



CONSULTANT SERVICES CONTRACT FOR WORKS

GENERAL CONDITIONS OF CONTRACT

Version 1.1 | 2024

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LIST OF ABBREVIATIONS

| | |
|-----|-----------------------------------|
| EOT | Extension of Time |
| IPR | Intellectual Property Rights |
| ILO | International Labour Organization |
| JV | Joint Venture |
| QMS | Quality Management System |
| VAT | value added tax |

1 GENERAL PROVISIONS

1.1 Definitions

In the Contract, the following words and expressions shall have the meanings stated below:

“Accepted Contract Amount” is the amount accepted by the Parties as of the Contract Effective Date and stated in Schedule 1 [*Contract Details*] for the performance of the Services and is to be paid/or adjusted in accordance with the Contract.

“Advance Payment Security” means the security (or securities) to be provided under Sub-Clause 7.8 [*Advance Payment*].

“Affiliate” means:

- (a) the ultimate parent company of the Consultant;
- (b) any company controlled by that ultimate holding company;
- (c) any company controlling the Consultant; or
- (d) any company controlled by the Consultant.

For the purposes of this definition control means that a party possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other party, whether through the ownership of voting shares, by contract or otherwise, and the terms controls and controlled shall be interpreted accordingly.

“Authority” means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, recognized by the United Nations and having jurisdiction over the Services and/or the Consultant as well as its Affiliates.

“Claim” means a request or assertion by one (1) Party to the other Party for an entitlement or relief under any Clause of these Conditions of Contract or otherwise in connection with, or arising out of, the Contract or the performance of the Services.

“Commencement Date” means the date stated in Schedule 1 [*Contract Details*], if not stated, fourteen (14) calendar days after the Contract Effective Date.

“Conditions of Contract” or “these Conditions” means these General Conditions as amended by the Particular Conditions (if any).

“Consultant” means the entity named as the “Consultant” in the Instrument of Agreement, that is employed by the Employer to perform the Services, and legal successors to and permitted assignee of such company.

“Consultant’s Documents” means each Deliverable and any other document, plan, design, specification, calculations, report, or other document required to be prepared by the Consultant as part of the Services.

“Consultant’s Intellectual Property Rights” or “Consultant’s IPR” means all IPR owned or held by the Consultant in accordance with Sub-Clause 1.8 [*Employer’s and Consultant’s Intellectual Property Rights*].

“Consultant’s Representative” means the person appointed by the Consultant to act as its representative and is named in Schedule 1 [*Contract Details*] or other person appointed from time to time by the Consultant.

“Contract” means the Instrument of Agreement together with these General Conditions, the Particular Conditions (if any), and all the Schedules and documents (if any) as listed as forming the Contract in the Instrument of Agreement.

“Contract Effective Date” means the date of the latest signature by the Parties and on which the Contract comes into force and effect as stated in the Instrument of Agreement.

“Contractor” means the entity named in the Works Contract as the Contractor and the legal successors in title and assignee to this entity that is responsible for executing the Works in relation to which the Services are required.

“Convention on the Privileges and Immunities of the United Nations” means the convention adopted by the General Assembly of the United Nations on 13 February 1946, which defines and specifies numerous issues relating to the status of the United Nations, its assets and its officials, in terms of the privileges and immunities that must be granted to them by its Member States.

“Convention on the Rights of the Child” means the convention adopted by the General Assembly of the United Nations on 20 November 1989, which defines the civil, political, economic, social and cultural rights to which all children are entitled.

“Cost” means all direct and reasonable expenditure necessarily incurred in connection with the Services by the Consultant but does not include non-Project specific overheads, profit or loss of profit.

“Country” means the Country named in Schedule 1 [*Contract Details*] or, where no Country is mentioned, the Country where the Works related to the Services are to be executed.

“day” means a calendar day, unless provided otherwise.

“Declaration on Fundamental Principles and Rights at Work” refers to the Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Organization (ILO) on 18 June 1998.

“Delay Damages” means the damages for which the Consultant shall be liable under Sub-Clause 4.4 [*Delays*] for failure to comply with the Time for Completion and any approved EOT.

“Deliverable” means a document or any output such as data, information, tools, publications, etc., in any format to be prepared and submitted by the Consultant under the Contract.

“Dispute” means any matter where:

- (a) one Party makes a claim against the other Party;
- (b) the other Party rejects the claim in whole or in part; and
- (c) the matter is referred to dispute resolution in accordance with Clause 11 [*Dispute Resolution*].

“Eight Fundamental ILO Conventions” refer to the international conventions adopted by the ILO which are: the Freedom of Association and Protection of the Right to Organise Convention of 9 July 1948, the Right to Organise and Collective Bargaining Convention of 1 July 1949, the Forced Labour Convention of 30 June 1930 and its Protocol of 11 June 2014, the Abolition of Forced Labour Convention of 25 June 1957, the Minimum Age Convention of 26 June 1973, the Worst Forms of Child Labour Convention of 17 June 1999, the Equal Remuneration Convention of 29 June 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention of 25 June 1958.

“Employer” means the Party named as the “Employer” in the Instrument of Agreement, and the legal successors in title and/or the assignees or novatees of such entity.

“Employer’s Intellectual Property Rights” or “Employer’s IPR” means all IPR owned or held by the Employer in accordance with Sub-Clause 1.8 [*Employer’s and Consultant’s Intellectual Property Rights*].

“Enhancements” means any enhancement, adaptation, change, modification or development of the IPR of either Party and which shall remain the property of the respective Party.

“Employer’s Representative” means the person appointed by the Employer to act as its representative for the administration of the Contract and named in Schedule 1 [*Contract Details*] or any other person appointed from time to time by the Employer, and communicated by Notice to the Consultant.

“Extension of Time” or “EOT” means an extension of the Time for Completion the Consultant shall be entitled to, in accordance with Sub-Clause 4.4 [*Delays*].

“Final Completion Certificate” means the certificate issued by the Employer under Sub-Clause 4.2 [*Commencement and Completion of the Services*].

“Final Completion of the Services” means when all the Services have been accepted by the Employer with the issue of the Final Completion Certificate unless otherwise terminated in accordance with the Contract.

“Force Majeure” means an exceptional event or circumstance occurring after the Contract Effective Date:

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

“General Assembly” means the main deliberative, policymaking and representative organ of the United Nations.

“General Conditions” means this document entitled “Consultant Services Contract for Works: General Conditions of Contract”.

“Health and Safety Improvement Notice” means a Notice to be issued under and in accordance with Sub-Clause 3.16 [*Health, Safety, Social and Environment*].

“Health and Safety Management Plan” means the Consultant’s Health and Safety Management Plan (as may be updated and/or revised from time to time) which is submitted in accordance with Sub-Clause 3.16 [*Health, Safety, Social and Environment*].

“Industry Best Practices” means the practices which are generally engaged in or observed by international consulting industries with respect to services of a similar size, type, nature, scope and complexity to the Services and which, with respect to any objective, may be expected, in the exercise of reasonable judgment, to accomplish that objective in a manner consistent with applicable Laws, reliability, safety, environmental protection, economy and expediency.

“Instrument of Agreement” means the document entitled “Consultant Services Contract for Works: Instrument of Agreement” signed by the Parties and forming part of the Contract.

“Intellectual Property Rights” or “IPR” means all IPR conferred by Law or equity and subsisting anywhere in the world, including:

- (a) (i) copyright and related rights; (ii) inventions (including patents, innovation patents and utility models); (iii) confidential information, trade secrets, technical data and know-how, whether or not confidential and in whatever form held, including formulae, design specifications, drawings, data, manuals and instructions; (iv) designs; (v) trademarks, trade name, service marks and domain names; (vi) circuit layout designs, semi-conductor topography rights and rights in databases, whether or not any of these is registered, registrable or patentable; and (vii) proprietary rights and any other IPR, in each case whether registered or unregistered;
- (b) Moral Rights and any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future;
- (c) any applications and the right to apply for registration of any of the above; and
- (d) any information or advice that is subject to legal professional privilege.

“Joint Venture” or “JV” means a joint venture, association, consortium or other unincorporated grouping of two (2) or more persons or entities, whether in the form of a partnership or otherwise.

“Key Personnel” means those Personnel listed in Schedule 4.4 [*Key Personnel*] in the capacity and role identified therein or their replacements.

“Laws” means:

- (a) all legislation, including, decrees, resolutions, acts, statutes, ordinances, rules, regulations, directives and other orders, treaties, by-laws, codes of practice and other subordinate legislation of the Country or any country in which the Services are performed;

- (b) the requirements, rules and regulations of any Authority, including legislation and regulations covering the registration and licensing of the Consultant necessary for the proper performance of the Services in accordance with the Contract; and
- (c) the guidelines of the Country or any country in which the Services are performed and of all relevant Authorities, with which the Consultant is legally required to comply.

“Law Applicable to the Contract” means the law referred to in Sub-Clause 11.3.10 [*Arbitration*].

“Liability Period” means the prescribed period or duration in Schedule 1 [*Contract Details*] within which the Employer should formally make a liability claim against the Consultant, if any, otherwise the Consultant's liability under the Contract will cease upon expiry of the Liability Period notwithstanding any legal requirement of the Country or any other jurisdiction.

“Locations” means the physical areas where the activities in relation to the Services are carried out and as may be indicated in Schedule 2.2 [*Locations Plan*].

“Member State” means a government of a country that holds membership in the United Nations.

“Moral Rights” means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law, that exist, or that may come to exist, anywhere in the world.

“New Intellectual Property Rights” or “New IPR” means all IPR created as a result of the Services performed by the Consultant.

“Nominated Sub-consultant” means a Sub-consultant nominated by the Employer that is included in Schedule 3.5 [*Nominated Sub-consultants*] or whom the Employer instructs the Consultant to employ as a subconsultant to perform certain parts of the Services as specified in the Contract.

“Notice” means a written communication identified as a Notice and issued in accordance with Sub-Clause 1.4 [*Notices and Other Communications*].

“Particular Conditions” means the document entitled “Consultant Services Contract for Works: Particular Conditions of Contract” included in the Contract, if any.

“Parties” means both the Employer and the Consultant.

“Party” means either the Employer or the Consultant, as the context requires.

“Performance Security” means the security or securities, (if any) under Sub-Clause 3.2 [*Performance Security*].

“Personnel” means the Consultant's Representative and all personnel the Consultant utilizes for the performance of Services in Locations where the Services are being carried out, which may include the staff, labour, agents and other employees of the Consultant and of each Subconsultant.

“Programme” means the fully detailed programme as described in Sub-Clause 4.3 [*Programme*] and any update to such Programme required to comply with the Contract and/or as notified by the Employer.

“Project” means the project described in Schedule 2.1 [*Project Details*], for which the Services are to be provided.

“Project Stakeholders” means the funding sources/clients, governments, beneficiaries and other partners that may affect or be affected by the Project and named in Schedule 3.1 [*Scope of Services*].

“Proscribed Practices” means:

- (a) corrupt practice: the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- (b) fraudulent practice: any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (c) coercive practice: an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;
- (d) collusive practice: an arrangement between two (2) or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (e) unethical practice: conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment provisions or other published requirements of doing business with the Employer; and/or
- (f) obstruction: acts or omissions by the Consultant that prevent or hinder the Employer from investigating instances of possible Proscribed Practices.

