 or 45.5, the Contractor shall be liable to pay Liquidated Damages to the Employer pursuant to GCC Clause 76.
- 47. Acceleration**
- 47.1 When the Employer wants the Contractor to finish the Works before the Intended Completion Date, the Engineer will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date will be advanced accordingly and confirmed by both the Employer and the Contractor.
- 47.2 If the Employer accepts the Contractor's priced proposals for acceleration, they will be incorporated in the Contract Price and treated as a **Variation** under GCC Clause 65.
- 48. Delays Ordered by the Engineer**
- 48.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.
- 49. Suspension of Work**
- 49.1 The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.
- 49.2 The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following GCC Clauses 50, 51 and 52 shall not apply.
- 50. Consequences of Suspension**
- 50.1 If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under GCC Clause 48 and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to GCC Clause 99 to:



- (a) an extension of time for any such delay, if Completion is or will be delayed, under GCC Clause 44, and
- (b) payment of any such cost, which shall be included in the Contract Price.

50.2 After receiving this notice, the Engineer shall proceed to agree or determine these matters.

50.3 The Contractor shall not be entitled to any extension of time for, or to any payment of the cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with GCC Clause 49.

51. Payment for Plant and Materials in Event of Suspension

- 51.1 The Contractor shall be entitled to payment of the value, as at the date of suspension, of Plant and/or Materials which have not been delivered to Site, if:
- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than twenty (28) days, and
 - (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

52. Prolonged Suspension

- 52.1 If the suspension under GCC Clause 49 has continued for more than eighty four (84) days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within twenty eight (28) days after being requested to do so, the Contractor may, by giving notice to the Project Manager, treat the suspension as an omission under GCC Clause 65 of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination pursuant to GCC Clause 93.

53. Resumption of Work

- 53.1 After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under GCC Clause 65.

C. Quality Control

54. Execution of Works

- 54.1 The Contractor shall construct, install and carry out the Works and Physical services in accordance with the Specifications and Drawings as scheduled in GCC Clause 6.

55. Examination of Works before covering up

- 55.1 All works under the Contract shall at all times be open to examination, inspection, measurements, testing and supervision of the Engineer, and the Contractor shall ensure presence of its representatives at such actions provided proper advance notice is given by the Engineer.



- 55.2 No part of the Works shall be covered up or put out of sight without the approval of the Engineer. The Contractor shall give notice in writing to the Engineer whenever any such part of the Works is ready for examination and the Engineer shall attend to such examination without unreasonable delay.
- 56. Identifying Defects**
- 56.1 The Engineer shall check the works executed by the Contractor and notify the Contractor of any Defects found. Such checking shall not relieve the Contractor from his or her obligations. The Engineer may also instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.
- 57. Testing**
- 57.1 The Contractor shall carry out the Testing of works in accordance with this Clause after providing the relevant documents.
- 57.2 The Contractor shall give to the Engineer not less than twenty one (21) days' notice of the date after which the Contractor will be ready to carry out each of the Testing. Unless otherwise agreed, Testing shall be carried out within fourteen (14) days after this date, on such day or days as the Engineer shall instruct.
- 57.3 In considering the results of the Testing, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works have passed any Testing, the Contractor shall submit a certified report of the results of these Tests to the Engineer.
- 57.4 If the Engineer instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 58. Rejection of Works**
- 58.1 If, as a result of an examination, inspection, measurement or testing, of Works it is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Works by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected Works subsequently complies with the Contract.
- 59. Remedial Work**
- 59.1 Not with standing any test or certification, the Engineer may instruct the Contractor to:
- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
 - (b) remove and re-execute any other work which is not in accordance with the Contract, and



- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

59.2 The Contractor shall comply with the instruction issued under GCC Sub Clause 59.1 within a reasonable time, which shall be specified in the instruction, or immediately if urgency is specified under GCC Sub Clause 59.1(c).

59.3 If the Contractor fails to comply with the instruction issued under GCC Sub Clause 59.2, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall be liable to pay all such costs arising from this failure.

60. Correction of Defects

60.1 The Engineer shall issue a **Defects Liability Schedule** for correction of Defects within fifty six (56) days from the Contractor's request for **Final Payment** stating the scope of corrections or additions that are necessary.

