

## SECTION VI. GENERAL CONDITIONS OF CONTRACT

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## General Conditions of Contract

### A. GENERAL

#### 1. Definitions

Capitalized terms used in this Contract and not otherwise defined have the meanings given such terms in the Compact or related document. Unless the context otherwise requires, the following words whenever used in this Contract have the following meanings:

- (a) “Adjudicator” means the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC Clauses 23 and 24.
- (b) “Agreement” means that portion of this Contract entitled Agreement that is signed by authorized representatives of the Employer and the Contractor.
- (c) “Applicable Law” means the laws and any other instruments having the force of law in the Employer’s country, that from time to time are in force and effect.
- (d) “Associate” means any entity that is a member of the Association that forms the Consultant. A subcontractor is not an Associate.
- (e) “Association” or “association” or “Joint Venture” or “joint venture” means an association of entities that forms the Consultant, with or without a legal status distinct from its members.
- (f) “Appointing Authority” means the person or entity identified in PCC Sub-Clause 24.1 and any successor Appointing Authority appointed pursuant to the terms of this Contract.
- (g) “Bid” or “Offer” means the bid for the construction of the Works submitted by the Contractor and accepted by the Employer and that forms a part of this Contract.
- (h) “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.<sup>1</sup>
- (i) “Certificate of Completion” means the certificate to be issued by the Engineer upon completion of the Works, in accordance with GCC Clause 57.
- (j) “Compact” has the meaning given such term in the recital clauses to the Agreement.

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<sup>1</sup> [In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule” and move the term to the appropriate place (alphabetically) in this list of defined terms.]

- (k) “Compensation Events” means those events defined as such in GCC Clause 46.1.
- (l) “Completion Date” means the date of completion of the Works as certified by the Engineer, in accordance with GCC Clause 57.
- (m) “Contract” means this agreement between the Employer and the Contractor to execute, complete, and maintain the Works and consists of the documents listed in GCC Sub-Clause 2.3, as the same may be amended, modified, or supplemented from time to time in accordance with the terms hereof and thereof.
- (n) “Contract Price” means the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of this Contract.
- (o) “Contractor” has the meaning given such term in the initial paragraph of the Agreement.
- (p) “Contractor’s Environmental & Social Management Plan” or “CESMP” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 70.
- (q) “day” means a calendar day.
- (r) “Dayworks” means varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.
- (s) “Defect” means any part of the Works not completed in accordance with this Contract.
- (t) “Defects Liability Certificate” means the certificate issued by the Engineer upon correction of Defects by the Contractor. The terms “Defects Liability Certificate” and “Performance Certificate” may be used interchangeably.
- (u) “Defects Liability Period” means the period specified in PCC Sub-Clause 37.1 and calculated from the Completion Date.
- (v) “Drawings” means calculations and other information provided or approved by the Engineer for the execution of this Contract.
- (w) “Employer” has the meaning given such term in the initial paragraph of the Agreement.
- (x) “Engineer” means the person or entity **named in the PCC** (or any other competent person or entity appointed by the Employer and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering this Contract.
- (y) “Equipment” means the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.

- (z) “Force Majeure” has the meaning given such term in GCC Sub-Clause 64.1.
- (aa) “GCC” means the General Conditions of Contract.
- (bb) “Government” has the meaning given such term in the recital clauses to the Agreement.
- (cc) “Health and Safety Management Plan” or “HSMP” means the plan the Contractor shall develop, deliver, and implement in accordance with GCC Clause 68.
- (dd) “IFC Performance Standards” means the International Finance Corporation’s Performance Standards on Environmental and Social Sustainability.
- (ee) “Initial Contract Price” means the Contract Price listed in the Letter of Acceptance.
- (ff) “Intended Completion Date” means the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Engineer by issuing an extension of time or an acceleration order.
- (gg) “Letter of Acceptance” means the letter, dated as **specified in the PCC** from the Employer to the Contractor notifying the Contractor that its Offer has been accepted and that forms an integral part of this Contract.
- (hh) “Materials” means all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (ii) “MCC” has the meaning given such term in the recital clauses to the Agreement.
- (jj) “MCC Funding” has the meaning given such term in the recital clauses to the Agreement.
- (kk) “month” means a calendar month and “monthly” refers to a calendar month.
- (ll) “Payment Certificate” means the certificate issued by the Engineer in accordance with GCC Clause 44.
- (mm) “Performance Security” means the security to be provided by the Contractor in accordance with GCC Clause 54.
- (nn) “Plant” means any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (oo) “Program” has the meaning given such term in GCC Sub-Clause 29.1.
- (pp) “PCC” means Particular Conditions of Contract.