“Quality Management System” or “QMS” means the Consultant’s QMS (as may be updated and/or revised from time to time) in accordance with Sub-Clause 3.17 [*Quality Management System*].

“Schedules” means the document entitled “Consultant Services Contract for Works: Schedules” prepared by the Employer and completed by the Consultant and/or Employer (as appropriate), and included in the Contract. Such Schedules may include data, lists and schedules of payments, rates and prices, contract details, requirements, and forms of securities.

“Senior Representatives” means personnel of the Parties identified as senior representatives and notified in writing by the Parties in the event of dispute resolution process in accordance with Sub-Clause 11.2 [*Amicable Resolution*].

“Services” means the services defined in Schedule 3.1 [*Scope of Services*] to be performed by the Consultant in accordance with the Contract which includes any Variations to the Services instructed or arising in accordance with the Contract.

“Social and Environmental Management Plan” means the Consultant’s Social and Environmental Management Plan (as may be updated and/or revised from time to time), which is submitted in accordance with Sub-Clause 3.16 [*Health, Safety, Social and Environment*].

“Sub-consultant” means any person or entity named in Schedule 4.6 [Sub-consultants], or any person or entity consented by the Employer and appointed as a Sub-consultant for a part of the Services, and the legal successors in title to each of these persons.

“Term of the Contract” means the period that the Contract shall remain in force until Final Completion of the Services, unless otherwise terminated in accordance with the Contract.

“Time for Completion” means the time for completing the Services as stated in Schedule 1 [Contract Details], or as may be amended in accordance with the Contract, calculated from the Commencement Date.

“Variation” means any change to the Services, which is instructed as a variation under Clause 5 [Variations to Services].

“Variation Notice” means a written communication identified as a Variation Notice and issued in accordance with the provisions of Sub-Clause 1.4 [Notices and Other Communications].

“Works” means the works in relation to which the Services are required, as described in Schedule 2.1 [Project Details].

“Works Contract” means a contract for the performance of permanent and temporary works (if any) to be carried out by a Contractor appointed by the Employer for the achievement of the Project.

“year” means a calendar year.

1.2 Interpretation

1.2.1 In the Contract, except where the context requires otherwise:

- (a) words indicating one (1) gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural include the singular;
- (c) references to the word “including” (or “includes”) means including, but not limited to;
- (d) where an expression is defined, another part of speech or grammatical form of that expression has the corresponding meaning;
- (e) references to a number of days or period of time from a particular date, shall be calculated exclusive of that date;
- (f) “consent” means that the Employer, the Consultant or the Employer’s Representative (as the case may be) agrees to or gives permission for, the requested matter;
- (g) “may” means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
- (h) “shall” means that the Party or person referred to has an obligation under the Contract to perform the duty referred to;

- (i) words indicating persons or parties shall be interpreted as referring to natural and legal persons (including corporations and other legal entities) except where the context requires otherwise;
 - (j) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
 - (k) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
 - (l) a reference to any Laws, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provisions substituted for, and any subordinate legislation issued under that legislation or legislative provision.
- 1.2.2 In any list in these Conditions, where the second-last item of the list is followed by “and”, “or” or “and/or” then all of the list items going before this item shall also be read as if they are followed by “and”, “or” or “and/or” (as the case may be).
- 1.2.3 The marginal words and other headings shall not be taken into consideration in the interpretation of these General Conditions.
- 1.2.4 All dates and periods shall be ascertained in accordance with the Gregorian calendar.
- 1.2.5 Where references are made in the Contract to industry or technical codes and standards in accordance with which the Services are to be performed, the edition or the revised version of such codes and standards current at the Contract Effective Date applies, unless otherwise specified.

1.3 Language

- 1.3.1 The language for communications shall be English, the language of these Conditions which is the ruling language of the Contract.
- 1.3.2 Unless otherwise specified in the Particular Conditions, the Consultant's Documents shall be written in English.

1.4 Notices and Other Communications

- 1.4.1 Wherever these Conditions provide for the giving or issuing of a Notice, a Variation Notice or other form of communication including without limitation approvals, consents, instructions and decisions, then such Notice, Variation Notice or communication shall be:
- (a) in writing;
 - (b) identified as such with reference to the Clause or Sub-Clause under which it is issued;
 - (c) delivered by hand (against receipt), or sent by mail or courier; and
 - (d) marked to the attention of the relevant representative of the Parties as set out in Schedule 1 [*Contract Details*]; and
 - (i) delivered at the address set out in Schedule 1 [*Contract Details*]; or

- (ii) sent or transmitted as a document, signed, scanned and attached in an email to the email address set out in Schedule 1 [*Contract Details*] or transmitted by any form of agreed system of electronic transmission stated in Schedule 1 [*Contract Details*].
- 1.4.2 If a Party has notified in writing a change of address or email address, then the communication shall be thereafter delivered to the changed email address or changed address accordingly.
- 1.4.3 Notices and other forms of communications shall take effect from the time it is received unless a later time is specified in it.
- 1.4.4 Notices and other form of communications are deemed to be received:
 - (a) in the case of a delivery, when delivered to the relevant address (against a written receipt); and
 - (b) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient's address, provided no non-delivery notification was received by the sender.
- 1.4.5 For the avoidance of doubt, any Notice or other form of communication shall not be deemed to have been given or made under the Contract if it is an email, other than as an attached document in accordance with Sub-Clause 1.4.1 (d) (ii), or in the form of meeting minutes.
- 1.4.6 Notices and other forms of communications shall not be unreasonably withheld or delayed.

1.5 Priority of Documents

- 1.5.1 The documents forming the Contract are to be taken as mutually explanatory of one another and shall be read as a whole. For the purposes of interpretation, the priority of the documents shall be in accordance with the order of precedence as listed in the Instrument of Agreement.
- 1.5.2 If the Consultant finds an ambiguity, conflict or discrepancy in or between the documents forming the Contract, the Consultant shall promptly give Notice to the Employer's Representative, describing the ambiguity, conflict or discrepancy. After receiving such Notice, or if the Employer itself finds an ambiguity, conflict or discrepancy in or between the documents, the Employer's Representative shall issue the necessary clarification or instruction.

1.6 Compliance with Laws

- 1.6.1 The Consultant undertakes that it shall, in performing the Services and all of its obligations under the Contract, comply with all applicable Laws and that the Consultant's Documents and the completed Services, shall comply with all Laws and/or to the extent required under the Contract.
- 1.6.2 If the enforcement or operation of any provision or part of the Contract is prohibited by Laws or is by Laws rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the rest of that provision and/or any other provisions of the Contract.
- 1.6.3 The Consultant shall obtain and comply with all relevant permits, licences, authorizations and approval necessary to carry out the Services in accordance with the Contract.

- 1.6.4 The Consultant shall at its cost at all times during the performance of the Services ensure that any Personnel who performs any part of the Services is registered and licenced as required by any applicable Laws and any Authority.
- 1.6.5 The Consultant shall give all notices, pay all taxes, duties and fees, as required by the Laws in relation to the performance of the Services.
- 1.6.6 In connection with the performance of its obligations under the Contract, the Consultant acknowledges that the imports and customs Laws and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Consultant specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation of certain products and components into the Country.
- 1.6.7 For the avoidance of any doubt, while the Consultant shall provide the Services in accordance with any applicable Laws, the Law Applicable to the Contract shall be the law stated in Sub-Clause 11.3 [*Arbitration*].

1.7 Assignment or Novation and Sub-Contracts

- 1.7.1 The Consultant acknowledges and agrees that the Employer may, in its absolute discretion novate, assign, transfer and/or charge the benefit of, the Contract and/or any of its present or future rights and responsibilities, interest and/or benefits hereunder to any third party upon giving Notice thereof to the Consultant.
- 1.7.2 The Consultant acknowledges and agrees that it shall, if required by the Employer, take all further actions necessary to give effect to the novation or assignments, transfer or charge in Sub-Clause 1.7.1 including executing a novation or an assignment agreement(s).
- 1.7.3 The Consultant shall not be entitled, without the prior written consent of the Employer, to novate or assign to any third party its interest under the Contract or any right or benefit, arising under the Contract.
- 1.7.4 The Consultant shall not subcontract performance of all or any part of the Services without the written consent of the Employer. The consent of the Employer shall not be required where the Sub-consultant for the performance of part of the Services is identified in the Consultant's proposal, accepted by the Employer and is incorporated into the Contract, or is otherwise included in any of the documents constituting the Contract.
- 1.7.5 The Employer may name Nominated Sub-consultant(s) and instruct the Consultant to procure and employ the Nominated Sub-consultant(s) for part or an element of the Services under the Contract.
- 1.7.6 The Employer's consent to any subcontract arrangement shall not relieve the Consultant of any of the Consultant's obligations under the Contract.

1.8 Employer's and Consultant's Intellectual Property Rights

- 1.8.1 The Employer grants to the Consultant for the Term of the Contract a non-exclusive, personal, non-transferable, royalty-free licence to use, modify, enhance, alter or decompile the Employer's IPR or any Enhancements thereof, necessary for the performance of the Services.

- 1.8.2 Any documentation and information supplied by the Employer to the Consultant for the purposes of performing the Services:
- (a) shall not be used, copied or reproduced by the Consultant for any other purpose; and
 - (b) remains the property of the Employer and shall be returned to it upon request, or upon Final Completion of the Services or prior to termination of the Contract.
- 1.8.3 The Consultant grants to the Employer a perpetual, unrestricted, non-exclusive, irrevocable, transferable, royalty-free licence (with a right to sub-licence) to use modify, enhance, alter or decompile (including for the purpose of the disclosure of information or documentation to third parties) the Consultant's IPR or any Enhancements thereof, which are required by the Employer for:
- (a) assessment of the performance of the Services;
 - (b) the design, construction, commissioning and/or expansion of the Works; and
 - (c) the operation, support and maintenance of the Works and the use of the Deliverables, or any part of the Deliverable, in connection with the Works.
- 1.8.4 All New IPR created by the Consultant in performing the Services shall vest immediately in the Employer.
- 1.8.5 The Employer grants to the Consultant a non-exclusive and royalty-free licence to use, modify, enhance, alter or decompile the New IPR to the extent necessary for the performance of the Services.
- 1.8.6 Prior to and as a condition of Final Completion of the Services or on termination of the Contract, the Consultant shall provide to the Employer all documentation, data and other information that contains New IPR in the Consultant's possession in an electronic and unlocked format.

1.9 Third Party's Intellectual Property Rights

- 1.9.1 If any third party's IPR forms part of the Services or is necessary to the use and operation of the Deliverables, the Consultant shall ensure that the Employer is granted a license to use, modify, enhance, alter or decompile the third party's IPR.
- 1.9.2 The Consultant shall indemnify and hold the Employer harmless against and from any other claim (including legal fees and expenses) alleging an infringement which arises out of or in relation to use of third party IPR that forms part of the Services.

1.10 Confidential Nature of Documents and Information

- 1.10.1 Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be in accordance with this Sub-Clause 1.10.

