

Section VII. Particular Conditions of Contract

Particular Conditions of Contract ¹

The following Particular Conditions of Contract (“PCCs”), including Annex A and Annex B in Section VIII. Contract Forms and Annexes, shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the Particular Conditions of Contract shall prevail over the General Conditions of Contract.

1. General Provisions	2
2. The Employer.....	6
3. The Engineer	7
4. The Contractor	9
5. Nominated Subcontractors.....	14
6. Staff and Labour	14
7. Plant, Materials and Workmanship.....	25
8. Commencement, Delays and Suspension	26
11. Defects Liability.....	27
12. Measurement and Evaluation	27
13. Variations and Adjustments.....	27
14. Contract Price and Adjustment	28
15. Termination by Employer	30
16. Suspension and Termination by Contractor.....	34
18. Insurance	34
19. Force Majeure	34
20. Claims, Disputes and Arbitration.....	35
21. Taxes	37
22. General Provisions of Compact and other Provisions	38

¹ The Particular Conditions of Contract (“PCCs”) represent amendments and additions to the General Conditions of Contract. These Particular Conditions of Contract have been developed by MCC for use by Accountable Entities using MCC Funding. These PCCs are to be used in their entirety as standard provisions of contracts for construction of works funded by MCC and for which the Accountable Entity serves as the Employer under the contract.

1. General Provisions**Sub-Clause 1.1.1****The Contract**

Amend Subpara. 1.1.1.1 (“Contract”) by adding the following at the end:

“The words ‘Agreement’ and ‘Contract’ are used interchangeably.”

Amend Subpara. 1.1.1.8 (“Tender”) by adding the following at the end:

“The word ‘tender’ is synonymous with ‘Bid’ and Offer,’ and the words ‘Letter of Tender’ with ‘Letter of Offer’ (Letter of Technical Offer and Letter of Financial Offer when QPBS is used), and the words ‘Appendix to Tender’ and ‘Appendix to Bid’ with ‘Appendix to Offer’ and the words ‘tender documents’ with ‘Bidding Documents.’”

Sub-Clause 1.1.2**Parties and Persons**

Add as Subpara. 1.1.2.11 a defined term to read as follows:

“ ‘MCC’ means the Millennium Challenge Corporation, the United States Government Corporation with the same name, responsible for providing funds under the terms of the Compact to the Government.”

Add as Subpara 1.1.2.16 a defined term to read as follows:

“ ‘*MCC Gender Policy*’ means the MCC Gender Policy and its amendments posted from time to time on the MCC website at www.mcc.gov.”

Add as Subpara. 1.1.2.17 a defined term to read as follows:

“ ‘Primary Suppliers’ means any person or legal entity who provides goods or materials essential for the contract (as set out in the Bill of Quantity).”

Sub-Clause 1.1.3**Dates, Tests, Periods and Completion**

Amend Subpara. 1.1.3.6 (“Tests after Completion”) by replacing “provisions of the Particular Conditions” with “Employer’s Requirements.”

Amend Subpara. 1.1.3.7 (“Defects Notification Period”) by inserting the following after the reference to Sub-Clause 11.1:

“which extends over twelve months except as otherwise stated in the Appendix to Offer”.

Sub-Clause 1.1.6 Other Definitions	<p>Add as Subpara. 1.1.6.10 a defined term to read as follows:</p> <p>“ ‘Contractor’s Environmental & Social Management Plan’ or ‘CESMP’ means the plan the Contractor shall develop, deliver, and implement in accordance with Particular Condition Sub-Clause 4.18.”</p>
	<p>Add as Subpara. 1.1.6.11 a defined term to read as follows:</p> <p>“ ‘Health and Safety Management Plan’ or ‘HSMP’ means the plan the Contractor shall develop, deliver, and implement in accordance with Particular Condition Sub-Clause 4.8.”</p>
Sub-Clause 1.2 Interpretation	<p>Amend Sub-Clause 1.2 by adding the following after item (d):</p> <p>“(e) “labour” and “labor” are synonymous.”</p> <p>Amend Sub-Clause 1.2 by adding the following at the end:</p> <p>“In Contract provisions including the expression "Cost plus reasonable profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Appendix to Offer.”</p>
Sub-Clause 1.5 Priority of Documents	<p>Amend Sub-Clause 1.5 by adding the following at the end of item (d) the Particular Conditions:</p> <p>“including the provisions set out in Annex A (Additional Provisions) attached to the Particular Conditions (which provisions shall apply to Subcontractors as well as to the Contractor) and any other attachments to the Particular Conditions.”</p>
Sub-Clause 1.7 Assignment	<p>Replace the text of Sub-Clause 1.7 with the following:</p> <p>“Neither Party shall assign the whole or any part of the Contract, or any benefit or interest in or under the Contract; provided that, the Employer may assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, to another person or entity of the Government (or another entity designated by the Government) without the consent of the Contractor at any time concurrent with or after the expiration of the Compact. The Employer shall notify the Engineer and the Contractor within 10 days of any such assignment.</p>

“In the event of any assignment of the Contract by the Employer in accordance with the immediately preceding paragraph:

- (a) the Contractor shall obtain a replacement Performance Security according to the terms of Sub-Clause 4.2 [*Performance Security*] in an amount equal to that of the then currently issued Performance Security naming the Employer’s assignee as beneficiary, and shall deliver this replacement Performance Security to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original Performance Security to the Contractor;
- (b) in the event any Retention Money guarantee is outstanding at the time of assignment, the Contractor shall obtain a replacement Retention Money guarantee according to the terms of Sub-Clause 14.9 [*Payment of Retention Money*] in an amount equal to that of the then currently issued Retention Money guarantee naming the Employer’s assignee as beneficiary, and shall deliver this replacement Retention Money guarantee to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original Retention Money guarantee to the Contractor.
- (c) in the event any advance payment guarantee is outstanding at the time of assignment, the Contractor shall obtain a replacement advance payment guarantee according to the terms of Sub-Clause 14.2 [*Advance Payment*] in an amount equal to that of the then currently issued advance payment guarantee naming the Employer’s assignee as beneficiary, and shall deliver this replacement advance payment guarantee to the Employer on or before the date the assignment becomes effective at which time the Employer shall concurrently return the original advance payment guarantee to the Contractor.
- (d) in the event any other guarantee, bond, insurance or other instruments have been obtained by the Contractor to cover the Employer against risks or liabilities associated with the performance of the Contract and remain outstanding or otherwise in effect at the time of assignment, the Contractor shall obtain a replacement guarantee, bond, insurance or other such instrument according to the terms of the Contract under which it was originally posted, purchased or otherwise became effective in an amount equal to that of the then currently issued guarantee, bond, insurance or other instrument naming the Employer’s assignee as beneficiary or payee, and shall deliver this replacement guarantee, bond, insurance or other instrument to the Employer on or before the date the assignment becomes effective at which time the Employer

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

shall concurrently return the original guarantee, bond, insurance or other instrument to the Contractor.

“In addition, either Party:

- (a) may assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, at any time with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favor of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.”

Sub-Clause 1.9**Delayed Drawings or Instructions**

Amend Sub-Clause 1.9 by replacing the third paragraph with the following:

“After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] and Sub-Clause 20.1 [*Contractor’s Claims*] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.”

Sub-Clause 1.12**Confidential Details**

Replace the text of Sub-Clause 1.12 with the following:

“The Contractor’s and the Employer’s Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor’s compliance with the Contract and allow its proper implementation; provided that the requirements of this Sub-Clause 1.12 shall not be construed to require the disclosure of any information by MCC or any authorized representatives of MCC, the Inspector General, the U.S. Government Accounting Office, or any auditor identified in the Compact.

“Each of the Parties shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer, information otherwise reasonably required to establish its qualifications to compete for other projects. If any dispute arises as to the necessity of any publication or disclosure of the details of the Contract, the same shall be referred to the Employer whose determination shall be final.