- (qq) “Primary Suppliers” means any person or legal entity who provides goods or materials essential for the Contract.
- (rr) “Schedule of Key Personnel” means the schedule of key personnel employed by the Contractor, described in GCC Clause 9.
- (ss) “Schedule of Other Contractors” means the schedule of other contractors working on the Site, described in GCC Clause 8.
- (tt) “Site” means the area **defined in the PCC**.
- (uu) “Site Investigation Reports” means those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (vv) “Site Possession Dates” means a date on which the Employer is to give possession of all or part of the Site to the Contractor in accordance with GCC Clause 19.
- (ww) “Specifications” means the Technical Specifications of the Works included as part of this Contract and any modification or addition made or approved by the Engineer.
- (xx) “Start Date” means the date **specified in the PCC** as the date when the Contractor may commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (yy) “Tax” and “Taxes” have the meanings given such terms in the Compact or related agreement.
- (zz) “Temporary Works” means those works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (aaa) “Ultimate Beneficial Owner” means an individual who (i) directly or indirectly controls more than 10% of the shares of the company; or (ii) directly or indirectly controls more than 10% of the voting rights of the company; or (iii) has the right to appoint a majority of the board of directors.
- (bbb) “Variation” means an instruction given by the Engineer which varies the Works.
- (ccc) “Works” means what this Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

## 2. Interpretation

- 2.1 In interpreting this Contract, unless otherwise indicated:
  - (i) “confirmation” means confirmation in writing;
  - (ii) “in writing” means communicated in written form (e.g., by

- mail, e-mail, or facsimile) delivered with proof of receipt;
- (iii) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular;
- (iv) the feminine means the masculine and vice versa;
- (v) headings are for convenience only and have no other significance; and
- (vi) the Engineer shall provide instructions clarifying queries about the interpretation of this Contract.

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

2.3 The following documents are each deemed to form an integral part of this Contract and shall be interpreted in the following order of priority:

- (a) Agreement,
- (b) Letter of Acceptance,
- (c) Offer,
- (d) PCC and Annex A to this Contract entitled “Annex A: Additional Provisions,”
- (e) GCC,
- (f) Technical Specifications,
- (g) Drawings,
- (h) Bill of Quantities,<sup>2</sup> and
- (i) any other document **listed in the PCC** as forming part of this Contract.

### 3. Language and Law

3.1 This Contract has been executed in the language(s) **specified in the PCC**. If the Contract is executed in both the English and another language, the English language version shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

3.2 This Contract, its meaning and interpretation and the relation between the parties shall be governed by Applicable Law.

<sup>2</sup> [In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”]



## Section VI. General Conditions of Contract (Small Works – CB &amp; QPBS)

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| <b>4. Engineer's Decisions</b> | 4.1 | Except where otherwise specifically stated, the Engineer shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.  |
| <b>5. Delegation</b>           | 5.1 | The Engineer may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.  |
| <b>6. Communications</b>       | 6.1 | Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Subject to Applicable Law, any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when delivered to such party at the address <b>specified in the PCC</b> , or sent by confirmed facsimile or confirmed email, in either case if sent during normal business hours of the recipient party. |
|                                | 6.2 | A party may change its address for receiving notice under this Contract by giving the other party notice in writing of such change to the address <b>specified in PCC 6.1</b> .   |
| <b>7. Subcontracting</b>       | 7.1 | The Contractor may subcontract with the approval of the Engineer, but may not assign this Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations under this Contract.  |
| <b>8. Other Contractors</b>    | 8.1 | The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.  |
| <b>9. Personnel</b>            | 9.1 | 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 such schedule or other personnel approved by the Engineer. The Engineer shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule of Key Personnel.   |
|                                | 9.2 | If the Engineer asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the   |

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- Site within seven days and has no further connection with the work in this Contract.
- 10. Employer's and Contractor's Risks**      10.1      The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**      11.1      From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works; or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2      From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
  - (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**      12.1      From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**      13.1      The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts

and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:

- (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 this Contract; and
- (d) personal injury or death.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.

13.3 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 from the Contractor to the Employer.

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Engineer.

13.5 Both parties shall comply with any conditions of the insurance policies.

#### **14. Eligibility; Source of Equipment, Material and Services**

14.1 The Contractor and its subcontractors, including their respective personnel and affiliates, shall at all times during the term of this Contract have the nationality of a country or territory eligible, in accordance with the Compact, the MCC Procurement Policy and Guidelines and Annex A to this Contract ("Eligible Countries"). The Contractor or a subcontractor and their respective personnel and affiliates shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

14.2 The Contractor shall submit updated Beneficial Ownership Disclosure Forms upon the addition of any Ultimate Beneficial Owner or at the Employer's request at any time during Contract performance. Failure to provide information as required may lead to the termination of the Contract in accordance with GCC Sub-Clause 61.2 (j).

