



**The Kingdom of Eswatini**  
**Eswatini Water Services Corporation**  
**Invitation To Tender (ITT) Document**  
**for**  
**Rehabilitation of Woodlands Water**  
**Treatment Plant**

<b>Procurement Method:</b>	<b>Open tender</b>
<b>Subject of Procurement:</b>	<b>Rehabilitation of Woodlands Water Treatment Plant</b>
<b>Procurement Reference Number:</b>	<b>EWSC 21 of 2025/26</b>
<b>Date of Issue:</b>	<b>30<sup>th</sup> May 2025</b>
<b>Participation</b>	<b>National</b>

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## PREFACE

This Tender Document has been prepared by the Eswatini Public Procurement Regulatory Agency to be used for the procurement of Works.

The document is customized to be consistent with the Public Procurement Act No. 07 of 2011, the Public Procurement Regulations, 2020, other of the Laws of Eswatini, and international best practices”.

This Invitation To Tender (ITT) shall be used to procure Works above E500, 000.

The sale of this tender document to potential Contractor(s) is discouraged.

Those wishing to submit comments or questions on this Tender Document or to obtain additional information are encouraged to contact:

The Chief Executive Officer  
Eswatini Public Procurement Regulatory Agency  
RHUS Office Park, P.O. Box 9665  
Karl Grant Street, Mbabane  
**ESWATINI**  
<https://esppra.co.sz>  
[info@esppra.co.sz](mailto:info@esppra.co.sz)

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TDS	Tender Data Sheet
TS	Tender Security
TSD	Tender Securing Declaration
ESHS	Environmental, Social, Health and Safety
GCC	General Conditions of the Contract
ITT	Instruction to Contractors.
JV	Joint Venture
PE	Procuring Entity
STD	Standard Tender Document
SCC	Special Conditions of the Contract
SOR	Statement of Requirements.
TCS	Technical Compliance Selection

# Tender Document

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### Disclaimer

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**Standard Invitation to Contractors**

**TENDER NOTICE UNDER OPEN TENDERING  
WITHOUT PRE-QUALIFICATION**

**04<sup>th</sup> July 2025**

**Rehabilitation of Woodlands Water Treatment Plant – EWSC 21 of 2025/2026**

1. The **Eswatini Water Services Corporation** has allocated/received funds to be used for the acquisition of works for the **Rehabilitation of Woodlands Water Treatment Plant**.
2. The Entity invites sealed Tenders from eligible Contractors for the provision of the above works.
3. Tendering shall be conducted in accordance with the procedures contained in the Public Procurement Act of 2011 and the Regulations of 2020.
4. Interested eligible Contractors may obtain further information about the tender document at the address given below at 8(a) from **8.00am-16.30pm**.
5. The Tender document which has been prepared in the *English language* may be obtained by interested Contractors at 8(b) upon payment of a non-refundable fee of **E1000.00**. The method of payment will be through paying at **EWSC service centre or EFT at (Standard Bank A/C no. 9110000596666, Branch-Mbabane:663164, Swift code SBIC SZ MX) Reference Tender Number**. with effect from **30<sup>th</sup> May 2025**.
6. Tenders must be delivered to the address indicated below at 8(c) at or before **12.00 noon, 04<sup>th</sup> July 2025**. All Tenders must be accompanied by a Tender security of **E20,000.00**. Tender securities must be valid until **31<sup>st</sup> October 2025**. Late Tenders shall be rejected. Tenders will be opened in the presence of the Contractors' representatives who choose to attend at the address below at 8(d) at **12.00pm, 04<sup>th</sup> July 2025**
7. There shall be a pre-Tender meeting/site visit at **Woodlands Water Treatment Plant** on the dates indicated in the proposed schedule in this notice.
8. Address and Contact Details:

(a)	Information about the tender may be accessed from:	<a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a>
(b)	Documents will be issued from:	<a href="http://www.esppra.co.sz">www.esppra.co.sz</a> or <a href="http://www.ewsc.co.sz">www.ewsc.co.sz</a>
(c)	Tenders must be delivered to:	<b>EWSC Headquarters Emtfonjeni building Cnr MR103 and Cultural Village Drive Ezulwini Eswatini</b>
(d)	Address of Tender opening:	<b>EWSC Headquarters Emtfonjeni building</b>

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## Part 1: Section 1 Instructions to Tenderers

		<b>Cnr MR103 and Cultural Village Drive Ezulwini Eswatini</b>
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9. The Planned Procurement Schedule (subject to changes) is as follows:

<b>Activity</b>	<b>Date</b>
(a) Issue of invitation to tender letter	<b>30<sup>th</sup> May 2025</b>
(b) Pre-Tender meeting/ Site visits	11 <sup>th</sup> June 2025
(c) Tender closing date	04 <sup>th</sup> July 2025
(d) Tender opening date	04 <sup>th</sup> July 2025
(e) Evaluation process	10 <sup>th</sup> July 2025
(f) Notification and Publication of Notice of Intention to Award	18 <sup>th</sup> July 2025
(g) Contract Award	28 <sup>th</sup> July 2025

Signature:

Name: Jabulile Mashwama

Position of Authorised Official: Managing  
Director

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## PART 1 - Tender Procedures

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## **Section 1: Instructions to Tenderers**

### **A. General**

#### **1. Scope of Tender**

- 1.1 The Procuring Entity (PE), as defined in the Tender Data Sheet (TDS), invites Tenders for the construction of works, as described in the TDS. The name and procurement reference number of the Contract and number of lots in this Tender Document are provided in the TDS. The Instructions to Tenderers (ITT) should be read in conjunction with the TDS.
- 1.2 The successful Contractor will be expected to complete the works by the Intended Completion Date specified in the Special Conditions of Contract (SCC).
- 1.3 Throughout this Tender document:
  - (a) the “Contractor” means the service provider.
  - (b) “day” means calendar day unless specified as working day.
  - (c) “day works” means varied work inputs subject to payment on a time basis for the Contractor’s employees and Equipment, in addition to payments for associated Materials and Plant.
  - (d) the “Employer” means the Procuring Entity.
  - (e) “ESHS” means environmental, social (including sexual exploitation and abuse (SEA) and gender -based violence (GBV)), health and safety.
  - (f) “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

#### **2. Source of Funds**

- 2.1 The PE has an approved budget from [*Government funds, grants, donor funds etc.*] towards the cost of the procurement named in the TDS. The PE intends to use these funds to place a contract for which this Tender Document is issued.
- 2.2 Payments will be made directly by the PE and shall be subject to the terms and conditions of the resulting contract placed by the PE.

#### **3. Corrupt and Fraudulent Practices**

- 3.1 It is the policy of the Government of The Kingdom of Eswatini through ESPPRA to require that PEs, as well as Contractors Sub- observe the highest standards of ethics during procurement and the execution of contracts.
  - (a) In pursuit of this policy, the Government of Eswatini defines for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value, to influence the action of a public official in the procurement process or in contract execution;
    - (ii) “fraudulent practice” means as any such practices under the code of ethics of the providers and not limited to misrepresentation of facts in order to influence a

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## Part 1: Section 1 Instructions to Tenderers

procurement or process or the execution of a contract to the detriment of the procuring or disposing entity, and includes collusive practices among Contractors prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and to deprive the PE of the benefits of free and competitive competition;

- (b) The PE shall reject a recommendation for award if the Contractor recommended for award has engaged in corrupt or fraudulent practices; and
- (c) The Agency shall suspend a contractor from engaging in any public procurement proceedings for a stated period of time in accordance with the Procurement Act and the Regulations made under the Act, if the provider has engaged in corrupt or fraudulent practices.

3.2 In pursuit of the policy defined in ITT Sub-Clause 3.1, the PE may terminate a contract for works, if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the PE or of a Contractor or sub-Contractor during the procurement or the execution of a contract.

3.3 In further pursuit of the policy defined in ITT Sub-Clause 3.1, the Agency requires representatives of both the PE and of Contractors and sub-Contractors to adhere to the relevant codes of ethical conduct. The Code of Ethical Conduct for Contractors and Providers as provided in the Tender forms shall be signed by the Contractor and submitted together with the other Tender forms.

3.4 Any communications between a Contractor and the PE related to matters of alleged fraud or corruption must be made in writing and addressed to the Controlling Officer of the PE.

### 4. Eligible Contractors

4.1 A Contractor, and all parties constituting the Contractor, shall meet the following criteria to be eligible to participate in public procurement:

- (a) The Contractor has the legal capacity to enter into a contract with the PE;
- (b) The Contractor is not:
  - (i) Insolvent;
  - (ii) In receivership;
  - (iii) Bankrupt; or
  - (iv) Being wound up
- (c) The Contractor's business activities have not been suspended;
- (d) The Contractor is not the subject of legal proceedings for any of the circumstances in (b); and
- (e) The Contractor has fulfilled his or her obligations to pay taxes and social security contributions.
- (f) The Contractor is not a member of the Entity Tender Board or an employee of the Procuring Entity.

4.2 A Contractor may be a physical person or artificial person, such as an entity. A combination of persons can Tender if they have an agreement to form a Joint Venture (JV), Consortium or Association. Such a Tender shall include a Power of Attorney from each party authorizing a representative to conduct all business for and on behalf of the party during the Tender process, contract signature and contract execution. Each party to the JV, Consortium or Association shall be a signatory to the contract with the PE and shall be jointly and severally liable.

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## Part 1: Section 1 Instructions to Tenderers

- 4.3 A Contractor, and all parties constituting the Contractor including sub-contractors, shall have the nationality of an eligible country, in accordance with Section 5, Eligible Countries. A Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors for any part of the Contract including related services.
- 4.4 A Contractor shall not have a conflict of interest. Any Contractor found to have a conflict of interest shall be disqualified. A Contractor may be considered to have a conflict of interest with one or more parties in this Tendering process, if the Contractor:
- (a) Has controlling shareholding with another Contractor; or
  - (b) Receives or has received any direct or indirect subsidy from another Contractor; or
  - (c) Has the same authorized representative for purposes of this tendering process as another Contractor; or
  - (d) Has a relationship with another Contractor, directly or through common third parties, that puts the Contractor in a position to have access to information about or influence the Tender of another Contractor, or influence the decisions of the PE regarding this tendering process; or
  - (e) Submits more than one Tender in this Tendering process, except for alternative Tenders permitted under ITT 19. However, this does not limit the participation of subcontractors in more than one Tender, or as Contractors and subcontractors simultaneously; or
  - (f) Is associated, or has been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or is being proposed as Project Manager for the Contract. A Contractor that has been engaged by the PE to provide consulting services for the preparation or supervision of the works, and any of its affiliates, shall not be eligible to Tender.
- 4.5 A Contractor that is suspended by the Agency shall not be eligible to participate in the Tendering process.
- 4.6 Government-owned enterprises shall be eligible only if they can establish that they are legally and operate under commercial law.
- 4.7 Contractors shall provide such evidence of their continued eligibility satisfactory to the PE, as the PE shall reasonably request.
- 4.8 To establish eligibility in accordance with ITT 4, a Contractor shall complete the eligibility declarations in the Tender Submission Sheet, included in Section 4, Tender Forms and submit the documents required in Section 3, Evaluation Methodology and Criteria.
- 4.9 A Contractor whose circumstances in relation to eligibility change during a procurement process or during the implementation of a contract, shall immediately inform the PE.
- 4.10 All materials, equipment and services to be used in the performance of the contract shall have as their country of origin an eligible country in accordance with Section 5, Eligible Countries.

## 5. Qualification of the Contractor

- 5.1 To establish its qualifications to perform the Contract, the Contractor shall complete and submit:
- (a) The Qualification Form provided in Section 4, Tendering Forms; and
  - (b) The information and documents stated in Section 3, Evaluation Methodology and Criteria.

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## Part 1: Section 1 Instructions to Tenderers

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- 5.2 The qualifications of the best evaluated Contractor will be assessed as part of a post-qualification in accordance with ITT 40.

### 6. Joint Ventures, Consortia and Associations

- 6.1 Tenders submitted by a JV, Consortium or Association shall include a copy of the Joint Venture, Consortium or Association Agreement signed by all parties to the Joint Venture, Consortium or Association Agreement.
- 6.2 In addition to the requirements under ITT 15.1, Tenders submitted by a joint venture, consortium or association of two or more firms as partners shall comply with the following requirements, unless otherwise stated in the TDS:
- (a) The Tender shall include all the information listed in Section 3, Evaluation Methodology and Criteria for each partner;
  - (b) The Tender shall be signed to be legally binding on all partners;
  - (c) All partners shall be jointly and severally liable for the implementation of the Contract in accordance with the Contract terms;
  - (d) One of the partners will be nominated as being in charge and receive instructions for and on behalf of any and all partners; and
  - (e) The implementation of the entire Contract shall be by the Joint Venture, consortium or association.

### 7. One Tender per Contractor

Each Contractor shall submit only one Tender, either individually or as a partner in a joint venture, consortium or association. A Contractor who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) shall cause all the Tenders with the Contractor's participation to be rejected.

### 8. Cost of Tendering

The Contractor shall bear all costs associated with the preparation and submission of his Tender, and the PE shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

### 9. Site Visit and Pre-Tender Meeting

- 9.1 The Contractor, at the Contractor's own responsibility and risk, is encouraged to visit and examine the site of works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for construction of the works. The costs of visiting the site shall be at the Contractor's own expense.
- 9.2 The Contractor and any of its authorized personnel or agents shall be granted permission by the PE to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Contractor, its personnel, and agents will release and indemnify the PE and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 9.3 If so indicated in the TDS, the PE will hold a pre-tender meeting or site visit at the time, date and location specified in the TDS to clarify issues and to answer questions on any matter that may be raised at that stage.

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## Part 1: Section 1 Instructions to Tenderers

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- 9.4 Contractors may submit any questions in writing to the Entity prior to the date of the meeting and may also orally raise questions at the meeting.
- 9.5 Minutes of the pre-tender meeting, if any was held, including the text of the questions asked by Contractors, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Contractors who have acquired the Tendering Documents. Any modification to the Tendering Documents that may become necessary as a result of the pre-Tender meeting shall be made by the PE exclusively through the issue of an Addendum pursuant to ITT 12 and not through the minutes of the pre-Tender meeting. Unless otherwise indicated in the TDS, non-attendance at the site visit shall not cause disqualification of a Contractor.

### 10. Margin of Preference

- 10.1 Unless otherwise specified in the TDS, a margin of preference shall apply. Where the margin of preference applies, its application and detail shall be specified in Section 3, Evaluation Methodology and Criteria.

## B. Tendering Document

### 11. Content of Tendering Document

- 11.1 The Tendering Document consists of Parts 1, 2, and 3, which includes all the Sections indicated below, and should be read in conjunction with any addenda issued in accordance with ITT Clause 13.

#### PART 1 Tendering Procedures

- Section 1. Instructions to Contractors (ITT)
- Section 2. Tender Data Sheet (TDS)
- Section 3. Evaluation Methodology and Criteria
- Section 4. Tendering Forms
- Section 5. Eligible Countries

#### PART 2 Statement of Requirements

- Section 6. Statement of Requirements

#### PART 3 Contract

- Section 7. General Conditions of Contract (GCC)
- Section 8. Special Conditions of Contract (SCC)
- Section 9. Contract Forms

- 11.2 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Tendering Documents, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tendering Documents.
- 11.3 The Contractor is expected to examine all instructions, forms, terms and specifications in the Tendering Document and to furnish with its Tender all information and documentation required by the Tendering Documents.

### 12. Clarification of Tendering Document

A Contractor requiring any clarification of the Tendering Document shall contact the PE in writing at the PE's address indicated in the TDS. The PE will respond in writing to any request for clarification, provided that such a request is received no later than the date indicated in the TDS. The PE shall forward copies of its response to all Contractors who have acquired the

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Tendering Document, including a description of the inquiry but without identifying its source. Should the PE deem it necessary to amend the Tendering Document as a result of a clarification, it shall do so following the procedure under ITT 13 and ITT 24.2.

### 13. Amendment of Tendering Document

- 13.1 Prior to the deadline for submission of Tenders, the PE may amend the Tendering Document by issuing an addendum.
- 13.2 Any addendum issued shall be part of the Tendering Document and shall be communicated in writing to all who have obtained the Tendering Document directly from the PE.
- 13.3 To give Contractors reasonable time in which to take an addendum into account in preparing their Tenders, the PE shall extend the deadline for submission of Tenders by a reasonable period in the event that less than one third of the Tendering period remains after the issue date of the addendum. The PE may, at its discretion, extend the deadline for the submission of Tenders, where more than one third of the Tendering period remains after the date of issue of the addendum.