The Contractor shall ensure that the requirements imposed on the Contractor by this Sub-Clause apply equally to each Subcontractor.”

Sub-Clause 1.13

Amend Sub-Clause 1.13(b) by adding the following at the end:

Compliance with Laws

“unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.”

2. The Employer

Sub-Clause 2.1

Right of Access to the Site

Replace the third thru fifth paragraphs of Sub-Clause 2.1 with the following:

“If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, and giving due consideration to the phased implementation of resettlement activities as described in the Appendix to Offer or in a notice from the Engineer, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [*Contractor’s Claims*] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [*Extension of Time for Completion*], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

“However, if and to the extent that the Employer’s failure to give right or possession to site within the agreed upon time was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor’s Documents, the Contractor shall not be entitled to such extension of time, Cost, or profit.”

Amend Sub-Clause 2.1 by adding the following at the end:

“As part of the implementation of resettlement activities associated with the Contract, certain structures existing in the right-of-way associated with the Site may be retained. In a case in which structures existing in the right-of-way are to be retained, the Engineer shall provide instructions regarding which structures the Contractor shall demolish, and which structures the Contractor shall protect from destruction or damage. The Contractor shall not demolish, damage, or affect in any way the structures identified in the Engineer’s instructions as being permitted to remain within the right-of-way associated with the Site.

“Failure to abide by the Employer’s instructions regarding right of access to the site may result in the Engineer instructing the Contractor to suspend progress on part or all of the Works. In any such event, the suspension of work will be deemed the responsibility of the Contractor subject to Sub-Clause 8.8 [*Suspension of Work*].”

**Sub-Clause 2.4
Employer’s Financial
Arrangements**

Replace Sub-Clause 2.4 with the following:

“The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Final Contract Price (as estimated at that time and as agreed and confirmed by the Engineer) in accordance with Clause 14 [*Contract Price and Payment*]. If the Employer intends to make any material change to its financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

“In addition, if MCC has notified the Employer that it has suspended disbursements under the Compact which finances the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of having received the suspension notification from MCC. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 28 days after the date of MCC notification of the suspension, the Employer shall provide reasonable evidence in such notice of the extent to which such funds will be available.

“For the avoidance of doubt, in no event shall any MCC Funding be subject to any type of co-financing, joint financing or similar arrangement that would violate the terms of the Compact.”

3. The Engineer

**Sub-Clause 3.1
Engineer’s Duties and
Authority**

Amend Sub-Clause 3.1 by replacing the word “may” in the first sentence of the third paragraph with the word “shall”.

Amend Subpara. (b) of Sub-Clause 3.1 by deleting the word “and” at the end.

Amend Subpara. (c) of Sub-Clause 3.1 by replacing the period at the end with “; and”.

Amend Sub-Clause 3.1 by adding the following at the end:

“(d) any act by the Engineer in response to a Contractor’s request except otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

“The following provisions also shall apply:

“The Engineer shall obtain the specific approval of the Employer before taking action under the-following Sub-Clauses of these Conditions:

- (i) Sub-Clause 4.12 [*Unforeseeable Physical Conditions*]: Agreeing to or determining an extension of time and/or additional cost.
- (ii) Sub-Clause 8.4 [*Extension of Time for Completion*]: Approving an extension of time under Sub-Clause 20.1.
- (iii) Sub-Clause 8.6 [*Rate of Progress*]: Instructing the Contractor to submit a revised programme, under Sub-Clause 8.3 [*Programme*], to expedite progress.
- (iv) Sub-Clause 13.1 [*Right to Vary*]: Instructing a Variation, except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Offer.
- (v) Sub-Clause 13.3 [*Variation Procedure*]: Approving a proposal for Variation submitted by the Contractor in accordance with Sub-Clause 13.1 [*Right to Vary*], 13.2 [*Value Engineering*] or 13.3 [*Variation Procedure*], except if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Appendix to Offer.
- (vi) Sub-Clause 13.4 [*Payment in Applicable Currencies*]: Specifying the amount payable in each of the applicable currencies.

“Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of its duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. Within 7 days of having issued such emergency instructions, the Engineer shall submit written documentation of such instructions to the Employer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 [*Variations and Adjustments*] and shall notify the Contractor accordingly, with a copy to the Employer.”

Sub-Clause 3.4
Replacement of Engineer

Amend Sub-Clause 3.4 by replacing the number “42” in the first sentence with the number “28.”

Sub-Clause 3.5
Determinations

Amend Sub-Clause 3.5 by adding the following to the end of the second paragraph:

“In the event a Party disagrees with any agreement or determination and intends to seek a revision under Clause 20, that Party must give notice of such disagreement to the Engineer and the other Party within 28 days of receiving the relevant agreement or determination. Failing to provide such notice of disagreement within 28 days shall bar the Party from later seeking any revision of the agreement or determination.”

4. The Contractor

Sub-Clause 4.1
Contractor’s General Obligations

Amend Sub-Clause 4.1 by adding the following at the end:

“The Contractor and its Subcontractors and suppliers, including their respective affiliates, shall at all times during the term of the Contract be an Eligible Entity.

“All Equipment, Materials, Plant and any services to be incorporated in or required for the Works shall have an Eligible Entity as their origin and, at the Employer’s request, the Contractor shall provide evidence of such origin.

“For the purpose of this Sub-Clause 4.1, “origin” means the place where the Equipment, Materials or Plant have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics, purposes or utility from its underlying components. With respect to any services, the term “origin” means the place from which the services are provided.”

Sub-Clause 4.2
Performance Security

Amend Sub-Clause 4.2 by adding the following at the end:

“Without limitation to the other provisions of this Sub-Clause 4.2, whenever the Engineer determines an addition to the Contract Price as a result of a change in cost and/or legislation or as a result of a Variation amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor, at the Engineer’s written request, shall promptly increase the value of the Performance Security in the applicable currency by an equal percentage.

“The Performance Security of a joint venture or other association shall be issued so as to commit fully all members of the joint venture or other association. If the joint venture or other association has not been legally constituted at the time the Performance Security is provided, the Performance Security shall be in the name of all future members of the proposed joint venture or other association.”

Sub-Clause 4.3

Amend Sub-Clause 4.3 by adding the following at the end:

**Contractor’s
Representative**

“If the Engineer determines that the Contractor’s Representative or any of these persons are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”

**Sub-Clause 4.4
Subcontractors**

Amend Sub-Clause 4.4 by adding at the end before the period the following:

"(d) each subcontract shall include (i) provisions which would entitle the Employer to require the subcontract to be assigned to the Employer if the Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, or in case of termination under Sub-Clause 15.2 (Termination by Employer), and (ii) each of the provisions set forth in Annex A (Additional Provisions) attached to the Particular Conditions of Contract.

In case of (i), the Contractor shall not bear any responsibility to the Employer for works done by the Subcontractor after the date such assignment comes into force”.

Amend Sub-Clause 4.4 by adding the following at the end:

“The consent of the Engineer shall not be required if the subcontract is less than one percent (1%) of the Contract Price with a maximum limit of US\$100,000. If the cumulative value of all subcontracts issued to un-approved subcontractors attains US\$250,000, each subsequent use of a non-approved subcontractor shall require the prior consent of the Engineer.”

Sub-Clause 4.8

Safety Procedures

Amend Sub-Clause 4.8 by adding the following at the end:

“The Contractor shall submit a detailed, site-specific Health and Safety Management Plan (or “HSMP”) based on all relevant health and safety provisions found in the Employer’s Requirements and Schedules and applicable Laws to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of*

Work]. The HSMP must be approved by the Engineer prior to commencement of the execution of the Works.

“Unless the Engineer, within 21 days after receiving the Health and Safety Management Plan, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the Health and Safety Management Plan.

“The Contractor shall also implement the health and safety requirements of the approved HSMP and comply with instructions issued as a result of periodic inspections to be undertaken as part of the supervisory role required of the Engineer.