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|  | 14.3 | All Equipment, Materials, Plant and any services to be incorporated in or required for the Works shall have their origin in Eligible Countries.  |
|  | 14.4 | For the purpose of this GCC Clause 14, “origin” means the place where the Equipment, Material 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 supplied. |
| <b>15. Queries about the Particular Conditions of Contract</b>       | 15.1 | The Engineer shall clarify queries on the PCC.   |
| <b>16. Contractor to Construct the Works</b>                         | 16.1 | The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.   |
| <b>17. The Works to Be Completed by the Intended Completion Date</b> | 17.1 | The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Engineer, and shall complete the Works by the Intended Completion Date.   |
| <b>18. Approval by the Engineer</b>                                  | 18.1 | The Contractor shall submit Technical Specifications and Drawings showing any proposed Temporary Works to the Engineer, who is to approve them if they comply with the Technical Specifications and Drawings.  |
|  | 18.2 | The Contractor shall be responsible for the design of any Temporary Works.   |
|  | 18.3 | The Engineer’s approval shall not alter the Contractor’s responsibility for the design of any Temporary Works.   |
|  | 18.4 | The Contractor shall obtain approval of third parties to the design of any Temporary Works, where required.  |
|  | 18.5 | All Drawings prepared by the Contractor for the execution of any Temporary Works or the Works, are subject to prior approval by the Engineer before their use.   |
| <b>19. Contractor Access to the Site</b>                             | 19.1 | The Site Possession Date(s) shall be as <b>listed in the PCC</b> , where access will be granted by the Employer to the Contractor after completion of the resettlement activities.   |

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| <b>20. Engineer Access to the Site</b>          | 20.1 | The Contractor shall allow any person authorized by the Engineer access to the Site and to any place where work in connection with this Contract is being carried out or is intended to be carried out.   |
| <b>21. Instructions, Inspections and Audits</b> | 21.1 | The Contractor shall carry out all instructions of the Engineer which comply with the Applicable Law where the Site is located.   |
|   | 21.2 | The Contractor shall permit MCC and/or persons appointed by MCC to inspect the Site and/or the accounts and records of the Contractor and any subcontractors relating to the performance of this Contract, and to have such accounts and records audited by auditors appointed by MCC, if so required by MCC in accordance with the provisions of the Annex to this Contract entitled “Additional Provisions.”  |
| <b>22. Disputes</b>                             | 22.1 | If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by this Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer’s decision.   |
| <b>23. Procedure for Disputes</b>               | 23.1 | The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.  |
|   | 23.2 | The Adjudicator shall be paid by the hour at the rate <b>specified in the PCC</b> , together with reimbursable expenses of the types <b>specified in the PCC</b> , and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to arbitration within 14 days of the Adjudicator’s written decision in accordance with GCC Sub-Clause 23.1. If neither party refers the dispute to arbitration within the above 14 days, the Adjudicator’s decision shall be final and binding. |
|   | 23.3 | The arbitration shall be conducted in accordance with the terms <b>specified in the PCC</b> and the arbitration procedures published by the institution named and in the place <b>specified in the PCC</b> .  |
|   | 23.4 | MCC has the right to be an observer of any arbitration proceeding arising under this Contract, at its sole discretion, but does not have the obligation to observe any arbitration proceeding. Whether or not MCC is an observer to any arbitration arising under this Contract, the Employer shall provide MCC with written English transcripts of any arbitration proceedings or hearings and a copy of the reasoned written award within 14 days after (a) each such proceeding or hearing   |

or (b) the date on which any such award is issued. The acceptance by MCC of the right to be an observer to the arbitration shall not constitute consent by MCC to the jurisdiction of the courts or any other organism of the Employer's or the Contractor's countries or any other jurisdiction or to the jurisdiction of any arbitral panel or other body.

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|---------------------------------------|------|--|
| <b>24. Replacement of Adjudicator</b> | 24.1 | Should the Adjudicator resign or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of this Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. If the Employer and the Contractor cannot reach agreement as to the appointment of such new Adjudicator within 28 days, either party may then request that the Appointing Authority <b>designated in the PCC</b> appoint a new Adjudicator and such replacement Adjudicator shall be designated by the Appointing Authority within 14 days of receipt of such request.  |
| <b>25. Conflict of Interest</b>       | 25.1 | The Contractor shall not engage, and shall cause its personnel as well as any subcontractors and their personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.  |
| <b>26. Commissions and Fees</b>       | 26.1 | The Contractor shall disclose any commissions or fees that may have been paid or, at any time during the execution of this Contract are paid, to agents, representatives, or commission agents with respect to the selection process or performance of this Contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.   |
| <b>27. Confidentiality</b>            | 27.1 | Each of the parties shall treat the details of this Contract as private and confidential, except to the extent necessary to carry out their respective obligations under this Contract or to comply with Applicable Laws. The parties shall not publish or disclose any particulars of the Works prepared by the other party without the previous agreement of the other. However, the Contractor shall be permitted to disclose any publicly available information, or, with the prior consent of the Employer in writing, 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 this 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 all of its personnel and each subcontractor and its personnel.

27.2 The Contractor shall disclose, and shall cause its personnel as well as any subcontractor and its personnel to disclose, all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with this Contract and to allow for this Contract's proper implementation.

## **28. Entire Agreement**

28.1 This Contract contains all of the covenants, stipulations and provisions agreed to by the parties. No agent or representative of either party has the authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth in this Contract.