## C. Preparation of Tenders

### 14. Language of the Tender and Communications

- 14.1 The Tender shall be in writing.
- 14.2 The Tender, as well as all correspondence and documents relating to the Tender exchanged between the Contractor and the PE, shall be written in English or unless otherwise specified in the TDS.
- 14.3 Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation by a competent institution of the relevant passages to the language stated in the ITT Sub-clause 14.2. In which case, for purposes of interpretation of the Tender, such translation shall govern.

### 15. Documents Comprising the Tender

- 15.1 The Tender submitted by the Contractor shall comprise the following:
  - (a) The Tender Submission Sheet, in accordance with ITT 15.2;
  - (b) A Tender Security or a Tender Securing Declaration in accordance with ITT 20;
  - (c) Written confirmation authorising the signatory of the Tender to commit the Contractor, in accordance with ITT 22;
  - (d) Documentary evidence in accordance with ITT 4.8 establishing the Contractor's eligibility to Tender;
  - (e) A priced Activity Schedule or Bill of Quantities in accordance with ITT 16 and 17;
  - (f) The Qualification Form and Documents in accordance with ITT 5;
  - (g) Technical documentation (description of the proposed work method and schedule, including drawings and charts, as necessary) in accordance with ITT 16;
  - (h) The duly signed Code of Ethical Conduct for Contractors and Providers in accordance with ITT 3.3; and
  - (i) Any other document(s) required in the TDS.
- 15.2 The Contractor shall submit the Tender Submission Sheet using the form provided in Section 4, Tendering Forms. This form must be completed without any alterations to its format, and

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no substitutes shall be accepted. All blank spaces shall be filled with the information requested.

### 16. Technical Documentation

- 16 The Contractor shall furnish technical documentation including a statement of work, equipment, personnel, schedule and any other information as stipulated in Section 4, Tendering Forms, in sufficient detail to demonstrate the adequacy of the Contractor's proposal to meet the work's requirements and the completion time.

### 17. Tender Prices and Discounts

- 17.1 The prices and discounts quoted by the Contractor in the Tender Submission Sheet and in the Priced Activity Schedules or Bills of Quantities submitted by the Contractor shall conform to the requirements specified below.
- 17.2 The Contractor shall fill in rates and prices for all items of the works described in the Bill of Quantities. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Items not listed in the Price Schedule shall be assumed not to be included in the Tender, and provided that the Tender is substantially responsive, the corresponding adjustment shall be applied in accordance with ITT 32.3.
- 17.3 The price to be quoted in the Tender Submission Sheet shall be the total price of the Tender, excluding any discounts offered. In the event that taxes are not exempt, the price must include any applicable taxes.
- 17.4 The Contractor shall quote any unconditional and conditional discounts in the Tender Submission Sheet.
- 17.5 The total Tender price shall be for the whole works based on the priced Activity Schedule or Bill of Quantities submitted by the Contractor.
- 17.6 The contract price or tender price quoted by the Contractor shall be subject to adjustment during the performance of the Contract if provided for in the SCC and the provisions of Clause 47 of the GCC.

### 18. Currencies of Tender and Payment

- 18.1 Tender prices for works and related services originating in and outside Eswatini shall be quoted in Eswatini Lilangeni unless authorised by a competent authority.
- 18.2 If authorised by the competent authority the Contractor shall utilise the rate of exchange specified in the TDS to express its offer. The source, date and type of exchange rate shall be indicated in ITT 36.
- 18.3 If authorised by the competent authority, Contractors shall indicate details of their expected foreign currency requirements in the Tender. Foreign currency requirements shall be indicated as a percentage of the Tender price (excluding provisional sums) and shall be payable at the option of the Contractor in up to two foreign currencies, unless otherwise stated in the TDS.
- 18.4 If authorised by the competent authority, Contractors may be required by the PE to clarify their foreign currency requirements and to substantiate that the amounts included in the lump sum and in the SCC are reasonable and responsive to ITT 18.3.

### 19. Tender Validity

- 19.1 Tenders shall remain valid until the date specified in the TDS. A Tender valid for a shorter period shall be rejected by the PE as non-compliant while a Tender valid for a longer period

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than the date specified in the TDS shall not be rejected but shall only be valid until the date in the TDS.

- 19.2 The PE shall make its best effort to complete the procurement process within the duration of the validity period specified in the TDS. A PE must ensure the validity of Tenders, Tender securities and Tender securing declarations throughout the procurement process until contract signature.
- 19.3 In exceptional circumstances, prior to the expiration of the Tender validity period, the PE may request Contractors to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security or a Tender Securing Declaration is requested in accordance with ITT Clause 20, it shall also be extended for a period corresponding to the extension of the Tender validity. A Contractor may refuse to extend its Tender validity period without forfeiting its Tender Security or Tender Securing Declaration. A Contractor who extends the validity periods of its Tender and Tender security or Tender securing declaration shall not be required or permitted to modify its Tender.

### 20. Tender Security or Tender Securing Declaration

- 20.1 The Contractor shall furnish as part of its Tender either a Tender Security or a Tender Securing Declaration as specified in the TDS in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS.
- 20.2 If a Tender security is specified pursuant to ITT 20,1, the Tender security shall be a demand guarantee in the amount specified in the TDS and denominated in Eswatini Lilangeni or a freely convertible currency, and shall:
- (a) Be issued by a reputable financial institution selected by the Contractor from an eligible country. If the institution issuing the security is located outside Eswatini, it shall be enforceable through a financial institution located in Eswatini.
  - (b) Be in the form of the Tender security included in section 4, Tendering forms;
  - (c) Be discharged by the financial institution immediately upon written demand by the PE in case the conditions stated in the Tender security are invoked;
  - (d) Be included in the Tender and submitted in its original form - copies shall not be accepted.
- 20.3 The Tender Security or Tender Securing Declaration shall be submitted using the appropriate form included in Section 4, Tendering Forms and shall be valid until the date specified in the TDS.
- 20.4 Any Tender not accompanied by appropriate Tender Security or Tender Securing Declaration, shall be rejected by the PE as non-compliant.
- 20.5 The Tender Security of all Contractors shall be returned as promptly as possible once the successful Contractor has signed the contract and provided the required Performance Security and ESHS Performance Security where applicable.
- 20.6 The Tender Security or Tender Securing Declaration of a JV, Consortium or Association must be issued in the names of all their members or partners.
- 20.7 The Tender Security may be forfeited, or the conditions of the Tender Securing Declaration executed in the following circumstances:
- (a) If a Contractor withdraws its Tender during the period of Tender validity specified by the Contractor in the Tender Submission Sheet, or during any extension thereto;

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- (b) If a Contractor fails to accept the correction of its Tender price pursuant to ITT Sub-Clause 32.5; or
- (c) If the successful Contractor fails to:
  - (i) Sign the Contract in accordance with ITT 45;
  - (ii) Furnish a Performance Security and if required in the TDS, the Environmental, Social, Health and Safety (ESHS) Performance Security in accordance with ITT 46.2.

### 21. Alternative Tenders

- 21.1 Contractors shall submit offers that comply with the requirements of the Tendering documents, including the basic technical design as indicated in the drawings and specifications. Alternative Tenders shall not be permitted.

### 22. Format and Signing of Tender

- 22.1 The Contractor shall prepare one original of the documents comprising the Tender as described in ITT Clause 14 and clearly mark it "ORIGINAL." In addition, the Contractor shall submit copies of the Tender, in the number specified in the TDS, and clearly mark each of them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 22.2 The original and all copies of the Tender shall be signed by the Contractor in the event that he or she is a physical person personally submitting the Tender and in any other event by a person duly authorised to sign on behalf of the Contractor. This authorisation shall consist of a Power of Attorney which if signed in Eswatini shall be registered with the competent authority and if signed outside Eswatini, shall be notarized. The Power of Attorney shall be submitted in the Tender. The name and position held by each person signing the authorisation must be typed or printed below the signature. All pages of the Tender, except for un-amended printed literature, shall be signed or initialled by the person authorized to sign the Tender.
- 22.3 The Tender shall contain no alterations or additions, except those to comply with instructions issued by the PE, or as necessary to correct errors made by the Contractor, in which case such corrections shall be initialed by the person(s) signing the Tender.
- 22.4 In the case of Tenders submitted by a JV, Consortium or Association, each member or partner shall nominate a representative through the power of attorney to conduct all business on its behalf during the Tender preparation, Tendering process and contract execution in case of award of the contract. Each representative duly nominated through the power of attorney shall commit each respective member or partner by executing a JV, Consortium or Association agreement providing; that the parties shall jointly submit a Tender, naming the lead member or partner and authorizing the representative of the lead member or partner who was granted power of attorney to sign the Tender.
- 22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## D. Submission and Opening of Tenders

### 23. Sealing and Marking of Tenders

- 23.1 The Contractor shall enclose the original and each copy of the Tender, in separate sealed envelopes or packages, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes or packages containing the original and the copies shall then be enclosed in one

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single plain envelope or package securely sealed in such a manner that opening and resealing cannot be achieved undetected and shall be submitted as specified in the TDS.

23.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Contractor;
- (b) Be addressed to the PE in accordance with ITT 23.1;
- (c) Bear the Procurement Reference number of this Tendering process; and
- (d) Bear a warning not to open before the time and date for Tender opening, in accordance with ITT 23.1.

23.3 If all envelopes are not sealed and marked as required, the PE will assume no responsibility for the misplacement or premature opening of the Tender.

### 24. Deadline for Submission of Tenders

24.1 Tenders must be received by the PE at the address and no later than the date and time indicated in the TDS. When so specified in the TDS, Contractors shall have the option of submitting their Tenders electronically. Contractors submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

24.2 The PE may, at its discretion, extend the deadline for the submission of Tenders by amending the Tendering Documents in accordance with ITT 13, in which case all rights and obligations of the PE and Contractors previously subject to the deadline shall thereafter be subject to the deadline as extended.

### 25. Late Tenders

The PE shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 24. Any Tender received by the PE after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Contractor.

### 26. Withdrawal and Replacement of Tenders

26.1 A Contractor may withdraw or replace its Tender after it has been submitted at any time before the deadline for submission of Tenders by sending a written notice, duly signed by an authorised representative, which shall include a copy of the authorisation in accordance with ITT 24.2. Any corresponding replacement of the Tender must accompany the respective written notice. All notices must be:

- (a) Submitted in accordance with ITT 23 and 24 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” or “REPLACEMENT,” and
- (b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT Clause 24.

26.2 Tenders requested to be withdrawn in accordance with ITT Sub-Clause 24.1 shall be returned unopened to the Contractor.

26.3 No Tender may be withdrawn or replaced in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Contractor in the Tender Submission Sheet or any extension thereof.

26.4 Tenders may only be modified by withdrawal of the original Tender and submission of a replacement Tender in accordance with ITT Sub-Clause 26.1. Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders.

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- 26.5 Contractors may only offer discounts to, or otherwise modify the prices of their Tenders, by withdrawing and replacing their Tender in accordance with this clause, or by including the discount in the original Tender submission in accordance with ITT 17.

### 27. Tender Opening

- 27.1 The PE shall conduct the Tender opening in the presence of Contractors' designated representatives who choose to attend, and at the address, date and time specified in the TDS. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 24.1 shall be as specified in the TDS.
- 27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened but returned to the Contractor. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and is read out at the Tender opening.
- 27.3 All other envelopes including those marked "REPLACEMENT" shall be opened and the relevant details read out. Replacement Tenders shall be recorded as such on the record of the Tender opening. The corresponding tender that is being replaced shall be returned unopened to the contractor.
- 27.4 Only envelopes or packages that are opened and read out at the Tender opening shall be evaluated.
- 27.5 All other envelopes shall be opened one at a time, reading out: the name of the Contractor; the Tender price, per lot where applicable, including any discounts; the presence of a Tender Security or Tender Securing Declaration; and any other details as the Procuring Entity may consider appropriate. No Tender shall be rejected at the Tender opening except for late Tenders, in accordance with ITT 25
- 27.6 The PE shall prepare a record of the Tender opening that shall include, as a minimum: the name of the Contractor and whether there is a withdrawal and/or replacement; the total Tender price or the Tender price per lot if applicable, including any discounts; the presence or absence of a Tender Security or Tender Securing Declaration, and whether a Power of Attorney was submitted. The Contractors' representatives who are present shall be requested to sign the record. The omission of a Contractor's signature on the record shall not invalidate the contents and effect of the record. 27.7 The opened tenders shall immediately be taken to a secure location, where they shall be kept until the evaluation begins.

## E. Evaluation of Tenders

### 28. Confidentiality

- 28.1 Information relating to the examination, evaluation, comparison, and post-qualification of Tenders, and recommendation of contract award, shall not be disclosed to Contractors or any other persons not officially concerned with such process until information detailing the Best Evaluated Contractor is communicated to all Contractors.
- 28.2 Any attempt by a Contractor to influence the PE in the examination, evaluation, comparison, and post-qualification of the Tenders or contract award decisions may result in the rejection of its Tender.

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- 28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract award, if any Contractor wishes to contact the PE on any matter related to the Tendering process, it should do so in writing.

### 29. Evaluation of Tenders

- 29.1 The PE shall use the criteria and methodologies listed in Section 3, Evaluation Methodology and Criteria. No other evaluation criteria or methodology shall be permitted. By applying the set criteria and methodology, the PE shall determine the Best Evaluated Tender.
- 29.2 If this Tendering document allows Contractors to quote separate prices for different lots, the methodology to determine the Best Evaluated Tender for a lot shall be as specified in Section 3, Evaluation Methodology and Criteria.

### 30. Clarification and Changes to Tenders

- 30.1 To assist in the examination, evaluation, comparison and post-qualification of the Tenders, the Procuring Entity may, at its discretion, ask any Contractor for a clarification of its Tender, including breakdowns of unit rates or prices. Any clarification submitted by a Contractor that is not in response to a request by the PE shall not be considered. The PE's request for clarification and the Contractor's response shall be in writing. No change in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the PE in the evaluation of the Tenders, in accordance with ITT 32.
- 30.2 If a Contractor does not provide clarifications of its Tender by the date and time set in the PE's request for clarification, its Tender may be rejected.

### 31. Compliance and Responsiveness of Tenders

- 31.1 The PE's determination of a Tender's compliance and responsiveness is to be based only on the contents of the Tender itself with the exception of findings recorded in the Evaluation Report after a due diligence or post qualification.
- 31.2 A substantially compliant and responsive Tender is one that conforms to all the terms, conditions, and specifications of the Tendering Document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) Affects in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
  - (b) Limits in any substantial way, inconsistent with the Tendering Document, the PE's rights or the Contractor's obligations under the Contract; or
  - (c) If rectified would unfairly affect the competitive position of other Contractors presenting substantially compliant and responsive Tenders.
  - (d) Impacts the key factors of a procurement including cost, risk, time and quality and causes -
    - (i) Unacceptable time schedules, where it is stated in the Tendering document that time is of the essence;
    - (ii) Unacceptable alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies; or unacceptable counter-Tenders with respect to key contract terms and conditions, such as payment terms, price adjustment, liquidated damages, sub-contracting or warranty.

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- 31.3 If a Tender is not substantially compliant and responsive to the Tendering Document, it shall be rejected by the PE and may not subsequently be made compliant and responsive by the Contractor by correction of the material deviation, reservation, or omission.

## 32. Nonconformities, Errors, and Omissions

- 32.1 Provided that a Tender is substantially compliant and responsive, the PE may waive any non-conformity or omission in the Tender that does not constitute a material deviation.
- 32.2 Provided that a Tender is substantially compliant and responsive, the PE may request that the Contractor submit the necessary information or documentation, within a reasonable period of time, to rectify non-material nonconformities or omissions in the Tender related to documentation requirements. Such an omission shall not be related to any aspect of the price of the Tender. Failure of the tender to comply with the request may result in the rejection of its Tender.
- 32.3 Provided that a Tender is substantially compliant and responsive, the PE shall rectify nonmaterial nonconformities or omissions. To this effect, the Tender price shall be adjusted, for comparison purposes only, to reflect the price of the missing or non-conforming item or component. The cost of any missing items will be added to the Tender price using the highest price from other Tenders submitted.
- 32.4 Provided that the Tender is substantially compliant and responsive, the PE shall correct arithmetic errors on the following basis:
  - (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the PE there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
  - (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; and
  - (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 32.5 If a Contractor does not accept the correction of errors, the Tender shall be rejected, and the Tender Security may be forfeited or conditions in the Tender Securing Declaration executed.