1.10.2 The Recipient shall:

- (a) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,
- (b) use the Discloser's Information solely for the purpose for which it was disclosed.

1.10.3 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Sub-Clauses 1.10, the Recipient may disclose Information to:

- (a) any other party with the Discloser's prior written consent; and,
- (b) the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:
 - a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty per cent (50%) of voting shares thereof; or,
 - any entity over which the Party exercises effective managerial control; or,
 - for the Employer, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

1.10.4 Any information, including information, provided by or on behalf of the Employer to the Consultant constitutes property and archives of the United Nations within the meaning of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15 (1946), and Article II of the Convention on the Privileges and Immunities of the United Nations, including its Sections 2, 3 and 4, is applicable to all such Information.

1.10.5 The Consultant may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, the Consultant will give the Employer sufficient prior notice of a request for the disclosure of Information in order to allow the Employer to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

1.10.6 The Employer may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

1.10.7 The Recipient shall not be precluded from disclosing Information that:

- (a) is obtained by the Recipient from a third party without restriction;
- (b) is disclosed by the Discloser to a third party without any obligation of confidentiality;
- (c) is previously known by the Recipient; or

- (d) at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 1.10.8 Either Party may be entitled to disclose the terms and conditions of the Contract and any documents and other information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
- (a) to any insurer under a policy of insurance issued pursuant to the Contract;
 - (b) to any Sub-consultant for the furtherance of the performance of that Party's obligations under the Contract; or
 - (c) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Works (including insurance, tax and legal advisers).
- 1.10.9 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

1.11 Official Not To Benefit and Proscribed Practices

- 1.11.1 The Consultant warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any Proscribed Practices in connection with the Consultant's proposal selection process or the performance of the Contract or any other activities of the Employer or any other entity of the United Nations, involving, in any way whatsoever, any Employer's personnel or Employer's Representative, officials, or other agent of the Employer or any other entity of the United Nations.
- 1.11.2 Notwithstanding the notice periods in Sub-Clause 6.4.1 [*Termination by the Employer*], the Consultant acknowledges and agrees that any breach of the Sub-Clause 1.11.1 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Consultant without any liability to the Employer for termination charges or any other liability of any kind.

1.12 Entire Agreement

- 1.12.1 The Contract constitutes the entire agreement between the Employer and the Consultant with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect to the subject matter of the Contract prior to the Contract Effective Date.
- 1.12.2 The Contract or aspects of the Contract shall not be amended except in writing signed by a duly authorized representative of each of the Parties.

1.13 Joint and Several Liability

- 1.13.1 If the Consultant constitutes (under applicable Laws) a JV:
- (a) the members of the JV shall be deemed to be jointly and severally liable to the Employer for the Services and performance of all of the Consultant's obligations under the Contract or failure in respect of the same. The actions of one (1) such member shall be deemed to be fully binding on the others;
 - (b) the Consultant shall not alter its composition or legal status without the prior written consent of the Employer.

1.14 Counterparts

- 1.14.1 The Contract may be executed in any number of counterparts, all of which when put together shall constitute one and the same instrument.

1.15 Independent Consultant

- 1.15.1 The Consultant shall be an independent consultant performing the Contract and shall not be considered to be an employee or agent of the Employer, except when the Consultant is required to perform the defined function as described in Sub-Clause 3.9 [*Construction Administration*]. The Contract does not create any partnership, JV or other joint relationships between the Employer on the one hand and the Consultant on the other hand.
- 1.15.2 The Consultant shall obtain written consent from the Employer prior to forming any partnership or other form of agreement with Project Stakeholders in relation to the Services under the Contract.
- 1.15.3 The Consultant shall declare as soon as it and/or its Sub-consultants become aware of any actual, potential or perceived conflict of interest in any existing partnership or other form of agreement or circumstances or matters with the Employer and/or Project Stakeholders that may interfere or appear to interfere with the proper performance of its obligations under the Contract.

1.16 Privity

- 1.16.1 No provision of the Contract is intended to or does confer upon any third party (including any Sub-consultant) any implied benefit or right enforceable at the option of the third party against the Employer.

1.17 Waiver

- 1.17.1 None of the terms, provisions or General Conditions shall be considered waived by the Employer unless a waiver is given in writing by the Employer duly signed and dated. The waiver shall specify the right and the extent to which it is being waived.
- 1.17.2 Any waiver under this Sub-Clause 1.17 is without prejudice to the privileges and immunities of the United Nations, of which the Employer is an integral part, as expressly reserved under Sub-Clause 1.22 [*Privileges and Immunities*].

1.18 Publicity and Use of the Name or Emblem of the Employer and the United Nations

- 1.18.1 The Consultant shall not:
- (a) advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer or the United Nations; or
 - (b) in any manner whatsoever make use of the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer's name or the United Nations in connection with its business or otherwise without the prior written permission of the Employer.
- 1.18.2 The Consultant may use material and information relating to the Services and the Project for tendering purposes with prior written consent of the Employer.
- 1.18.3 This Sub-Clause 1.18 shall survive the completion, expiry or termination of the Contract.

1.19 Mines

- 1.19.1 The Consultant warrants and represents that neither it, nor any of the Consultant's subsidiaries or Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.
- 1.19.2 Notwithstanding the notice periods in Sub-Clause 6.4.1 [*Termination by the Employer*], the Consultant acknowledges and agrees that any breach of Sub-Clause 1.19.1 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Consultant without any liability to the Employer for termination charges or any other liability of any kind.

1.20 Unexploded Ordnances

- 1.20.1 If at any time during the carrying out of the Services an unexploded ordnance or land mine is discovered at the Locations, the Consultant shall immediately stop all work at the Locations, notify the Employer's Representative, and as applicable, take all necessary steps to ensure the safety of all persons and property and secure the Locations. The Consultant shall immediately resume work at the Locations when instructed by the Employer or Employer's Representative. Any substantive delay is subject to Clause 10 [*Claims*].

1.21 Blasting

- 1.21.1 The Consultant shall not use or instruct the use of any explosives without the prior written permission of the Employer. The Consultant shall comply with all regulations in force in the Country regarding the storage and use of explosives (including the use of licensed personnel). In the event use of the explosives is approved by the Employer, the Consultant shall ensure that appropriate storage facilities approved by the relevant Authorities are used.
- 1.21.2 The Employer's approval or refusal to permit the use of explosives shall not relieve the Consultant from any of its warranties, obligations or liabilities under or in connection with the Contract and the Consultant shall not be entitled to any additional time or additional costs for the performance of the Services in relation to such approval or refusal.

1.22 Privileges and Immunities

- 1.22.1 Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs, of which the Employer is an integral part, which are hereby expressly reserved.

1.23 Taxes and Duties

- 1.23.1 Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including the Employer as a subsidiary organ, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental Authority refuses to recognize the exemptions of the Employer from such taxes, restrictions, duties, or charges, the Consultant shall immediately consult with the Employer to determine a mutually acceptable procedure.
- 1.23.2 The Consultant authorizes the Employer to deduct from the Consultant's payment any amount representing such taxes, duties or charges, unless the Consultant has consulted with the Employer before the payment thereof and the Employer has, in each instance, specifically authorized the Consultant to pay such taxes, duties, or charges under written protest. In that event, the Consultant shall provide the Employer with written evidence that payment of such taxes, duties or charges have been made and appropriately authorized, and the Employer may reimburse the Consultant for any such taxes, duties, or charges so authorized by the Employer and paid by the Consultant under written protest.

1.24 Personal Data

- 1.24.1 The Consultant shall take all appropriate measures to safeguard any information relating to an identified or identifiable natural person, including any such information the disclosure of which could harm such identified or identifiable natural person that is:
- (a) obtained by the Consultant from the Employer in connection with, or related to, the performance of the Contract; or
 - (b) otherwise handled by the Consultant on behalf of the Employer, in connection with, or related to, the performance of the Contract ("Employer Personal Data").
- 1.24.2 Without prejudice to the generality of Sub-Clause 1.24.1, above, and unless otherwise more specifically provided in the Contract, the Consultant shall, at a minimum:
- (a) for the purposes of the Contract and subject to the provisions of Sub-Clause 1.24.3, treat Employer Personal Data as information within the meaning of Sub-Clause 1.10 [*Confidential Nature of Documents and Information*] above;

- (b) handle Employer Personal Data in a manner that is adequate, relevant and limited to what is necessary for the performance of the Contract, and ensure that Employer Personal Data is kept for no longer than is necessary to perform services under the Contract;
 - (c) as and when requested by the Employer, update or rectify Employer Personal Data to ensure its accuracy;
 - (d) transfer Employer Personal Data to third parties, including the Consultant's agents or Sub-consultants, only in accordance with the requirements of the Contract, and on terms and conditions equivalent to those set forth in this Sub-Clause 1.24 and in Sub-Clause 1.10 [*Confidential Nature of Documents and Information*], it being understood that provisions of this Sub-Clause 1.24 shall govern to the extent that the provision of this Sub-Clause 1.24 are more restrictive than those set forth in Sub-Clause 1.10 [*Confidential Nature of Documents and Information*];
 - (e) immediately notify the Employer in writing upon becoming aware of any data or security breach; take immediate mitigating and/or remedial action, including mitigating and/or remedial action as directed by the Employer; and inform and update on a regular basis the Employer of any measures taken by the Consultant to address such data or security breach;
 - (f) as set forth in the Contract or as otherwise instructed by the Employer in writing, return, delete or destroy Employer Personal Data and, upon written request by the Employer, provide substantiating evidence of such deletion or destruction to the Employer; and
 - (g) consult with, and follow the instructions of, the Employer with respect to handling any requests and/or complaints by third parties in respect of Employer Personal Data made to or received by the Consultant.
- 1.24.3 The Employer will handle any information relating to an identified or identifiable natural person, including any such information the disclosure of which could harm such identified or identifiable natural person that it obtains from the Consultant as a result of, or in connection with, the Contract solely in accordance with its own legal framework.
- 1.24.4 The provisions of this Sub-Clause 1.24 shall remain effective following any termination or expiration of the Contract.

2 THE EMPLOYER

2.1 Right of Access to the Locations

- 2.1.1 The Employer shall give the Consultant right of access to, and non-exclusive possession of those parts of the Locations required for the Services, within the time (or times) set out in Schedule 2.2 [*Locations Plan*] and subject to any staged or shared access restrictions as specified in Schedule 2.2 [*Locations Plan*].

2.2 Employer's Representative

- 2.2.1 The Employer shall appoint the Employer's Representative, who shall carry out the duties assigned in the Contract, and exercise the authority delegated by the Employer. The Employer's Representative shall be deemed to act on the Employer's behalf under the Contract.
- 2.2.2 The Employer's Representative's delegated duties and authorities are as expressed in the Contract and/or specified in Schedule 3.6 [*Employer's Delegations*]. Notwithstanding the delegated authorities to the Employer's Representative, the Employer shall still exercise its full authority under the Contract.
- 2.2.3 The Employer's Representative shall have no authority to amend the Contract, relieve or waive any duty, obligation or responsibility of the Consultant under or in connection with the Contract.