## **B. TIME CONTROL**

## **29. Program**

29.1 Within the time **stated in the PCC**, after the date of Contract signing, the Contractor shall submit to the Engineer for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works (the "Program").

29.2 An update of the Program shall be a Program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

29.3 The Contractor shall submit to the Engineer for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Engineer may withhold the amount **stated in the PCC** from the next Payment Certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted and approved by the Engineer.

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



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| <b>30. Extension of the Intended Completion Date</b> | <p>30.1 The Engineer shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work in a manner that would cause the Contractor to incur additional cost. The Engineer shall also extend the Intended Completion Date if it determines an event of Force Majeure has occurred in accordance with GCC Clause 64. Any extensions that extend the original Contract duration by 25 percent or more, individually or in the aggregate, shall require the Employer's prior approval.</p> <p>30.2 The Engineer shall decide whether and by how much to extend the Intended Completion Date within 21 days of (a) the Contractor asking the Engineer for a decision upon the effect of a Compensation Event or Variation or (b) the Contractor or the Employer asking the Engineer for a decision on the occurrence of an event of Force Majeure. In each case, such request is to be in writing and shall be supplemented by full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.</p> |
| <b>31. Acceleration</b>                              | <p>31.1 When the Employer wants the Contractor to finish before the Intended Completion Date as it may have been extended, the Engineer shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.</p> <p>31.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.</p>  |
| <b>32. Delays Ordered by the Engineer</b>            | <p>32.1 The Engineer may instruct the Contractor to delay the start or progress of any activity within the Works.</p>  |
| <b>33. Management Meetings</b>                       | <p>33.1 Either the Engineer or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.</p> <p>33.2 The Engineer shall record the business of management meetings and provide copies of the record to those attending the</p>   |



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 meeting or after the management meeting and stated in writing to all who attended the meeting.

#### **34. Early Warning**

- 34.1 The Contractor shall warn the Engineer at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Engineer may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 34.2 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 by anyone involved in the work and in carrying out any resulting instruction of the Engineer.

### **C. QUALITY CONTROL**

#### **35. Identifying Defects**

- 35.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Engineer may instruct the Contractor to search for a Defect and to uncover and test any work that the Engineer considers may have a Defect.

#### **36. Tests**

- 36.1 If the Engineer instructs the Contractor to carry out a test not specified in the Technical Specifications 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.

#### **37. Correction of Defects**

- 37.1 The Engineer shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 37.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Engineer's notice of Defect.

#### **38. Uncorrected Defects**

- 38.1 If the Contractor has not corrected a Defect within the time specified in the Engineer's notice of Defect, the Engineer shall

assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

#### **D. COST CONTROL**

##### **39. Bill of Quantities<sup>3</sup>**

- 39.1 The Bill of Quantities shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.
- 39.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.
- 39.3 If the Bill of Quantities includes Provisional Sums, these shall be expended in whole or in part at the direction and discretion of the Engineer except with respect to Adjudicator fees and expenses, for which no instruction will be required from the Engineer.

##### **40. Changes in the Quantities<sup>4</sup>**

- 40.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds one percent of the Initial Contract Price, the Engineer shall adjust the rate to allow for the change.
- 40.2 Except with the prior approval of the Employer, the Engineer shall not adjust rates from changes in quantities if such change, either individually or in the aggregate, causes the Initial Contract Price increase by either (a) 10 percent or more or (b) US\$1 million, whichever is less.
- 40.3 In the event the cumulative threshold referenced in GCC 40.2 above has is reached, prior Employer approval shall then be required for any subsequent adjustments that cause the Initial Contract Price to be increased by 3 percent or more, either individually or in the aggregate.

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<sup>3</sup> [In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace GCC Sub-Clauses 39.1 and 39.2, with the following:

39.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to do so by the Engineer. The activities on the Activity Schedule shall be coordinated with the activities on the Program.

39.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.]

<sup>4</sup> [In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule,” and replace entire GCC Clause 40 (40.1 through 40.3) with the following:

40.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor’s own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.]

- 40.4 If requested by the Engineer, the Contractor shall provide the Engineer with a detailed cost breakdown of any rate in the Bill of Quantities.
- 41. Variations** 41.1 All Variations shall be included in updated Programs<sup>5</sup> produced by the Contractor.
- 42. Payments for Variations** 42.1 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 days of the request or within any longer period stated by the Engineer and before the Variation is ordered.
- 42.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Engineer, the quantity of work above the limit stated in GCC Sub-Clause 42.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.<sup>6</sup>
- 42.3 If the Contractor's quotation is 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.
- 42.4 If the Engineer decides that the urgency of varying the work would prevent a quotation from being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 42.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning in accordance with GCC Clause 34.
- 43. Cash Flow Forecasts** 43.1 When the Program<sup>7</sup> is updated, the Contractor shall provide the Engineer with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in this Contract, converted as necessary using the exchange rates provided for in this Contract.

<sup>5</sup> [In lump sum contracts, add "and Activity Schedules" after "Programs."]