### 33. Stages of Evaluation: Using the Technical Compliance Selection Evaluation Method

The evaluation of a Tender for the procurement of works using the technical compliance evaluation method shall be conducted under the following stages:

### **34. Preliminary Examination of Tenders – Eligibility and Administrative Compliance**

- 34.1 The PE shall examine the legal documentation to establish the eligibility of the Contractors and to verify the validity and authenticity of the documents submitted by the Contractor.
- 34.2 If after the examination of eligibility, the PE determines that the Tender is not compliant, it shall reject the Tender with the exception of rectification of omissions in accordance with ITT 32.2.
- 34.3 The PE shall confirm that the following administrative compliance documents and information have been provided in the Tender. If any of these documents or information is



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missing or contrary to the requirements in the Tendering document, the Tender shall be rejected.

- (a) The Tender Submission Sheet duly signed by the authorized representative of the Contractor, including:
  - (i) A brief description of the works and related services offered;
  - (ii) The total price of the Tender; and
  - (iii) The appropriate duration of the Tender validity;
- (b) The Price Schedule;
- (c) A Power of Attorney in accordance with ITT 22.2; and
- (d) An authentic Tender Security or Tender Securing Declaration, whichever is applicable, in the appropriate form and amount.

34.4 Eligibility and administrative compliance shall be determined on a pass or fail basis and a Tender which is not eligible or administratively compliant shall be rejected at the preliminary stage of evaluation.

### 35. Technical Evaluation

- 35.1 The PE shall examine the technical aspects of the Tender submitted in accordance with ITT 16, in particular, to confirm that all requirements of Section 6, Statement of Requirements (SoRs) have been met without any material deviation, reservation or omission.
- 35.2 The determination shall be based upon an examination of the documentary evidence of the Contractor's qualifications submitted by the Contractor, pursuant to ITT Clause 5, to clarifications in accordance with ITT Clause 30 and the qualification criteria indicated in Section 3, Evaluation Methodology and Criteria.
- 35.3 If, after the examination of the terms, conditions and requirements, the PE determines that the Tender is not substantially responsive in accordance with ITT 31, it shall reject the Tender.

### 36. Currency and Exchange Rate

- 36.1 The currency that shall be used for evaluation purposes for all Tenders shall be Eswatini Lilangeni unless otherwise authorized by a competent authority.
- 36.2 The exchange rate shall be the prevailing Central Bank of Eswatini exchange rate and shall not precede the tender submission deadline by less than 21 days. Should this date be a non-working day, the selling exchange rate on the date prior to this non-working day shall be used for currency conversion or as otherwise specified in the TDS.

### 37. Financial Comparison of Tenders

- 37.1 The PE will evaluate and compare only the Tenders determined to be substantially responsive following Technical Evaluation in accordance with ITT 37.3.
- 37.2 To financially evaluate a Tender, the PE shall only use the criteria and methodologies defined in this clause and in Section 3, Evaluation Methodology and Criteria. No other criteria or methodology shall be permitted.
- 37.3 To financially compare Tenders, the PE shall:
  - (a) Correct any arithmetic errors in accordance with ITT 30.1;
  - (b) Apply any discounts offered in accordance with ITT 17;
  - (c) Make adjustments for any deviation that is not a material deviation in accordance with ITT 32;
  - (d) Convert all Tenders to a single currency in accordance with ITT 18;

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## Part 1: Section 1 Instructions to Tenderers

- (e) Apply any margin of preference, in accordance with ITT 38;
  - (f) Determine the total evaluated price of each Tender.
- 37.4 The PE shall consider prices that appear to:
- (a) Be unbalanced;
  - (b) Show a misunderstanding of the requirements; or
  - (c) Be intended to front load earnings.
- 37.5 The PE reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the Tendering documents or otherwise result in unsolicited benefits for the PE will not be taken into account in Tender evaluation, unless otherwise specified in Section 3, Evaluation Methodology and Criteria.
- 37.6 The estimated effect of any price adjustment conditions under Clause 47 of the GCC, during the period of implementation of the Contract, will not be taken into account in Tender evaluation, unless otherwise indicated in Section 3, Evaluation Methodology and Criteria.
- 38. Margin of Preference**
- 38.1 Unless otherwise specified in the TDS, a margin of preference shall apply. Where a Margin of Preference applies, its application and detail shall be specified in Section 3, Evaluation Methodology and Criteria.
- 38.2 For the purpose of granting a margin of domestic preference, Tenders will be classified in two groups, as follows:
- (a) Group A: Swati Company participating alone in the tender *[In accordance with Regulation 12(2) of the Procurement Regulations, 2020]*
  - (b) Group B: Foreign Company sub-contracting or partnering with a Swati company *[In accordance with Regulation 12(5) of the Procurement Regulations, 2020]*
- 39. Determination of Best Evaluated Tender**
- The best evaluated Tender shall be the lowest priced Tender which is eligible, administratively and technically compliant to the requirements specified in the Tendering document.

## F. Award of Contract

### 40. Award Procedure and Notice of Intention to Award

- 40.1 An award decision by the relevant approvals authority is not a contract. The Contractor with the best evaluated Tender shall be awarded the contract following an adjudication by the relevant approvals authority.
- 40.2 The PE shall issue a Notice of Intention to Award within five (5) working days after the decision of the relevant approvals authority to all Contractors who participated in the Tendering process and the Agency for publication on its website
- 40.3 No contract shall be awarded within the period of ten (10) working days after the date of issuance of the Notice of Intention to Award.
- 40.4 Negotiations will only be held in exceptional circumstances as provided for under the Procurement Act.

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## Part 1: Section 1 Instructions to Tenderers

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### 41. PE's Right to Accept any Tender and to Reject any or all Tenders

The PE reserves the right to accept or reject any Tender and to cancel the Tendering process at any time prior to contract award, without thereby incurring any liability, subject to adherence to Regulation 26 and 27. of the Public Procurement Regulations of 2020.

### 42. Confirmation of Award

An award shall be confirmed by acceptance of a Letter of Award by the contractor.

### 43. Signing and Effectiveness of Contract

43.1 On expiry of the ten (10) working day period after issuance of the letter of appointment to the best evaluated Contractor, the PE shall promptly sign a contract with the successful Contractor.

43.2 Failure by the successful Contractor to promptly sign the contract shall constitute sufficient ground for annulment of the contract award decision and forfeiture of the Tender Security or execution of the Tender Securing Declaration. In that event, the PE may award the Contract to the next best ranked Contractor whose Tender was evaluated at the financial comparison stage.

43.3 Effectiveness of the contract shall be subject to submission of a satisfactory performance security where applicable and any other conditions specified in the Contract.

43.4 A contract shall not be entered into by the Controlling Officer with a Contractor during the period of administrative review.

### 44. Debriefing of Contractors

44.1 The Contractor shall be provided with information on the reasons for the failure of its Tender after the notice of Intention to Award has been issued. The Procuring Entity shall give the Contractor a written debrief.

### 45. Performance Security

45.1 Within twenty-one (21) calendar days after signing of the contract, the successful Contractor shall where applicable, furnish to the PE a Performance Security and the Environmental, Social, Health and Safety (ESHS) Performance Security if required in the TDS, in the amount stipulated in the SCC and in the form of an on demand Bank Guarantee as stipulated in Section 9, denominated in the type and proportions of the currencies of the Contract. The Performance Security shall be issued by a Bank located in Eswatini or a foreign Bank through correspondence with a Bank located in Eswatini. Notwithstanding the foregoing and unless the acceptance of a performance security by the procuring entity would be in violation of the laws of Eswatini, a procuring entity shall not reject a performance security on the grounds that the performance security was not issued by the issuer in Eswatini, if the performance security and the issuer otherwise conform to the requirements prescribed in the invitation document.

45.2 Failure of the successful Contractor to submit the above-mentioned Performance Security and the Environmental, Social, Health and Safety (ESHS) Performance Security, if required in the TDS, shall constitute sufficient ground for annulment of the contract award decision. In this case, or where the successful Contractor fails to sign the contract as stated in ITT Clause 43.2, the successful Contractor's Tender Security shall be forfeited, or the conditions of the Tender Securing Declaration shall be executed. In that event, the PE may award the contract to the next best ranked Contractor whose Tender was evaluated at the financial comparison stage.

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### 46. Procurement Related Complaints and Administrative Review

46.1 The procedures for making a Procurement-related Complaint are as specified in the TDS

### 47. Abnormally Low and Abnormally High Prices

#### 47.1 Abnormally Low Prices

47.1.1 An Abnormally Low Price is one where the financial price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the price raises material concerns with the Procuring Entity as to the capability of the Contractor to perform the Contract for the offered price.

47.1.2 In the event of identification of a potentially Abnormally Low Price by the evaluation committee, the Procuring Entity shall seek written clarification from the firm, including a detailed price analysis of its price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the Tendering document.

47.1.3 After evaluation of the price analyses, if the Procuring Entity determines that the firm has failed to demonstrate its capability to perform the contract for the offered price, the Procuring Entity shall reject the firm's Tender.

#### 47.2 Abnormally High Prices

47.2.1 An abnormally high price is one where the proposal price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between the Contractors is compromised.

47.2.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tendering Document to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high proposals. The Procuring Entity may also seek written clarification from the Contractor on the reason or the high Tender price. The Procuring Entity shall proceed as follows:

- i) If the Tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the proposal depending on the Procuring Entity's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high proposal prices, the Procuring Entity shall reject all Tenders and may re-invite for Tenders for the contract based on revised estimates, specifications, scope of work and conditions of contract.

47.2.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between Contractors is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise and copy ESPPRA, before re-inviting tenders.

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## Section 2: Tender Data Sheet

Instructions to Contractors Reference	Data relevant to the ITT
ITT 1.1	The Procuring Entity is: <b>Eswatini Water Services Corporation</b>
ITT 1.1	The works consist of: <b>Rehabilitation of Woodlands Water Treatment Plant</b>
ITT 1.1	The Procurement Reference Number of the Contract is: <b>EWSC 21 of 2025/26</b>
ITT 1.1	The number and identification of lots comprising this Tendering Document is: <b>N/A</b>  The minimum and maximum number of lots a Contractor may Tender for is: <b>N/A</b>
ITT 9.3	The Eswatini Water Services Corporation shall be holding a pre-Tender meeting or site visit.  If a pre-Tender meeting / Site visit is to be held, it shall take place at: Location: <b>Woodlands Water Treatment Plant</b> <b>(-26.292088726866005, 31.12656492613318)</b>  Date: <b>11<sup>th</sup> June 2025</b>  Time: <b>11.00am</b>
ITT 9.5	Site visit shall be a mandatory requirement.
ITT 12	For clarification purposes only, the Procuring Entity's address is: Attention: <b>Senior Manager; Supply Chain Management</b> Physical Address: <b>EWSC Headquarter</b> <b>Emtfonjeni Building</b> <b>Cnr MR103 &amp; Mantenga Cultural drive</b> <b>Ezulwini</b> <b>Eswatini</b>  Telephone: <b>(+268) 2416 9000</b> Electronic mail address: <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a>
ITT 12	The Procuring Entity will respond to any request for clarification provided that such request is received no later than <b>27<sup>th</sup> June 2025</b> .
ITT 14.2	The language of the Tender shall be <b>English</b>

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Instructions to Contractors Reference	Data relevant to the ITT
ITT 15.1(i)	<p>The Contractor shall submit with its Tender the following additional documents: <b>1 Copy</b></p> <p><b>ESHS Code of Conduct for Contractor's Personnel</b></p> <p>The Contractor shall submit its Code of Conduct that will apply to the Contractor's Personnel to ensure compliance with its Environmental, Social, Health and Safety (ESHS) obligations under the contract. <i>[Note: Complete and include the risks to be addressed by the Code in accordance with Section VI- Statement of Requirements, e.g. risks associated with: labour influx, spread of communicable diseases, sexual harassment, gender based violence, sexual exploitation and abuse, illicit behaviour and crime, and maintaining a safe environment etc.]</i></p> <p>In addition, the Contractor shall detail how this Code of Conduct will be implemented. This will include: how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Contractor proposes to deal with any breaches.</p> <p>The Contractor shall be required to implement the agreed Code of Conduct.</p> <p><b>Environment and Social Management Plan (ESMP)</b></p> <p>The Contractor shall be required to submit for approval, and subsequently implement, the Contractor's Environment and Social Management Plan that includes the Strategies and Implementation Plans described below:</p> <p><i>[Note: insert name of applicable plans and strategies and specific risk/s];</i></p> <ul style="list-style-type: none"> <li>• <i>[e.g. Traffic Management Plan to ensure safety of local communities from construction traffic];</i></li> <li>• <i>[e.g. Water Resource Protection Plan to prevent contamination of drinking water];</i></li> <li>• <i>[e.g. Boundary Marking and Protection Strategy for mobilization and construction to prevent offsite adverse impacts];</i></li> <li>• <i>[e.g. Strategy for obtaining Consents/Permits prior to the start of relevant works such as opening a quarry or borrow pit];</i></li> <li>• <i>[e.g. Gender based violence and sexual exploitation and abuse (GBV/SEA) prevention and response action plan].</i></li> <li>• <i>[e.g strategy for marking and respecting work site boundaries etc.]</i></li> </ul> <p><i>[Note: The extent and scope of these requirements should reflect the significant ESHS risks or requirements set out in Section VI as advised by Environmental/Social specialists.</i></p> <p><i>The key risks to be addressed by the Contractor should be identified by Environmental/Social specialists, for example from the Environmental and Social Impact Assessment (ESIA). The risks may arise during mobilization or construction phases, and may include construction traffic impacts on the</i></p>

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## Part 1: Section 2 Tender Data Sheet

Instructions to Contractors Reference	Data relevant to the ITT
	<i>community, pollution of drinking water, depositing on private land and impacts on rare species etc.</i>
ITT 18.2	The Authority for specifying rates of exchange shall be the Central Bank of Eswatini.
ITT 18.3	Foreign currency requirements shall not be payable in different foreign currencies
ITT 19.1	Tenders must be valid until <b>31<sup>st</sup> October 2025</b>
ITT 20.1	A Tender Securing Declaration <b><i>shall not</i></b> be required. A Tender Security <b><i>shall</i></b> be required.
ITT 20.2	Where a Tender Security is required, the amount and currency of Tender Security shall be <b>E20,000.00</b> Eswatini Lilangeni.
ITT 20.3	The Tender Security or Tender Securing Declaration shall be valid until <b>31<sup>st</sup> October 2025</b> .
ITT 22.1	In addition to the original of the Tender, the number of copies required is: <b>1 Copy</b>
ITT 23.1	For Tender submission purposes only, the Procuring Entity's address is: Attention: <b>Managing Director</b> Physical Address: <b>EWSC Headquarter Emtfonjeni Building Cnr MR103 &amp; Mantenga Cultural drive Ezulwini Eswatini</b>
ITT 24.1	The deadline for Tender submission is: Date: <b>04<sup>th</sup> July 2025</b> Time (SAST): <b>12.00 noon</b>
ITT 27.1	The Tender opening shall take place at: Physical Address: : <b>EWSC Headquarter Emtfonjeni Building Cnr MR103 &amp; Mantenga Cultural drive Ezulwini Eswatini</b>

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## Part 1: Section 2 Tender Data Sheet

Instructions to Contractors Reference	Data relevant to the ITT
	<p>Date: <b>04<sup>th</sup> July 2025</b></p> <p>Time (SAST): <b>12.00 noon</b></p>
<b>ITT 38.1</b>	A margin of preference <b><i>shall not</i></b> apply. If a margin of preference applies, the application methodology shall be as stated in Section 3 Evaluation Methodology and Criteria.
<b>ITT 38.2</b>	<p>(a) The margin of preference for contractors in Group A shall be: <b>0%</b></p> <p>(b) The margin of preference for contractor in Group B shall be: <b>0%</b></p>
<b>ITT 45.1</b>	The successful Contractor shall be required to submit an Environmental, Social, Health and Safety (ESHS), 10% Performance Security, Updated Works Program.
<b>ITT 46.1</b>	<p>The procedures for making a Procurement-related Complaint are detailed in the ESPPRA website <a href="https://esppra.co.sz">https://esppra.co.sz</a></p> <p>If a Contractor wishes to make a procurement-related complaint, the Contractor shall submit its complaint following these procedures, in writing (by the quickest means available, that is by email), to:</p> <p><b>Title/position:</b> Managing Director</p> <p><b>Procuring Entity:</b> <i>Eswatini Water Services Corporation</i></p> <p><b>Email address:</b> <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a></p> <p>In summary, a procurement-related complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Tendering Documents; and</li> <li>2. the Procuring Entity's decision to award the contract.</li> </ol>

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## Section 3: Evaluation Methodology and Criteria

Procurement Reference Number: EWSC 21 of 2025/26

### A. Evaluation Methodology

#### 1. Methodology Used

The evaluation methodology to be used for the evaluation of Tenders received shall be the Technical Compliance Selection (TCS) methodology.