“The Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the HSMP.

“If, at any time, the Engineer gives notice to the Contractor that all or any portion of the Health and Safety Management Plan fails (to the extent stated) to comply with the Contract, the Contractor shall submit a revised Health and Safety Management Plan to the Engineer in accordance with this Sub-Clause.

“The Contractor shall notify the Engineer, the Employer, and MCC within 24 hours or as soon as reasonably possible after the occurrence of any accident which has resulted in damage or loss of property, disability or loss of human life, or which has or which could reasonably be foreseen to have a material impact on the environment and shall submit to the Engineer, the Employer, and MCC no later than 7 days after the occurrence of such an event, a summary report thereof.

The Contractor shall monitor its Primary Suppliers on an ongoing basis and, where there is a high risk of significant life-threatening situations related to the Primary Suppliers’ workers, the Contractor will introduce procedures and mitigation measures to ensure that Primary Suppliers are taking steps to prevent or to correct such life-threatening situations. Where a remedy is not possible, the Contractor shall shift its Primary Suppliers from which it obtains supplies for this Contract. Additional summary guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-on-supply-chains>.

Sub-Clause 4.18
Protection of the
Environment

Amend Sub-Clause 4.18 by replacing the title of this sub-clause with “Protection of the Environment and Social Sustainability”

Amend Sub-Clause 4.18 by adding the following at the end:

“The Contractor shall submit a detailed, site-specific Contractor’s Environmental & Social Management Plan (or “CESMP”) in respect

of safety, security, and management of environmental and social impacts based on all relevant provisions found in the Employer's Requirements and Schedules and applicable Laws to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [*Commencement of Work*]. The CESMP must be approved by the Engineer prior to commencement of the execution of the Works.

“Unless the Engineer, within 21 days after receiving the CESMP, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the CESMP.

“If, at any time, the Engineer gives notice to the Contractor that all or any portion of the CESMP fails (to the extent stated) to comply with the Contract, the Contractor shall submit a revised CESMP to the Engineer in accordance with this Sub-Clause.

“The Contractor shall ensure that its activities under the Contract comply with MCC Environmental Guidelines (as such term is defined in the Compact or related agreement, which are available at www.mcc.gov), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such Environmental Guidelines.

“The Contractor shall request written confirmation from the Engineer that actions requiring completion by the approved Resettlement Action Plan (“RAP”) have been completed before the commencement of the execution of the Works or each Section (as the case may be). The Contractor shall also immediately notify the Engineer of any land acquisition or resettlement needs resulting from the design or Works that have not been addressed by the RAP. No work shall commence in any such newly identified area without the approval of the Engineer.

“The Contractor shall implement environmental and social requirements of the approved CESMP and instructions issued as a result of periodic inspections to be undertaken as part of the supervisory role required of the Engineer, to ensure compliance with the requirements of the CESMP.

“The Contractor shall comply with the IFC Performance Standards on Environmental and Social Sustainability and the Contractor shall be responsible for ensuring that all Subcontractor's and Contractor's Personnel understand and operate in accordance with the principles and requirements of the environmental, social, health and safety impacts provisions of this Sub-Clause and that similar standards apply to the Subcontractor's environmental, social, health and safety impacts management systems and environmental and social impacts performance.

“Social Performance standards include prohibitions against forced or compulsory labor, harmful child labor, trafficking in persons,

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

sexual harassment, and sexual exploitation and abuse, as well as requirements related to gender and social inclusion, staff and labor, facilities for staff and labor, foreign personnel, and non-discrimination and equal opportunity.

“The Contractor’s programme submitted, maintained and implemented in accordance with Sub-Clause 8.3 [Programme] shall demonstrate clearly the procedures and methods of working that the Contractor and its Subcontractors shall utilize to comply with the environmental and social impacts requirements of this Sub-Clause.

“The Contractor shall ensure the adequate disposal of construction and excavation wastes in accordance with MCC Environmental Guidelines and applicable Laws. This includes identifying the presence of hazardous materials and developing plans, approved by the Engineer, for proper handling and disposal of such materials.

“The Contractor shall restore the Site to original conditions or to a state as set out in the Employer’s Requirements after the completion of the Works.”

Sub-Clause 4.21

Amend Sub-Clause 4.21 by adding the following at the end:

Progress Reports

“Within 7 days of the submission by the Contractor of each monthly progress report, the Engineer and the Employer shall meet with the Contractor to discuss the progress of the Works.”

Sub-Clause 4.25

Add the following Sub-Clause 4.25:

Gender and Social Inclusion

“The Contractor shall prepare and implement a plan, in form and substance satisfactory to the Employer and MCC, to ensure that its activities under the Contract comply with the MCC Gender and Inclusion Policy and the Employer’s Social and Gender Integration Plan. The Contractor shall specifically address social and gender inequalities to ensure opportunities under this Contract for the participation and benefits of women and structurally disadvantaged groups, including opportunities for project related employment. MCC encourages the Contractor to procure goods and services from women-owned business, to include such objectives in its procurement plan, and to report on the achievement of such objectives. The Gender and Inclusion Policy may be accessed here: <https://www.mcc.gov/resources/doc/gender-and-inclusion-policy/>

The Contractor shall ensure that its activities do not cause significant negative social and gender impacts as defined in the above policy and plan, and the Employer’s Requirements.

The Contractor shall be responsible for ensuring that all Subcontractor’s and Contractor’s Personnel understand and operate in accordance with the principles and requirements of the plan. The

Employer understands that the Contractor is not responsible for the social and gender impacts of the Works, to the extent that such impacts result directly from completion of the Works as designed by the Employer."

5. Nominated Subcontractors

Sub-Clause 5.2

Objection to Nomination

Amend Subpara. (i) of Sub-Clause 5.2 by deleting the word "and" at the end.

Amend Subpara. (ii) of Sub-Clause 5.2 by replacing the period at the end with “; and”.

Amend Sub-Clause 5.2 by adding the following at the end:

“(iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [*Payments to Nominated Subcontractors*].”

6. Staff and Labour

Sub-Clause 6.1

Engagement of Staff and Labour

Amend Sub-Clause 6.1 by adding the following at the end:

“The Contractor shall adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing the Contractor’s Personnel. At a minimum, the Contractor shall provide all Contractor’s Personnel with documented information that is clear and understandable to the personnel regarding their rights under all the relevant labor Laws applicable to the Contractor’s Personnel and any applicable collective agreements, including their rights related to their employment, health, safety, welfare, immigration and emigration upon beginning the working relationship and when any material changes occur. The Contractor shall provide each of the Contractor’s Personnel with a contract in a language comprehensible to the Personnel.

“The Contractor shall adopt recruitment, hiring and retention practices that support the employment of women and staff from diverse backgrounds. MCC sets a non-binding target for contractors to employ women at 30 percent of its contracted and sub-contracted personnel, in each broad category of managers/professional staff, administrative staff, and both skilled and unskilled labor. The Contractor shall set its own contract-specific targets for women’s employment and include updates in its routine reports.

“The Contractor shall ensure that the employment terms and conditions of migrant workers (see also Sub-Clause 6.12) are not influenced by their migrant status.

“The Contractor shall be responsible for monitoring compliance of Subcontractors and Primary Suppliers to the labor and working

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

conditions outlined in the IFC Performance Standards in force from time to time.”