<sup>6</sup> [In lump sum contracts, delete this GCC Sub-Clause 44.2 entirely and renumber the following sub-clauses accordingly.]

<sup>7</sup> [In lump sum contracts, add "or Activity Schedule" after "Program."]

**44. Payment Certificates**

- 44.1 The Contractor shall submit to the Engineer monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 44.2 The Engineer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor which certified amount shall be set forth in a Payment Certificate issued by the Engineer.
- 44.3 The value of work executed shall be determined by the Engineer.
- 44.4 The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed.<sup>8</sup>
- 44.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 44.6 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.

**45. Payments**

- 45.1 Payments shall be adjusted for deductions for advance payments and retention, if any. The Employer shall pay, or cause to be paid to, the Contractor the amounts certified by the Engineer within 28 days of the date of each Payment Certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate of interest for each of the relevant currencies as **indicated in the PCC**.
- 45.2 If an amount certified is increased in a later Payment Certificate or as a result of an award by the Adjudicator or in arbitration in accordance with GCC Clause 23, the Contractor shall be paid interest on the delayed payment. Such interest shall be calculated from the date on which the increased amount would have been paid in the absence of dispute at the rate provided for in GCC Sub-Clause 45.1.
- 45.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 45.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in this Contract.

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<sup>8</sup> [In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."]

**46. Compensation Events**

46.1 The following shall be “Compensation Events”:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 19.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under this Contract.
- (c) The Engineer orders a delay or does not issue Drawings, Technical 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.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to Offerors (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 (other than subcontractors), public authorities, utilities, or the Employer does not work within the dates and other constraints stated in this 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 Certificate of Completion.

**47. Taxes**

- 47.1 Unless otherwise **stated in the PCC**, 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.

- 47.2 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 and who are in the Employer's Country for the purpose of executing the Works.
- 47.3 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.
- 47.4 As provided for under the terms of the Compact, the Contractor's local staff and labor (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.
- 47.5 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.
- 47.6 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.

**48. Currencies**

- 48.1 Payments will be made in the currency(ies) of the Offer, in the same proportion that was proposed in the Offer.

**49. Price Adjustment**

- 49.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each Payment Certificate, before deducting for the advance payment, if any, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \times I_{mc}/I_{oc}$$

where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency “c.”

$A_c$  and  $B_c$  are coefficients<sup>9</sup> **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable in that specific currency “c;” and

$I_{mc}$  is the index prevailing at the end of the month being invoiced and  $I_{oc}$  is the index prevailing 28 days before Offer opening for inputs payable, both in the specific currency “c.”

- 49.2 Adjustment shall be made for the first time during the term of this Contract at the time **specified in the PCC**.
- 49.3 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next Payment Certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

**50. Retention**

- 50.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until completion of the whole of the Works.
- 50.2 On completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the

<sup>9</sup> [The sum of the two coefficients  $A_c$  and  $B_c$  should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient  $A$ , for the nonadjustable portion of the payments, takes account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.]



- Contractor before the end of the Defects Liability Period have been corrected.
- 50.3 On completion of the whole Works, the Contractor may substitute retention money with an “on demand” bank guarantee in a form and issued by a bank acceptable to the Employer.
- 51. Liquidated Damages**
- 51.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the PCC**. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor’s liabilities.
- 51.2 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. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 51.1.
- 52. Bonus**
- 52.1 Unless otherwise **specified in the PCC**, no bonus shall apply to this Contract.
- 53. Advance Payment**
- 53.1 The Employer shall make an advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an unconditional bank guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. Such unconditional bank guarantee shall remain effective until the advance payment has been repaid, but the amount of such guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- 53.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of this Contract. The Contractor shall demonstrate that the advance payment has been used in this way by supplying copies of invoices or other documents to the Engineer in form and substance acceptable to the Engineer.
- 53.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the



Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, bonuses, if any, or liquidated damages.

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| <b>54. Securities</b>      | 54.1 | The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the amount <b>specified in the PCC</b> , in a form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 21 days from the date of issue of the Defects Liability Certificate. |
| <b>55. Dayworks</b>        | 55.1 | If applicable, the Dayworks rates in the Contractor's Offer shall be used for small additional amounts of work only when the Engineer has given written instructions in advance for additional work to be paid for in that way.  |
|                            | 55.2 | All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Engineer. Each completed form shall be verified and signed by the Engineer within two days of the work being done.  |
|                            | 55.3 | The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.  |
| <b>56. Cost of Repairs</b> | 56.1 | Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Liability Periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.  |

## **E. FINISHING THE CONTRACT**

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| <b>57. Completion</b>    | 57.1 | The Contractor shall request the Engineer to issue a Certificate of Completion of the Works, and the Engineer shall do so upon deciding that the work is completed.          |
| <b>58. Taking Over</b>   | 58.1 | The Employer shall take over the Site and the Works within seven days of the Engineer's issuing a Certificate of Completion.   |
| <b>59. Final Account</b> | 59.1 | The Contractor shall supply the Engineer with a detailed account of the total amount that the Contractor considers payable under this Contract before the end of the Defects |

Liability Period. The Engineer shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Engineer shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Engineer shall decide on the amount payable to the Contractor and issue a Payment Certificate.