#### 2. Summary of Methodology

2.1 The evaluation shall be conducted in four sequential stages –

- (a) A Preliminary Examination to determine the eligibility of Contractors and the administrative compliance of Tenders received;
- (b) A Technical Evaluation to determine the technical responsiveness of the eligible and compliant Tenders;
- (c) A Financial Comparison to compare costs of the eligible, compliant, responsive Tenders received and determine the best evaluated Tender; and
- (d) Post qualification to confirm whether the best evaluated Contractor has the capacity and resources to effectively execute the procurement.

2.2 Failure of a Tender at any stage of the evaluation shall prevent further consideration at the next stage of evaluation. Substantial responsiveness shall be considered a pass at the Technical Evaluation stage.

### B. Preliminary Examination Criteria

#### 3. Eligibility Criteria

3.1 The eligibility requirements shall be determined in accordance with ITT Clause 4; and

3.2 The documentation required to provide evidence of eligibility shall be:-

	Eligibility Requirement	Documentary Evidence to be Provided by the Contractor
(a)	The Contractor has legal capacity to enter into the contract	(i) Certificate of Incorporation or Registration (ii) Trading License for the current year (iii) Form C & J (iv) Valid CIC C2 & C3 certificate
(b)	The Contractor is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended, and it is not the	A written declaration signed by the authorised representative of the Contractor  Or  Any other evidence

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## Part 1: Section 3 Evaluation Methodology and Criteria

	subject of legal proceedings for any of the foregoing	
(c)	The Contractor has fulfilled its obligations to pay taxes	Tax Compliance Certificate issued by Tax Regulator
(d)	The Contractor has fulfilled its obligations to social security contributions	Eswatini National Provident Fund Compliance Certificate
(e)	The Contractor adheres to basic labour legislation	Labour Compliance Certificate
(f)	The Contractor does not have a conflict of interest in relation to the procurement requirement	A written declaration signed by the authorised representative of the Contractor
(g)	The Contractor, or any of its directors or officers, have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of five years preceding the commencement of procurement proceedings	A written declaration signed by the authorised representative of the Contractor  Police clearance or Affidavit, not more than 3 months old.
(f)	The Contractor is not subject to suspension in accordance with section 55 [of the Public Procurement Act, 2011] <sup>1</sup> , and none of its directors or officers have been involved in a Contractor or supplier currently subject to suspension	A written declaration signed by the authorised representative of the Contractor

*Procuring Entity shall include “or equivalent document” in respect of international tenders and shall indicate the information provided by the corresponding document obtainable from the Eswatini jurisdiction appreciation of foreign bidders to submit corresponding documents.*

### 3.3 For Joint Venture or Consortiums or Associations;

- a) A registered Power of Attorney from each member or partner if drawn and signed in Eswatini; or a notarised Power of Attorney if drawn and signed outside Eswatini,

<sup>1</sup> Refers to suspension by the Eswatini Public Procurement Regulatory Agency



nominating a representative to conduct all business on its behalf during the Tender preparation, Tendering process and contract execution in case of award of the contract.

- b) The documentation in Section 3.2 for each member or partner and a copy of the Joint Venture / Consortium / Association Agreement which is legally binding on all partners or members stating that:
  - (i) The partners or members shall jointly submit a Tender;
  - (ii) One of the parties will be nominated as lead member or partner to act for and on behalf of all members or partners;
  - (iii) The authorized representative of the lead member or partner who was granted power of attorney shall sign the Tender;
  - (iv) In the event that the Tender is successful, the contract shall be executed in the name of the Joint Venture (JV), Consortium or Association and each member or partner shall sign the contract agreement; and
  - (v) All partners shall be jointly and severally liable for the implementation of the contract in accordance with the contract terms.

#### 4. Administrative Compliance Criteria

The evaluation of Administrative Compliance criteria shall be conducted in accordance with ITT Clause 34.3.

### C. Technical Evaluation Criteria

#### 5. Assessment of Responsiveness

5.1 The assessment of responsiveness will consider the following criteria:

- (a) Acceptance of the conditions of the proposed contract;
- (b) Acceptable completion schedule;
- (c) Acceptability of the proposed program (work method and schedule), including relevant drawings and charts.

#### 6. Mobilization

Evaluation of the responsiveness of the Tender to the technical requirements will include an assessment of the Contractor's capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section 6 (Statement of Requirements).

### 6.1 Personnel and Equipment

#### A. Personnel

The Contractor must demonstrate that it will have the personnel for the key positions that meet the following requirements:

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## Part 1: Section 3 Evaluation Methodology and Criteria

*[The PE shall list ALL key personnel required for the execution of the project]*

No.	Position	General Work Experience (years)	Experience in Similar Works (years)
1.			
2.			
3.			
4.			
5.			
6.			
7.	<i>[Safety Officer]</i>		
8.	<i>[Environmental Officer]</i>		
9.	<i>[Social Development Officer]</i>		

The Contractor shall provide details of the proposed personnel and their experience records in the relevant Forms included in Section IV, Tendering Forms.

### B. Equipment

The Contractor must demonstrate that it shall have access to the key equipment listed hereafter (either by ownership, lease, hire): Attach documentary evidence of ownership, lease, hire such as registration books, agreements or memoranda or purchase order).

No.	Equipment Type and Description/ Capacity	Minimum Number required
1.		
2.		
3.		
4.		
5.		

The Contractor shall provide further details of proposed items of equipment using the relevant Form in Section 4.

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## 6.2 Qualification

Factor	Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Contractor				
		Single Entity	Joint Venture, Consortium or Association			
	All partners combined		Each partner	At least one partner		
6.2.1 History of non-performing contracts	Non-performance of a contract did not occur within the last _____ years prior to the deadline for application submission, based on all information on fully settled disputes or litigation.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form 5
6.2.2 Pending Litigation	All pending litigation shall in total not represent more than _____ percent (____%) of the Contractor’s net worth and shall be treated as resolved against the Contractor.	Must meet requirement by itself or as partner to past or existing JV	N / A	Must meet requirement by itself or as partner to past or existing JV	N / A	Form 5A

<b>Rehabilitation of Woodlands WTP</b>		Maximum Score to be awarded	Tenderers awarded score	Comments
<b>Description</b>	<b>Personnel Capacity</b>			
<b>1. Contracts Manager:</b> Minimum of a Degree in Civil Engineering Total work experience 10 year  Work experience in similar works (Civils works and building) 5 years		7		
<b>2. Site Agent:</b> Minimum of a Diploma in Civil Engineering Total work experience 5 years  Work experience in similar works (Civil works and building) 3 years		5		
<b>3. Site Foreman:</b> Minimum of a Diploma in Civil Engineering Total work experience 5 years  Work experience in similar works (Civil works and building) 3 years		5		
<b>4. Safety, Health &amp; Environment Officer:</b> Minimum bachelor's degree in environmental management and occupational Health and Safety. Total work experience 5 years  Work experience in similar work (Civil works and building) 3 years		5		

<b>5.Quantity Surveyor:</b> Minimum Diploma in Quantity Surveying. Total work experience 5 years			
Work experience in similar work (Civil works and building) 3 years	5		
<b>Electrician:</b> Minimum Grade 1 Certificate. Work experience in similar work 5 years	5		
<b>Pipe Fitter:</b> Minimum Grade 1 Certificate. Work experience in similar work 5 years	5		
<b>Builder:</b> Minimum Grade 1 certificate. Work experience in similar work 5 years	5		
<b>Equipment</b>			
2 x Tractor Loader Backhoe (TLB)	5		
2 x Tipper truck	4		
Pocker Vibrators 50mm diameter	2		
Survey Equipment Set, Total Station, GPS, Level	2		
2 x Pickup vehicles, 1Ton, 4WD	4		
Concrete Mixer 10m3/hr	1		
Excavator	2		



<b>Financial Capacity</b>			
1. Two years audited financial Statements	5		
2. Annual Turnover E 5 million	5		
3.Proof of available funding or credit facility with a bank amounting to E2 million	5		
<b>Company experience</b>			
1. Company must at least have 5 years' experience in managing contracts	5		
2. Specific experience Participated in at least 5 contracts in the last 5 years and contracts should be in the value of at least E1.5 million, with the activity of at least 6 months in each of the last 3 years	5		
Successfully completed Three (3) projects within the past 5 years for similar works. Provide completion certificates.	5		
<b>Construction Program</b> allows for completion in 5 months	2		
<b>EHSM Plan</b> Practical	2		
<b>Site Organogram</b> Practical	2		
<b>Method Statement</b> Practical	2		
<b>Total Score</b>	100		
<b>Bidder must score a minimum of 70 marks to be deemed responsive and considered for financial evaluation</b>			

Contractor's shall also provide information and documentation of:-

- (a) Authority to seek references from the Contractor's bankers; and
- (b) Foreign firms shall be required to submit proposals for subcontracting components of the works to local (Swati) firms amounting to at least 30% of the Contract Price. N/A this is tender is only open to Eswatini nationals.

## **D. Financial Comparison Criteria**

### **7. Costs to be included in the Tender Price**

7.1 The financial comparison shall be conducted in accordance with ITT Clause 37.

The following costs shall be included in the Tender price:

- (a) the total price given in the Activity Schedule/Bills of Quantities;
- (b) day works, if any.

7.2 The following costs shall be excluded from the Tender price:

- (a) provisional sums;
- (b) the provision for contingencies in the Activity Schedule/ Bills of Quantities.

### **8. Margin of Preference**

8.1 If the TDS specifies a margin of preference is applicable, for the purpose of Tender comparison, the following procedures will apply:

8.2 The PE will first review the Tenders that have reached financial comparison to confirm the appropriateness of the classification, and to identify the Tender group classification of each based upon Contractors' declarations in the Tender Submission Sheet and supporting evidence on ownership/shareholding of the Contractors in accordance with ITT 38.2.

8.3 All evaluated Tenders in each group will then be compared to determine the lowest evaluated Tender of each group. The Tender prices for Contractors in Group A and Group B will be increased by the respective percentages of preference as specified in the Tender Data Sheet. *[For Example: (Tender Price of Contractor Z)- (Tender Price of Contractor Z x percentage specified in the Tender Data Sheet ITT 35.2)].* After application of the preferences, all the Tenders shall be compared, with the lowest-evaluated Tender determined from this comparison selected for the award.

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## 9. Determination of Best Evaluated Tender or Tenders

9.1 Post qualification evaluation will be carried out on the most responsive evaluated Contractor as specified below: -

Legal Requirements – Due diligence shall be done to verify ownership of the company and its registration with appropriate body in the country of principal business.

(i) Technical Requirements–Due diligence shall be done to:

- (a) Verify and validate the Contractor's performance on previous indicated
- (b) private and public contracts in the Contractor's submission.
- (c) Verify and validate current commitments and litigation record of the
- (d) Contractor.

(ii) Financial Requirements - Due diligence shall be done to verify and ascertain the Contractor's financial contracting capacity and bank commitment to provide a credit line to the Contractor.

9.2 A Contractor not meeting any of the above criteria shall be rejected.

Evaluation shall be done as per the above scoring matrix.

The formula for determining the financial scores is the following:

[Either  $S_f = 100 \times F_m/F$ , in which  $S_f$  is the financial score,  $F_m$  is the lowest price and  $F$  the price of the proposal under consideration, or another proportional linear formula]

The weights given to the Technical (T) and Financial Proposals (F) are:

T= 0.7, and

F = 0.3

Contract to be awarded to the service provider with the highest overall score.

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## **Additional Evaluation Criteria (If applicable)**

*In addition to the evaluation criteria listed in Section 3, the following criteria may apply for the Procuring Entities*

### **10 Multiple Contracts**

If permitted under additional criteria, will be evaluated as follows:

#### **10.1 Award Criteria for Multiple Contracts:**

##### **Lots**

Contractors have the option to Tender for any one or more lots. Tenders will be evaluated lot-wise, taking into account discounts offered, if any, after considering all possible combinations of lots, the contract(s) will be awarded to the Contractor or Contractors offering the lowest evaluated cost to the Procuring Entity for combined lots, subject to the selected Contractor(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

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## Part 1: Section 4 Tendering Forms

*[This Tender Submission Sheet should be on the letterhead of the Contractor and should be signed by a person with the proper authority to sign documents that are binding on the Contractor]*

### Tender Submission Sheet

Date: *[insert date (as day, month and year) of Tender Submission]*

Procurement Reference No: *[insert Procurement Reference number]*

To: *[insert complete name of Procuring Entity]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Tendering Document, including Addenda No.: *[insert the number and issue date of each Addenda]*;
- (b) We offer to execute in conformity with the Tendering Document and in accordance with the completion schedule specified in the Statement of Requirements and the terms and conditions of the Tendering Document, the following works *[insert a brief description of the Works]*;
- (c) The total price of our Tender, excluding any discounts offered in item (d) below, is

- (d) The discounts offered and the methodologies for their application are:

Unconditional discounts. If our Tender is accepted, the following discounts shall apply. *[Specify in detail each discount offered (eg amount/percentage) and the specific item of the Statement of Requirements to which it applies.]*

Methodology of application of the unconditional discounts. The unconditional discounts shall be applied using the following method: *[Specify precisely the method that shall be used to apply the discounts]*;

Cross discounts. If our Tenders for more than one lot are accepted, the following discounts shall apply. *[Specify precisely each discount offered (eg amount/percentage) and the conditions for its application.]*

Methodology of application of the cross discounts. The cross discounts shall be applied using the following method: *[Specify in detail the method that shall be used to apply the discounts]*;

- (e) Our Tender shall be valid until the date specified in ITT Sub-Clause 19.1 and it shall remain binding upon us and may be accepted at any time before that date;
- (f) If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering Document in the amount of *[insert amount in words and figures of the Performance Security]* for the due performance of the Contract;
- (g) We, including any subcontractors for any part of the contract resulting from this procurement process, are eligible to participate in public procurement in accordance with ITT Clause 4.1;
- (h) We, including any subcontractors for any part of the contract, have nationals from eligible countries *[insert the nationality of the Contractor, including that of all parties that comprise the Contractor, if the Contractor is a joint venture, consortium or association, and the nationality of each subcontractor]*;
- (i) We are eligible for a Margin of Preference in accordance with ITT Clause 38;  
*[or]*  
We are not eligible for a Margin of Preference in accordance with ITT Clause 38;
- (j) We have signed and undertake to abide by the Code of Ethical Conduct for Contractors and Providers during the procurement process and the execution of any resulting contract;

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## Part 1: Section 4 Tendering Forms

(k) We accept the appointment of *[name proposed in GCC 35.1]* as the Adjudicator.

*[or]*

We do not accept the appointment of *[name proposed in GCC 35.1]* as the Adjudicator, and propose instead that *[name]* be appointed as Adjudicator, whose daily fees and biographical data are attached.

- (l) We are not participating, as Contractors, in more than one Tender in this Tendering process, other than alternative Tenders in accordance with the Tendering Document;
- (m) We, including any subcontractors, do not have any conflict of interest as stated in ITT 4.4 and are not associated, nor have been associated in the past, directly or indirectly, with the consultant or any other entity that has prepared the design, specifications, and other documents for the Project or that is being proposed as Project Manager for the Contract;
- (n) We, including any subcontractors for any part of the contract, have not been suspended by the Eswatini Public Procurement Regulatory Agency from participating in public procurement;
- (o) We understand that you are not bound to accept the lowest Tender or any other Tender that you may receive.

Signed: *[signature of person whose name is shown below]*

Name: *[insert complete name of person signing the Tender]*

In the capacity of *[insert designation of person signing the Tender]*

Duly authorised to sign the Tender for and on behalf of: *[insert complete name of Contractor/Joint Venture]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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## Part 1: Section 4 Tendering Forms

### Declaration of Eligibility

*[The Tenderer must provide a signed declaration on its company letterhead in the following format. If the tender is being presented by a joint venture or consortium all members must each sign their declaration.]*

[>>>Name of Tenderer, Address, and Date>>>]

Re Tender Reference .....

In accordance with the eligibility requirements of the Invitation to Tender documents we hereby  
declare that: -

- (a) We, including any joint venture partners or consortium partners, are a legal entity and have the legal capacity to enter into the contract.
- (b) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended and we are not the subject of legal proceedings for any of the foregoing.
- (c) We have fulfilled our obligations to pay taxes and social security contributions.
- (d) We declare that we adhere to basic labour legislation.
- (e) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (f) I/We declare that we are eligible to participate in the above-mentioned public procurement tender as per paragraphs (a) – (e) above.
- (g) We further declare that we are not Politicians and or Public Officers.
- (h) That we do not have a **conflict of interest** in relation to the procurement requirement as defined in the Instructions to Tenderers.
- (i) I/We are aware that, where it shall be found that any or all of the below mentioned directors of our Company have provided misleading information in preparing this tender document, the tender will be cancelled, and contracts awarded shall be terminated immediately.