Sub-Clause 6.6**Facilities for Staff and Labour**

Amend Sub-Clause 6.6 by adding the following at the end:

“Where accommodation or welfare facilities are provided to Contractor’s Personnel or Employer’s Personnel, the Contractor shall put in place and implement policies on the quality and management of such accommodation and the provision of such welfare facilities. This includes the following: minimum space, supply of water, adequate sewage and garbage disposal systems, appropriate protection against heat, cold, damp, noise, fire and disease carrying animals, adequate sanitary and washing facilities, separate breastfeeding/pumping facilities, ventilation, cooking and storage facilities and natural and artificial lighting, and all reasonable precautions to maintain the health and safety of the Contractor’s Personnel and Employer’s Personnel as provided in Sub-Clause 6.7 [*Health and Safety*]). The accommodation and welfare facilities shall be provided in a manner consistent with the principles of non-discrimination and equal opportunity. Accommodation arrangements shall not restrict freedom of movement or of association. Sanitary and washing facilities should be provided in a manner that allows individuals’ privacy and safety.” Additional guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-accommodation-welfare-staff-and-labor>

When submitting their ESMP, the Contractor shall include their proposed specifications related to any facilities that will be provided for staff and labor. The proposed facilities must comply with requirements of IFC Performance Standard-2 and be approved by the Engineer.” For further guidance on standards for workers’ accommodation see: “Workers’ accommodation: processes and standards, A guidance note by IFC and the EBRD” in particular its Part II:, Subsection I. Standards for workers’ accommodation, available at: https://www.ifc.org/wps/wcm/connect/60593977-91c6-4140-84d3-737d0e203475/workers_accomodation.pdf?MOD=AJPERES&CA CHEID=ROOTWORKSPACE-60593977-91c6-4140-84d3-737d0e203475-jqetNIh.”

Sub-Clause 6.7**Health and Safety**

Amend Sub-Clause 6.7 by adding the following at the end:

“The Contractor shall conduct an HIV-AIDS awareness program in the project areas as required by the approved CESMP and/or HSMP via an approved service provider, and shall undertake such other measures as are specified in the Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor’s

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

Personnel and the local community, to promote early diagnosis and to assist affected individuals.”

Sub-Clause 6.8

Amend Sub-Clause 6.8 by adding the following at the end:

**Contractor’s
Superintendence**

“If the Engineer determines that the Contractor’s Personnel providing superintendence have inadequate knowledge of such language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”

Sub-Clause 6.12

Add the following Sub-Clause 6.12:

Foreign Personnel

“The Contractor may bring into the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use its best endeavors in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national, or government permission required for bringing in the Contractor’s Personnel.

“The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.”

Sub-Clause 6.13

Add the following Sub-Clause 6.13:

**Prohibition of Forced
or Compulsory Labour**

“The Contractor shall not employ "forced or compulsory labour" in any form. “Forced or compulsory labour" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

“The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these suppliers. If new risks or incidents of forced or compulsory labour are identified, the Contractor shall take appropriate steps to remedy them. Additional summary guidance may be found here: <https://www.mcc.gov/resources/doc/guidance-on-supply-chains>”

Sub-Clause 6.14

Add the following Sub-Clause 6.14:

**Prohibition of Harmful
Child Labour**

“The Contractor shall not employ any child to perform any work that is economically exploitative; is likely to be hazardous to, or to interfere with, the child's education; or is likely to be harmful to the

child's health or physical, mental, spiritual, moral, or social development.

“The Contractor will identify the presence of all persons under the age of eighteen (18). Where applicable laws do not specify a minimum age or specifies a minimum age below fifteen (15) years old for employment, the Contractor shall ensure that children aged below fifteen (15) are not employed to perform work under this Contract. Where applicable laws specify a minimum age of fifteen (15) or above, such minimum age requirement shall apply. Notwithstanding any allowances provided under applicable Law to the contrary, under no circumstance shall children under the age of eighteen (18) be employed in hazardous work. All work of persons under the age of eighteen (18) will be subject to an appropriate risk assessment and regular monitoring of health, working conditions, and hours of work.”

“The Contractor shall monitor its Primary Suppliers on an ongoing basis in order to identify any significant changes in these Primary Suppliers. If new risks or incidents of child labor are identified, the Contractor shall take appropriate steps to remedy them.”

Additional summary guidance may be found here:

<https://www.mcc.gov/resources/doc/guidance-on-supply-chains>

Sub-Clause 6.15

Add the following Sub-Clause 6.15:

Employment Records of Workers

“The Contractor shall maintain an updated record of staff and labour employed at the site, full time and part-time, directly or by the Subcontractor(s); and shall keep complete and accurate records, including the name, age, gender, hours worked, and wages paid for all workers. These records shall be available for inspection by auditors during normal working hours and submitted to the Engineer and Employer on a quarterly basis. The Contractor shall report on a monthly basis to the Engineer and Employer the following records: hours worked by all employees and monthly payments made to the different levels of managers/professionals, administrative workers, skilled workers, and unskilled workers; each disaggregated by sex and age. These records will be used to monitor compliance with child labor prohibitions and to track progress toward Contractors’ women’s employment targets. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [*Records of Contractor’s Personnel and Equipment*].”

Sub-Clause 6.16

Add the following Sub-Clause 6.16:

Combatting Trafficking in Persons

“MCC, along with other United States Government entities, has adopted a zero-tolerance policy with regard to trafficking in persons (“TIP”).

In pursuance of this policy:

(a) Defined Terms

For purposes of the application and interpretation of this Sub-Clause 6.16:

- (i) The terms “coercion,” “commercial sex act,” “debt bondage,” “employee,” “forced labor,” “fraud,” “involuntary servitude,” and “sex trafficking” have the meanings given such terms in the *MCC Counter-Trafficking in Persons Policy* (“C-TIP Policy”) and such definitions are incorporated by reference into this Sub-Clause; and
- (ii) “Trafficking in Persons” means (a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; (b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; and
- (iii) “Survivor-centered” means aiming to put the rights of each survivor of a TIP violation at the forefront of all actions. People reporting TIP should have their safety protected, their reports addressed confidentially, and their concerns addressed in a manner that maintains their dignity while also respecting their rights to withdraw from or decline procedures related to their reports.

(b) Prohibition

The Contractor, the Contractor’s Personnel, any Subcontractor or supplier, or any of their respective personnel, or any agent or affiliate of any of the forgoing shall not engage in any form of Trafficking in Persons during the period of performance of any contract funded, in whole or in part, with MCC funding and must also comply with those prohibitions described in U.S. laws and Executive Orders regarding TIP, including using misleading recruitment practices; charging employees recruitment fees; or destroying, concealing, confiscating, or otherwise denying access by an employee to the employee’s identity documents.

(c) Contractor Requirements

- (i) The Contractor (or Subcontractor) shall:
 - a. notify its Personnel of the MCC C-TIP Policy in writing and of the actions that will be taken against Personnel for violations of this policy. Such actions

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

may include, but are not limited to, removal from the Contract, reduction in benefits, or termination of employment;

- b. orient Contractor Personnel with respect to both the MCC definition of TIP and any country-specific legal definition of TIP, to examples of what might constitute TIP, and to the C-TIP obligations of the relevant contract with the Employer, in languages comprehensible to the Personnel;
 - c. provide information and means to Personnel and to affected community members so that they can report suspected instances of TIP to the Contractor, to the Engineer, to the Employer's reporting mechanism, to the Employer's staff, and, where applicable, to an independent/third party mechanism;
 - d. record and report the Contractor's C-TIP compliance efforts, including its notification to Personnel of the MCC C-TIP Policy and its orientation of Personnel;
 - e. develop and implement written, survivor-centered fact-finding and response protocols for allegations that maintain the confidentiality of witnesses and potential survivors; and specify their right to be protected from reprisal; and outline resources and processes to support TIP survivors, should an incident occur;
 - f. have in place a dedicated person or a contract with a person or consulting organization with appropriate skills, experience, and training to receive and review allegations or concerns of TIP; and
 - g. take appropriate action, up to and including termination, against Personnel or Subcontractors that violate the prohibitions set out in this clause and the MCC C-TIP Policy.
- (ii) Each Contractor shall:
- a. certify that it is not engaged in, facilitating, or allowing any activities constituting Trafficking in Persons, or related activities also prohibited under this policy, for the duration of the Contract;
 - b. provide assurances that activities constituting Trafficking in Persons, or related activities also prohibited under this policy, will not be tolerated on the part of its Personnel, Subcontractors or Sub-

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

- Consultants (as the case may be), or their respective personnel; and
- c. acknowledge that engaging in such activities is cause for suspension or termination of employment or of the Contract.
- (iii) The Contractor or Subcontractor shall inform the Employer within 24 hours of:
 - a. any information it receives from any source (including law enforcement) that alleges its Personnel, Subcontractor, or the personnel of a Subcontractor, has engaged in conduct that violates this policy;
 - b. and any actions taken against any Personnel, Subcontractor, or the personnel of a Subcontractor, pursuant to these requirements.