60.2 The Engineer shall give notice to the Contractor, with a copy to the Employer and others concerned, of any Defects before the end of the Defects Liability Period, which begins at Completion Date, and is defined in the PCC.

60.3 Every time notice of Defects is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice.

60.4 The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

60.5 If the corrections or additions scheduled or notified by the Engineer have been completed by the Contractor, the Engineer shall issue a Defects Correction Certificate.

61. Uncorrected Defects

61.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice, the Engineer shall assess the cost of having the Defect corrected by it, and the Contractor shall remain liable to pay the expenditures incurred on account of correction of such Defect.

D. Cost Control

62. Contract Price

62.1 The Contract price shall be agreed or determined under GCC Sub Clause 62.2 and as specified in the PCC.

62.2 The Contractor shall pay all of taxes, duties, fees, levies, and other charges required to be paid under the Applicable Law under the Contract pursuant to GCC Clause 18 and the Contract Price shall not be adjusted for any of these costs except as provided under the Conditions of the Contract.

63. Bill of Quantities

63.1 The priced Bill of Quantities shall be used to calculate the Contract Price. The Bill of Quantities shall provide estimated quantities for the individual items of Works and Dayworks. The Employer may



include in the Bill of Quantities the Provisional Sums for payments to Nominated Subcontractor(s) and for meeting other expenditures under the Contract pursuant to GCC Sub Clause 80.

63.2 Except as otherwise stated in the Contract and notwithstanding any other practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities.

63.3 Items of works quantified in the Bill of Quantities (BoQ) for which no rates or prices have been quoted shall be deemed covered by the amounts at rates and prices of other items in the Contract and shall not be separately paid for.

64. Changes in the Quantities and Unit Rate or Price

64.1 A new rate or price for items included in the Bill of Quantities shall, however, be appropriate for an item of work if:

- (a) the final measured quantity of the work done for any particular item in the Bill of Quantities (BoQ) is increased or decreased by more than twenty five (25) percent from the quantity of this item in the Bill of Quantities;
- (b) the cost resulting from such increase or decrease in quantity of this particular item in the Bill of Quantities multiplied by its specified rate or price is exceeded by one (1) percent of the original Contract price;
- (c) this particular item is not specified in the Contract as a "fixed rate item";
- (d) this particular item is not specified in the Contract as for which no rates or prices have been quoted and deemed covered by the amounts at rates and prices of other items in the Bill of Quantities stated under GCC Sub Clause 63.3; and

64.2 The new rate or price for the particular item of work included in the Bill of Quantities described under GCC Sub Clause 64.1 shall be adjusted by the Engineer from any relevant rates or prices within the Contract by taking into consideration the context and threshold of the Variation Order as stated under GCC Clause 65.

65. Variations

65.1 The Employer may issue a Variation Order for Procurement of Works and Physical services from the original Contractor to cover any increase or decrease in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of this Contract.

65.2 The Employer may also issue an Extra Work Order to cover the introduction of such new works necessary for the completion, improvement or protection of the original works which were not included in the original contract, on the grounds where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical



conditions at the site of an unusual nature differing materially from those usually encountered and generally recognized as inherent in the work, or character provided for in the Contract.

- 65.3 Variations as defined under GCC Sub Clause 1.1(tt) may be initiated by the Engineer at any time prior to issuing the Taking-Over certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

65.4 Variations may include;

- (a) changes to the quantities of any item of work included in the Bill of Quantities as stated under GCC Sub Clause 64.1; not necessarily however, shall always constitute a Variation until the algebraic summation of costs resulting from such increases or decreases in quantities of changing items included in the Bill of Quantities under the Contract exceeds one (1) percent of the original Contract price;
- (b) changes to the quality and other characteristics of any item of work;
- (c) changes to the levels, positions and/or dimensions of any part of the Works;
- (d) omission of any work unless it is to be carried out by others;
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated testing, boreholes and other testing and exploratory work; or
- (f) changes to the sequence or timing of the execution of the Works.

- 65.5 The Contractor, for any Variation or Extra Work Order, shall deliver a written notice within seven (7) calendar days of being aware of the need for the Variation, giving full and detailed particulars of any extra cost in order that it may be investigated at that time, and failure to provide such notice shall constitute a waiver by the Contractor for any subsequent claim.