**60. Drawings, Operating and Maintenance Manuals**

- 60.1 "As built" Drawings shall be supplied by the Contractor to the Engineer, in form and substance satisfactory to the Engineer, by the date **stated in the PCC**.
- 60.2 If operating and maintenance manuals are required, the Contractor shall supply them to the Engineer, in form and substance satisfactory to the Engineer, by the date **stated in the PCC**.
- 60.3 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC**, or they do not receive the Engineer's approval, the Engineer shall withhold the amount **stated in the PCC** from payments due to the Contractor.

**61. Termination**

- 61.1 The Employer or the Contractor may terminate this Contract if the other party causes a fundamental breach of this Contract.
- 61.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
  - (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Engineer;
  - (b) the Engineer instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
  - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Engineer is not paid by the Employer to the Contractor within 84 days of the date of the Engineer's issuance of a Payment Certificate;
  - (e) the Engineer gives notice that failure to correct a particular Defect is a fundamental breach of this Contract and the Contractor fails to correct it within a reasonable period of time determined by the Engineer;
  - (f) the Contractor does not maintain a Performance Security, which is required in accordance with GCC Clause 54;

- (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**;
  - (h) the Contractor, in the judgment of the Employer, has, directly or through an agent, engaged in any coercive, collusive, corrupt, fraudulent, obstructive or prohibited practices (each as defined in GCC Clause 66) in competing for or in the performance of this Contract or another MCC-funded contract;
  - (i) 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 to this Contract entitled “Annex: Additional Provisions” (which such termination will obligate the Contractor to repay any and all funds so misused within a maximum of 30 days after termination); and
  - (j) the Contractor fails 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.
- 61.3 When either party to this Contract gives notice of a breach of Contract to the Engineer for a cause other than those listed under GCC Sub-Clause 61.2, the Engineer shall decide whether the breach is fundamental or not.
- 61.4 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 61.1 through 61.3, if the execution of substantially all of the Works in progress is prevented for a continuous period of days as **specified in the PCC** (or for multiple periods that total more than the days as **specified in the PCC** due to the same event) by reason of an event of Force Majeure as determined by the Engineer in accordance with GCC Clause 64, then either party may give the other party a notice of termination of this Contract. In this event, the termination shall take effect seven days after such notice of termination is given and the Contractor shall proceed in accordance with GCC Sub-Clause 61.6.
- 61.5 In addition to termination of this Contract for a fundamental breach in accordance with GCC Sub-Clauses 61.1 through 61.3, or resulting from an event of Force Majeure in accordance with GCC Sub-Clause 61.4, the Employer may terminate this Contract for convenience or upon termination or suspension of the Compact.

- 61.6 If this Contract is terminated for any reason, the Contractor shall (a) stop work immediately, (b) make the Site safe and secure, (c) hand over any Drawings, Technical Specifications, other documents, Materials, Plant, and other work for which the Contractor has received payment (and all Materials, Plant, Equipment, Temporary Works, and Works in accordance with GCC Clause 63), and (d) leave the Site as soon as reasonably possible.
- 62. Payment upon Termination**
- 62.1 If this Contract is terminated because of a fundamental breach of Contract by the Contractor, the Engineer shall issue a certificate for the value of the work done and Materials ordered less advance payments, if any, received up to the date of the issue of such certificate and less the percentage to apply to the value of the work not completed, as **indicated in the PCC**. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 62.2 If this Contract is terminated for the Employer's convenience, suspension or termination of the Compact, or because of a fundamental breach of Contract by the Employer, or as the result of an event of Force Majeure, the Engineer shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments, if any, received up to the date of the certificate.
- 63. Property**
- 63.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if this Contract is terminated because of the Contractor's default.
- 64. Force Majeure**
- 64.1 For the purposes of this Contract, "Force Majeure" means an event or condition that (a) is not reasonably foreseeable and is beyond the reasonable control of a party, and is not the result of any acts, omissions or delays of the party relying on such Force Majeure (or any third person over whom such party has control, including any subcontractor), (b) is not an act, event or condition the risks or consequence of which such party has expressly agreed to assume under this Contract, (c) could not have been prevented, remedied or cured by such party's reasonable diligence, and (d) makes such party's performance of its obligations under this Contract impossible or so impractical as to be considered impossible under the

circumstances. Such events may include, but are not restricted to, acts of the Government in its sovereign capacity, wars or revolutions, terrorism, fires, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, and strike or lockout by persons other than the Contractor, any subcontractor, or any of their personnel.