(d) Remedies

Once a TIP incident has been confirmed and depending on the severity of each case, the Employer will apply remedies, which could include any, all, or any combination of the following:

- (i) the Employer requiring the Contractor to remove the involved Personnel, Subcontractor or any of its involved Personnel, or any involved agent or affiliate;
- (ii) the Employer requiring the termination of a subcontract or sub-award;
- (iii) suspension of Contract payments until the breach is remedied to the satisfaction of the Employer;
- (iv) loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the Employer determined non-compliance;
- (v) the Employer pursuing sanctions against the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract;
- (vi) termination of the Contract by the Employer for default or cause in accordance with the termination clause of the Contract; and
- (vii) the Employer directing the Contractor to provide reasonable financial support or restitution to the survivor(s) of any such incident, in each case in accordance with the Contractor's applicable TIP risk management plan, and/or based on a final judicial or administrative determination issued pursuant to

applicable Law or the findings of an investigation conducted (directly or through a third party) by the Employer through its written fact-finding protocols; and

- (viii) a finding that the Contractor's Personnel, Subcontractor, or the personnel of a Subcontractor has engaged in conduct that violates the MCC C-TIP Policy or the requirements of this clause constitutes a breach of the Contractor's obligations under the Contract and could be grounds for the Employer to demand payment of up to the total sum of the Performance Guarantee.

Sub-Clause 6.17

Add the following Sub-Clause 6.17:

Prohibition of Sexual Harassment and Sexual Exploitation and Abuse

MCC has adopted a series of mutually reinforcing policy and guidance to prevent and prohibit sexual misconduct, including harassment, exploitation, and abuse of any kind among Contractor Personnel and Accountable Entities. These include some forms of trafficking in persons (TIP) (sub-clause 6.16), sexual harassment (SH), and sexual exploitation and abuse (SEA).

(a) Defined Terms: For purposes of the application and interpretation of this Sub-Clause 6.17:

(i) "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person's sex, sexual orientation, or non-conformity with gender stereotypes.

(ii) "Sexual Exploitation" means actual or attempted abuse of a position of vulnerability, power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another.

(iii) "Sexual Abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

(iv) Sexual exploitation and abuse are referred to under the umbrella term "SEA." SEA also includes sexual relations with any person under the age of eighteen (18) in any context. SEA may involve behavior of Contractor Personnel toward other Contractor Personnel, as well the behavior of Contractor Personnel toward third parties, such as Compact beneficiaries

and community members. Several forms of SEA are also covered by MCC's TIP Policy.

(v) "Survivor-centered" means aiming to put the rights of each survivor of a violation including SH and SEA at the forefront of all actions. People reporting SH and SEA should have their safety protected, their reports addressed confidentially, and their concerns addressed in a manner that maintains their dignity while also respecting their rights to withdraw from or decline procedures related to their reports.

(b) Prohibitions:

The Contractor shall prohibit all Contractor Personnel from engaging in Sexual Harassment, Sexual Exploitation, and Sexual Abuse behaviors directed toward other Contractor Personnel; Compact beneficiaries, community members, partners, and stakeholders; Accountable Entity employees and Consultants; and MCC personnel and consultants.

(c) Contractor Requirements

(i) Sexual harassment

The Contractor (or Subcontractor) shall

a) implement a policy prohibiting all Contractor Personnel from engaging in sexual harassment and put in place an incident referral and reporting plan with respect to the provision of services to support a safe and respectful work environment, in form and substance satisfactory to the Accountable Entity and MCC;

b) ensure that all Contractor and Sub-Contractor Personnel understand and operate in accordance the requirements of this Clause in order to assure a safe, respectful, and harassment free work environment and harassment-free behavior in communities surrounding worksites.

(ii) Sexual exploitation and abuse

The Contractor (or Subcontractor) shall:

a) implement a policy prohibiting all Contractor Personnel from engaging in sexual exploitation and abuse in all its forms and put in place survivor-centered incident reporting and service referral plan, in form and substance satisfactory to the Accountable Entity and MCC;

b) ensure that all Contractor Personnel understand and operate in accordance the requirements of this Clause, including by

providing training on the Clause and any related codes of conduct.

(iii) The Contractor (or Subcontractor) shall

- (a) notify Personnel that actions taken for violations related to sexual harassment, sexual exploitation, and sexual abuse may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment;
- (b) provide information and means to Personnel and to affected community members so that they can report suspected instances of SH and SEA to the Contractor, to the Engineer, to the Employer's reporting mechanism, to the Employer's staff, and, where applicable, to an independent/third party mechanism;
- (c) have in place a dedicated person or a contract with a person or consulting organization with appropriate skills, experience, and training to receive and review allegations or concerns of SH and SEA;
- (d) develop and implement fact-finding protocols for SH and SEA allegations that maintain the confidentiality of witnesses and potential survivors and specify their right to be protected from reprisal; and
- (e) take appropriate action, up to and including termination, against Personnel or Subcontractors that violate the prohibitions set out in this clause;

(iv) The Contractor (or Subcontractor) shall inform the Accountable Entity:

- (a) Within 24 hours of information it receives from any source (including law enforcement) that alleges its Personnel, Subcontractor, or the personnel of a Subcontractor, has engaged in conduct that violates this clause;
- (b) Of any active investigations; and
- (c) Of any actions taken against any Personnel, Subcontractor, or the personnel of a Subcontractor, pursuant to these requirements.

(d) Remedies

The Accountable Entity may investigate (either directly or through a third party) allegations of sexual harassment, exploitation, and abuse as it determines appropriate, in accordance with its written fact-finding protocols. The Contractor shall fully cooperate with any investigation conducted by the Accountable Entity regarding breach of this provision. The Contractor will ensure that any

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

incident of sexual harassment, exploitation, or abuse is investigated by the Accountable Entity has been resolved to the Entity's and MCC's satisfaction.

Once an incident has been confirmed and depending on the severity of each case, the Accountable Entity may apply remedies that could include any, all, or a combination of the following:

- (a) the Accountable Entity requiring the Contractor to remove the involved Personnel, Sub-Contractor or any of its involved Personnel, or any involved agent or affiliate;
- (b) the Accountable Entity requiring the termination of a subcontract or sub-award;
- (c) suspension of Contract payments until the breach is remedied to the satisfaction of the Accountable Entity.
- (d) loss of incentive payment, consistent with the incentive plan set out in the Contract, if any, for the performance period in which the Accountable Entity determined non-compliance;
- (e) the Accountable Entity pursuing sanctions against the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract;
- (f) termination of the Contract by the Accountable Entity for default or cause in accordance with the termination clause of the Contract; and
- (g) the Accountable Entity directing the Contractor to provide reasonable financial support or restitution to the survivor(s) of any such incident, in each case in accordance with the Contractor's ESMP, and/or based on a final judicial or administrative determination issued pursuant to applicable Law or the findings of an investigation conducted (directly or through a third party) by the Accountable Entity.

Sub-Clause 6.18

Add the following Sub-Clause 6.18:

Non-Discrimination and Equal Opportunity

"The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. Personal characteristics include sex, race, nationality, ethnic, social and indigenous origin, religion or belief, disability, age, sexual orientation, and gender identity. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labor laws provide further

requirements regarding non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labor laws are silent on non-discrimination in employment, the Contractor shall ensure compliance with this Sub-Clause's requirements by implementing a policy in form and substance satisfactory to the Employer and MCC. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination."

