

Section VII: General Conditions of Contract (GCC)

1. General Provisions	
1.1 Definitions	In the Contract as defined below, the words and expressions defined shall have the following meanings assigned to them, except where the context requires otherwise:
The Contract	1.1.1 “Contract” means the Agreement signed between the Employer and the contractor and the other documents listed in the Special Conditions of Contract (SCC). 1.1.2 “Specification” means the document as listed in the SCC, and any variation to such document. 1.1.3 “Drawings” means the Employer’s drawings of the Works as listed in the SCC, and any variation to such drawings. 1.1.4 “Bill of Quantities” means the priced and completed bill of quantities forming part of the Tender. 1.1.5 “Bid or Quotation” means the contractor’s priced offer to the Employer for the execution and completion of the Works and the remedying of any defects therein in accordance with the provisions of the Contract, as accepted by the Letter of Acceptance. 1.1.6 “Letter of Acceptance” means the formal acceptance by the Employer of the bid or Tender.
Persons	1.1.7 “Employer” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the contractor) any assignee. 1.1.8 “Contractor” means the person named in the Agreement and the legal successors in title to this person, but not (except with the consent of the Employer) any assignee. 1.1.9 “Party” means either Employer or the contractor.
Date, Times and Periods	1.1.10 “Commencement Date” means the date stated in the SCC after the date the Agreement comes into effect or any other date agreed between the Parties. 1.1.11 “Day” means a calendar day.

	1.1.12 " Time for Completion " means the time for completing the Works as stated in the SCC (or as extended under Sub-Clause 6.3), calculated from the Commencement Date.
Money and Payments	1.1.13 "Cost" means all expenditure properly incurred (or to be incurred) by the contractor, whether on or off the Site, including overheads and similar charges, but does not include profit. 1.1.14 "Contract Price" means the sum stated in the Letter of Acceptance as payable to the contractor and adjusted with any Variation Orders and Other Adjustments upon completion of the works and the remedying of any defects therein in accordance with the provisions of the Contract. 1.1.15 "Retention Money" means the aggregate of all monies retained by the Employer pursuant to Sub-Clause 10.3
Other Definitions	1.1.16 "Contractor's Equipment" means all apparatus, machinery, vehicles, facilities and other things required for the execution of the Works but does not include Materials or Plant. 1.1.17 "Country" means Nepal. 1.1.18 "Employer's Liabilities" means those matters listed in Sub-Clause 5.1. 1.1.19 "Materials" means things of all kinds (other than Plant) intended to form or forming part of the permanent work. 1.1.20 "Plant" means the machinery and apparatus intended to form or forming part of the Permanent Works. 1.1.21 "Site" means the places provided by the Employer where the Works are to be executed, and any other places specified in the Contract as forming part of the Site. 1.1.22 "Variation" means any change which is a result of unforeseen circumstances that arise as a result of instruction by the Employer/ Engineer under Sub-Clause 9.1. 1.1.23 "Works" means all the work and design (if any) to be performed by the contractor including temporary work and any Variation. 1.1.24 "Permanent Works" means the permanent works to be executed (Including Plant) in accordance with the Contract. 1.1.25 "Temporary Works" means all temporary works of every kind (other than contractor's Equipment) required in or about the execution and completion of the Works and the remedying of any defects therein.
1.2 Interpretation	Words importing persons or parties shall include firms and organisations. Words importing singular or one gender shall include plural or the other gender where the context requires.
1.3 Priority of Documents	The documents forming the Contract shall to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, the Employer shall issue any necessary instructions to the contractor, and the priority of the documents shall be in accordance with the order as listed in the SCC .
1.4 Law	The law of the Contract is stated in the Law of Nepal.