- 65.6 The Contractor shall, under no circumstances, proceed to commence the works under any Variation or Extra Work Order unless it has been approved by the **Approving Authority**.

- 65.7 The Head of the Procuring Entity may, in exceptions to the GCC Sub Clause 65.6, and subject to the availability of funds and to his or her satisfaction, authorize the immediate start of work under any Variation or Extra Work Order under any or all of the following conditions -

- (a) in the event of an extreme emergency where the carrying out of the work is required urgently to avoid causing damage to public services, or damage to life or property or to both or to the Works itself; or



- (b) when time is of the essence provided that,
 - i the cumulative increase in value of works under the Contract not yet duly approved does not exceed ten (10) percent of the adjusted original Contract price.
 - ii immediately after the start of work, the corresponding Variation Order or Extra Work Order shall be prepared and submitted for approval following due procedures, and adhering to the time-line stated under GCC Sub Clause 65.11.

65.8 Any cumulative Variation Orders or Extra Work Orders beyond fifteen (15) percent of the original Contract price shall be the subject of another, separate contract to be tendered out provided that the Works are separable from this Contract.

65.9 For a Variation or Extra Work Order for works justifiably inseparable from this Contract involving a cumulative amount beyond fifteen (15) percent of the original Contract price, no work thereon shall be commenced unless the said Variation or Extra Work Order has been approved by the **Approving Authority**.

65.10 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or communicates such approvals of a Variation or Extra work Order.

65.11 The time for processing of a Variation and an Extra Work Order from its preparation to approval may not exceed thirty (30) days.

65.12 All Variations and Extra Work Orders under the Contract shall be included in the updated Programme of Works produced by the Contractor.

66. Costing of Variations or Extra Orders

66.1 The Contractor shall provide the Engineer with a quotation for carrying out the Variation when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Engineer and before the Variation or Extra Work Order is ordered.

66.2 Items of works under Variation or Extra work Order are if exactly the same or similar to those in the Bill of Quantities (BoQ) of the original Contract, the applicable unit rates or prices of those work items in the Bill of Quantities of the original Contract shall be used for costing of those additional work items.

66.3 For new items of works that are not included in the Bill of Quantities of the original Contract as stated under GCC Sub Clause 65.1, the unit rates or prices of those new work items shall be based on ;

- (i) the direct unit costs used in the Bill of Quantities of original Contract for other items (e.g. unit cost of cement, steel rebar, formwork, labor rate, equipment rental, etc) as indicated in the Contractor's price breakdown of the cost estimate, if



available; or

- (ii) fixed prices acceptable to both the Employer and the Contractor based on market prices; or
- (iii) the direct cost of the new work items based on (i) and (ii) above shall then be combined with the mark-up factor (i.e. taxes, overheads and profit) used by the Contractor in his or her Tender to determine the unit rate or price of the new work item.

66.4 If the Contractor's quotation is found to be unreasonable, the Engineer may order the Variation and make a change to the Contract price, which shall be based on the Engineer's own forecast of the effects of the Variation on the Contractor's costs.

66.5 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event under GCC Sub Clause 72.

66.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning under GCC Sub Clause 44.1.

67. Cash Flow Forecasts

67.1 When the Programme of Works is updated under GCC Sub Clause 42.2, the Contractor shall provide the Engineer with an updated cash flow forecast.

68. Payment Certificates

68.1 The basis for payment certificates shall be Bill of Quantities used to determine the Contract price.

68.2 The Contractor shall submit to the Engineer monthly statements of the estimated value of the works executed less the cumulative amount certified previously.

68.3 The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

68.4 The value of work executed shall be determined by the Engineer and shall comprise the value of the items of works completed as per the unit rates or prices in the Bill of Quantities including the priced Schedules, if any.

68.5 The value of work executed shall include the valuation of Variations or Extra Work Orders, Certified Dayworks and Compensation Events.

68.6 The Engineer may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

68.7 The Engineer may in any payment certificate make any correction or modification that should properly be made to any previous payment certificate.