Sub-Clause 6.19

Grievance Mechanism for Contractor and Subcontractor Personnel

Add the following Sub-Clause 6.19:

"The Contractor shall provide a grievance mechanism for Contractor's Personnel, including Subcontractor staff, if a separate Subcontractor grievance mechanism does not exist, to raise workplace concerns. The Contractor shall inform its Personnel of the grievance mechanism at the time of recruitment and make it easily accessible to each member of its Personnel in a language or languages comprehensible to the Personnel. The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned, without any retribution to Personnel for initiating or participating in a complaint under such mechanism. The mechanism should also allow for anonymous complaints to be raised and addressed. The mechanism should not impede access to other judicial or administrative remedies that might be available under applicable Law or through existing arbitration procedures, or substitute for grievance mechanisms provided through collective agreements.

In the event of a grievance filed by Contractor Personnel or Subcontractor Personnel related to Trafficking in Persons, Sexual Harassment, Sexual Exploitation, or Sexual Abuse, the Contractor shall additionally follow the procedures set forth in Sub-Clause 6.16 on Combatting Trafficking in Persons, the clause Sub-Clause 6.17 on Prohibition of Sexual Harassment and Sexual Exploitation and Abuse, and related MCC policies."

7. Plant, Materials and Workmanship

Sub-Clause 7.7

Ownership of Plant and Materials

Amend Sub-Clause 7.7 by replacing Subparas. (a) and (b) with the following:

"(a) when it is incorporated in the Works;

(b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [*Payment for Plant and Materials in Event of Suspension*]."

8. Commencement, Delays and Suspension**Sub-Clause 8.1**

Amend Sub-Clause 8.1 by inserting the following at the end:

Commencement of Works

“Failure of the Contractor to mobilize all Contractor’s Equipment and Contractor’s Personnel to the Site as set out in the programme approved in accordance with Sub-Clause 8.3 [*Programme*] shall result in an obligation on the part of the Contractor to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).”

Sub-Clause 8.3

Amend Sub-Clause 8.3 by inserting the following at the end:

Programme

“Failure of the Contractor to submit a revised programme to the Engineer within 28 days of receiving notice from the Engineer in accordance with this Sub-Clause shall result in an obligation on the part of the Contractor to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).

“In the event the Contractor submits a revised programme and the Engineer gives notice to the Contractor stating the extent to which such revised programme does not comply with the Contract, all in accordance with this Sub-Clause, and the Contractor fails to submit a further revised programme to the Engineer within 14 days of receiving such notice from the Engineer, the Contractor shall be obligated to increase the Performance Security by an amount equal to two percent of the Contract Price (as estimated at that time).”

Sub-Clause 8.6

Amend Sub-Clause 8.6 by inserting the following at the end:

Rate of Progress

“Additional Costs of revised methods, including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [*Extension of Time for Completion*] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.”

Sub-Clause 8.12

Amend Sub-Clause 8.12 by inserting the following at the end:

Resumption of Work

“after receiving from the Engineer an instruction to this effect under Clause 13 [*Variations and Adjustments*].”

10. Employer's Taking Over**Sub-Clause 10.1**

Amend Sub-Clause 10.1 by replacing the last sentence in the second paragraph with the following:

Taking Over of the Works or Sections

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

"If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section, as defined in the Appendix to Offer"

11. Defects Liability

Sub-Clause 11.3
Extension of Defects
Notification Period

Amend Sub-Clause 11.3 by inserting the following at the end of the first sentence of the first paragraph:

“attributable to the Contractor.”

12. Measurement and Evaluation

Sub-Clause 12.1
Works to be Measured

Amend Sub-Clause 12.1 by inserting the following at the end of the first sentence of the first paragraph:

“The Contractor shall show in each application under Sub-Clauses 14.3 [*Application for Interim Payment Certificates*], 14.10 [*Statement at Completion*], and 14.11 [*Application for Final Payment Certificate*] the quantities and other particulars detailing the amounts to which he considers himself to be entitled under the Contract.”

Amend Sub-Clause 12.1 by inserting the following at the end of the second sentence of the final paragraph:

“and certify the payment of the undisputed part.”

Sub-Clause 12.3
Evaluation

Amend Sub-Clause 12.3 by inserting the following at the end of the first sentence of the second paragraph:

“Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.”

Amend Sub-Clause 12.3 by replacing “10%” in (a)(i) with “25%” and by replacing “0.01%” in (a)(ii) with “0.25%”.

13. Variations and Adjustments

Sub-Clause 13.1
Right to Vary

Amend Sub-Clause 13.1 by inserting the following at the end of the first sentence of the second paragraph:

“or such Variation requires a substantial change in the sequence or progress of the Works.”

Sub-Clause 13.7

Amend Sub-Clause 13.7 by adding the following to the end of the first paragraph:

**Adjustments for
Changes in Legislation**

“, provided, that no such adjustment will be made on account of any change in the Laws of the Country related to taxes as such term is defined and used in Sub-Clause 21.”

Amend Sub-Clause 13.7 by adding the following at the end:

“Notwithstanding the foregoing, the Contractor shall not be entitled to such an extension of time if the same shall already have been taken into account in determining an extension and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [*Adjustments for Changes in Cost*].”

**Sub-Clause 13.8
Adjustments for
Changes in Cost**

Amend Sub-Clause 13.8 by inserting the following after the first sentence of the second paragraph:

“Adjustment shall be made for the first time and with the frequency as stated in the Appendix to Offer.”

14. Contract Price and Adjustment**Sub-Clause 14.1
The Contract Price**

Amend Subpara. (b) of Sub-Clause 14.1 by deleting the phrase “except as stated in Sub-Clause 13.7 [*Adjustments for Changes in Legislation*]”.

**Sub-Clause 14.2
Advance Payment**

Amend Sub-Clause 14.2 by replacing the fifth paragraph with the following:

“Unless stated otherwise in the Appendix to Offer, the advance payment shall be repaid through percentage deductions from the interim payments certified by the Engineer in accordance with Sub-Clause 14.6 [*Issue of Interim Payment Certificates*], as follows:

(a) deductions shall commence in the next Interim Payment Certificate following that in which the total of all interim payments (excluding the advance payment and deductions and repayments of retention) certified to the Contractor has reached the percentage of the Accepted Contract Amount stipulated in the Appendix to Offer less Provisional Sums; and

(b) deductions shall be made at the amortization rate stated in the Appendix to Offer of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; always provided that the advance payment shall be completely repaid prior to the time when the percentage of

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

the Accepted Contract Amount less Provisional Sums stipulated in the Appendix to Offer has been certified for payment.”

Sub-Clause 14.3

Amend Sub-Clause 14.3 by adding the following at the end:

Application for Interim Payment Certificates

“At the same time as submitting the Statement to the Engineer, the Contractor shall send a copy to the Employer at the address in the Appendix to Offer.”

Sub-Clause 14.7**Payment**

Amend Sub-Clause 14.7 by replacing the first line with the following:

“The Employer shall pay or cause to be paid to the Contractor:”

Amend Sub-Clause 14.7 by adding the following at the end:

“The bank account(s) nominated by the Contractor shall be as stipulated in the Appendix to Offer.”

Sub-Clause 14.8**Delayed Payment**

Amend Sub-Clause 14.8 by replacing the second paragraph with the following:

“These financing charges shall be calculated at the annual rates of interest and shall be paid in the currencies indicated in the Appendix to Offer.”

Sub-Clause 14.9**Payment of Retention Money**

Amend Sub-Clause 14.9 by replacing “two-fifths (40%)” in the first and second paragraphs with “one-half (50%)”.

Amend Sub-Clause 14.9 by adding the following at the end:

“When the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified by the Engineer for payment, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and provided by an entity approved by the Employer, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2 [*Performance Security*]. On receipt by the Employer of such guarantee, the Engineer shall certify and the Employer shall pay, or cause to be paid, the second half of the Retention Money. The release of the second half of the Retention Money against such guarantee shall then be *in lieu of* the

release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate."