2.3 Information

- 2.3.1 In order to not delay the Consultant in the performance of the Services, the Employer shall within a reasonable time and with due regard to the Programme, provide to the Consultant, free of cost, all information, and any further information reasonably requested by the Consultant, which may pertain to the Services and which is in the Employer's possession.
- 2.3.2 The Consultant shall use reasonable endeavours to review all information provided by the Employer or by others (on behalf of the Employer) within a reasonable time of receipt. To the extent achievable using the provisions in Sub-Clause 3.3 [*Standard of Care*], the Consultant shall review such information to ensure that it does not contain any error, omission or ambiguity and shall give Notice to the Employer's Representative promptly of any adverse findings.
- 2.3.3 In the event of any error, omission, or ambiguity (manifest or otherwise) in the information provided to the Consultant by the Employer and notified by the Consultant to the Employer, the Employer's Representative shall rectify or clarify such error, omission or ambiguity by Notice and where necessary shall issue a Variation to the Services in accordance with Clause 5 [*Variations to Services*] as the case may require.

2.4 Instructions and Approvals

- 2.4.1 On all matters referred by the Consultant to the Employer in writing in accordance with the Contract, the Employer shall give its decision, approval, consent, instruction or Variation, as the case may be, in writing within a reasonable time and with regard to the Programme so as not to delay the Services.

- 2.4.2 Except as otherwise specified in the Contract, no comment, review, representation, inspection, testing, certificate, consent, examination, approval, no-objection, instruction, notice, proposal, request or similar act (including absence of disapproval) by or on behalf of the Employer or the Employer's Representative shall relieve, reduce or otherwise affect the Consultant's undertakings, warranties, obligations or liabilities, including responsibility for errors, omissions, discrepancies and non-compliances.

2.5 Assistance

- 2.5.1 If requested by the Consultant, the Employer shall (where it is in a position to do so) promptly provide reasonable assistance to the Consultant, its personnel, as well as Sub-consultants, if any, within the Country in:
- (a) the provision of documents necessary for entry, residency, working and exit;
 - (b) providing unobstructed access wherever it is required for the Services;
 - (c) import, export and customs clearance of personal effects and goods required for the Services; and
 - (d) providing access to other organizations for collection of information which is to be obtained by the Consultant.
- 2.5.2 Sub-Clauses 2.5.1 (a) and (c) shall not apply where the Country is a principal place of business and/or registration of the Consultant.

2.6 Employer-Supplied Personnel and Services of Others, Employer's Equipment and Employer's Facilities

- 2.6.1 The Employer shall make the equipment and facilities described in Schedule 3.1 [*Scope of Services*] available to the Consultant for the purpose of the Services, with due regard to the Programme and free of cost.
- 2.6.2 The Consultant shall be responsible for each item of Employer's equipment and/or Employer's facilities whilst in use, occupation or in possession of them.
- 2.6.3 In the event that the Employer cannot supply the equipment and facilities for which it is responsible, then the Employer's Representative may instruct the Consultant to arrange for an alternative supply of equipment and facilities and shall issue a Variation to the Services in accordance with Clause 5 [*Variations to Services*].
- 2.6.4 The Employer shall arrange at its own cost the provision of personnel and services of others as described in Schedule 3.1 [*Scope of Services*]. The Consultant shall cooperate with such personnel and the suppliers of such services, but shall not be responsible for them or their performance.
- 2.6.5 In the event that the Employer cannot supply the personnel or services of others for which it is responsible, then the Employer may instruct the Consultant to arrange for an alternative supply of personnel and services from others and shall issue a Variation to the Services in accordance with Clause 5 [*Variations to Services*].

3 THE CONSULTANT

3.1 Scope of Services

- 3.1.1 The Consultant shall provide the Services as stated in Schedule 3.1 [*Scope of Services*], including the obligation for the Consultant to rectify, at its own cost, any defects in the Services that are identified during the implementation of the Works and until the expiry of the Liability Period.
- 3.1.2 The Consultant shall perform the Services in accordance with the Programme as may be amended from time to time in accordance with the Contract.

3.2 Performance Security

- 3.2.1 The Consultant shall obtain (at the Consultant's cost) an unconditional and irrevocable Performance Security to secure the Consultant's proper performance of the Contract, in the amount and currency specified in Schedule 1 [*Contract Details*]. If no Performance Security is stated in Schedule 1 [*Contract Details*], this Sub-Clause 3.2 shall not apply.

3.3 Standard of Care

- 3.3.1 Notwithstanding any term or condition to the contrary in the Contract or any related document or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of registration of the Consultant), in the performance of the Services the Consultant shall exercise all the reasonable skill, care and diligence to be expected from a consultant using Industry Best Practices and experienced in the provision of such services for projects of similar size, nature and complexity and in similar circumstances.
- 3.3.2 The Parties shall act and work together in a spirit of mutual trust and cooperation.

3.4 Employer's Property

- 3.4.1 Anything supplied by or paid for by the Employer for use by the Consultant shall be and remain the property of the Employer. The Consultant shall use reasonable endeavours to safeguard and protect such property of the Employer until completion of the Services and/or return of such property to the Employer.

3.5 Consultant's Representative

- 3.5.1 The Consultant's Representative is as named in Schedule 1 [*Contract Details*].
- 3.5.2 The Consultant shall notify the Employer of the extent of all authority delegated to the Consultant's Representative necessary to act for and on behalf of the Consultant under the Contract. The Consultant is responsible for all acts and omissions of the Consultant's Representative.
- 3.5.3 The Consultant shall not, without the Employer's Representative's prior consent, revoke the appointment of the Consultant's Representative or appoint a replacement. Once the Employer's Representative gives consent, the Consultant shall submit to the Employer's Representative for approval the name and particulars of the person the Consultant proposes to replace the Consultant's Representative.

- 3.5.4 The Consultant's Representative shall be qualified, experienced and competent in the main disciplines applicable to the Services and be fluent in the language for communications defined in Sub-Clause 1.3 [*Language*].
- 3.5.5 If required by the Employer, the Consultant shall designate an individual to liaise with the Employer's Representative in the Country.

3.6 Key Personnel

- 3.6.1 The Key Personnel proposed by the Consultant to provide the Services shall be subject to acceptance by the Employer with regards to their qualifications, experience and relevant registration and/or licence in accordance with the minimum requirements in Schedule 3.7 [*Key Personnel Requirements*]. Such acceptance shall not be unreasonably withheld. Key Personnel, if any, included in the Consultant's proposal and also included as part of the Contract in Schedule 4.4 [*Key Personnel*] shall be deemed to be accepted by the Employer upon entering into the Contract.
- 3.6.2 All the Key Personnel shall be fluent in the language for communications defined in Sub-Clause 1.3 [*Language*].

3.7 Change in Key Personnel

- 3.7.1 If it is necessary for any reason to replace any of the Key Personnel provided by the Consultant, the Consultant shall arrange for such replacement by a person(s) of suitable qualification, experience and valid registration and/or licence in the provision of the Services as soon as reasonably possible. The Consultant shall then submit to the Employer for consent the name and particulars of the replacement person(s).
- 3.7.2 Where the replacement is requested by the Employer, the request shall be made by a Notice stating the reasons for replacement; such reasons shall relate to the provision of the Services and shall be reasonable and not vexatious.
- 3.7.3 The cost of such replacement shall be borne by the Consultant.

3.8 Sub-consultants

- 3.8.1 The Consultant shall ensure that any Services performed by a Sub-consultant and Nominated Sub-consultant are in accordance with the Contract.
- 3.8.2 The Consultant's obligations under the Contract are not lessened or otherwise affected by entering into any contract with a Sub-consultant and/or Nominated Sub-consultant.
- 3.8.3 The Consultant shall be responsible and liable to the Employer for the services of all Sub-consultants and/or Nominated Sub-consultants, for managing and coordinating all the Sub-consultant and/or Nominated Sub-consultant services, and for the acts, omissions or defaults of any Sub-consultant and/or Nominated Sub-consultant, any of their agents or employees, as if they were the acts or defaults of the Consultant.

3.9 Construction Administration

- 3.9.1 This Sub-Clause 3.9 shall only apply where stated in the Particular Conditions, if any, and in Schedule 3.1 [*Scope of Services*] and Schedule 3.2 [*Consultant's Delegations*], whereby the Consultant and any of its Personnel that are required to perform a defined function under a Works Contract by the Employer.
- 3.9.2 The Consultant shall have the authority to act on behalf of the Employer to the extent provided in the Works Contract as indicated in Schedule 3.1 [*Scope of Services*] and Schedule 3.2 [*Consultant's Delegations*]. If the authority of the Consultant under the Works Contract is subject to prior approval of the Employer, then the Employer warrants that such restriction on the authority of the Consultant shall be stated in the Works Contract or shall be made known in writing to the Contractor under the Works Contract. Whenever carrying out duties or exercising authority, specified in or implied by the Works Contract, the Consultant shall act as a skilled professional and shall be deemed to act for the Employer except in the event of agreements and determinations and as required by the duties and obligations in the identified Works Contract.
- 3.9.3 In the discharge of its duties under the Works Contract, the Consultant shall only be liable to the Employer if the Consultant commits a breach of the Contract. The Consultant shall not be liable to the Employer for the performance of the Works Contract by the Contractor.
- 3.9.4 The Consultant shall not be liable to the Employer or the Contractor for the means, techniques, methods or sequencing of any aspect of the Works Contract or for the safety or adequacy of any of the Contractor's operations. The Consultant shall have, however, the responsibility to exercise Sub-Clause 3.3 [*Standard of Care*] and provide relevant notifications in the performance of the Services related to the Consultant's duties under the Works Contract.
- 3.9.5 If an ambiguity or discrepancy is found between the Consultant's obligations under the Contract and the Consultant's duties under the Works Contract, the Consultant shall give Notice to the Employer indicating the effect of such ambiguity or discrepancy. The Employer shall rectify such ambiguity or discrepancy by instruction as soon as reasonably practicable and where necessary shall issue a Variation to the Services in accordance with Clause 5 [*Variations to Services*].

3.10 Alcoholic Liquor or Drugs

- 3.10.1 The Consultant shall not bring, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs onto the Locations, or permit or suffer any such importation, sale, gift, barter or disposal by its Personnel and/or its Sub-consultants.

3.11 Arms, Ammunition and Explosives

- 3.11.1 Unless instructed or permitted by the Employer in writing, the Consultant and its Sub-consultant shall not bring onto or store on the Locations, give, barter or otherwise dispose of, to any person or persons, any arms, ammunition or explosives of any kind or allow the Personnel or its Sub-consultants to do so.

3.12 Festivals and Religious Customs

- 3.12.1 The Consultant shall in all dealings with its Personnel have due regard to all recognized festivals, days of rest and religious or other customs.

3.13 Fundamental Principles and Rights at Work

- 3.13.1 The Consultant warrants that it shall comply with and ensure the Personnel will comply with the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the Eight Fundamental ILO Conventions, whichever has the highest standards. These universal rights include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.
- 3.13.2 The Consultant shall provide a safe and secure working environment, all necessary accommodation, sanitary and welfare facilities for its Personnel in accordance with Sub-Clause 3.16 [*Health, Safety, Social and Environment*] and shall provide amenities at the Locations.
- 3.13.3 Notwithstanding the notice periods in Sub-Clause 6.4.1 [*Termination of the Contract*], the Consultant acknowledges and agrees that any breach of this Sub-Clause 3.13 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Consultant without any liability to the Employer for termination charges or any other liability of any kind.