1.5 Communications	Where provision is made for the giving or issue of any notice, instruction, or other communication by any person, unless otherwise specified such communication shall be written in the language stated in the SCC. as shall not be unreasonably withheld or delayed. If a notice given pursuant to Sub Clause 1.5 fails to be delivered due to failure to trace the address of the party then the notice shall be published as public notice in a National daily newspaper and when the notice is so published then the notice shall be considered to be delivered to the concerned party.
1.6 Statutory Obligations	The contractor shall comply with the laws of Nepal where activities are performed. The contractor shall give all notices and pay all fees and other charges in respect of the Works.
2. The Employer	
2.1 Provision of Site	The Employer shall provide the Site and right of access thereto at the times stated in the SCC .
2.2 Permits and Licenses	The Employer shall, if requested by the contractor, assist him in applying for permits, licenses or approvals which are required for the Works.
2.3 Employer's Instructions	The contractor shall comply with all instructions given by the Employer in respect of the Works including the suspension of all or part of the Works.
2.4 Approvals	No approval or consent or absence of comment by the Employer or the Employer's representative shall affect the contractor's obligations.
3. Employer's Representatives	
3.1 Authorized Person	One of the Employer's personnel shall have authority to act for him. This authorized person shall be as stated in the SCC , or as otherwise notified by the Employer to the contractor.
3.2 Employer's Representative	The Employer may also appoint a firm or individual to carry out certain duties. The appointee may be named in the SCC , or notified by the Employer to the contractor from time to time. The Employer shall notify the contractor of the delegated duties and authority of this Employer's representative.
4. The Contractor	
4.1 General Obligations	The contractor shall carry out the Works properly and in accordance with the Contract. The contractor shall provide all supervision, labour, Materials, Plant and contractor's Equipment which may be required. All Materials and Plant on Site shall be deemed to be the property of the Employer. During continuance of the of the contract, the contractor and his sub-contractors shall abide at all times by all labour laws, including child labour related enactments, and rules made there under. A child who has not attained the age of fourteen years shall not be employed in any work as a labourer.
4.2 Contractor's Representative	The contractor shall submit to the Employer for consent the name and particulars of the person authorized to receive instructions on behalf of the contractor.

4.3 Subcontracting	The contractor shall not subcontract the Works.
4.4 Performance Security	4.4.1 The Performance Security, including any additional security, shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC, by a Commercial Bank or Financial Institution eligible to issue Bank Guarantee as per prevailing Law in Nepal in accordance with the conditions of Contract using Sample Form for the Performance Security included in Section IX (Contract Forms), or another form acceptable to the Employer., and denominated in Nepalese Rupees. The Performance Security shall be valid until a date 30 days beyond the end of the intended Defect Liability Period. 4.4.2 However, any additional performance securities required as per ITB 26.1, should be valid until a date 30 days beyond the end of the intended completion date.
5. Employer's Liabilities	
5.1 Employer's Liabilities	In this Contract, Employer's Liabilities mean: a. war, hostilities (whether war be declared or not), invasion, act of foreign enemies, within the Country, b. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country, c. riot, commotion or disorder by persons other than the contractor's personnel and other employees, affecting the Site and/or the Works. d. use or occupation by the Employer of any part of the Works, except as may be specified in the Contract, e. design of any part of the Works by the Employer's personnel or by others for whom the Employer is responsible, f. any operation of the forces of nature affecting the Site and/or the Works, which was unforeseeable or against which an experienced contractor could not reasonably have been expected to take precautions g. a suspension under Sub-Clause 2.3 unless it is attributable to the contractor's failure, h. any failure of the Employer, i. physical obstructions or physical conditions, other than climatic conditions, encountered on the Site during the performance of the Works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the contractor immediately notified to the Employer, j. any delay or disruption caused by any Variation, k. any change to the law of the Contract after the date of the contractor's offer as stated in the Agreement, l. losses arising out of the Employer's right to have the permanent work executed on, over, under, in or through any land, and to occupy this land for the permanent work, and m. damage which is an unavoidable result of the contractor's obligations to execute the Works and to remedy any defects.