- 68.8 The Engineer may withhold any payment certificates under the Contract until the Programme of Works has been submitted by the Contractor as stated under GCC Sub Clause 42.2.
- 68.9 The Engineer may also withhold the cost of rectification or replacement until such rectification or replacement has been completed, if anything supplied or work done by the Contractor is not in accordance with the Contract. Further, if the Contractor is or was failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer earlier, the value of this work or obligation may be withheld until the work or obligation has been performed.
- 69. Payments to the Contractor**
- 69.1 The Employer shall pay the Contractor the amounts certified by the Engineer within twenty eight (28) days of the date of each certificate after due adjustments for deductions for advance payments, retention and any other additions or deductions which may have become due under the Contract or otherwise, including those under GCC Clause 99.
- 69.2 Items of works quantified in the Bill of Quantities for which no rates or prices have been quoted shall be deemed covered by the amounts at rates and prices of other items in the Contract as stated under GCC Sub Clause 63.3 and shall under no circumstances be paid for, by the Employer.
- 69.3 Payments due to the Contractor in each certificate shall be made into the Bank Account of the title of the Contract specified in the PCC and nominated by the Contractor in the currency specified in the Contract.
- 70. Delayed Payment**
- 70.1 If the Contractor does not receive payments as stated under GCC Sub Clause 69.1, the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date due for payment specified in GCC Sub Clause 69.1.
- 70.2 These financing charges shall be calculated at the annual rate of interest as specified in the PCC.
- 70.3 If an amount certified is increased in a subsequent certificate as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 71. Payments to Nominated Subcontractor (s)**
- 71.1 The Contractor shall pay to the Nominated Subcontractor(s) the amounts shown on the Nominated Subcontractor's invoices approved by the Contractor which the Engineer certifies to be due in accordance with the subcontract included under the Contract.



72. Compensation Events

72.1 The following shall be Compensation Events:

- (a) The Employer does not give access to or possession of the Site or part of the Site by the Site Possession Date stated in the GCC Sub Clause 13.1;
- (b) The Employer modifies the Schedule of other Contractors in a way that affects the works of the Contractor under the Contract;
- (c) The Engineer orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time;
- (d) The Engineer instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects;
- (e) The Engineer unreasonably does not approve a subcontract to be let, if applicable;
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Notification of Award from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site;
- (g) The Engineer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons;
- (h) Other Contractors, public authorities, utilities, or the Employer do not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor;
- (i) The advance payment is delayed;
- (j) The effects on the Contractor of any of the Employer's Risks;
- (k) The Engineer unreasonably delays issuing a Completion Certificate;
- (l) A situation of Force Majeure has occurred, as defined in GCC Clause 88; and
- (m) Other Compensation Events described in the Contract or determined by the Engineer in the PCC shall apply.

72.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall decide whether and by how much the Contract price shall be increased and whether and by how much the Intended Completion Date shall be extended, only on justifiably acceptable grounds duly recorded.

72.3 As soon as the Contractor has provided information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost, the Engineer shall assess it,



and the Contract price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Engineer shall adjust the Contract price based on the Engineer's own forecast. The Engineer will assume that the Contractor will react competently and promptly to the event.

72.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Engineer.

73. Adjustments for Changes in Legislation

73.1 Unless otherwise specified in the Contract, if between the date twenty-eight (28) days before the submission of Tenders for the Contract and the date of the last Completion Certificate, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Bangladesh (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Completion Date and/or the Contract price, then such Completion Date and/or Contract price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract.

73.2 The Engineer shall adjust the Contract Price on the basis of the change in the amount of taxes, duties, and other levies payable by the Contractor, provided such changes have not already been accounted for in the price adjustment as defined in GCC Clause 74 and/or reflected in the Contract price.

74. Price Adjustment

74.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts as certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amount. The generic formula indicated below in the form as specified in the PCC applies:

$$P = A + B (I_m/I_o)$$

where:

P is the adjustment factor

A and **B** are Coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and

I_m is the Index during the month the work has been executed and **I_o** is the Index prevailing twenty eight (28) days prior to the deadline for submission of Tender.

The Indexes to be used is as published by the Bangladesh Bureau of Statistics (BBS) on a monthly basis. In case not available, then other countries or authorities of the sources mentioned in **Appendix to the Tender** may be used.