3.14 Child Labour

- 3.14.1 The Consultant represents and warrants that neither it nor its Personnel nor any of the Consultant's subsidiaries or its Affiliates (if any) are engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- 3.14.2 Notwithstanding the notice periods in Sub-Clause 6.4.1 [*Termination by the Employer*], the Consultant acknowledges and agrees that any breach of Sub-Clause 3.14.1 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice to the Consultant without any liability to the Employer for termination charges or any other liability of any kind.

3.15 Sexual Harassment, Exploitation and Abuse

- 3.15.1 The Consultant shall take all appropriate measures, including any other requirements (if any) set out in the Specification, to prevent sexual harassment, exploitation or abuse of anyone by its Personnel. For these purposes, sexual harassment, exploitation and abuse includes sexual activity with any person less than eighteen (18) years of age, regardless of any Laws relating to consent, unless such sexual activity is consensual between two (2) persons who are married and such marriage is recognized as valid under the Laws of the country of citizenship of such Personnel.

- 3.15.2 In addition, the Consultant shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging in any sexual activities that are exploitive or degrading to any person.
- 3.15.3 Notwithstanding the notice periods in Sub-Clause 6.4.1 [*Termination by the Employer*], the Consultant acknowledges and agrees that any breach of the Sub-Clause 3.15.1 and/or Sub-Clause 3.15.2 shall entitle the Employer to terminate the Contract immediately upon the provision of a Notice without any liability to the Employer for termination charges or any other liability of any kind.

3.16 Health, Safety, Social and Environment

- 3.16.1 Within twenty-one (21) days of the Commencement Date, the Consultant shall submit to the Employer's Representative the Health and Safety Management Plan and Social and Environmental Management Plan which have been specifically prepared for the Services. Thereafter, whenever the Plans are updated or revised, a copy shall promptly be submitted to the Employers Representative.
- 3.16.2 The Consultant shall comply with health, safety, social and environmental requirements as stated in Schedule 3.1 [*Scope of Services*] and other related statutory requirements, Laws, codes and standards applicable to the Services in the Country, and any requirements which the Employer's Representative shall notify the Consultant, from time to time until the issue of the Final Completion Certificate.
- 3.16.3 The Consultant shall submit all procedures and compliance documents specified in the Contract to the Employer's Representative for information, including safe work method statements, risk assessments, records that show that personnel have been made aware of risk assessments, critical controls and other information that help them to address key health and safety risks.
- 3.16.4 The Consultant shall be responsible for the health and safety of its Personnel.
- 3.16.5 The Consultant shall use reasonable efforts to keep their working areas for the delivery of Services clear of unnecessary obstruction so as to avoid danger to persons and shall provide fencing, lighting, guarding, which may be necessary, because of the execution of the Services, for the use and protection of the public and of owners and occupiers of adjacent land.
- 3.16.6 The Consultant shall provide the Employer's Representative with reasonable access to the Consultant's records and facilities, to enable the Employer's Representative to assess the Consultant's compliance with this Sub-Clause 3.16.
- 3.16.7 In the event of any outbreak of illness of an epidemic nature, the Consultant shall comply with and carry out such regulations, orders and requirements as may be made by the relevant Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.
- 3.16.8 Notwithstanding any other right or remedy the Employer may have, the Consultant agrees that in the event it fails to comply with its health and safety obligations as set out in the Contract, the Employer's Representative may issue a Health and Safety Improvement Notice to the Consultant. This Notice shall be given under Sub-Clause 6.4 [*Termination of the Contract*]. In this case, the Consultant shall be responsible to implement any corrective measures required to comply with the Health and Safety Improvement Notice, and as may be instructed by the Employer's Representative in the Notice, at its own costs.

- 3.16.9 In case of a breach of a Health and Safety Improvement Notice by the Consultant, the Employer shall have the right to terminate the Contract under Clause 6 [*Suspension of the Services and Termination of the Contract*].
- 3.16.10 In addition, the Employer's Representative shall have the right to suspend all or part the Services for and as long as the Consultant remains in breach of its health and safety obligations and until it has taken any required corrective measures, at its own costs, as may be instructed by, and to the satisfaction of, the Employer's Representative. For the avoidance of doubt, in case of such a suspension, the Consultant shall not be entitled to an EOT or any increase to the Accepted Contract Amount in accordance with Sub-Clause 6.3 [*Effects of Suspension of the Services*].
- 3.16.11 In the event of an imminent risk, notwithstanding any other provision of the Contract, the Employer's personnel shall have the right to immediately suspend all or part of the Services orally, as may be appropriate. The Employer's Representative shall be informed as soon as possible and shall assess the situation and instruct the Consultant of any corrective measures that may be required before the Services can resume. The Employer shall then confirm the suspension and corrective measures in writing not later than forty-eight (48) hours.
- 3.16.12 The Consultant shall also pay any monetary fines and remediation costs as specified in the Contract, if any, and/or as may be imposed by the relevant Authority for health, safety, social and environmental breaches.
- 3.16.13 In case of any health and safety related incident that may occur during the performance of the Services, the Consultant's Representative shall, as soon as possible and within no more than twenty-four (24) hours after the incident, submit to the Employer's Representative a report detailing the incident.
- 3.16.14 The Consultant shall take all necessary measures to protect the environment (both at and away from the Locations) and consistently adhere to the Social and Environmental Management Plan for the performance of the Services and shall at all times:
- (a) carry out its obligations under the Contract in an environmentally and socially responsible manner ensuring all necessary precautions are taken to prevent negative impacts on the environment and communities in accordance with Industry Best Practices;
 - (b) limit damage and nuisance to people and property resulting from pollution, noise, vibration and other results of its operations. In the event there is damage or nuisance incurred, mitigation and remedial measures shall be taken by the Consultant at its cost;
 - (c) comply with the policies, guidelines, standards procedures and requirements specified in Schedule 3.1 [*Scope of Services*] and the policies, guidelines, standards, procedures and requirements of all relevant Authorities relating to protection of the environment; and
 - (d) ensure that emissions, surface discharges, effluent and any other pollutants from the Consultant's activities shall not exceed the values indicated in the Contract and as otherwise prescribed by Laws.

3.17 Quality Management System

- 3.17.1 The Consultant shall prepare and implement a QMS to ensure that the Services as stated in Schedule 3.1 [*Scope of Services*] are performed and completed in compliance with the requirements of the Contract.
- 3.17.2 The QMS shall be specifically prepared for the Services and submitted to the Employer together with the Programme identified in Sub-Clause 4.3 [*Programme*].
- 3.17.3 The Consultant shall carry out an internal review of the QMS regularly and submit the results of such internal reviews to the Employer's Representative along with any proposed measures to improve and/or rectify the QMS and/or its implementation. Thereafter, whenever the QMS is updated or revised, a copy shall promptly be submitted to the Employer's Representative.

4 COMMENCEMENT AND COMPLETION

4.1 Contract Effective Date

- 4.1.1 The Contract comes into force and effect on the date of the latest signature by the Parties.

4.2 Commencement and Completion of the Services

- 4.2.1 The Services shall commence on the Commencement Date, as indicated in Schedule 1 [*Contract Details*] and last until Final Completion of the Services.
- 4.2.2 The Consultant shall complete the Services as identified in Schedule 3.1 [*Scope of Services*], within the Time for Completion as stated in Schedule 1 [*Contract Details*], including submitting all information and/or documentation which is stated in the Contract as being required for the Services to be complete for the purposes of Final Completion of Services.
- 4.2.3 Performance of the Consultant's obligations shall not be considered to have been completed until the Employer's Representative has issued the Final Completion Certificate to the Consultant, stating the date on which the obligations were completed.
- 4.2.4 Final Completion of the Services shall not relieve the Consultant of its obligation to rectify at its own cost any defect in the Services that may occur during and until the expiry of the Liability Period as set out in Schedule 1 [*Contract Details*].

4.3 Programme

- 4.3.1 Within fourteen (14) days of the Commencement Date the Consultant shall submit its detailed Programme to the Employer's Representative which shall include as a minimum:
- (a) the order and timing in which the Consultant intends to carry out the Services in order to complete the Services by the Time for Completion;
 - (b) any key dates stipulated in Schedule 3.4 [*Programme Requirements*] or elsewhere in the Contract for the delivery of any part of the Services and/or Deliverables to the Employer;
 - (c) the key dates when decisions, consents, approvals or information from the Employer or third parties is required to be given to the Consultant; and
 - (d) any other requirements stated in Schedule 3.4 [*Programme Requirements*] and in accordance to Schedule 4.2 [*Programme*].
- 4.3.2 The Programme will be used to monitor the progress of the Services under the Contract, and the Employer's Representative shall rely on the Programme for the administration of the Contract. The Employer's Representative may request the Consultant to submit a revised Programme at any time if the Programme fails to comply with the Contract, or ceases to reflect the actual progress.
- 4.3.3 Unless the Employer's Representative gives Notice to the Consultant within fourteen (14) days of receiving the Programme, stating the extent to which it does not comply with the Contract, the Consultant shall proceed in accordance with the Programme, subject to its other obligations under the Contract.

- 4.3.4 The Parties shall promptly give Notice to each other of any specific, actual or probable future events or circumstances, which may adversely affect or delay the delivery of the Services.

4.4 Delays

- 4.4.1 Subject to Clause 10 [*Claims*], the Consultant shall be entitled to an EOT if and to the extent that completion of the Services is or will be delayed by any of the following causes:
- (a) a Variation to the Services (excluding Variations required due to an act, omission or default of the Consultant or its Personnel);
 - (b) any delay, impediment or prevention caused by or attributable to the Employer, or the Employer's other consultants, contractors, or other third parties;
 - (c) a Force Majeure event; or
 - (d) any other event or circumstance giving an entitlement to an EOT under the Contract.
- 4.4.2 Where any circumstances referred to in Sub-Clause 4.4.1 causes the Consultant to incur additional Costs, then subject to Clause 10 [*Claims*] and in accordance with Sub-Clause 7.1.2 [*Payment to the Consultant*] the Consultant shall be entitled to payment of such substantiated Costs. As soon as reasonably practicable the Consultant shall inform the Employer's Representative of the occurrence of the additional Costs by issue of a Notice.
- 4.4.3 Any EOT shall have due regard to the Programme, any constraints therein and concurrent delays
- 4.4.4 Despite any other provisions of the Contract, the Employer's Representative may, at the sole and absolute discretion of the Employer, at any time make a fair and reasonable EOT. The Employer's Representative has no obligation to grant, or to consider whether to grant, an EOT and is not required to exercise this discretion for the benefit of the Consultant.
- 4.4.5 If the Consultant fails to comply with the Time for Completion as stated in Schedule 1 [*Contract Details*] and any approved EOT the Employer may apply the Delay Damages at the rate indicated in Schedule 1 [*Contract Details*] and recover the amount due in accordance with Sub-Clause 7.7 [*Set-off*].
- 4.4.6 The total amount of Delay Damages shall not exceed the aggregate maximum amount stated in Schedule 1 [*Contract Details*]. Where no maximum amount is identified in Schedule 1 [*Contract Details*] the maximum amount shall be ten (10) per cent of the Accepted Contract Amount.
- 4.4.7 These Delay Damages shall not relieve the Consultant from its obligations to complete the Services or from any other duties, obligations or responsibilities which it may have under this Contract.
- 4.4.8 If the cumulative amount of Delay Damages reaches the maximum amount stated in Schedule 1 [*Contract Details*], the Employer may terminate the Contract in accordance with Sub-Clause 6.4 [*Termination of the Contract*].