Name \_\_\_\_\_ (In the capacity of) \_\_\_\_\_

**Authorised Representative Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

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### Code of Ethical Conduct in Business for Contractors

#### 1. Ethical Principles

Contractors and providers shall at all times-

- (a) Maintain integrity and independence in their professional judgement and conduct;
- (b) Comply with both the letter and the spirit of-
  - (i) The laws of Eswatini; and
  - (ii) Any executed contract.
- (c) Avoid associations with businesses and organisations which are in conflict with this code.

#### 2. Standards

Contractors and providers shall-

- (a) Strive to provide works, services and goods of high quality and accept full responsibility for all works, services or goods provided;
- (b) Comply with the professional standards of their industry or of any professional body of which they are members.

#### 3. Conflict of Interest

Contractors and providers shall not accept contracts which would constitute a conflict of interest with any prior or current contract with any Procuring Entity. Contractors and providers shall disclose to all concerned parties those conflicts of interest that cannot reasonably be avoided or escaped.

#### 4. Confidentiality and Accuracy of Information

- (a) Information given by Contractors and service providers in the course of procurement processes, or the performance of contracts shall be true, fair and not designed to mislead.
- (b) Service providers shall respect the confidentiality of information received in the course of performance of a contract and shall not use such information for personal gain.

#### 5. Gifts and Hospitality

Contractors and providers shall not offer gifts or hospitality directly or indirectly, to staff of a Procuring Entity that might be viewed by others as having an influence on a procurement decision of the Entity.

#### 6. Inducements

- (a) Contractors and service providers shall not offer or give anything of value to influence the action of a public official in the procurement process or in contract execution.
- (b) Contractors and service providers shall not ask a public official to do anything which is inconsistent with the Act, Regulations, Guidelines or the Code of Ethical Conduct in Business.

#### 7. Fraudulent Practices

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## Part 1: Section 4 Tendering Forms

Contractors and service providers shall not-

- (a) Collude with other businesses and organisations with the intention of depriving a Procuring Entity of the benefits of free and competitive competition;
- (b) Enter into business arrangements that might prevent the effective operation of fair competition;
- (c) Engage in deceptive financial practices, such as bribery, double billing or other improper financial practices;
- (d) Misrepresent facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity; or utter false documents;
- (e) Unlawfully obtain information relating to a procurement process in order to influence the process or execution of a contract to the detriment of the PE;
- (f) Withholding information from the PE during contract execution to the detriment of the PE.

I ..... agree to comply with the above code of ethical conduct in business.

AUTHORISED SIGNATORY

NAME OF CONTRACTOR<sup>2</sup>

<sup>2</sup> If the bidder is a JV, Consortium or Association, state the name of the JV, Consortium or Association

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## Part 1: Section 4 Tendering Forms

*[This Tender Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign the Tender Security. It should be included by the Contractor in its Tender, if so indicated in the TDS]*

### Form of Tender Security (Bank Guarantee)

Date: *[insert date (as day, month and year) of Tender Submission]*

Procurement Reference No.: *[insert Procurement Reference number]*

To: *[insert complete name of Procuring Entity]*

Whereas, *[insert complete name of Contractor/Joint Venture/Consortium/Association]* (hereinafter called “the Contractor”) has submitted its Tender dated *[insert date (as day, month and year) of Tender submission]* for Procurement Reference number *[insert Procurement Reference number]* for the construction of *[insert brief description of the Works]*.

KNOW ALL PEOPLE by these presents that We *[insert complete name of institution issuing the Tender Security]* of *[insert city of domicile and country of nationality]* having our registered office at *[insert full address of the issuing institution]* (hereinafter called “the Guarantor”) are bound unto *[insert complete name of Procuring Entity]* (hereinafter called “the Procuring Entity”) in the sum of *[specify in words and figures the amount and currency of the Tender Security]* for which the Guarantor binds itself, its successors or assignees to make payment to the Procuring Entity.

Sealed with the Common Seal of the said Guarantor this *[insert day in numbers]* day of *[insert month]*, *[insert year]*.

THE CONDITIONS of this obligation are:

- (1) If the Contractor withdraws its Tender during the period of Tender validity specified in the Tender submission sheet or as provided in ITT Sub-Clause 19.3 or refuses to accept the correction of its Tender price pursuant to ITT Clause 32.5; or
- (2) If the Contractor having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity fails or refuses to:
  - (a) Sign the Contract in accordance with the ITT Clause 43.2, if required; or
  - (b) Furnish the Performance Security, in accordance with the ITT Clause 45.2 and, if required, the Environmental, Social, Health and Safety (ESHS) Performance Security, in accordance with the Instructions to Contractors (“ITT”).

We undertake to pay to the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity’s having to substantiate its demand, provided that in its demand the Procuring Entity states that the amount claimed by it is due to it, owing to the occurrence of one or more of the above conditions, specifying the occurred conditions.

This security shall remain in force up to and including \_\_\_\_\_ *[insert date, (day, month and year) in accordance with ITT Clause 19.1 or 19.3]* and any demand in respect thereof should be received by the Guarantor no later than the above date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that sub – article 20 (a) is hereby excluded.

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## Part 1: Section 4 Tendering Forms

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Signed: *[insert signature of person whose name is shown below]*

Name: *[insert complete name of person signing the Tender Security]*

In the capacity of *[insert designation of person signing the Tender Security]*

Duly authorised to sign the Tender Security for and on behalf of: *[insert complete name of Financial Institution]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) *[insert date of signing]*

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## Part 1: Section 4 Tendering Forms

[Use Contractor's Letterhead]

[Name of Contractor]

[Physical Address of Contractor]

### Form of Tender-Securing Declaration

Date: *[insert date (as day, month and year)]*

Subject of procurement and Ref number.: *[insert reference number of procurement process]*

To: *[insert complete name of Procuring Entity]*

I/We\*, the undersigned, declare as follows:

I/We\* understand that, according to the conditions of the Tendering Document, Tenders must be supported by a Tender Securing Declaration valid until the date indicated in the Tender Data Sheet (TDS).

I/We\* accept that I/we\* may be suspended by the Agency from being eligible for Tendering in any public procurement or disposal process if we are in breach of our obligations under the conditions in the Tendering document, because we:

- (a) Have withdrawn our Tender during the period of Tender validity specified by us in the Tender Submission Sheet or as provided in ITT Sub-Clause 19.3 or have refused to accept the correction of our Tender price pursuant to ITT Clause 32.5; or
- (b) Having been notified of the acceptance of our Tender by the PE during the period of Tender validity, (i) fail or refuse to sign the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with ITT 45.2 or and, if required, the Environmental and Social (ES) performance securing declaration.

I/We\* understand this Tender Securing Declaration shall cease to be valid if I am/we are\* not the successful Contractor, upon the earlier of:

- (i) The expiry of the notice of best evaluated Contractor without any pending administrative review application; or
- (ii) Twenty-eight (28) days after the expiration of the validity of my/our\* Tender.

Signed: *[insert signature of person whose name is shown below]* In the capacity of *[insert designation of person signing the Tender Securing Declaration]*

Name: *[insert complete name of person signing the Tender Securing Declaration]*

Duly authorized to sign the Tender for and on behalf of: *[insert complete name of Contractor]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) *[insert date of signing]*  
Corporate Seal (where appropriate)

*[Note: In case of a Joint Venture, Consortium or Association the Tender Securing Declaration must be in the name of all partners that submit the Tender and signed by the representative duly authorized by the partners.]*

**\*Please delete as appropriate**

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### Technical Documentation

1. Site Organization
2. Method Statement
3. Mobilization Schedule
4. Construction Schedule
5. Environmental, Health & Safety and Social Management Plan
6. Code of Conduct for Contractor's Personnel
7. *[Insert any other relevant documentation]*

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**Site Organization**

*Provide a detailed description/illustration of the proposed site organization in terms of personnel, offices, materials storage, workshops etc.*

**Method Statement**

*Provide a detailed description of the proposed method statement to execute the works*

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**Mobilization Schedule**

*Provide a detailed description/illustration of the proposed mobilization schedule for materials, equipment, labour etc. including sources.*

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**Construction Schedule**

*Provide a detailed description/illustration of the proposed construction schedule.*

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### Environmental and Social Management Plan

- a) *The Contractor shall submit comprehensive and concise Environment Social Health and Safety Management Plan as required by ITT 15.1 (i) of the Tender Data Sheet. This plan shall describe in detail the actions and management processes etc. that will be implemented by the Contractor, and its subcontractors.*
- b) *In developing these strategies and plans, the Contractor shall have regard to the ESHS provisions of the contract including those as may be more fully described in the Statement of Requirements in Section 6.*

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## Part 1: Section 4 Tendering Forms

### Code of Conduct for Contractor's Personnel Form

#### Note to the Contractor:

**The minimum content of the Code of Conduct Form as set out by the Employer shall not be substantially modified.** However, the Contractor may add requirements as appropriate, including to take into account Contract-specific issues/risks.

The Contractor shall initial and submit the Code of Conduct Form as part of its bid.

### CODE OF CONDUCT FOR CONTRACTOR'S PERSONNEL

We....., [enter name of Contractor], undertake that once we are awarded the contract for .....[enter description of the works] to be carried out at [enter the site and other locations where the works will be carried out] shall implement measures to address environmental and social risks related to the works, including the risks of sexual exploitation and assault and gender-based violence.

This Code of Conduct is part of our measures to deal with environmental and social risks related to the works. It applies to all our staff, labourers and other employees at the Works Site or other places where the works would be carried out. It also applies to the personnel of each subcontractor and any other personnel assisting us in the execution of the Works. All such persons are referred to as “**Contractor's Personnel**” and are subject to this Code of Conduct.

This Code of Conduct identifies the behaviour that we require from all Contractor's Personnel.

Our workplace is an environment where unsafe, offensive, abusive or violent behaviour will not be tolerated and where all persons should feel comfortable raising issues or concerns without fear of retaliation.

#### REQUIRED CONDUCT

Contractor's Personnel shall:

1. Carry out his/her duties competently and diligently;
2. Comply with this Code of Conduct and all applicable laws, regulations and other requirements, including requirements to protect the health, safety and well-being of other Contractor's Personnel and any other person;
3. Maintain a safe working environment including by:
  - a. Ensuring that workplaces, machinery, equipment and processes under each person's control are safe and without risk to health;
  - b. Wearing required personal protective equipment;
  - c. Using appropriate measures relating to chemical, physical and biological substances and agents; and
  - d. Following applicable emergency operating procedures.
4. Report work situations that he/she believes are not safe or healthy and remove himself/herself from a work situation which he/she reasonably believes presents an imminent and serious danger to his/her life or health;

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## Part 1: Section 4 Tendering Forms

5. Treat other people with respect, and not discriminate against specific groups such as women, people with disabilities, migrant workers or children;
6. Not engage in any form of sexual harassment including unwelcome sexual advances, requests for sexual favours, and other unwanted verbal or physical conduct of a sexual nature with other Contractor's or Employer's Personnel;
7. Not engage in Sexual Exploitation, which means any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.
8. Not engage in Sexual Assault, which means sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of "rape", especially because (a) it may be committed by other means than force or violence, and (b) it does not necessarily entail penetration.
9. Not engage in any form of sexual activity with individuals under the age of 18, except in case of pre-existing marriage;
10. Complete relevant training courses that will be provided related to the environmental and social aspects of the contract, including on health and safety matters, and Sexual Exploitation and Assault (SEA);
11. Report violations of this Code of Conduct; and
12. Not retaliate against any person who reports violations of this Code of Conduct, whether to us or the Employer, or who makes use of the [Project Grievance [Redress] Mechanism].

### RAISING CONCERNS

If any person observes behaviour that he/she believes may represent a violation of this Code of Conduct, or that otherwise concerns him/her, he/she should raise the issue promptly. This can be done in either of the following ways:

1. Contact [*enter name of the Contractor's Social Expert with relevant experience in handling gender-based violence, or if such person is not required under the Contract, another individual designated by the Contractor to handle these matters*] in writing at this address .....[ ] or by telephone at [ ..... ] or in person at [..... ]; or
2. Call [..... ] to reach the Contractor's hotline (*if any*) and leave a message.

The person's identity will be kept confidential, unless reporting of allegations is mandated by the law. Anonymous complaints or allegations may also be submitted and will be given all due and appropriate consideration. We take seriously all reports of possible misconduct and will investigate and take appropriate action. We will provide warm referrals to service providers that may help support the person who experienced the alleged incident, as appropriate.

There will be no retaliation against any person who raises a concern in good faith about any behaviour prohibited by this Code of Conduct. Such retaliation would be a violation of this Code of Conduct.

### CONSEQUENCES OF VIOLATING THE CODE OF CONDUCT

Any violation of this Code of Conduct by Contractor's Personnel may result in serious consequences, up to and including termination and possible referral to legal authorities.

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## Part 1: Section 4 Tendering Forms

### FOR CONTRACTOR'S PERSONNEL:

I have received a copy of this Code of Conduct written in a language that I comprehend. I understand that if I have any questions about this Code of Conduct, I can contact ..... *[enter name of Contractor's contact person with relevant experience in handling gender-based violence]* requesting an explanation.

Name of Contractor's Personnel: [insert name]

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Contractor:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

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## Part 1: Section 4 Tendering Forms

### Forms for Key Personnel

#### Form – 1: Proposed Personnel

Contractors should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in Section 3: Evaluation Methodology and Criteria. The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position
	Name
	Duration of commitment for this position
2.	Title of position
	Name
	Duration of commitment for this position
3.	Title of position
	Name
	Duration of commitment for this position
4.	Title of position:
	Name
	Duration of commitment for this position
5.	Title of position: Environmental Officer
	Name
	Duration of commitment for this position
6.	Title of position: Social Development Officer
	Name
	Duration of commitment for this position
etc.	Title of position
	Name
	Duration of commitment for this position

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## Part 1: Section 4 Tendering Forms

### Form – 2: CV of Proposed Personnel

The Contractor shall provide all the information requested below.

<b>Position</b>		
<b>Personnel Information</b>	Name	Date of birth
	Professional qualifications	
	Academic qualifications	
<b>Present Employment</b>	Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present Employer

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Project	Role	Duration in Involvement	Relevance Experience
[Date, Month and Year]	[Date, Month and Year]	[main project details]	[role and responsibilities on the project]	[time in role i.e. Months and Years]	[describe the experience relevant to this position]

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## Part 1: Section 4 Tendering Forms

### Declaration

I, the undersigned *[insert name of “Key Personnel”]*, certify that to the best of my knowledge and belief, the information in reference to my data contained in the Forms for Key Personnel correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor’s Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

1. Be taken into consideration during Tender evaluation;
2. Result in my disqualification from participating in the procurement process.

**Name of Key Personnel:** *[insert name]*

Signature: \_\_\_\_\_

Date: (day, month, year): \_\_\_\_\_

**Countersignature of authorized representative of the Contractor:**

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

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## Part 1: Section 4 Tendering Forms

### Forms for Equipment

The Contractor shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section 3: Evaluation Methodology and Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Contractor. The Contractor shall provide all the information requested below, to the extent possible:

#### FORM 3

Type of Equipment		
Equipment Information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current Status	Current location	
	Details of current commitments	
Source	<p>Indicate source of the equipment</p> <p><input type="checkbox"/> Owned</p> <p><input type="checkbox"/> Rented</p> <p><input type="checkbox"/> Leased</p> <p><input type="checkbox"/> Specially manufactured</p> <p>[Attach evidence of ownership, lease or hire in the form of registration books, agreements or memoranda or purchaser order]</p> <p>[For Specially Manufactured Equipment, attach evidence in form of Proforma Invoices, Quotation or Sales Agreement between the Contractor and the prospective equipment manufacturer]</p>	

The following information shall be provided only for equipment not owned by the Contractor.