Sub-Clause 14.11
Application for Final
Payment Certificate

Amend Sub-Clause 14.11 by inserting the following in the first sentence of the second paragraph after "may reasonably require":
 "within 28 days from receipt of the said draft..."

15. Termination by Employer

Sub-Clause 15.2
Termination by
Employer

Amend Subpara. (c) of Sub-Clause 15.2 by adding the following immediately after the text of Subpara. (c) (ii):

"(iii) to provide evidence of continued eligibility or if the MCC makes an unfavorable eligibility determination of the Contractor, including in relation with any changes of Ultimate Beneficial Owners during Contract performance"

Amend Subpara. (e) of Sub-Clause 15.2 by deleting the word "or" at the end.

Amend Subpara. (f) of Sub-Clause 15.2 by replacing the period at the end with a comma.

Amend Sub-Clause 15.2 by adding the following immediately after the text of Subpara. (f):

"(g) if the Contractor, in the judgment of the Employer or MCC, fails to perform its obligations relating to the use of funds set out in Annex A (Additional Provisions) attached to the Particular Conditions of Contract, or

"(h) if the Compact expires, is suspended or terminates in whole or in part in accordance with the terms of the Compact."

Amend Sub-Clause 15.2 by replacing the text of the second sentence of the second paragraph with the following:

"However, in the case of Sub-paragraphs (c) (iii), (e), (f), (g) or (h), the Employer may, by notice, terminate the Contract immediately. In the event of Employer termination of the Contract pursuant to Sub-paragraph (g), the Contractor shall be liable to repay any and all funds so misused. In the event of Employer termination of the Contract pursuant to Sub-paragraph (h), the Contractor shall proceed in accordance with Sub-Clause 16.3 [*Cessation of Work and Removal of Contractor's Equipment*] and shall be paid in accordance with Sub-Clause 19.6 [*Optional Termination, Payment and Release*] in accordance with the terms of the Compact and any related agreements."

Sub-Clause 15.5**Employer's Entitlement to Termination**

Amend Sub-Clause 15.5 by replacing the first paragraph with the following:

"The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security.

Sub-Clause 15.6**Fraud and Corruption Requirements**

Add the following Sub-Clause 15.6:

"MCC requires that the Employer and any other beneficiaries of MCC Funding, including Offerors, suppliers, contractors, and subcontractors under any MCC-funded contracts, observe the highest standards of ethics during the procurement and execution of such contracts.

MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations ("MCC AFC Policy") is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. *MCC AFC Policy* requires that companies and entities receiving MCC funds acknowledge notice of *MCC AFC Policy* and certify to the Employer that they have acceptable commitments and procedures in place to address the potential for coercion, collusion, corruption, fraud, and prohibited practices. In pursuance of this policy:

- (a) For purposes of the Contract, the terms set forth below are defined as follows, and sometimes referred to collectively in this document as "Fraud and Corruption":
 - (i) **"coercion"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to improperly influence the actions of a party in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including such actions taken in connection with a procurement process or the execution of a contract;
 - (ii) **"collusion"** means a tacit or explicit agreement between two or more parties to engage in coercion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or a prohibited practice, including any such agreement designed to fix, stabilize, or manipulate prices or to otherwise deprive the Employer of the benefits of free and open competition;
 - (iii) **"corruption"** means The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of a public official,

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

Employer Personnel, MCC staff, consultants, or employees of other entities engaged in work supported, in whole or in part, with MCC Funding, including such work involving taking or reviewing selection decisions, otherwise advancing the selection process or contract execution, or the making of any payment to any third party in connection with or in furtherance of the Contract;

- (iv) ***“fraud”*** means any act or omission, including any misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party in order to obtain a financial or other benefit in connection with the implementation of any contract supported, in whole or in part, with MCC Funding, including any act or omission designed to influence (or attempt to influence) a selection process or the execution of a contract, or to avoid (or attempt to avoid) an obligation;
 - (v) ***“obstruction of investigation into allegations of fraud or corruption”*** means any act taken in connection with the implementation of any contract supported, in whole or in part, with MCC Funding: (a) that results in the deliberate destroying, falsifying, altering or concealing of evidence or making false statement(s) to investigators or any official in order to impede an investigation into allegations of coercion, collusion, corruption, fraud, or a prohibited practice; or (b) that threatens, harasses, or intimidates any party to prevent him or her from either disclosing his or her knowledge of matters relevant to an investigation or from pursuing the investigation; or (c) that is intended to impede the conduct of an inspection and/or the exercise of audit rights of MCC and/or the Office of the Inspector General (OIG) responsible for MCC provided under a Compact, Threshold Program agreement, or related agreements;
 - (vi) ***“prohibited practice”*** means any action that violates Section E (Compliance with Anti-Corruption Legislation), Section F (Compliance with Anti-Money Laundering Legislation), and Section G (Compliance with Terrorist Financing Legislation and Other Restrictions) of the Annex of Additional Provisions that will be made a part of MCC-funded contracts.
- (b) MCC may cancel any portion or all of the MCC Funding allocated to the Contract if it determines at any time that representatives of the Employer, the Contractor or any other beneficiary of the MCC Funding were engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during

the selection process or the performance of the Contract, or another MCC-funded contract, without the Employer, the Contractor or such other beneficiary having taken timely and appropriate action satisfactory to MCC to remedy the situation.

- (c) MCC and the Employer may pursue sanction of the Contractor, including declaring the Contractor ineligible, either indefinitely or for a stated period of time, to be awarded any MCC-funded contract if at any time either MCC or the Employer determines that the Contractor has, directly or through an agent, engaged in any coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices in competing for, or in performance of, the Contract or another MCC-funded contract.
- (d) If the Employer or MCC determines that the Contractor, any Subcontractor, any of the Contractor's Personnel, or any agent or affiliate of any of them has, directly or indirectly, engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices, in competing for or in the performance of the Contract, then the Employer or MCC may, by notice, immediately terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 15 [*Termination by Employer*] shall apply as if such expulsion had been made under Sub-Clause 15.2(f).
- (e) Should any of the Contractor's Personnel be determined to have engaged in coercion, collusion, corruption, fraud, obstruction of investigation into allegations of fraud or corruption, or prohibited practices during the competition for or execution of the Contract, but the Employer or MCC determines not to terminate the Contractor's employment and the Contract in accordance with the immediately preceding sub-paragraph, then the relevant Contractor's Personnel shall be removed in accordance with Sub-Clause 6.9 [*Contractor's Personnel*].
- (f) *MCC AFC Policy* requires that companies and entities receiving MCC funds (including contractors) acknowledge notice of *MCC AFC Policy* and certify to the Employer that they have acceptable commitments and procedures in place to address the potential for fraudulent and corrupt practices. Any entity receiving an award (including, but not limited to, both contracts and grants) of MCC Funding of over \$500,000 will be required certify that they will adopt and implement a code of business ethics and conduct within 90 days of contract award. Such entity will also include the substance of this clause in subcontracts that have a value in excess of \$500,000. Information regarding the establishment of business ethics and conduct programs can be obtained from numerous sources, including but not limited to:

<http://www.oecd.org/corruption/Anti-CorruptionEthicsComplianceHandbook.pdf>

<https://www.cipe.org/resources/anti-corruption-compliance-guide-mid-sized-companies-emerging-markets/>

16. Suspension and Termination by Contractor

Sub-Clause 16.2 Termination by Contractor

Amend Subpara. (d) of Sub-Clause 16.2 by adding the following at the end:

“in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,”

17. Risk and Responsibility

Sub-Clause 17.3 Employer’s Risks

Amend Sub-Clause 17.3 by replacing the first line with the following:

“The Employer’s risks, insofar as they directly affect the execution of the Works in the Country where the Permanent Works are to be executed, are:”

Sub-Clause 17.6 Limitation of Liability

Amend Sub-Clause 17.6 by replacing the first paragraph with the following:

“Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [*Delay Damages*]; Sub-Clause 11.2 [*Cost of Remedying Defects*]; Sub-Clause 15.4 [*Payment after Termination*]; Sub-Clause 16.4 [*Payment on Termination*]; Sub-Clause 17.1 [*Indemnities*]; Sub-Clause 17.4 (b) [*Consequences of Employer’s Risks*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*].”