4.5 Rate of Progress of Services

- 4.5.1 If, for any reason that does not entitle the Consultant to an EOT, the rate of progress of the Services is insufficient to ensure completion of the Services by the Time for Completion, in the reasonable opinion of the Employer, then the Employer's Representative may give Notice to that effect to the Consultant.
- 4.5.2 Upon receipt of such Notice the Consultant shall revise the Programme and shall issue a Notice to the Employer describing the measures the Consultant intends to put in place (at the Consultant's cost) in order to complete the Services in accordance with the Time for Completion.

4.6 Force Majeure

- 4.6.1 If a Party is or will be prevented from performing any of its obligations under the Contract by, or due to, a Force Majeure then it shall give a Notice to the other Party providing a description of the Force Majeure together with an assessment of its effects on the Party's ability to comply with its obligations under the Contract. The Notice shall be given within seven (7) days from when the Party becomes aware, or should have become aware, of the event or circumstance constituting a Force Majeure. The Party having given Notice, shall be excused from performance of such obligations for so long as the effects of the Force Majeure prevent such performance.
- 4.6.2 If the Services are delayed and/or suspended by reason of such Force Majeure, the Consultant shall be entitled to an EOT. For the avoidance of doubt, if the Consultant is instructed by the Employer's Representative to implement mitigation measures related to Force Majeure, these shall be deemed to have been given under Clause 5 [*Variation to Services*].
- 4.6.3 Force Majeure may include, but is not limited to, the following events or circumstances, so long as the conditions set out in Sub-Clause 1.1 [*Definitions*] for Force Majeure are satisfied:
- (a) war (whether war be declared or not), invasion or act of foreign enemies within the Country;
 - (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
 - (c) munitions of war, ionizing radiation or contamination by radio-activity within the Country, except as may be attributable to the Consultant's use of such munitions, explosives, radiation or radioactivity;
 - (d) earthquake, hurricane, typhoon, tsunami, volcanic activity, fire or other natural disaster that is outside the normal range for that place at that time of year, but excluding other weather conditions which should reasonably have been foreseen by the Party claiming Force Majeure and which are not exceptionally adverse;
 - (e) in-country epidemic or pandemic declared by health Authorities; or
 - (f) measures and/or actions taken by Authorities, which prevent the provision of the Services under the Contract. Such measures and/or actions do not constitute a Force Majeure event if the Authority's action is due to the Consultant's failure to comply with applicable Laws, regulations or procedures in accordance with Sub-Clause 3.3 [*Standard of Care*].

- 4.6.4 The Consultant acknowledges and agrees that, with respect to any of its obligations under the Contract, the Consultant will be performing such obligations in areas in which the United Nations, including the Employer, is engaged in, preparing to engage in, or disengaging from peacekeeping, humanitarian or disaster recovery or similar operations and any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, shall not, in and of itself, constitute a Force Majeure event unless the conditions set out in Sub-Clause 1.1 [*Definitions*] for Force Majeure are satisfied.

5 VARIATIONS TO SERVICES

5.1 Variations

- 5.1.1 At any time prior to the Final Completion of the Services, the Employer may request the Consultant to vary the Services. Such a request shall be in writing through a Notice.
- 5.1.2 A Notice may be issued in respect of any:
- (a) request for change to Schedule 3.1 [*Scope of Services*];
 - (b) omission of part of the Services;
 - (c) changes in the specified sequence or timing of the performance of the Services;
 - (d) changes in the method of performance of the Services;
 - (e) provision of the Contract requiring the issue of a Variation; or
 - (f) proposal submitted by the Consultant (at the Employer's request or otherwise) and accepted in writing by the Employer.
- 5.1.3 Within fourteen (14) days (or another time frame agreed upon with the Employer) of receiving the Employer's written Notice, the Consultant shall submit a proposal, indicate (with supporting evidence) that it does not possess the relevant skills or resources to carry out the request to vary, or indicate that it considers that the request to vary will substantially change the extent or nature of the Services to the Employer's Representative. Such proposal shall include additional time and/or costs, and details of the estimated impact on the Programme, if any.
- 5.1.4 As soon as practicable after having received such Consultant's proposals and/or Notices, the Employer's Representative shall respond with approval, disapproval or comments to the proposal. The Consultant shall then be bound by any such Variation Notice issued by the Employer.
- 5.1.5 The Consultant shall not otherwise make any changes to the Services, unless and until the Employer instructs a Variation Notice under this Sub Clause 5.1.

5.2 Valuation of the Variation

- 5.2.1 The Employer's Representative and the Consultant shall agree the value of any Variation, or its method of measurement, including its impact (if any) upon other parts of the Services, the Programme and the Time for Completion.
- 5.2.2 The value of any Variation shall be determined based upon the rates and/or prices included in Schedule 4.1 [*Fees and Reimbursable Cost*], if any are available and relevant. Where the rates and/or prices are not applicable to the Variation then reasonable rates and/or prices shall be agreed by the Parties.
- 5.2.3 If the Services are varied in accordance with the provisions in Clause 5 [*Variations to Services*], the Consultant shall be entitled to adjustments to the Accepted Contract Amount in accordance with Sub-Clause 7.1 [*Payment to the Consultant*] as applicable.

5.3 Adjustments for Changes in Laws

- 5.3.1 The Accepted Contract Amount shall be adjusted to take account of any increase or decrease in Cost resulting from a change in Laws made and/or officially published after the Contract Effective Date, which affect either Party in the performance of obligations under the Contract.

6 SUSPENSION OF THE SERVICES AND TERMINATION OF THE CONTRACT

6.1 Suspension of Services

- 6.1.1 The Employer may suspend all or part of the Services at its sole discretion and for any reason by giving fourteen (14) days' Notice to the Consultant. Upon receiving such Notice, the Consultant shall immediately make arrangements to stop the Services and minimize expenditure.
- 6.1.2 In case of a suspension of the Services by the Employer, the Consultant may be entitled to an EOT and/or Cost. In this case, the Consultant shall inform the Employer in accordance with Clause 10 [*Claims*].
- 6.1.3 The Consultant may suspend all or part of the Services in the following circumstances:
 - (a) When the Consultant has not received payment of an invoice or part of an invoice, as the case may be, by the due date for payment of such invoice and the Employer has not issued a valid Notice in accordance with Sub-Clause 7.4 [*Disputed Invoices*] stating the reasons for non-payment of the invoice or part thereof, subject to the Consultant giving fourteen (14) days' Notice to the Employer; and
 - (b) Where a Force Majeure event arises, the Consultant may suspend the part(s) of the Services affected by the Force Majeure event for the duration of the Force Majeure event, provided that the Consultant has given Notice to the Employer in accordance with Sub-Clause 4.6 [*Force Majeure*], and uses reasonable endeavors to avoid or minimize such suspension.

6.2 Resumption of Suspended Services

- 6.2.1 When the Services have been suspended under Sub-Clause 6.1.1 [*Suspension of Services*], the Consultant shall resume the Services or part thereof, within fourteen (14) days of receipt of Notice from the Employer or within the time as indicated in the Notice instructing the Consultant to resume the Services or part thereof.
- 6.2.2 Where the Services have been suspended under Sub-Clause 6.1.3 [*Suspension of Services*], the Consultant shall resume the Services or part thereof, as soon as reasonably practicable after the matters giving rise to the suspension have ceased.

6.3 Effects of Suspension of the Services

- 6.3.1 The Consultant shall be paid for Services performed in accordance with the Contract up to the date of suspension of the Services or part thereof.
- 6.3.2 During the period of suspension of all or part of the Services the Consultant shall ensure, so far as is reasonably practicable, the security, maintenance and custody of the Services so as to prevent spoilage or loss.
- 6.3.3 If during the suspension and in the resumption of Services or part thereof the Consultant incurs Costs, then:
 - (a) as soon as reasonably practicable the Consultant shall inform the Employer, by issue of a Notice indicating the Claim in accordance with Clause 10 [*Claims*]; and

- (b) the Accepted Contract Amount shall be adjusted in accordance with Sub-Clause 7.1.2 [*Payment to the Consultant*].
- 6.3.4 As an effect of suspension, the Time for Completion shall be amended in accordance with Sub-Clause 4.4 [*Delays*] and it shall be reflected in the Programme.
- 6.3.5 The Consultant shall take reasonable measures to minimize the effects of the suspension of the Services or part thereof.

6.4 Termination of the Contract

6.4.1 Termination by the Employer

- (a) If the Consultant is in breach of a term or condition of the Contract, the Employer may give Notice to the Consultant outlining the breach and the remedy required under the Contract. If the Consultant has not proceeded to remedy the breach within twenty-eight (28) days after the issue of the Notice then the Employer may terminate the Contract upon giving fourteen (14) days' Notice to the Consultant.
- (b) Notwithstanding the notice periods in Sub-Clause 6.4.1 (a), if the Consultant becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, the Employer may terminate the Contract with immediate effect upon issue of an appropriate Notice.
- (c) Notwithstanding the notice periods in Sub-Clause 6.4.1 (a), if the Consultant is in breach of Sub-Clause 1.11 [*Official Not To Benefit and Proscribed Practices*], Sub-Clause 1.19 [*Mines*], Sub-Clause 3.14 [*Child Labour*], Sub-Clause 3.15 [*Sexual Harassment, Exploitation and Abuse*], or Clause 9 [*Insurance*] the Employer may terminate the Contract with immediate effect upon issue of an appropriate Notice.
- (d) At its sole discretion upon giving the Consultant twenty-eight (28) days' Notice, the Employer may terminate the Contract for convenience.
- (e) Where a Force Majeure event has led to a suspension of the Services for more than one hundred and sixty-eight (168) days the Employer may terminate the Contract upon giving fourteen (14) days' Notice to the Consultant.
- (f) Upon termination of the Contract by the Employer, the Consultant shall stop the provision of the Services promptly and take all actions necessary or as may be directed by the Employer to transfer any of the Consultant's Documents, IPR and equipment to the Employer, as applicable.

6.4.2 Termination by the Consultant

- (a) If the Services have been suspended under Sub-Clause 6.1.1 and 6.1.3 (b) [*Suspension of Services*] for more than one hundred and sixty-eight (168) days the Consultant may terminate the Contract upon giving fourteen (14) days' Notice to the Employer.
- (b) If the Services have been suspended under Sub-Clause 6.1.3 (a) [*Suspension of Services*] for more than forty-two (42) days, the Consultant may terminate the Contract upon giving fourteen (14) days' Notice to the Employer.