6. Time for Completion	
6.1 Execution of the Works	The contractor shall commence the Works on the Commencement Date and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion.
6.2 Programme	The contractor shall submit to the Employer a programme for the Works within the time stated in the SCC .
6.3 Extension of Time	The contractor shall be entitled to an extension to the Time for Completion if he is or shall be delayed by any of the Employer's Liabilities. The contractor shall submit an application to the Employer for extension of time, stating the causes for delay, 21 days before the expiry of the Contract completion date. On receipt of an application from the contractor, within 21 days, the Employer shall consider all supporting details provided by the contractor and shall decide extend the Time for Completion as appropriate.
6.4 Liquidated Damages for Delay	If the contractor fails to complete the Works within the Time for Completion, the contractor's liability to the Employer for such failure shall be to pay the amount stated in the SCC for each day for which he fails to complete the Works.
7. Taking-Over	
7.1 Completion	The contractor may notify the Employer when he considers that the Works are complete. In addition to the other provisions, before acceptance of the completed works, Employer shall verify and assure that such works are within the set objective, quality and appropriate to operate and use.
7.2 Taking-Over Notice	The Employer shall notify the Contractor when he considers that the Contractor has completed the Works stating the date accordingly. Alternatively, the Employer may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly. The Employer shall take over the Works upon the issue of this notice. The Contractor shall promptly complete any outstanding work and, subject to Clause 8, clear the Site.
8. Remedying Defects	
8.1 Remedying Defects	The Employer may at any time prior to the expiry of the period stated in the SCC, notify the Contractor of any defects or outstanding work. The Contractor shall remedy at no cost to the Employer any defects due to the Contractor's design, materials, plant or workmanship not being in accordance with the Contract. Failure to remedy any defects or complete outstanding work within a reasonable time of the Employer's notice shall entitle the Employer to carry out all necessary work at the Contractor's cost.

8.2 Uncovering and Testing	The Employer may give instruction as to the uncovering and/or testing of any work. Unless as a result of any uncovering and/or testing it is established that the contractor's design, materials, plant or workmanship are not in accordance with the Contract, the Contractor shall be paid for such uncovering and/or testing as a Variation in accordance with Sub-Clause 9.2.
9. Variations and Claims	
9.1 Right to Vary	The Employer may instruct Variations.
9.2 Valuation of Variations	Variations shall be valued as follows: a. where appropriate, at rates in the Contract, or b. in the absence of appropriate rates, the rates in the Contract shall be used as the basis for valuation or c. at appropriate new rates, as may be agreed or which the Employer considers appropriate.
9.4 Right to Claim	If the contractor incurs cost as a result of any of the Employer's Liabilities, the contractor shall be entitled to the amount of such cost. If as a result of any of the Employer's Liabilities, it is necessary to change the Works, this shall be dealt with as a Variation.
9.5 Variation and Claim Procedure	The contractor shall submit the Employer an itemised make-up of the value of Variations and claims within 7 days of the instruction or of the event giving rise to the claim. The Employer shall check and if possible, agree the value. In the absence of agreement, the Employer shall determine the value.
10. Contract Price and Payment	
10.1 Valuation of the Works	The Contract Bill of Quantities and the approved Variation quantities shall be used to calculate the valuation of the works completed. The Contractor shall be paid for the quantity of work done at the rate in the Bill of Quantities or rate agreed pursuant to clause 9.2 for varied works.
10.2 Payments Certificates	The Contractor shall submit to the Employer monthly statements of the estimated value of the works completed less the cumulative amount certified previously. The Employer shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor
10.3 Payments	The Employer shall pay to the contractor the amount certified less retention at the rate stated in the SCC within 30 days of the date of each certificate.
10.4 Payment Retention of	One half of the retention shall be repaid by the Employer to the contractor within 30 days upon expiry of Defects Liability Period and the Employer has certified that the notified defects have been corrected. The remainder of the retention shall be paid by the Employer to the contractor within 7 days after submission of evidence document from the concerned Internal Revenue Office that the contractor has submitted his Income Returns

10.5 Advance Payment	10.5.1 The Employer shall make advance payment to the Contractor of the amounts stated in the SCC in two equal installments by the date stated in the SCC, against provision by the Contractor of an unconditional bank guarantee from Commercial Bank or Financial Institution eligible to issue Bank Guarantee as per prevailing Law in Nepal in a form acceptable to the Employer in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment. 10.5.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager. 10.5.3 The advance payment shall be repaid by deducting proportionate amounts, as stated in SCC, from payments otherwise due Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages. 10.5.4 [S1] If the advance provided under GCC 10.5.1 is not settled due to non-performance of the Works under the contract, by the Contractor within the time period specified in the Contract, the Employer shall recover the advance by enforcing the bank guarantee as provided under GCC 10.5.1, and shall also recover interest on the advance amount from the Contractor at a rate stated in SCC
10.6 Local Taxation & Value Added Tax	a. The prices quoted by the Contractor shall include all taxes that may be levied in accordance to the laws and regulations in being in Nepal. b. The Contractor shall pay VAT in the concerned VAT office within time frame specified in VAT regulation.
11. Termination of Contract and Payment	11.1 The Employer may terminate the Contract at any time if the contractor; a. does not commence the work as per the Contract, b. abandons the work without completing, c. fails to achieve progress as per the Contract. 11.2 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. 11.3 Fundamental breaches of Contract shall include, but shall not be limited to, the following : (a) The Contractor uses the advance payment for matters other than the contractual obligations, (b) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project