18. Insurance

Sub-Clause 18.1 General Requirements for Insurance

Amend Sub-Clause 18.1 by adding the following at the end:

“The insuring Party shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18 [*Insurance*]) with insurers from any Eligible Entity.”

19. Force Majeure

Sub-Clause 19.4

Amend Sub-Clause 19.4 by inserting the following at the end of Subpara. (b):

Consequences of Force Majeure “, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [*Insurance for Works and Contractor’s Equipment*].”

20. Claims, Disputes and Arbitration

Sub-Clause 20.1 Contractor’s Claims Amend Sub-Clause 20.1 by inserting the following as a new paragraph between subparagraphs 6 and 7:

“Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [*Extension of Time for Completion*], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.”

Amend Sub-Clause 20.1 by deleting paragraph 8 (in the order of paragraphs prior to the amendment made above) and replacing it with the following new paragraph:

“If the Engineer does not respond within the timeframe defined in this Sub-Clause, either Party may consider that the claim is rejected by the Engineer and either Party may refer such claim to the DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board’s Decision*].”

Sub-Clause 20.2 Appointment of the Dispute Adjudication Board

Amend Sub-Clause 20.2 by inserting the following at the end of the first sentence of the second paragraph:

“, each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents.”

Amend Sub-Clause 20.2 by replacing the fifth paragraph with the following:

“The agreement between the Parties and either the sole member (“adjudicator”) or each of the three members shall:

- (a) incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions; and
- (b) be in the form annexed to the Particular Conditions or in another form approved by the Employer.”

**Sub-Clause 20.6
Arbitration**

Amend Sub-Clause 20.6 by replacing the first paragraph with the following:

“Any dispute not settled amicably and in respect of which the DAB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Unless otherwise agreed by both Parties:

- (a) For contracts with foreign contractors,
 - (i) international arbitration shall be conducted with proceedings administered by the international arbitration institution appointed in the Appendix to Offer, in accordance with the rules of arbitration of the appointed institution, if any, or in accordance with UNCITRAL arbitration rules, at the choice of the appointed institution;
 - (ii) the place of arbitration shall be the city where the headquarters of the appointed arbitration institution is located or such other place selected in accordance with the applicable arbitration rules; and
 - (iii) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [*Law and Language*], and
- (b) For contracts with domestic contractors, arbitration shall be conducted with proceedings in accordance with the Laws of the Employer’s Country.”

Amend Sub-Clause 20.6 by adding the following at the end:

“MCC has the right to be an observer to any arbitration proceeding hereunder, at its sole discretion, but does not have the obligation to participate in any arbitration proceeding in any capacity. Whether or not MCC is an observer to any arbitration hereunder, the Parties shall provide MCC with all pleadings, correspondence, and other documents related in any way to the proceedings or hearings, as well as written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within ten (10) days after (a) each such proceeding or hearing or (b) the date on which any such award is issued. MCC may enforce its rights under the Contract in an arbitration conducted in accordance with this provision or by bringing an action in any court that has jurisdiction. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent to the jurisdiction of the courts or any other body of any jurisdiction or to the jurisdiction of any arbitral panel.”

Sub-Clause 20.7

Replace the text of Sub-Clause 20.7 with the following:

Failure to Comply with Dispute Adjudication Board's Decision “In the event that a Party fails to comply with any decision of the DAB, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [*Arbitration*] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*] and Sub-Clause 20.5 [*Amicable Settlement*] shall not apply to this reference.”

Add the following Clauses and Sub-Clauses:

21. Taxes

Sub-Clause 21.1
Certain Forms of Local Taxation “As provided for under the terms of the Compact, most services performed under and activities undertaken in furtherance of the Contract, including in connection with the execution of the Works, are exempt from taxes, duties, levies, contributions or other charges imposed under Laws currently or hereafter in effect in the Employer's Country (separately “tax” and collectively “taxes”) during the effective term of the Compact, including, without limitation:

- (a) income taxes, withholding taxes, and other profit or business taxes imposed on individuals, organizations, or enterprises (other than nationals or permanent residents of the Employer's Country);
- (b) customs duties, tariffs, import and export taxes or other taxes imposed on import, usage and re-export of goods, (including Contractor's Equipment and spare parts thereof, Plant, Materials and supplies imported into the Employer's Country for purposes of the Contract), services or personal items (including personal automobiles) to be used in connection with the execution of the Works or for usage by the Contractor's Personnel (or their family members) who are not nationals or permanent residents of the Employer's Country and are in the Employer's Country for the purpose of the execution of the Works; and
- (c) sales tax, valued added tax, excise tax, property (real or personal) transfer tax, taxes on the ownership, possession or use of property (real or personal), and other similar charges on any transactions involving goods, works or services.

“In the case of imports of goods for personal usage, the written information shall indicate that the goods shall be used for personal usage by Contractor's Personnel (or their family members) who are neither nationals nor permanent residents of the Employer's Country

Section VII. Particular Conditions of Contract (Large Works - CB & QPBS)

and who are in the Employer's Country for the purpose of executing the Works.

"The Employer shall use reasonable efforts to ensure that the Government provides the Contractor, any Subcontractor and any Contractor's Personnel the exemptions from taxation applicable to such persons or entities, in accordance with the terms of the Compact or related agreements."

Sub-Clause 21.2**Income Taxes on Local Staff**

"As provided for under the terms of the Compact, the Contractor's local staff and labour (nationals or permanent residents of the Employer's Country) will be liable to pay personal income taxes in the Employer's Country in respect of such of their salaries and wages as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws."

Sub-Clause 21.3**Obligation to Pay Taxes**

"The Contractor, each Subcontractor and their respective personnel shall pay all taxes levied under applicable Laws. In no event shall the Employer be responsible for the payment of any taxes.

"If the Contractor, any Subcontractor or Contractor's Personnel is required to pay taxes that are exempt under the Compact or a related agreement, the Contractor shall promptly notify the Employer of any such taxes paid, and shall cooperate with, and take such actions as may be requested by the Employer, MCC, or either of their agents or representatives, in seeking the prompt and proper reimbursement of such taxes."

22. General Provisions of Compact and other Provisions**Sub-Clause 22.1****Provisions a Part of the Contract**

The provisions set forth in Annex A (Additional Provisions) attached to the Particular Conditions of Contract form an integral part of the Contract. For the avoidance of doubt, the Parties agree and understand that the provisions set forth in Annex A reflect certain requirements of the Government and the Employer under the terms of the Compact that are required to be transferred onto any contractor or subcontractor who partakes in procurement or subsequent contracts in which MCC Funding is involved and that, as with the other clauses under the Contract, the provisions of Annex A are binding obligations under the Contract."

Sub-Clause 22.2**Flow Through Provisions**

"In any subcontract or sub-award entered into by the Contractor, as permitted by the terms of the Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A (Additional Provisions) attached to the Particular Conditions of Contract in any agreement related to such subcontract or sub-award."

Sub-Clause 22.3
Contractor Past
Performance
Reporting System

“The Contractor acknowledges that during the performance of the Contract the Employer shall maintain a performance record of the Contractor in accordance with MCC’s Contractor Past Performance Reporting System, as described on MCC’s website. The Contractor shall provide timely information or input to, and otherwise respond to requests for input or information from, the Employer to enable the Employer to comply with MCC requirements related to this Contractor Past Performance Reporting System.”