6.5 Effects of Termination

- 6.5.1 The Consultant shall be paid for Services performed in accordance with the Contract up to the date of termination of the Contract.
- 6.5.2 If the Contract is terminated in accordance with Sub-Clause 6.4.1 (a), (b) or (c) [*Termination of the Contract*] the Employer shall, without prejudice to any other rights the Employer may have under the Contract, be entitled to:
 - (a) take over from the Consultant all the Consultant's Documents, information, calculations and other Deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination, necessary to enable the Employer to complete the Services either by itself or with the assistance of another consultant (all documents in electronic format shall be accessible and editable) including the IPRs;
 - (b) claim compensation for reasonable costs directly incurred as a consequence of the termination, including but not limited to additional costs incurred in arranging for the Services to be completed by another consultant;
 - (c) withhold payments due to the Consultant:
 - (i) until all the costs incurred by the Employer under Sub-Clause 6.5.2 (b) have been established and the amount due is recovered in accordance with Sub-Clause 7.7 [*Set-Off*]; and
 - (ii) all the Consultant's Documents, information, calculations and other deliverables necessary to enable the Employer to complete the Services have been received.
- 6.5.3 The Employer shall take all reasonable steps to minimize such costs and shall act expeditiously without delay in establishing its own costs under Sub-Clause 6.5.2 (b).
- 6.5.4 If the Contract is terminated in accordance with Sub-Clause 6.4.1 (d) or (e) [*Termination of the Contract*] or Sub-Clause 6.4.2 [*Termination of the Contract*] and the Consultant incurs substantiated Costs, then, without prejudice to any other rights the Consultant may have under the Contract, the Consultant shall inform the Employer as soon as reasonably practicable by issue of a Claim under Clause 10 [*Claims*].

6.6 Accrued Rights, Claims and Liabilities of Parties

- 6.6.1 Termination of the Contract shall not prejudice or affect the accrued rights or Claims and liabilities of the Parties.

7 PAYMENT

7.1 Payment to the Consultant

- 7.1.1 The Employer shall pay the Consultant for the Services, including for Variations instructed in accordance with Clause 5 [*Variations to Services*], according to this Clause 7 [*Payment*] and Schedule 4.1 [*Fees and Reimbursable Cost*] and subject to Sub-Clause 7.7 [*Set-Off*].
- 7.1.2 The Employer shall pay the Consultant:
- (a) the value of the Services as included in the Consultant's invoices and certified as completed by the Employer's Representative in accordance with the rates and/or milestone amounts identified in Schedule 4.1 [*Fees and Reimbursable Cost*];
 - (b) for any additional time spent by the Personnel in the performance of the Services in connection with Variations to the Services at the rates and prices stated in Schedule 4.1 [*Fees and Reimbursable Cost*]. Where the rates and prices are not applicable then new rates and prices shall be agreed by the Parties;
 - (c) for any reimbursable costs incurred by the Consultant in the performance of the Services at the rates and prices stated in Schedule 4.1 [*Fees and Reimbursable Cost*]. Where the rates and prices are not applicable then new rates and prices shall be agreed by the Parties; and/or
 - (d) the cost of all other expenses reasonably incurred by the Consultant subject to Clause 10 [*Claims*].
- 7.1.3 The Consultant shall pay all taxes, duties, fees and levies required to be paid by the Consultant under the Contract and as required by Laws wherever the Services or part thereof are performed, and the Accepted Contract Amount shall not be adjusted for any of these costs except as stated in Sub-Clause 1.6 [*Compliance with Laws*] and subject to Sub-Clause 1.23 [*Taxes and Duties*].
- 7.1.4 In case a valued added tax (VAT) may be applicable to the Services, invoices of the Consultant shall not include such VAT if and only the Employer obtains an exemption for such VAT on behalf of the Consultant.

7.2 Time for Payment

- 7.2.1 Unless the Employer's Representative objects in writing to the invoices of the Consultant in accordance with Sub-Clause 7.4 [*Disputed Invoices*], payments due to the Consultant shall be made within forty-two (42) days upon receipt by the Employer of the Consultant's invoices.
- 7.2.2 If the Consultant does not receive payment within the time stated in Sub-Clause 7.2.1, it shall be paid eligible financing charges at the rate(s) and details stated in Schedule 1 [*Contract Details*] on the amount overdue calculated from the due date for payment of the certified invoice to the actual date payment is received from the Employer. Such financing charges shall not affect the rights of the Consultant stated in Sub-Clause 6.1.3 (a) [*Suspension of Services*] or Sub-Clause 6.4.2 [*Termination of the Contract*].

7.3 Currency of Payment

- 7.3.1 Payments shall be made in the currency or currencies and proportions (in case of payments with more than one currency) as stated in Schedule 1 [*Contract Details*].

7.4 Disputed Invoices

- 7.4.1 If any item or part of an item in an invoice submitted by the Consultant is contested by the Employer as not properly due under the Contract, the Employer's Representative shall give a Notice of its intention to withhold payment with reasons but shall not delay payment of the remainder of the invoice. Sub-Clause 7.2.2 [*Time for Payment*] shall apply to all contested amounts which are finally determined to be payable to the Consultant.

7.5 Audit and Investigations

- 7.5.1 Each payment made by the Employer to the Consultant may be subject to a post-payment audit by auditors, whether internal or external, of the Employer or by other authorized and qualified agents of the Employer at any time during the Term of the Contract and for a period of two (2) years following the Final Completion of the Services or termination of the Contract. The Employer shall be entitled to a refund from the Consultant for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.
- 7.5.2 The Consultant acknowledges and agrees that, from time to time, the Employer may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Consultant generally relating to performance of the Contract. The right of the Employer to conduct an investigation and the Consultant's obligation to comply with such an investigation does not lapse upon Final Completion of the Services or termination of the Contract.
- 7.5.3 The Consultant shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Consultant's obligation to make available its Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Consultant's premises at reasonable times and on reasonable conditions in connection with such access to its Personnel and relevant documentation.
- 7.5.4 The Consultant shall require its agents, including, but not limited to, the Consultant's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

7.6 Consultant's Performance Evaluation

- 7.6.1 The Employer may conduct evaluation of the Consultant's performance immediately upon the Final Completion of the Services or termination of the Contract. The Consultant shall provide its full and timely cooperation towards such performance evaluation by the Employer.

7.7 Set-Off

- 7.7.1 The Employer, without prejudice to any other right it may have, may set-off any amount that may be due by the Consultant to the Employer under the Contract against any amount that may be due by the Employer to the Consultant under the Contract.

7.8 Advance Payment

- 7.8.1 If no advance payment is set out in Schedule 1 [*Contract Details*], then this Sub-Clause 7.8 shall not apply.
- 7.8.2 The Employer shall make the advance payment (if any) set out in Schedule 1 [*Contract Details*], in advance of delivery of services, when the Consultant submits an Advance Payment Security in accordance with this Sub-Clause 7.8.
- 7.8.3 The Advance Payment Security shall be duly executed and enforceable, unconditional and irrevocable on-demand guarantee in the form set out in Schedule 5.1 [*Form of Advance Payment Security*] from a leading and accredited guarantor approved by the Employer. Unless and until the Employer receives this guarantee, this Sub-Clause 7.8 shall not apply.
- 7.8.4 The Consultant shall ensure that the Advance Payment Security is valid and enforceable until the whole of the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Consultant in the invoices.
- 7.8.5 If the terms of the Advance Payment Security specify its expiry date, and the advance payment has not been repaid by twenty-eight (28) days prior to the expiry date, the Consultant shall extend the validity of the security until the advance payment has been repaid. If the Employer does not receive this evidence of the extension of the security, the Employer shall be entitled to claim under the Advance Payment Security the amount of advance payment which has not been repaid.
- 7.8.6 The advance payment shall be repaid by the Consultant through percentage deductions in payments at the rate stated in Schedule 1 [*Contract Details*], until such time as the advance payment has been repaid.
- 7.8.7 If the advance payment has not been fully repaid prior to the issue of the Final Completion Certificate or prior to the date of termination of the Contract, the whole of the balance then outstanding shall immediately become due and payable by the Consultant to the Employer.

8 LIABILITIES

8.1 Liability for Breach

- 8.1.1 The Consultant shall be liable to the Employer for any breach by the Consultant of any provision of the Contract.
- 8.1.2 If the Consultant is liable to the Employer, damages shall be payable only on the following terms:
 - (a) such damages shall be limited to the amount of loss and damage suffered as a direct result of such breach;
 - (b) in any event, the amount of such damages shall be limited to the amount stated in Sub-Clause 8.3 [*Limit of Liability*].

8.2 Liability Period

- 8.2.1 The Liability Period is as stated in Schedule 1 [*Contract Details*], which starts on the date of Final Completion of the Services.
- 8.2.2 Notwithstanding anything else in the Contract or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), the Consultant shall not be liable to the Employer for any loss or damage resulting from any occurrence unless a claim is formally made against it before the expiry of the Liability Period.

8.3 Limit of Liability

- 8.3.1 The maximum compensation which the Consultant may have to pay to the Employer in respect of liability under this Clause 8 [*Liabilities*], including liability arising from negligence, under or in connection with the Contract, shall be limited to the amount stated in Schedule 1 [*Contract Details*]. This limit is without prejudice to Sub-Clause 8.4 [*Exceptions*] and Sub-Clause 4.4.4 [*Delays*].
- 8.3.2 Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the expiry or termination of the Contract.

8.4 Exceptions

- 8.4.1 Sub-Clauses 8.1.2 [*Liability for Breach*], Sub-Clause 8.2 [*Liability Period*], and Sub-Clause 8.3 [*Limit of Liability*] shall not apply to Claims arising:
 - (a) out of deliberate manifest and reckless default, fraud, fraudulent misrepresentation or reckless misconduct by the Consultant; and
 - (b) otherwise than in connection with the performance of obligations under the Contract.

9 INSURANCE

9.1 Extent of Cover

- 9.1.1 The Consultant shall at a minimum procure and maintain at all times valid and enforceable insurances described in Schedule 3.9 [*Insurance Requirements*] for the periods and requirements, as set out therein. The insurances required to be provided under this Sub-Clause 9.1 are the minimum required by the Employer, and the Consultant may, at the Consultant's own cost, add such other insurances that the Consultant may deem prudent to obtain.
- 9.1.2 The Consultant shall, on or prior to the Commencement Date, effect and thereafter maintain the following valid and enforceable insurances in the joint names of the Parties (to the extent possible), as applicable:
- (a) All risks insurance: for loss and damage to the Consultant's Documents, Consultant's equipment, materials or plant for not less than the full reinstatement cost;
 - (b) Professional indemnity insurance: against any liability of the Consultant (and its Sub-consultant) as a result of any negligent act, error or omission in providing the Services; including the costs of redesign, reconstruction, rectification or any other liability the Consultant may have to the Employer as a result of such negligent act, error or omission. The insured parties shall be the Consultant and its Sub-consultant undertaking professional activities;
 - (c) Public liability insurance: for liability of both Parties for loss, damage, death or injury to third parties or their property arising out of the Consultant's performance of the obligations under the Contract, including the Consultant's liability for damage to the Employer's property including interference, trespass, loss of amenities, nuisance, infringement, obstruction, arising out of or in connection with the Services; and
 - (d) Workers compensation insurance: against liability for claims, damages, losses and expenses on no-fault basis or negligence (including legal fees and expenses) arising out of the performance of the Services in respect of injury, sickness, disease or death of any Personnel. The Employer shall also be indemnified, except exclude losses and claims to the extent that arise from any act or neglect of the Employer or of its personnel.
- 9.1.3 The Consultant shall also procure and maintain any other valid and enforceable insurance(s) as may be required by Laws or by industry body or trade associations and require its Sub-consultants to effect and maintain such valid and enforceable insurance(s).
- 9.1.4 Unless otherwise instructed by the Employer, the Consultant's insurances shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa or A.M. Best BBB+.