- 64.2 The failure of a party to fulfill any of its obligations under this Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure; provided that the party affected by such an event has (a) taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, (b) informed the other party as soon as practicable (and in no event later than seven days following the occurrence) about the occurrence of an event giving rise to a claim of Force Majeure, and (c) has made a request to the Engineer with respect to the claim of Force Majeure in accordance with GCC Clause 30.2.
- 64.3 Subject to GCC Sub-Clause 64.6, a party affected by an event of Force Majeure shall continue to perform its obligations under this Contract as far as is reasonably practical, and shall take all reasonable measures to minimize and otherwise mitigate the consequences of any event of Force Majeure.
- 64.4 A party affected by an event of Force Majeure shall provide evidence of the nature and cause of such event in accordance with GCC Clause 30 and GCC Sub-Clause 64.2, and shall similarly give written notice of the restoration of normal conditions as soon as practicable.
- 64.5 If a party is prevented from performing any of its obligations under this Contract as the result of an event of Force Majeure and is otherwise in compliance with each of its obligations under GCC Clause 30 and this GCC Clause 64, such party shall be entitled to an extension of the Intended Completion Date in accordance with GCC Clause 30.
- 64.6 If any subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this GCC Clause 64, such additional or broader force majeure events, circumstances or provisions shall in no way excuse the Contractor's non-performance under this Contract or otherwise entitle the Contractor to relief under this GCC Clause 64.

## **F. ADDITIONAL PROVISIONS**

**65. MCC  
Required  
Provisions; Flow  
Through  
Provisions**

- 65.1 The provisions set forth in Annex A (Additional Provisions) form an integral part of this 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 this Contract, the provisions of Annex A are binding obligations under this Contract.
- 65.2 In any subcontract or sub-award entered into by the Contractor, as permitted by the terms of this Contract, the Contractor shall ensure the inclusion of all the provisions contained in Annex A in any agreement related to such subcontract or sub-award.

**66. Fraud and  
Corruption  
Requirements**

- 66.1 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's Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations ("MCC's AFC Policy") is applicable to all procurements and contracts involving MCC Funding and can be found on the MCC website. MCC's AFC Policy requires that companies and entities receiving MCC funds acknowledge notice of MCC's AFC Policy and certify to the Employer that they have acceptable commitments and procedures in place to address the potential for fraud and corruption.

Any entity receiving an award (including, but not limited to, both contracts and grants) of MCC Funding of over \$500,000 will be required to certify to the Employer that they will adopt and implement a code of business ethics and conduct within ninety (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:

[https://www.oecd.org/en/publications/anti-corruption-ethics-and-compliance-handbook-for-business\\_e1cf4226-en.html](https://www.oecd.org/en/publications/anti-corruption-ethics-and-compliance-handbook-for-business_e1cf4226-en.html)

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

(a) For purposes of the Contract, the terms set forth below are defined as follows:

- (i) ***“coercion”*** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party, to influence improperly 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, Employer staff, 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 a 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) improperly 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, 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 any 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 GCC Clause 61 shall apply.

(e) Should any of the Contractor’s personnel be determined to have engaged in any 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 GCC Clause 9.

**67. Combatting  
Trafficking in  
Persons**

67.1 MCC, along with other United States Government entities, has adopted a zero-tolerance policy with regard to Trafficking in Persons ("TIP") through its Counter-Trafficking in Persons Policy.<sup>10</sup> In pursuance of this policy:

**a) Defined Terms.** For purposes of the application and interpretation of this Clause 67:

- (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 ("MCC 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.** Contractors, subcontractors, consultants, cub-consultants and any of their respective personnel 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 Execute Orders regarding TIP, including using misleading recruitment practices; charging

<sup>10</sup> <https://www.mcc.gov/resources/doc/policy-counter-trafficking-in-persons/>

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 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 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-consultants (as the case may be), or their respective employees; 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 employee of a subcontractor, has engaged in conduct that violates this policy; and
- b. any actions taken against any personnel, subcontractor, subcontractor, or the employee 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;
- (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 Security.

## 68. Safety Procedures

- 68.1 Within the time **stated in the PCC**, after the date of Contract signing, 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 Technical Specifications and Schedules and Applicable Laws to the Engineer. The HSMP must be approved by the Engineer prior to commencement of the execution of the Works.
- 68.2 Unless the Engineer, within 14 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 HSMP.
- 68.3 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.
- 68.4 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.

68.5 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.

68.7 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 the Contract.

#### **69. HIV Awareness**

69.1 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 personnel and the local community, to promote early diagnosis and to assist affected individuals.

#### **70. Protection of the Environment and Social Sustainability**

70.1 Within the time **stated in the PCC**, after the date of Contract signing, 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 in respect of safety, security, and protection of the environment based on all relevant provisions found in the Technical Specifications and Schedules and Applicable Laws to the Engineer. The CESMP must be approved by the Engineer prior to commencement of the execution of the Works.

70.2 Unless the Engineer, within 14 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.

70.3 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.