74.2 If the value of the Index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next or in the final payment



certificate. The Index value shall be deemed to take account of all changes in price due to fluctuations.

75. Retention Money

- 75.1 The Employer shall retain from each progressive payment due to the Contractor at the percentage specified in the PCC until completion of the whole of the Works under the Contract.
- 75.2 On completion of the whole of the Works, the first half the total amount retained under GCC Sub Clause 75.1 shall be repaid to the Contractor and the remaining second half after the Defects Liability Period has passed and the Engineer has certified in the form of **Defects Corrections Certificate** as stated under GCC Sub Clause 60.5 that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.
- 75.3 On completion of the whole of the Works, the Contractor may substitute an unconditional Bank Guarantee an internationally reputable Bank which has a correspondent Bank located in Bangladesh in the format as specified (**Form PW7-11**) acceptable to the Employer for the second half of the retention money as stated under GCC Sub Clause 75.2.
- 75.4 Deductions of Retention Money shall be applicable in this Contract, if no advance payment has been made to the Contractor and in such case, the provisions under GCC Sub Clauses 79.1 and 79.2 shall be applied.
- 75.5 If the provision of Retention Money is not included in this Contract these Sub Clauses shall not apply except the relevant ones.

76. Liquidated Damages

- 76.1 The Contractor shall be liable to pay Liquidated Damages or in other words the Delay Damages to the Employer at the rate per day as specified in the PCC for each day of delay from the Intended Completion Date, for the uncompleted Works or for any part thereof.
- 76.2 The total amount of Liquidated Damages shall not exceed the amount defined in the PCC.
- 76.3 Once the cumulative amount of Liquidated Damages reaches ten (10) percent of the Contract price, the Employer may rescind the Contract, without prejudice to other courses of action and remedies open to it.
- 76.4 The amount of Liquidated Damages may be deducted from any money due or which may become due to the Contractor under the Contract and/or collect such amount of Liquidated Damages from the Retention Money (if any) or other securities posted by the Contractor whichever is convenient to the Employer.
- 76.5 Payment of Liquidated Damages by the Contractor shall not relieve the Contractor from its obligations.



- 76.6 If the Intended Completion Date is extended after Liquidated Damages have been paid, the Engineer shall correct any overpayment of Liquidated Damages by the Contractor by adjusting the next payment certificate.
- 77. Bonus**
- 77.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day if stated in the PCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion of the whole of the Works is earlier than the Intended Completion Date. The Engineer shall require certifying that the Works are complete, although they may not have fallen due to being complete as per approved updated Programme of Works.
- 78. Advance Payment**
- 78.1 The Employer shall make advance payment, if so specified in the PCC, to the Contractor in the amounts and by the dates specified in the PCC against an Unconditional Bank Guarantee issued by an internationally reputable Bank which has a correspondent Bank located in Bangladesh in the format as specified (**Form PW7-10**) and acceptable to the Employer, of an amount equal to the advance payment.
- 78.2 The Guarantee stated under GCC Sub Clause 78.1 shall remain effective until the advance payment has been repaid by the Contractor, but the amount of the Guarantee shall be progressively reduced by the amounts repaid. No interest will be charged on the advance payment made.
- 78.3 The Contractor shall use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used for such specific purposes by supplying copies of invoices or other documents to the Engineer.
- 78.4 The advance payment shall be repaid by deducting at proportionate rate from payments otherwise due to the Contractor, based on percentages of actually completed Works as specified in the PCC.
- 78.5 Advance payment or its repayment shall not be taken into account in assessing Valuation of work done, Variations or Extra Work Order, Price Adjustments, Compensation Events, Bonuses or Liquidated Damages.
- 78.6 If the repayment of advance payment by the Contractor has not been completed by twenty eight (28) days prior to the expiry date of the Guarantee stated under GCC Sub Clause 78.2, the Contractor shall correspondingly extend the validity of the Guarantee for a period so long the advance payment has been fully repaid.
- 78.7 If the provision of advance payment is not included in this Contract these Sub Clauses shall not apply.
- 79. Performance**
- 79.1 Without limitation to provisions of any of these Sub Clauses,