#### FORM 3A

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project. (Attach evidence of lease or hire in the form of registration books, agreements or memoranda or purchaser order)	

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Qualification Forms

To establish its qualifications to perform the contract in accordance with Section 3: Evaluation Methodology and Criteria. The Contractor shall provide the information requested in the corresponding Information Sheets included hereunder:

## Part 1: Section 4 Tendering Forms

### Form 4

#### Contractor Information Sheet

Date: \_\_\_\_\_  
Procurement Reference Number: \_\_\_\_\_

1. Contractor's Name <sup>1</sup> :
2. In case of JV / Consortium / Association, state name of each party in Form 4A
3. Contractor's Country of Registration / Incorporation <sup>2</sup> :
4. Contractor's Year of Registration / Incorporation <sup>3</sup> :
5. Contractor's Address in Country of Registration / Incorporation <sup>4</sup> :
6. Contractor's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Certificate of Incorporation or Registration of firm named in 1, above. <input type="checkbox"/> In case of JV / Consortium / Association, the JV / Consortium / Association Agreement <input type="checkbox"/> In case of government owned entity from the Procuring Entity's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

<sup>1</sup>In case of JV / Consortium / Association, Fill in Form 4A

<sup>2</sup>In case of JV / Consortium / Association, Fill in Form 4A

<sup>3</sup>In case of JV / Consortium / Association, Fill in Form 4A

<sup>4</sup>In case of JV / Consortium / Association, Fill in Form 4A

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## Part 1: Section 4 Tendering Forms

### Form 4 A

#### Party to JV / Consortium / Association Information Sheet

Date: \_\_\_\_\_

Procurement Reference Number: \_\_\_\_\_

1. Legal Name of party to JV / Consortium / Association:
2. Country of Registration of party to JV / Consortium / Association:
3. Year of Registration of party to JV / Consortium / Association:
4. Legal Address in Country of Registration for party to JV / Consortium / Association:
6. Authorized Representative Information for party to JV / Consortium / Association Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of:  <input type="checkbox"/> Certificate of Incorporation or Registration of firm named in 1, above.  <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

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## Part 1: Section 4 Tendering Forms

### Form 5

## Historical Contract Non-Performance

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Names: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

Non-Performing Contracts in accordance with the Technical Criteria			
<input type="checkbox"/> Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 6.2.1 of Section III.			
<input type="checkbox"/> Contract non-performance during the stipulated period, in accordance with Sub-Factor 6.2.1 of Section III.			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount
_____	_____	Contract Identification: _____ Name of Employer: _____ Address of Employer: _____ Matter in dispute: _____	_____

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Pending Litigation

Pending Litigation, in accordance with Section III			
<input type="checkbox"/> No pending litigation in accordance with Sub-Factor 6.2.2 of Section III			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 6.2.2 of Section III, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

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## Environmental, Social, Health and Safety Performance Declaration

<b>Environmental, Social, Health, and Safety Performance Declaration</b> in accordance with Section III, Qualification Criteria, and Requirements			
<input type="checkbox"/> <b>No suspension or termination of contract:</b> An employer has not suspended or terminated a contract and/or called the performance security for a contract for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 6.2.3.			
<input type="checkbox"/> <b>Declaration of suspension or termination of contract:</b> The following contract(s) has/have been suspended or terminated and/or Performance Security called by an employer(s) for reasons related to Environmental, Social, Health, or Safety (ESHS) performance since the date specified in Section III, Qualification Criteria, and Requirements, Sub-Factor 6.2.3. Details are described below:			
Year	Suspended or terminated portion of contract	Contract Identification	Total Contract Amount (value, currency, exchange rate and Lilangeni equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for suspension or termination: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
...	...	<i>[list all applicable contracts]</i>	...

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## Part 1: Section 4 Tendering Forms

Performance Security called by an employer(s) for reasons related to ESHS Performance		
Year	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Lilangeni equivalent)
[insert year]	Contract Identification: [indicate complete contract name/ number, and any other identification]  Name of Employer: [insert full name]  Address of Employer: [insert street/city/country]  Reason(s) for calling of performance security: [indicate main reason(s)]	[insert amount]

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## Part 1: Section 4 Tendering Forms

### Form 6

#### Current Contract Commitments / Works in Progress

*[The following table shall be filled in for the Contractor, each member of a Joint Venture / Consortium / Association]*

Contractor's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture / Consortium / Association Member's Name: *[insert full name]*

Proc. Reference No: *[insert Reference Number]*

*[Contractors and each partner to a JV/ Consortium / Association should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.]*

Name of contract	Employer, contact address/tel	Value of outstanding work	Estimated completion date	Average monthly invoicing over last six months (Lilangeni /month)
1.				
2.				
3.				
4.				
5.				
etc.				

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## Part 1: Section 4 Tendering Forms

### FORM 6 A

#### Financial Situation

##### Historical Financial Performance

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Legal Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

To be completed by the Contractor and, if JV/ Consortium / Association, by each partner

Financial information in Lilangeni equivalent	Historic information for previous _____ ( ) years (Lilangeni equivalent)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

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## Part 1: Section 4 Tendering Forms

- ☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:
- Must reflect the financial situation of the Contractor or partner to a JV, and not sister or parent companies
  - Historic financial statements must be audited by a certified accountant
  - Historic financial statements must be complete, including all notes to the financial statements
  - Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

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## Part 1: Section 4 Tendering Forms

### Form 7

#### Average Annual Turnover

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

Annual turnover data (construction only)		
Year	Amount and Currency	Lilangeni equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Construction Turnover	_____	_____

\*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III, Sub-Factor 6.2.5, divided by that same number of years.

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## Part 1: Section 4 Tendering Forms

### Form 8

#### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in Section 3: Evaluation Methodology and Criteria.

Source of financing	Amount (Lilangeni equivalent)
1.	
2.	
3.	
4.	

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## Part 1: Section 4 Tendering Forms

### FORM 9

#### Experience

#### General Experience

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Contractor
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____
_____	_____	_____	Contract name: Brief Description of the Works performed by the Contractor: Name of Employer: Address:	_____

\*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

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## Part 1: Section 4 Tendering Forms

### Form 10

#### Specific Experience

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

<b>Similar Contract Number: ____ [insert specific number] of ____ [insert total number of contracts required].</b>	<b>Information</b>		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		Lilangeni ____
If partner in a JV or subcontractor, specify participation of total contract amount	_____ %	_____	Lilangeni ____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone number:	_____		
E-mail:	_____		

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## Part 1: Section 4 Tendering Forms

### Form 10 A (cont.)

### Specific Experience (cont.)

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

Similar Contract No. <i>___[insert specific number] of ___[insert total number of contracts] required</i>	Information
Description of the similarity in accordance with Sub-Factor 6.2.8a) of Section 3: Evaluation Methodology and Criteria.:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Physical Production Rate	_____

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## Part 1: Section 4 Tendering Forms

### Form 10 A (b)

#### Specific Experience in Key Activities

Contractor's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
Total contract amount	_____		_____
If partner in a JV / Consortium / Association, specify participation of total contract amount	_____ %	_____	_____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone number:	_____		
E-mail:	_____ _____		

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## Part 1: Section 4 Tendering Forms

### Form 10 (b) (cont.)

### Specific Experience in Key Activities (cont.)

Contractor's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV/ Consortium / Association Partner Name: \_\_\_\_\_

Procurement Reference No.: \_\_\_\_\_

	Information
Description of the key activities in accordance with Sub-Factor 6.2.9 b) of Section III:	

We, the undersigned, declare that the information contained in and attached to these forms is true and accurate as of the date of Tender submission:

Signed: *[signature of person whose name and capacity are shown below]*

Name: *[insert complete name of authorized person signing the Qualification Form]*

Duly authorised to sign the Qualification Form for and on behalf of: *[insert complete name of Contractor or name of Joint Venture/ Consortium / Association]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert day / month / year of signing]*

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## **Section 5: Eligible Countries**

### **Procurement Reference Number: EWSC 21 of 2025/26**

All countries are eligible except countries subject to the following provisions.

A country shall not be eligible if:

- (a) As a matter of law or official regulation, the Government of Eswatini prohibits commercial relations with that country, provided that the Government of Eswatini is satisfied that such exclusion does not preclude effective competition for the provision of goods or related services required; or
- (b) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of Eswatini prohibits any import of Goods from that country or any payments to persons or entities in that country.

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## **PART 2 - Statement of Requirements**

### **Section 6: Statement of Requirements**

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Bookmark not defined.	
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### Scope of Works

- Rehabilitation of Woodlands Water Treatment Plant as per BOQ.

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### • Technical Specifications

#### STANDARD SPECIFICATIONS

The following specifications shall apply for the construction and quality control of the Works but shall not apply for measurement and payment of any portion of the Works.

(a) the relevant SABS specifications

Wherever any reference is made to the South African Bureau of Standards (SABS) and the British Standards Specification (BSS) in the Specification of Materials and Methods to be Used (OOG-001E), this reference shall be deemed to read "SABS or equivalent standard" and BS or equivalent standard" respectively.

(b) Various other specifications specified elsewhere by the Contractor and approved by the Engineer

The following variations are applicable to the standard specification SABS 1200 A:

#### MATERIALS

##### Quality of Materials

All materials delivered to site shall, where applicable, conform to the relevant SABS or

BS, DIN or ISO standard, and shall bear the appropriate standardisation mark. The Engineer reserves the right to call for compliance certificates, or in the absence of such certificates, for samples of the materials to be sent to an approved laboratory for testing. Should any sample tested in this manner fail to meet the required specification, the material from which the sample was taken may be rejected, and replaced at the Contractor's expense. All furnishing of certificates, and testing as specified, shall be at the Contractor's cost.

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## Part 2: Section 6 Statement of Requirements

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### Environmental, Social, Health and Safety Requirements

*[The PE shall use the services of suitably qualified environmental, social, health and safety specialists to prepare the specifications for ESHS.*

*The PE shall attach or refer to the PE's environmental, social, health and safety policies that will apply to the project. If these are not available, the PE should use the guidance in the user guide in drafting an appropriate policy for the works].*

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### Drawings

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## Part 2: Section 6 Statement of Requirements

### Bill of Quantities

Date: *[insert date (as day, month and year) of Tender Submission]*

Procurement Reference No.: *[insert Procurement Reference number]*

NO.	DESCRIPTION	UNIT	QUANTITY	AMOUNT (SZL)
<b>1</b>	<b>CLARIFIER No. 1</b>			
a.	Replace the existing 250mm PN 10 flanged gate valve	No.	1	
b.	Remove old and install 250mm PN10 90 degree flanged steel bend	No.	1	
<b>2</b>	<b>SLUDGE SUMP</b>			
a	Replace existing pump with 150m <sup>3</sup> /hour pump with 12m head (pumped media is sludge)	No.	1	
b	Excavate, lay, backfill, test & commission 200mm dia uPVC Class 12 (pipe supplied by EWSC)	m	150	
c	Supply & Install 200mm GS pipe	m	15	
d	Supply & Install 90 degree bends copon coated 200mm, flanged steel including gasket & bolt tests	No.	8	
<b>3</b>	<b>UPWASH</b>			
a	Replace existing 90 degree bend with copon coated PN 16 90 degree 450mm flanged steel bend including gaskets	No.	1	
b	Replace existing 450mm equal tee, PN 16 flanged, epoxy coated steel	No.	1	

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## Part 2: Section 6 Statement of Requirements

c	Excavate, spoil and recompact to 95% MOD ASSHTO in 150 layers	m <sup>3</sup>	10	
d	Construct 100mm thick 25MPA apron	m <sup>2</sup>	10	
<b>4</b>	<b>SUMP OVERFLOWS</b>			
a	Supply, excavate, lay, back and test 250mm dia uPVC Class 12 from sump and connect to 500mm uPVC pipe (provisional)	m	100	
b	Supply and install 600mm to 250 uPVC GS reducing Tee (provisional)	No.	1	
c	Supply and install 400 to 250mm steel Tee (provisional)	No.	1	
<b>5</b>	<b>FILTRATION</b>			
a	Supply, install and commission 1400 x 300mm sealed sluice gates	No.	14	
b	Replace 400mm PN 16 90 degree steel flanged bend	No.	1	
c	Replace 400mm steel flanged equal tee	No.	1	
<b>6</b>	<b>CHLORINE TANK</b>			
a	Excavate in soft material to expose existing concrete pipe and fix leak	m <sup>3</sup>	30	
b	Cast 30/19 concrete	m <sup>3</sup>	15	
<b>7</b>	<b>MCC</b>			
a	Create access hatch for MCC on existing block wall, reconstruct and paint upon completion	m <sup>2</sup>	9	

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## Part 2: Section 6 Statement of Requirements

b	Install, test and commission new MCC, including supply, installation and termination of cabling (MCC supplied by Client)	sum	1	
c	Disconnect, dismantle and decommission existining MCC	sum	1	
d	Assessment and correction of MCC	Prov. Sum	80,000.00	
e	Core existing slab to suit new MCC	m <sup>2</sup>	20	
f	Cast 30/19 concrete to fix holes of existing MCC	m <sup>3</sup>	20	
g	Relocate existing signal and electrical clables	m	30	
<b>8</b>	<b>STORAGE TANKS</b>			
a	Replace existing 600mm geared gate valves, PN16	No.	4	
	<b>TOTAL OF BILL OF QUANTITIES</b>			
	<b>CONTINGENCIES AT 10%</b>			
	<b>SUB-TOTAL</b>			
	<b>CIC LEVY</b>			
	<b>VALUE ADDED TAX AT 15%</b>			
	<b>GRAND TOTAL</b>			

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## Part 2: Section 6 Statement of Requirements

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### NOTES

- Supply relevant fasteners & gasket sets
- All relevant lifting equipment (including crane hire) scaffolding and relevant permits will be at contractor's cost
- On completion of installation of the MCC, the contractor to issue certificate of compliance

Signed: *[signature of person whose name and capacity are shown below]*

Name: *[insert complete name of person signing the Tender]*

In the capacity of *[insert legal capacity of person signing the Tender]*

Duly authorised to sign the Tender for and on behalf of: *[insert complete name of Contractor/Joint Venture/Consortium/Association]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

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Completion Schedule

Supplementary Information

**PART 3 - Contract**  
**Section 7: General Conditions of Contract for the**  
**Procurement of Works**

## 1. Definitions

**Boldface type** is used to identify defined terms.

- (a) The **Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The **Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump-sum contract. It includes a lump-sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The **Adjudicator** is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- (e) **Compensation Events** are those defined in GCC Clause 42 hereunder.
- (f) The **Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 57.1.
- (g) The **Contract** is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (h) The **Contractor** is the party whose Bid to carry out the Works has been accepted by the Employer.
- (i) The **Contractor's Bid** is the completed bidding document submitted by the Contractor to the Employer.
- (j) The **Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (k) **Days** are calendar days; months are calendar months.
- (l) **Dayworks** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

## Part 3: Section 8 Special Conditions of Contract

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- (m) A **Defect** is any part of the Works not completed in accordance with the Contract.
- (n) The **Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (o) The **Defects Liability Period** is the period **named in the SCC** pursuant to GCC Sub-Clause 38.1 and calculated from the Completion Date.
- (p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (q) The **Employer** is the party who employs the Contractor to carry out the Works, **as specified in the SCC**.
- (r) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (s) “**In writing**” or “**written**” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (t) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (u) The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The **Intended Completion Date** is specified in the SCC. The **Intended Completion Date** may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (v) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (w) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (x) The **Project Manager** is the person named in the SCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (y) **SCC** means Particular Conditions of Contract.
- (z) The **Site** is the area defined as such in the SCC.

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## Part 3: Section 8 Special Conditions of Contract

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- (aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (cc) The **Start Date** is **given in the SCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (dd) A **Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (ff) A **Variation** is an instruction given by the Project Manager on behalf of the employer which varies the Works.
- (gg) The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the SCC.
- (hh) **“Contractor’s Personnel”** refers to all personnel whom the Contractor utilizes on the Site or other places where the Works are carried out, including the staff, labor and other employees of each Subcontractor.
- (ii) **“Key Personnel”** means the positions (if any) of the Contractor’s personnel that are stated in the Specification.
- (jj) **“ES”** means Environmental and Social (including Sexual Exploitation and Abuse (SEA), and Sexual Harassment (SH));
- (kk) **“Sexual Exploitation and Abuse” “(SEA)”** means the following:

**Sexual Exploitation** is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. In Corporation financed operations/projects, sexual exploitation occurs when access to or benefit from a Corporation’s financed Goods, Works, Non-consulting Services or Consulting Services is used to extract sexual gain;

**Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;

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- (ll) **“Sexual Harassment” “(SH)”** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by the Contractor’s Personnel with other Contractor’s or Employer’s Personnel; and
- (mm) **“Employer’s Personnel”** refers to the Project Manager and all other staff, labor and other employees (if any) of the Project Manager and of the Employer engaged in fulfilling the Employer’s obligations under the Contract; and any other personnel identified as Employer’s Personnel, by a notice from the Employer or the Project Manager to the Contractor.

### 2. Interpretation

- 2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- 2.2 If sectional completion is **specified in the SCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
  - (a) Agreement,
  - (b) Letter of Acceptance,
  - (c) Contractor’s Bid,
  - (d) Particular Conditions of Contract,
  - (e) General Conditions of Contract, including Appendices,
  - (f) Specification,
  - (g) Drawings,
  - (h) Bill of Quantities, and
  - (i) any other document **listed in the SCC** as forming part of the Contract.