- 70.4 The Contractor shall ensure that its activities under the Contract comply with MCC’s Environmental Guidelines (as such term is defined in the Compact or related agreement, which are available at <http://www.mcc.gov>), and are not ‘likely to cause a significant environmental, health, or safety hazard’ as defined in such Environmental Guidelines.
- 70.5 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.
- 70.6 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.
- 70.7 The Contractor shall comply with the IFC Performance Standards on Environmental and Social Sustainability, and the Contractor shall be responsible for ensuring that all subcontractors’ 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 subcontractors’ environmental, social, health and safety impacts management systems and environmental and social impacts performance.
- 70.8 Social Performance standards include prohibitions against forced or compulsory labor, harmful child labor, trafficking in persons, sexual harassment, and sexual exploitation and abuse, as well as requirements related to social impact, staff and labor, facilities for staff and labor, foreign personnel, and non-discrimination and equal opportunity.
- 70.9 The Contractor’s program submitted, maintained and implemented in accordance with GCC Clause 29 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 Clause.

- 70.10 The Contractor shall ensure the adequate disposal of construction and excavation wastes in accordance with MCC's 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.
- 70.11 The Contractor shall restore the Site to original conditions or to a state as set out in the Technical Specifications after the completion of the Works.
- 71. Engagement of Staff and Labor**
- 71.1 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 language comprehensible to the personnel.
- 71.2 The Contractor shall adopt recruitment, hiring and retention practices that support the employment of both women and men.
- 71.3 The Contractor shall ensure that the employment terms and conditions of migrant workers are not influenced by their migrant status.
- 71.4 The Contractor shall be responsible for monitoring compliance of subcontractors and Primary Suppliers to the labor and working conditions outlined in the IFC Performance Standards in force from time to time.
- Facilities for Staff and Labor**
- 71.5 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 Clause 68. Safety Procedures. 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 summary guidance may be found here:

<https://www.mcc.gov/resources/doc/guidance-accommodation-welfare-staff-and-labor>

- 71.6 When submitting their CESMP, 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 Standards 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/en/insights-reports/2000/publications-gpn-workersaccommodation>

#### **Foreign Personnel**

- 71.7 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.

- 71.8 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.

#### **Employment Records of Workers**

- 71.9 The Contractor shall maintain an updated record of staff and labor 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, sex (male/female), 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 labor laws.

- 72. Social Analysis and Implementation Plan**
- 72.1 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 Employer's Social Analysis and Implementation Plan (SAIP) (if such Plan is in place), as relevant to the activities performed under this Contract. The SAIP is a public document that summarizes the social analysis findings that have led to program activities and designs and sets out a program-wide action plan to ensure effective implementation, oversight, coordination of the social analysis and impact elements of the program. It may include program and project-specific guidance and metrics beyond those minimum requirements stated in clauses related to C-TIP, prohibition of sexual harassment and sexual exploitation and abuse, and a grievance mechanism for Contractor and subcontractor Personnel. The Contractor shall ensure that its activities do not cause significant negative social impacts as defined in the above policy and plan, and the Specifications.
- 72.2 The Contractor shall be responsible for ensuring that all subcontractors' 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 impacts of the Works, to the extent that such impacts result directly from completion of the Works as designed by the Employer.
- 73. Prohibition of Forced or Compulsory Labor**
- 73.1 The Contractor shall not employ "forced or compulsory labor" in any form. "Forced or compulsory labor" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.
- 73.2 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 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>
- 74. Prohibition of Harmful Child Labor**
- 74.1 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 Law does not specify a minimum age or specify 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 the Contract. Where Applicable Law 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.

- 74.3 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 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>

**75. Prohibition of Sexual Harassment and Sexual Exploitation and Abuse**

- 75.1 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 Employer. These include some forms of trafficking in persons (TIP), sexual harassment (SH), and sexual exploitation and abuse (SEA).

**(a) Defined Terms:** For purposes of the application and interpretation of this clause:

(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 or sexual orientation.

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 (SEA) 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; Employer employees and Consultants; and MCC personnel and consultants.

**(c) Contractor Requirements**

**(i) Sexual harassment**

The Contractor 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 Employer and MCC;

b) ensure that all Contractor and subcontractor 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 protocols, 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 that will be taken for violations. Such actions 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 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 Employer:
- (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, 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 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 Employer may apply remedies that could include any, all, or a 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 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 Employer.

**76. Non-Discrimination and Equal Opportunity**

- 76.1 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, or sexual orientation. 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 in addition to the foregoing. 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.
- 76.2 The Contractor shall adopt recruitment, hiring, and retention practices that support the employment of both women and men.

**77. Grievance Mechanism for Contractor and Subcontractor Personnel**

- 77.1 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.
- 77.2 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 Clause 67 on Combatting Trafficking in Persons, Clause 75 on Prohibition of Sexual Harassment and Sexual Exploitation and Abuse, and related MCC policies.

**78. Contractor  
Past Performance  
Reporting System**

- 78.1 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.
- 78.2 The Contractor shall provide timely information or input to, and otherwise respond to requests for input or information from, the Accountable Entity to enable the Accountable Entity to comply with MCC requirements related to this Contractor Past Performance Reporting System.