	Manager; (c) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days; (d) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation. (e) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 90 days of the date of the Project Manager's certificate; (f) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager; (g) The Contractor fails to update the Program as per the contract and demonstrate acceleration of the works within a reasonable period of time determined by the Project Manager; (h) the Contractor does not maintain a Security, which is required; (i) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC 6.4; and (j) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC 14. 11.5 Notwithstanding the above, the Employer may terminate the Contract for convenience. 11.6 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
	11.7 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered minus the advance payments received up to the date of the issue of the certificate. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer. 11.8 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate. 11.9 If the Contract is terminated because of fundamental breach of Contract or for any other fault by the Contractor, the Employer may after forfeiting the performance security: (a) withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, liquidated damages (if any), and all other costs incurred by the Employer, have been established, and/or (b) recover from the Contractor any losses and damages incurred by the Employer and any additional costs of completing the Works, after allowing

	for any sum due to the Contractor, as Government dues. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
12. Risk and Responsibility	
12.1 Contractor's Care of the Works	The contractor shall take full responsibility for the care of the Works from the Commencement Date until the date of the Employer's notice under Sub-Clause 7.2. Responsibility shall then pass to the Employer. If any loss or damage occurs to the Works during the above period, the contractor shall rectify such loss or damage so that the Works conform to the Contract.
12.2 Force Majeure	If a Party is or shall be prevented from performing any of its obligations by Force Majeure, the Party affected shall notify the other Party immediately. If necessary, the contractor shall suspend the execution of the Works and, to the extent agreed with the Employer, demobilize the contractor's Equipment. If the event continues for a period of 90 days, either Party may then give notice of termination which shall take effect 30 days after the giving of the notice. After termination, the contractor shall be entitled to payment of the unpaid balance of the value of the Works executed and of the Materials and Plant reasonably delivered to the Site, adjusted by the following: a. any sums to which the contractor is entitled under Sub-Clause 9.4, b. the Cost of his suspension and demobilization, c. any sums to which the Employer is entitled. The net balance due shall be paid or repaid within 30 days of the notice of termination.
13. Resolution of Disputes	
13.2 Amicable Settlement	The Employer and the Contractor shall attempt to settle amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.
14. Fraud and Corruption	14.1 If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 15 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site. For the purposes of this GCC 14; (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party. (ii) "fraudulent practice"⁵ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to

	mislead, a party to obtain a financial or other benefit or to avoid an obligation; (iii) “collusive practice”⁶ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party; (iv) “coercive practice”⁷ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; (v) “obstructive practice” is (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (bb) acts intended to materially impede the exercise of the GON’s/DP’s inspection and testing rights provided for under GCC8. 14.2 The contractor shall be prosecuted for offenses under prevailing criminal laws, if the contractor: (i) Misuses the Advance Payment or payments received from the Employer; (ii) Receives payment by submitting false information or documents; (iii) Abandons the works before completion; (iv) Commits a serious violation of the contract; or (v) Causes loss or damage to the Employer.
15. Blacklisting	15.1 Without prejudice to any other right of the Employer under this Contract, GoN, Public Procurement Monitoring Office may blacklist a contractor for his conduct up to three years on the following grounds and seriousness of the act committed by the contractor: a) if it is proved that the contractor committed acts pursuant to the GCC Clause 14 b) if it is proved later that the contractor had committed substantial defect in implementation of the contract or had not substantially fulfilled his obligations under the contract or the completed work is not of the specified quality as per the contract, c) if convicted by a court of law in a criminal offence which disqualifies the bidder from participating in the contract. d) if it is proved that the contract agreement signed by the bidder was based on false or misrepresentation of bidder’s qualification information,
16. Provision of PPA and PPR	If any provision of this document is inconsistent with Public Procurement Act (PPA), 2063 or Public Procurement Regulations (PPR), 2064, the provision of this document shall be void to the extent of such inconsistency and the provision of PPA and PPR shall prevail.