### 3. Language and Law

- 3.1 The language of the Contract and the law governing the Contract are **stated in the SCC**.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Employer’s country when

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## Part 3: Section 8 Special Conditions of Contract

- (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

- 4. Project Manager's Decisions**
  - 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation**
  - 5.1 Unless otherwise **specified in the SCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications**
  - 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting**
  - 7.1 The Contractor may subcontract with the approval of the Project Manager but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations. The Contractor shall require that its Subcontractors execute the Works in accordance with the Contract, including complying with the relevant ES requirements and the obligations set out in Sub-Clause 28.1.
  - 7.2 Submission by the Contractor for approval of the Project Manager, addition of any Subcontractor not named in the Contract, shall also include the Subcontractor's declaration in accordance with Appendix C- Sexual exploitation and Abuse (SEA) and/or Sexual Harassment (SH) Performance Declaration
- 8. Other Contractors**
  - 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.
  - 8.2 The Contractor shall also, as stated in the Specification or as instructed by the Project Manager, cooperate with and allow appropriate opportunities for the Employer's or any other personnel, notified to the

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Part 3: Section 8    Special Conditions of Contract

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Contractor by the Employer or Project Manager, to conduct any environmental and social assessment.

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### 9. Personnel and Equipment

- 9.1 The Contractor shall employ the Key Personnel and use the Equipment identified in its Bid, to carry out the Works or other personnel and Equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and Equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 The Project Manager may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Key Personnel (if any), who:
- (a) persists in any misconduct or lack of care;
  - (b) carries out duties incompetently or negligently;
  - (c) fails to comply with any provision of the Contract;
  - (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;
  - (e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works;
  - (f) has been recruited from the Employer's Personnel;
  - (g) undertakes behavior which breaches the Code of Conduct for Contractor's Personnel (ES).

If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience.

Notwithstanding any requirement from the Project Manager to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Works are being carried out, any Contractor's Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above.

- 9.3 The Contractor shall take all necessary safety measures to avoid the occurrence of incidents and injuries to any third party, associated with the use of, if any, Equipment on public roads or other public infrastructure. The Contractor shall monitor road safety incidents and accidents to identify negative safety issues, and establish and implement necessary measures to resolve them.

#### 9.4 Labor

- 9.4.1 *Engagement of Staff and Labor.* The Contractor shall provide and employ on the Site for the execution of the Works such skilled, semi-skilled and unskilled labor as is necessary for the proper and timely execution of the Contract. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within the Country.

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Unless otherwise provided in the Contract, the Contractor shall be responsible for the recruitment, transportation, accommodation and welfare facilities in accordance with GCC Sub-Clause 9.4.6, of the Contractor's Personnel, and for all payments in connection therewith.

The Contractor shall provide the Contractor's Personnel information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation shall set out their rights under relevant labor laws applicable to the Contractor's Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from any requirements in the Specification. The Contractor's Personnel shall be informed when any material changes to their terms or conditions of employment occur.

9.4.2 *Conditions of Labor.* The Contractor shall inform the Contractor's Personnel about:

- (a) any deduction to their payment and the conditions of such deductions in accordance with the applicable laws or as stated in the Specification; and
- (b) their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the laws of the Country for the time being in force.

The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws.

Where required by applicable laws or as stated in the Specification, the Contractor shall provide the Contractor's Personnel written notice of termination of employment and details of severance payments in a timely manner. The Contractor shall have paid the Contractor's Personnel (either directly or where appropriate for their benefit) all due wages and entitlements including, as applicable, social security benefits and pension contributions, on or before the end of their engagement/employment.

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

9.4.4 The Contractor shall at its own expense provide the means of repatriation to and the Contractor's Personnel employed on the Contract at the Site to their various home countries. It shall also provide suitable temporary maintenance of all such persons from the

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cessation of their employment on the Contract to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Employer may provide the same to such personnel and recover the cost of doing so from the Contractor.

- 9.4.5 *Disorderly conduct.* The Contractor shall at all times during the progress of the Contract use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst the Contractor's Personnel.
- 9.4.6 *Facilities for Staff and Labor.* Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. If stated in the Specification, the Contractor shall give access to or provide services that accommodate the physical, social and cultural needs of the Contractor's Personnel. The Contractor shall also provide similar facilities for the Employer's Personnel if stated in the Specification.
- 9.4.7 The Contractor shall, in all dealings with the Contractor's Personnel, pay due regard to all recognized festivals, official holidays, religious or other customs and all local laws and regulations pertaining to the employment of labor. The Contractor shall provide the Contractor's Personnel annual holiday and sick, maternity and family leave, as required by applicable laws or as stated in the Specification.
- 9.4.8 *Supply of Foodstuffs.* The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.
- 9.4.9 *Supply of Water.* The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.
- 9.4.10 *Measures against Insect and Pest Nuisance.* The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.
- 9.4.11 *Alcoholic Liquor or Drugs.* The Contractor shall not, otherwise than in accordance with the laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereto by Contractor's Personnel.

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- 9.4.12 *Arms and Ammunition.* The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
- 9.4.13 *Funeral Arrangements.* The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of its local employees who may die while engaged upon the Works.
- 9.4.14 *Forced Labor.* The Contractor, including its Subcontractors, shall not employ or engage forced labor. Forced labor consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.

- 9.4.15 *Child Labor.* The Contractor, including its Subcontractors, shall not employ or engage a child under the age of 14 unless the national law specifies a higher age (the minimum age).

The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner 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.

The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Project Manager's approval. The Contractor shall be subject to regular monitoring by the Project Manager that includes monitoring of health, working conditions and hours of work.

Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:

- (a) with exposure to physical, psychological or sexual abuse;
- (b) underground, underwater, working at heights or in confined spaces;
- (c) with dangerous machinery, equipment or tools, or involving handling or





- (d) transport of heavy loads;
- (e) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or
- (f) under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.

9.4.16 *Employment Records of Workers.* The Contractor shall keep complete and accurate records of the employment of labor at the Site. The records shall include the names, ages, genders, hours worked, and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the project Manager.

9.4.17 *Workers' Organizations.* In countries where the relevant labor laws recognize workers' rights to form and to join workers' organizations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers' organizations and legitimate workers' representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. Where the relevant labor laws substantially restrict workers' organizations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organizations and collective bargaining or alternative mechanisms. Workers' organizations are expected to fairly represent the workers in the workforce.

9.4.18 *Non-Discrimination and Equal Opportunity.* The Contractor shall not make decisions relating to the employment or treatment of Contractor's Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor's Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.

Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups

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such as women, people with disabilities, migrant workers and children (of working age in accordance with GCC Sub-Clause 9.4.15).

9.4.19 *Contractor's Personnel Grievance Mechanism.* The Contractor shall have a grievance mechanism for Contractor's Personnel, and where relevant the workers' organizations stated in GCC Sub-Clause 9.4.17, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.

The Contractor's Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor's Personnel.

The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.

The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to Contractor's Personnel. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.

9.4.20 *Training of Contractor's Personnel.* The Contractor shall provide appropriate training to relevant Contractor's Personnel on ES aspects of the Contract, including appropriate sensitization on prohibition of SEA and SH, and health and safety training referred to in GCC Sub-Clause 18.2.

As stated in the Specification or as instructed by the Project Manager, the Contractor shall also allow appropriate opportunities for the relevant Contractor's Personnel to be trained on ES aspects of the Contract by the Employer's Personnel.

The Contractor shall provide training on SEA and SH, including its prevention, to any of its personnel who has a role to supervise other Contractor's Personnel.

## 10. Employer's and Contractor's Risks

10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

## 11. Employer's Risks

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:



- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
  - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
  - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to

- (a) a Defect which existed on the Completion Date,
- (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.

### 12. Contractor's Risks

12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.

### 13. Insurance

13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
- (d) personal injury or death.

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

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## Part 3: Section 8 Special Conditions of Contract

- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.

### 14. Site Data

- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.

### 15. Contractor to Construct the Works

- 15.1 The Contractor shall construct and install the Works in accordance with the Specification and Drawings.
- 15.2 If the Contract specifies that the Contractor shall design any part of the permanent Works, the Contractor shall take into the Employer's requirements which may include, if stated in the Specification:
- (a) designing structural elements of the Works taking into account climate change considerations;
  - (b) applying the concept of universal access (the concept of universal access means unimpeded access for people of all ages and abilities in different situations and under various circumstances; and
  - (c) considering the incremental risks of the public's potential exposure to operational accidents or natural hazards, including extreme weather events.

### 16. The Works to Be Completed by the Intended Completion Date

- 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 16.2 The Contractor shall not carry out mobilization to the Site unless the Project Manager gives approval, an approval that shall not be unreasonably delayed, to the measures the Contractor proposes to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor's Personnel submitted as part of the Bid and agreed as part of the Contract.

The Contractor shall submit, to the Project Manager for its approval any additional MSIPs as are necessary to manage the ES risks and impacts of ongoing Works. These MSIPs collectively comprise the Contractor's Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6)

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months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Project Manager for its approval.

### 17. Approval by the Project Manager

- 17.1 The Contractor shall submit Specification and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2 The Contractor shall be responsible for design of Temporary Works.
- 17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

### 18. Health, Safety and Protection of the Environment

- 18.1 The Contractor shall be responsible for the safety of all activities on the Site.
- 18.2 The Contractor shall:
  - (a) comply with all applicable health and safety regulations and Laws;
  - (b) comply with all applicable health and safety obligations specified in the Contract;
  - (c) take care for the health and safety of all persons entitled to be on the Site and other places, if any, where the Works are being executed;
  - (d) keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
  - (e) provide fencing, lighting, safe access, guarding and watching of the Works until the issue of the Contract Certificate of Completion;
  - (f) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land;
  - (g) provide health and safety training of Contractor's Personnel as appropriate and maintain training records;
  - (h) actively engage the Contractor's Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to Contractor's Personnel, training on occupational safety and health, and provision of personal protective equipment without expense to the Contractor's Personnel;

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- (i) put in place workplace processes for Contractor's Personnel to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health;
- (j) Contractor's Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken.  
Contractor's Personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal;
- (k) where the Employer's Personnel, any other contractors employed by the Employer, and/or personnel of any legally constituted public authorities and private utility companies are employed in carrying out, on or near the site, of any work not included in the Contract, collaborate in applying the health and safety requirements, without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and
- (l) establish and implement a system for regular (not less than six-monthly) review of health and safety performance and the working environment.

Subject to GCC Sub-Clause 16.2, the Contractor shall submit to the Project Manager for its approval a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works.

The health and safety manual shall be in addition to any other similar document required under applicable health and safety regulations and laws.

The health and safety manual shall set out all the health and safety requirements under the Contract,

- (a) which shall include at a minimum:
  - (i) the procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents;
  - (ii) details of the training to be provided, records to be kept;
  - (iii) the procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating

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- procedures that are designed to prevent their occurrence, extreme weather or lack of early warning);
- (iv) remedies for adverse impacts such as occupational injuries, deaths, disability and disease;
  - (v) the measures to be taken to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases,
  - (vi) the measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the execution of the Works, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labor;
  - (vii) the policies and procedures on the management and quality of accommodation and welfare facilities if such accommodation and welfare facilities are provided by the Contractor in accordance with GCC Sub-Clause 9.4.6; and
- (b) any other requirements stated in the Specification.

### 18.3 Protection of the environment

- (a) The Contractor shall take all necessary measures to: protect the environment (both on and off the Site); and
- (b) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor's operations and/ or activities.

The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor's activities shall exceed neither the values indicated in the Specification, nor those prescribed by applicable laws.

In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor's operations, the Contractor shall agree with the Project Manager the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Project Manager.

## 19. Archaeological and Geological Findings

- 19.1 All fossils, coins, articles of value or antiquity, structures, groups of structures, and other remains or items of geological, archaeological, paleontological, historical, architectural or religious interest found on the

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Site shall be placed under the care and custody of the Employer. The Contractor shall:

- (a) take all reasonable precautions, including fencing-off the area or site of the finding, to avoid further disturbance and prevent Contractor's Personnel or other persons from removing or damaging any of these findings;
- (b) train relevant Contractor's Personnel on appropriate actions to be taken in the event of such findings; and
- (c) implement any other action consistent with the requirements of the Specification and relevant laws.

The Contractor shall, as soon as practicable after discovery of any such finding, notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

**20. Possession of the Site** 20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC**, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

**21. Access to the Site** 21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager (including the Corporation staff or consultants acting on the Corporation's behalf, stakeholders and third parties, such as independent experts, local communities, or non-governmental organizations), including to carry out environmental and social audit, as appropriate, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

**22. Instructions, Inspections and Audits** 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and subconsultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 Inspections & Audit by the Corporation

Pursuant to paragraph 2.2 e. of Appendix A to the GCC- Fraud and Corruption, the Contractor shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit, the Corporation and/or persons appointed by the Corporation to inspect the site and/or the accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have such accounts, records and other documents audited by auditors appointed by the Corporation.

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The Contractor's and its Subcontractors' and subconsultants' attention is drawn to GCC Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Corporation's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Corporation's prevailing sanctions procedures).

### 23. Appointment of the Adjudicator

- 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the SCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

### 24. Procedure for Disputes

- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place **specified in the SCC**.

### 25. Fraud and Corruption

- 25.1 The Corporation requires compliance with the Corporation's Anti-Corruption Guidelines and its prevailing sanctions policies and procedures.

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25.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### 26. Stakeholder Engagement

26.1 The Contractor shall provide relevant contract-related information, as the Employer and/or Project Manager may reasonably request to conduct Stakeholder engagements. "Stakeholder" refers to individuals or groups who:

- (i) are affected or likely to be affected by the Contract; and
- (ii) may have an interest in the Contract.

The Contractor may also directly participate in Stakeholder engagements, as the Employer and/or Project Manager may reasonably request.

### 27. Suppliers (other than Subcontractors)

27.1 **Forced Labor:** The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage forced labor including trafficked persons as described in GCC Sub-Clause 9.4.14. If forced labor/trafficking cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

27.2 **Child Labor:** The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage child labor as described in GCC Sub-Clause 9.4.15. If child labor cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

27.3 **Serious Safety Issues:** The Contractor, including its Subcontractors, shall comply with all applicable safety obligations, including as stated in GCC Sub-Clause 18.2. The Contractor shall also take measures to require its suppliers (other than Subcontractors) to adopt procedures and mitigation measures adequate to address safety issues related to their personnel. If serious safety issues are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.

27.4 **Obtaining natural resource materials in relation to supplier:** The Contractor shall obtain natural resource *materials* from suppliers that can demonstrate, through compliance with the applicable verification

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and/ or certification requirements, that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats such as unsustainably harvested wood products, gravel or sand extraction from river beds or beaches.

If a supplier cannot continue to demonstrate that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to demonstrate that they are not significantly adversely impacting the habitats.

### 28. Code of Conduct 28.1 The Contractor shall have a Code of Conduct for the Contractor's Personnel.

The Contractor shall take all necessary measures to ensure that each Contractor's Personnel is made aware of the Code of Conduct including specific behaviors that are prohibited and understand the consequences of engaging in such prohibited behaviors.

These measures include providing instructions and documentation that can be understood by the Contractor's Personnel and seeking to obtain that person's signature acknowledging receipt of such instructions and/or documentation, as appropriate.

The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Works will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor's Personnel, Employer's Personnel and the local community.

The Contractor's Management Strategy and Implementation Plans shall include appropriate processes for the Contractor to verify compliance with these obligations.

### 29. Security of the Site 29.1 The Contractor shall be responsible for the security of the Site, and:

- (a) for keeping unauthorized persons off the Site.
- (b) authorized persons shall be limited to the Contractor's Personnel, the Employer's Personnel, and to any other personnel identified as authorized personnel (including the Employer's other contractors on the Site), by a notice from the Employer or the Project Manager to the Contractor.

Subject to GCC Sub-Clause 16.2, the Contractor shall submit for the Project Manager's No-objection a security management plan that sets out the security arrangements for the Site.

The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force

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(and where applicable, firearms), and appropriate conduct towards Contractor's Personnel, Employer's Personnel and affected communities; and (iii) require the security personnel to act within the applicable Laws and any requirements set out in the Specification.

The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.

In making security arrangements, the Contractor shall also comply with any additional requirements stated in the Specifications

### B. Time Control

#### 30. Program and Progress Reports

- 30.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump-sum contract, the activities in the Program shall be consistent with those in the Activity Schedule. The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
- 30.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 30.3 The Contractor shall monitor progress of the Works and submit to the Project manager progress report and any updated Program showing the actual progress achieved and the effect of the progress achieved on the timing of the remaining Works, including any changes to the sequence of the activities, at intervals no longer than the periods **stated in the SCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of lump-sum Contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.
- 30.4 Unless otherwise stated in the Specification, each progress report shall include the Environmental and Social (ES) metrics set out in Appendix B.
- 30.5 In addition to the progress reports, the Contractor shall inform the Project Manager immediately of any allegation, incident or accident in the Site, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's

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Personnel or Contractor's Personnel. This includes, but is not limited to, any incident or accident-causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA and/or SH. In case of SEA and/or SH, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, sexual abuse or sexual harassment), gender and age of the person who experienced the alleged incident should be included in the information.