9.2 Arrangements

- 9.2.1 The Consultant shall effect and maintain all insurances with insurers and in terms approved by the Employer. The Consultant shall provide the Employer with evidence that any required insurance policy is in force and that the premiums have been paid.

- 9.2.2 The insurances referred to in Sub-Clause 9.1 [*Extent of Cover*] shall:
- (a) name or firmly indicate the Employer as co-insured;
 - (b) contain a clause waiving the insurers' subrogation rights against each insured party, its personnel and agents (except where such rights are due to a vitiating act); and
 - (c) provide that the Employer shall receive a written notice from the insurer not less than fourteen (14) days prior to any cancellation, non-renewal or amendment.
- 9.2.3 All payments received from insurers relating to loss or damage to the Services shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.
- 9.2.4 The Consultant shall be responsible for handling any claims under the Consultant's insurances. In this regard, the Consultant shall keep the Employer fully informed and seek the cooperation of the Employer and its professional advisors.
- 9.2.5 The Consultant shall not, without obtaining the prior written consent of the Employer and the insurer (as may be required under the applicable insurance):
- (a) make any admission of liability to a third party;
 - (b) enter into any negotiation to settle or compromise a claim under a Consultant insurance;
 - (c) enter into a settlement or compromise a claim on the Consultant's insurances; or
 - (d) commence litigation or arbitration proceedings.
- 9.2.6 The Consultant shall be responsible under any of the insurance policies required under Sub-Clause 9.1.2 [*Extent of Cover*] for any deductible, fees and other costs or failure to recover in whole or part, in which case the Consultant shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.
- 9.2.7 If the Consultant fails to procure or maintain at all times any of the insurances required under Sub-Clause 9.1 [*Extent of Cover*], or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause 9.2, the Employer may, at its option and without prejudice to any other right or remedy, after having notified the Consultant in writing, pay any premiums or take any such other steps as may be required to procure or maintain such insurance in force at the expense of the Consultant.
- 9.2.8 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Consultant of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Consultant and/or the Employer in accordance with these obligations, liabilities or responsibilities.
- 9.2.9 The cost of the Consultant's insurances shall be deemed to be incorporated into the Accepted Contract Amount.
- 9.2.10 The obligations in this Clause 9 [*Insurance*] shall remain valid following the completion, termination or expiry of the Contract.

9.3 Failure to Insure

- 9.3.1 If the Consultant fails to effect or keep in force any of the insurances referred to in Sub-Clause 9.1 [*Extent of Cover*], or fails to provide satisfactory evidence, policies or receipts, the Employer may, at its option and without prejudice to any other right or remedy, terminate the Contract immediately by Notice of termination in accordance with Sub-Clause 6.4 [*Termination of the Contract*].

10 CLAIMS

10.1 Consultant's Claims

- 10.1.1 If the Consultant considers it may have a Claim under or in relation with the Contract, it shall notify and inform the Employer's Representative and provide details regarding the Claim to the Employer's Representative within fourteen (14) days of the circumstances giving rise to such Claim.
- 10.1.2 Within seven (7) days of receiving such Claim, the Employer's Representative may ask the Consultant for more details regarding the Claim.
- 10.1.3 Within fourteen (14) days of receiving the Claim or further details from the Consultant, the Employer's Representative shall assess the Claim, along with the supporting documents and records, and notify its agreement or determination of the Consultant's entitlement (if any) under the Contract for:
- (a) additional payment; and/or
 - (b) an EOT.
- 10.1.4 The Consultant shall not be entitled to an EOT or any additional payment or Costs if it fails to submit a Notice of Claim within the period of fourteen (14) days in accordance with Sub-Clause 10.1.1, in which case the Consultant shall be deemed to have waived its entitlement to make such Claim, the Employer shall be discharged from any liability arising out of or in connection with the event or circumstances giving rise to the Claim, and the Consultant shall comply with its obligations to perform the Services by the Time for Completion and for the Accepted Contract Amount.
- 10.1.5 If a Party needs time and/or information to comply with this Sub-Clause 10.1, it shall inform the other Party in writing.
- 10.1.6 If a Dispute arises between the Parties out of or in connection with the Claim, the Parties shall exercise to resolve the Dispute amicably pursuant to Clause 11 [*Dispute Resolution*].

11 DISPUTE RESOLUTION

11.1 Right to Joinder

- 11.1.1 The Consultant and the Employer agree to resolve Disputes under or in relation with the Contract in accordance with this Clause 11 [*Dispute Resolution*].
- 11.1.2 They further agree that if the Employer, after the signature of this Contract, enters into a subsequent contract with another party that is related to the implementation of the Services or Deliverable, then the other party (such as another consultant or a Works contractor) may become party to this Clause 11 [*Dispute Resolution*] by incorporation by reference in the subsequent contract entered into between the Employer and the other party. In this case, the Employer shall inform the Consultant in writing of such incorporation by reference.

11.2 Amicable Resolution

- 11.2.1 In the event of a Dispute between the Parties, either Party may provide Notice of such Dispute to the respective representative(s) of the other Party(ies). That Notice shall:
- (a) set out the legal and contractual basis of the Dispute;
 - (b) set out the facts upon which the Dispute is based;
 - (c) have annexed copies of correspondence and any relevant background material;
 - (d) contain detailed particulars of the quantification of the Dispute ; and
 - (e) be duly signed by the authorized signatory of the Party issuing the Notice.
- 11.2.2 Upon receipt of such Notice, the Party that has received the Notice may join any other party(ies) that may have become party to this Clause 11 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 11.1 [*Right to Joinder*] with copy to the Party that provided the Notice.
- 11.2.3 Then, the Parties' representatives shall attempt to resolve the Dispute amicably. If the Employer's Representative and the Consultant's Representative are unable to resolve the Dispute amicably within twenty-eight (28) days of receipt of the Notice, the Dispute shall be referred by either Party to Senior Representatives of the Parties, to be designated in writing by the Parties at that time.
- 11.2.4 If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within twenty-eight (28) days of such reference of a Dispute, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 11.3 [*Arbitration*].

11.3 Arbitration

- 11.3.1 Any Disputes between the Parties arising out of or in connection with the Contract and the contracts set out in Sub-Clause 11.1 [*Right to Joinder*] shall be finally resolved, at the request of either Party, through arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules (UNCITRAL) then in effect (the “Procedural Rules”).
- 11.3.2 Any Party to this Clause 11 [*Dispute Resolution*] (either directly or under Sub-Clause 11.1 [*Right to Joinder*]) may, either separately or together with any other party to this Clause 11 [*Dispute Resolution*], initiate arbitration proceedings against one or multiple parties to this Clause 11 [*Dispute Resolution*].
- 11.3.3 Any Party to this Clause 11 [*Dispute Resolution*] named as Respondent in a Notice of Arbitration may join any other party(ies) that may have become party to this Clause 11 [*Dispute Resolution*] by incorporation by reference under Sub-Clause 11.1 [*Right to Joinder*] in the arbitration by submitting a Notice of Joinder to the other party(ies) within thirty (30) days from the receipt by such Respondent of the relevant Notice of Arbitration, together with its Response to the Notice of Arbitration to the Party that requested the arbitration. In this case, the party(ies) that received the Notice of Joinder shall have thirty (30) days to respond to the Notice of Arbitration and the Notice of Joinder, before the proceedings can continue.
- 11.3.4 There shall be three (3) arbitrators, selected according to the procedure set out in Sub-Clauses 11.3.5 to 11.3.7.
- 11.3.5 If the Notice of Arbitration names only one (1) Claimant and one (1) Respondent and no Party has exercised its right to joinder in accordance with Sub-Clause 11.1 [*Right to Joinder*], each Party shall appoint one (1) Arbitrator within fourteen (14) days after the expiry of the period during which parties can exercise their right to joinder. The two (2) Arbitrators shall appoint the third Arbitrator, who shall act as chairperson.
- 11.3.6 If more than two (2) Parties are named in the Notice of Arbitration, or at least one (1) Party exercises its right to joinder, the Claimant(s) shall (jointly) appoint one (1) Arbitrator and the Respondent(s) shall (jointly) appoint the other Arbitrator, both within fourteen (14) days after the expiry of the period during which the Parties can exercise their right to joinder. If the Claimant(s) and the Respondent(s) appoint the arbitrators as provided, the two (2) Arbitrators shall then appoint the third Arbitrator, who shall act as chairperson. If one (1) or both of the Parties fail to appoint an Arbitrator as provided, the Secretary General of the Permanent Court of Arbitration shall, upon the request of any party, appoint all three (3) Arbitrator(s) on their behalf and designate one (1) of them to act as chairperson.
- 11.3.7 If more than one (1) arbitration is initiated under this Clause 11 [*Dispute Resolution*] (either directly or under Sub-Clause 11.1 [*Right to Joinder*]) and any Party thereto contends that two (2) or more arbitrations are substantially related and that the issues should be heard in one (1) proceeding, the arbitrators selected in the first filed of such arbitrations shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before those Arbitrators.
- 11.3.8 The arbitration shall be conducted delocalized without a place of arbitration and shall not be subject to the laws and jurisdiction of any country. In the event of an in-person hearing, the Parties may agree on the physical location of the hearing or, in the absence of such an agreement between the Parties, the arbitral tribunal

may decide on the physical location of the hearing. However, an agreement or decision on such physical location shall not constitute an agreement or decision on a place of arbitration and shall not lead to the application of the laws and jurisdiction of any country, nor shall it be construed as a waiver, express or implied, of the privileges and immunities of the United Nations, including its subsidiary organs.

- 11.3.9 The language of the arbitration shall be English.
- 11.3.10 The decisions of the Arbitrators shall be guided by the general principles of international commercial law as codified in the International Institute for the Unification of Private Law (UNIDROIT) in effect at Contract Effective Date, as the Law Applicable to the Contract.
- 11.3.11 The Arbitrators shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York's Secured Overnight Financing Rate (SOFR) then prevailing, and any such interest shall be simple interest only.
- 11.3.12 The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such Dispute.
- 11.3.13 The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential, subject to Sub-Clause 1.10 [*Confidential Nature of Documents and Information*].

11.4 Dispute Resolution Not to Delay Performance of the Services

- 11.4.1 Despite any activation of the dispute resolution procedures under this Clause 11 [*Dispute Resolution*], the Consultant shall continue to perform the Services and its other obligations under and in connection with the Contract.

11.5 Survival

- 11.5.1 This Clause 11 [*Dispute Resolution*] survives the completion, expiry or termination of the Contract.