The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Project Manager of any such incident or accident on the Subcontractors' or suppliers' premises relating to the Works which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer's Personnel, or Contractor's, its Subcontractors' and suppliers' personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Project Manager within the timeframe agreed with the Project Manager.

The Contractor shall require its Subcontractors and suppliers (other than Subcontractors) to immediately notify the Contractor of any incidents or accidents referred to in this Subclause.

### 31. Extension of the Intended Completion Date

- 31.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 31.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

## 32. Acceleration

- 32.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 32.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.



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- 33. Delays Ordered by the Project Manager**
- 33.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 34. Management Meetings**
- 34.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The purpose of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 34.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 35. Early Warning**
- 35.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 35.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### C. Quality Control

- 36. Identifying Defects**
- 36.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 37. Tests**
- 37.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 38. Correction of Defects**
- 38.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at

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Completion, and is **defined in the SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

- 38.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

### 39. Uncorrected Defects

- 39.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

## D. Cost Control

### 40. Contract Price

- 40.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

### 41. Changes in the Contract Price

- 41.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- 41.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

### 42. Variations

- 42.1 All Variations shall be included in updated Programs produced by the Contractor.
- 42.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Contractor shall also provide information of any ES risks and impacts of the Variation. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 42.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 42.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying

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the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

- 42.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 42.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in GCC Sub-Clause 41.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.
- 42.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;
- (a) the proposed change(s), and a description of the difference to the existing contract requirements;
  - (b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle cost) the Employer may incur in implementing the value engineering proposal;
  - (c) a description of any effect(s) of the change on performance/functionality; and
  - (d) a description of the proposed work to be performed, a program for its execution and sufficient ES information to enable an evaluation of ES risks and impacts.

The Employer may accept the value engineering proposal if the proposal demonstrates benefits that:

- (a) accelerates the contract completion period; or
  - (b) reduces the Contract Price or the life cycle costs to the Employer;  
or
  - (c) improves the quality, efficiency, safety or sustainability of the Facilities; or
  - (d) yields any other benefits to the Employer,
- without compromising the functionality of the Works.

If the value engineering proposal is approved by the Employer and results in:



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- (a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the SCC** of the reduction in the Contract Price; or
- (b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

### 43. Cash Flow Forecasts

43.1 When the Program, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### 44. Payment Certificates

- 44.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 44.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 44.3 The value of work executed shall be determined by the Project Manager.
- 44.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.
- 44.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 44.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 44.7 If the Contractor was, or is, failing to perform any ES obligations or work under the Contract, the value of this work or obligation, as determined by the Project Manager, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Project Manager, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:
- (a) failure to comply with any ES obligations or work described in the Works' Requirements which may include: working outside site boundaries, excessive dust, failure to keep public roads in a safe usable condition, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;

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- (b) failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ES issues, or anticipated risks or impacts;
- (c) failure to implement the C-ESMP e.g. failure to provide required training or sensitization;
- (d) failing to have appropriate consents/permits prior to undertaking Works or related activities;
- (e) failure to submit ES report/s (as described in Appendix B), or failure to submit such reports in a timely manner;
- (f) failure to implement remediation as instructed by the Project Manager within the specified timeframe (e.g. remediation addressing non-compliance/s).

## 45. Payments

- 45.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 45.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 45.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- 45.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

## 46. Compensation Events

- 46.1 The following shall be Compensation Events:
- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
  - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - (c) The Project Manager orders a delay or does not issue Drawings, Specification, or instructions required for execution of the Works on time.





- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

46.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

46.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

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

## 47. Tax

47.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax

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payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 49.

### 48. Currencies

48.1 Payments will be made in the National currency of the Employer.

### 49. Price Adjustment

49.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts.

$$P = A + B \text{ Im/Io}$$

where:

P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients<sup>7</sup> **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable and

Im is the index prevailing at the end of the month being invoiced and Io is the index prevailing 28 days before Bid opening for inputs payable;

49.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

### 50. Retention

50.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the SCC** until Completion of the whole of the Works.

50.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC Sub-Clause 57.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Corporation guarantee.

### 51. Liquidated Damages

51.1 The Contractor shall pay liquidated damages to the Employer at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Employer may deduct liquidated damages from payments due to

<sup>7</sup>

The sum of the two coefficients A and B should be 1 (one) in the formula. Coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components.

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## Part 3: Section 8 Special Conditions of Contract

the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

51.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 45.1.

## 52. Bonus

52.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

### 53. Advance Payment

53.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an Unconditional Corporation Guarantee in a form and by a Corporation acceptable to the Employer in amounts and currencies 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.

53.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of 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.

53.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

## 54. Securities

54.1 The Performance Security, and if so **specified in the SCC** an environmental and social (ES) performance 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 Corporation or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a



## Part 3: Section 8 Special Conditions of Contract

Corporation Guarantee, and until one year from the date of issue of the Certificate of Completion in the case of a Performance Bond.

### 55. Dayworks

- 55.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 55.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 55.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

### 56. Cost of Repairs

- 56.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

## E. Finishing the Contract

### 57. Completion

- 57.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

### 58. Taking Over

- 58.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a Certificate of Completion.

### 59. Final Account

- 59.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

### 60. Operating and Maintenance Manuals

- 60.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the SCC**.
- 60.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** pursuant to GCC Sub-Clause 60.1, or they do not receive the Project Manager's approval, the Project Manager shall

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## Part 3: Section 8 Special Conditions of Contract

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withhold the amount **stated in the SCC** from payments due to the Contractor.

### 61. Termination

- 61.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 61.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
  - (c) the Employer or the Contractor is made Corporationrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
  - (e) 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;
  - (f) the Contractor does not maintain a Security, which is required;
  - (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the SCC**; or
  - (h) if the Contractor, in the judgment of the Employer has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Employer may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.
- 61.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 61.4 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.
- 61.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC

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## Part 3: Section 8 Special Conditions of Contract

Sub-Clause 61.2 above, the Project Manager shall decide whether the breach is fundamental or not.

### 62. Payment upon Termination

- 62.1 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 less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **specified in the SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.
- 62.2 If 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.

### 63. Property

- 63.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

### 64. Release from Performance

- 64.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

### 65. Suspension of Corporation Loan or Credit

- 65.1 In the event that the Corporation suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:
- (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Corporation's suspension notice.
  - (b) If the Contractor has not received sums due to it within the 28 days for payment provided for in GCC Sub-Clause 45.1, the Contractor may immediately issue a 14-day termination notice.

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## Section 8: Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC Clause Reference	Special Condition of Contract
GCC 1.1 (d)	The financing institution is: Eswatini Water Services Corporation
GCC 1.1 (r)	The Employer is Eswatini Water Services Corporation P.O Box 20 Mbabane
GCC 1.1 (v)	The Intended Completion Date for the whole of the Works shall be:  5 months
GCC 1.1 (y)	The Project Manager is:  Eswatini Water Services Corporation
GCC 1.1 (aa)	The sites are located at Woodlands, Mbabane, Hhohho Region
GCC 1.1 (dd)	The Start Date shall be: 1 week following the signature of the contract
GCC 1.1 (hh)	The Works consist of rehabilitation of Woodlands Water Treatment Plant as determined in the scope of work in the bid document.
GCC 2.2	Sectional Completions are: <i>Not allowable</i>
GCC 2.3(i)	The following documents also form part of the Contract: Contractors Methodology Contractors work program Contractors E&S methodologies/strategies All tender forms Bid Submission document
GCC 3.1	The language of the contract is <b>English</b>
GCC 5.1	The Project Manager <i>may not</i> delegate any of his duties and responsibilities.
GCC 8.1	Schedule of other contractors: N/A
GCC 13.1	The minimum insurance amounts and deductibles shall be:  (i) (a) for loss or damage to the Works, Plant and Materials: E500,000.00  (b) for personal injury or death:  (ii) of the Contractor's employees: E150,000.00

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## Part 3: Section 8 Special Conditions of Contract

	(iii) of other people: E250,000.00.
<b>GCC 14.1</b>	Site Data are: <i>N/A</i>
<b>GCC 20.1</b>	The Site Possession Date(s) shall be: <i>at commencement date</i>
<b>GCC 23.1 &amp; GCC 23.2</b>	Appointing Authority for the Adjudicator: To be determined at contract signing.
<b>GCC 24.3</b>	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>TBD</i>
<b>GCC 24.4</b>	Institution whose arbitration procedures shall be used: Association of Arbitrators Southern Africa
<b>B. Time Control</b>	
<b>GCC 30.1</b>	The Contractor shall submit for approval a Program for the Works within 5 <i>business</i> days from the date of the Letter of Acceptance.
<b>GCC 30.3</b>	The period between Program updates is 30 days.  The amount to be withheld for late submission of an updated Program is <i>N/A</i>  The period for submission of progress reports is 30 days.
<b>C. Quality Control</b>	
<b>GCC 38.1</b>	The Defects Liability Period is: 365 days.
<b>D. Cost Control</b>	
<b>GCC 42.7</b>	If the value engineering proposal is approved by the Employer, the amount to be paid to the Contractor shall be 2% of the reduction in the Contract Price.
<b>GCC 48.1</b>	The currency of the Employer's Country is: <i>Lilangeni</i>
<b>GCC 49.1</b>	The Contract <b>is not</b> subject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients <b>does not</b> apply.
<b>GCC 50.1</b>	The proportion of payments retained is: <i>10%</i>
<b>GCC 51.1</b>	The liquidated damages for the whole of the Works are 0.1% of the final Contract Price per day. The maximum amount of liquidated damages for the whole of the Works is 10% of the final Contract Price.

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<b>GCC 52.1</b>	The Bonus for the whole of the Works is <i>N/A</i> per day. The maximum amount of Bonus for the whole of the Works is <i>N/A</i> of the final Contract Price.
<b>GCC 53.1</b>	The Advance Payments shall be: <i>10% of the contract amount</i> and shall be paid to the Contractor no later than <i>60 days following the submission and approval of an advance payment guarantee</i>
<b>GCC 54.1</b>	<p>The Performance Security will be in the form of a “<i>demand guarantee</i>” or “<i>performance bond</i>” in the amount(s) of 10% percent of the Accepted Contract Amount and in the same currency of the Accepted Contract Amount.</p> <p>The ES Performance Security will be in the form of a “demand guarantee” in the amount(s) of 1% of the Accepted Contract Amount and in the same currency of the Accepted Contract Amount.</p>
<b>E. Finishing the Contract</b>	
<b>GCC 60.1</b>	<p>The date by which operating and maintenance manuals are required is <i>by 1 month before the end of the contract period</i></p> <p>The date by which “as built” drawings are required is <i>on completion of the contract</i></p>
<b>GCC 60.2</b>	The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC Sub-Clause 60.1 is SZL 20,000.00
<b>GCC 61.2 (g)</b>	The maximum number of days is: 100 days
<b>GCC 62.1</b>	The percentage to apply to the value of the work not completed, representing the Employer’s additional cost for completing the Works, is 10%

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## Section 9: Contract Forms

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# Contract Agreement

Procurement Reference No: \_\_\_\_\_

THIS CONTRACT AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_  
(hereinafter “the Procuring Entity - PE”), of the one part, and \_\_\_\_\_ of  
\_\_\_\_\_ (hereinafter “the Contractor”), of the other part.

Whereas the PE is desirous that the Contractor executes \_\_\_\_\_  
(hereinafter called “the Works”) and the PE has accepted the Tender by the Contractor for the  
execution and completion of such Works and the remedying of any defects therein for the  
Contract Price of Eswatini Lilangeni \_\_\_\_\_.

NOW THIS CONTRACT AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Contract Agreement shall prevail over all other Contract documents.
  - (a) the Contractor’s Tender;
  - (b) the Special Conditions of Contract;
  - (c) the General Conditions of Contracts;
  - (e) the Scope of works;
  - (f) the Drawings; and
  - (g) the completed Schedules.
3. In consideration of the payments to be made by the PE to the Contractor as indicated in this Contract, the Contractor hereby covenants with the Procuring Entity to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The PE hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein the Contract Price of \_\_\_\_\_ or such other sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract.
5. The Contract Price or such other sum as may be payable shall be paid \_\_\_\_\_ in Eswatini Lilangeni , \_\_\_\_\_ in \_\_\_\_\_ and \_\_\_\_\_ in \_\_\_\_\_.

IN WITNESS whereof the parties thereto have caused this Contract to be executed in accordance with the law specified in the Special Conditions of Contract on the day, month and year indicated above.

Signed by \_\_\_\_\_ (for the Procuring Entity)

Name: \_\_\_\_\_ Position: \_\_\_\_\_

In the presence of:

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Tendering Document for the Procurement of Works

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Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signed by \_\_\_\_\_ (for the Contractor)

Name: \_\_\_\_\_ Position: \_\_\_\_\_

In the presence of:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

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## Performance Security

*[The Performance Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution. The draft is for an unconditional Security. The amount of the guarantee must represent the percentage of the Contract Price specified in the Contract and should be denominated either in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Procuring Entity].*

Date: *[insert date (as day, month and year) of Performance Security]*

Procurement Reference No: *[insert Procurement Reference Number]*

To: *[insert complete name and address of Procuring Entity]*

WHEREAS *[insert name and address of Contractor]* (hereinafter called “the Contractor”) has undertaken, pursuant to the Contract referenced above, dated *[insert date (as day, month and year) of contract]* to execute *[insert brief description of Works]* (hereinafter called “the Contract”);

AND WHEREAS it has been stipulated by you in the aforementioned Contract that the Provider shall furnish you with a demand guarantee issued by a financial institution for the sum specified therein as security for compliance with the Provider’s performance obligations in accordance with the Contract;

AND WHEREAS the undersigned *[insert complete name of Guarantor]*, legally domiciled in *[insert complete address of Guarantor]*, (hereinafter the “Guarantor”}, have agreed to give the Contractor a security;

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of *[insert currency and amount of Guarantee in words and figures]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract, without cavil or argument, any sum or sums within the limits of *[insert currency and amount of Guarantee in words and figures]* as aforesaid without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

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### Tendering Document for the Procurement of Works

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### Part 3. Section 9. Contract Forms

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This Guarantee shall remain in force up to and including \_\_\_\_\_ \* *[insert date: day, month, year]*

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that Sub-article 20(a) is hereby excluded.

Name: *[insert complete name of person signing the Performance Security]*

In the capacity of *[insert legal capacity of person signing the Performance Security]*

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorized to sign the Performance Security for and on behalf of: *[insert complete name of Financial Institution]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

*\* Insert the date twenty-eight (28) days after the intended completion date as stated in SCC 22.1. In the event of an extension of the intended completion date, the Entity shall request for an extension of this guarantee from the contractor. The request for extension shall be in writing and must be made prior to the expiration date stated in the guarantee.*

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## Advance Payment Security

*[The Advance Payment Security should be on the letterhead of the issuing Financial Institution and should be signed by a person with the proper authority to sign documents that are binding on the Financial Institution. The amount of the security is to be inserted by the Financial Institution and must represent the amount of the Advance Payment and be denominated either in the currency(ies) of the Advance Payment as specified in the Contract, or in a freely convertible currency acceptable to the PE].*

Date: *[insert date (as day, month, and year) of Payment Security]*  
Procurement Reference No.: *[insert Procurement Reference Number]*

To: *[insert complete name and address of Procuring Entity]*

In accordance with the payment provision included in the Contract referenced above, in relation to advance payments, *[insert complete name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with the PE a Bank Guarantee to guarantee its proper and faithful performance of the obligations imposed by said Clause of the Contract, in the amount of *[insert currency and amount of guarantee in words and figures]*.

We, the undersigned *[insert complete name of Guarantor]*, legally domiciled in *[insert full address of Guarantor]* (hereinafter “the Guarantor”), as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the PE on its first demand without whatsoever right of objection on our part and without its first claim to the Contractor, in the amount not exceeding *[insert currency and amount of guarantee in words and figures]*.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed there under or of any of the Contract documents which may be made between the PE and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Security shall remain valid and in full effect from the date of the advance payment under the Contract until the PE receives full repayment of the same amount from the Contractor.

Name: *[insert complete name of person signing the Payment Security]*  
In the capacity of *[insert legal capacity of person signing the Payment Security]*

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758, except that Sub-article 20(a) is hereby excluded.

Signed: *[signature of person whose name and capacity are shown above]*

Duly authorized to sign the Payment Security for and on behalf of: *[insert complete name of the Financial Institution]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

### Disclaimer

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### Tendering Document for the Procurement of Works

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