

the following materials, notifications, and information pertaining to the spare parts manufactured or distributed by the Service Provider:

- (a) such spare parts, as the Procuring Entity, may elect to purchase from the Service Provider, provided that this election shall not relieve the Service Provider of any warranty obligations under the Contract; and
- (b) in the event of termination of the production of the spare parts:
 - (i) advance notification to the Procuring Entity of the pending termination is done in sufficient time to permit the Procuring Entity to produce needed requirements; and
 - (ii) following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.

8. DELIVERY AND DOCUMENTS

- 8.1 Delivery of the Service shall be made by the Service Provider in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Service Provider shall be specified in the Contract.
- 8.2 For purposes of the Contract, the trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms published by the International Chamber of Commerce, Paris.

9. INSURANCE

- 9.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

10. TRANSPORTATION

- 10.1 Where the Service Provider is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Procuring Entity or other agreed point shall be arranged and paid for by the Service Provider, and the cost thereof shall be included in the Contract Price.
- 10.2 Where the Service Provider is required under the Contract to deliver the Goods CIP, transport of the Goods to the port of destination or such other named place of destination in Eswatini, as shall be specified in the Contract, shall be arranged and paid for by the Service

Provider, and the cost thereof shall be included in the Contract Price.

- 10.3 Where the Service Provider is required under the Contract to transport the Goods to a specified place of destination within Eswatini, defined as the Project Site, transport to such place of destination in Eswatini, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Service Provider, and the related costs shall be included in the Contract Price.

11. WARRANTY

- 11.1 The Service Provider warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and that incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Service Provider further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity's specifications) or from any act or omission of the Service Provider that may develop under normal use of the supplied Goods in the conditions prevailing in Eswatini.
- 11.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.
- 11.3 The Procuring Entity shall promptly notify the Service Provider in writing of any claims arising under this warranty.
- 11.4 Upon receipt of such notice, the Service Provider shall, within the period specified and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity.
- 11.5 If the Service Provider, having been notified, fails to remedy the defect(s) within the period specified in the Special Conditions of Contract, the Procuring Entity may proceed to take such remedial action as may be necessary at the Service Provider's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Service Provider under the Contract.

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12. PAYMENT

- 12.1 The method and conditions of payment to be made to the Service Provider under this Contract shall be specified in the Contract document.
- 12.2 The Service Provider's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and upon fulfilment of other obligations stipulated in the Contract.
- 12.3 Payments shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Service Provider unless otherwise stated in the Contract.

13. PRICES

- 13.1 Prices charged by the Service Provider for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Service Provider in its tender.
- 13.2 All such prices shall be valid and fixed for a period of one (01) year

14. DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE

- 14.1 Delivery of the Goods and performance of Services shall be made by the Service Provider in accordance with the time schedule prescribed by the Procuring Entity.
- 14.2 If at any time during the performance of the Contract, the Service Provider or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Service Provider shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Service Provider's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Service Provider's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 14.3 Except as provided under Clause 17, a delay by the Service Provider in the performance of its delivery obligations shall render the Service Provider liable to the imposition of liquidated damages pursuant to Clause 19, unless an extension of time is agreed upon pursuant to Clause 14.2 without the application of liquidated damages.

15. TERMINATION FOR DEFAULT

- 15.1 The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Service Provider, may terminate this Contract in whole or in part:

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- a) if the Service Provider fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to Clause 14.1; or
- b) if the Service Provider fails to perform any other obligation(s) under the Contract.

15.2 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to Clause 15.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Service Provider shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Service Provider shall continue performance of the Contract to the extent not terminated.

16. LIQUIDATED DAMAGES

16.1 Subject to GCC Clause 15, if the Service Provider fails to deliver any or all of the Goods or fails to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the Special Conditions of Contract of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of the delay until the actual delivery or performance, up to a maximum deduction of the percentage specified in the Special Conditions of Contract. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 14.

17. FORCE MAJEURE

17.1 Notwithstanding the provisions of Clauses 14, 15 and 16, the Service Provider shall not be liable for liquidated damages or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

17.2 For purposes of this clause, "Force Majeure" means an event beyond the control of the Service Provider and not involving the Service Provider's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

17.3 If a Force Majeure situation arises, the Service Provider shall promptly notify the Procuring Entity in writing of such

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condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Service Provider shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

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| 18. APPLICABLE LAW | 18.1 | The Contract shall be interpreted in accordance with the laws and regulations in effect in The Kingdom of Eswatini. |
| 19. TAXES AND DUTIES | 19.1 | The Service Provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies incurred or imposed until delivery of the contracted Goods to the Procuring Entity. |
| 20. TERMINATION FOR INSOLVANCY | 20.1 | The Procuring Entity may at any time terminate the contract by giving written notice to the Service Provider if the Service Provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Service Provider, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity |
| 21. TERMINATION FOR CONVENIENCE | 21.1 | The Procuring Entity, by written notice sent to the Service Provider, may terminate the Contract, in whole or in part, at any time for should it be deemed necessary for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Service Provider under the Contract is terminated, and the date upon which such termination becomes effective. |
| | 21.2 | The Goods which are complete and ready for shipment within thirty (30) days after the Service Provider's receipt of notice of termination, shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may choose to: <ul style="list-style-type: none"> (a) Have any portion completed and delivered at the Contract terms and prices; and/or (b) Cancel the remainder and pay to the Service Provider an agreed amount for partially completed Goods and Services performed and for materials and parts already procured by the Service Provider for the fulfilment of Contract at that stage |
| 22. RESOLUTION OF DISPUTES | 22.1 | The Procuring Entity and the Service Provider shall make every effort to resolve amicably, by direct informal negotiation any disagreement, disputes, or claim arising |

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out of or in connection with the contract or the breach, termination, or validity thereof.

22.2 If, after thirty (30) days from the commencement of such informal negotiations, the Procuring Entity and the Service Provider have failed to negotiate such an amicable settlement, any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination or validity thereof, either party may require that the dispute be referred for resolution by final and binding arbitration in accordance with UNCITRAL Arbitration Rules presently in force.

22.3 The arbitrator shall determine the matters in dispute in accordance with the laws of the Kingdom of Eswatini.

22.4 All notices to be given in connection with the arbitration shall be in writing and shall be effective upon receipt.

23. GOVERNING LANGUAGE

23.1 The Contract shall be written in English and this Tender Invitation has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

24. PERFORMANCE SECURITY

24.1 Within fourteen (14) days of receipt of the notification of the Contract Award and before the contract signing, the successful Tenderer, otherwise referred herein as Service Provider, shall furnish to the Procuring Entity the Performance Security in the amount and in the format specified in the Special Conditions of Contract.

24.2 The proceeds of the Performance Security shall be used as a recompense for any loss resulting from the Service Provider's failure to complete its obligations under the Contract.

24.3 The Performance Security shall be denominated in the currency of the Contract and shall be in one of the following forms:

(a) a bank guarantee issued by a reputable bank located in the Tenderer's country or abroad, acceptable to the Procuring Entity; or

(b) an insurance company bond from a reputable Insurance Company acceptable to the Procuring Entity

24.4 Once delivery of the requirements has been completed, the Service Provider may apply to have the Performance Security reduced to 1% (one percent) to cover the period of the warranty obligations.

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25. INSPECTION AND TESTS

24.5 The Performance Security will be discharged by the Procuring Entity and returned to the Service Provider not later than thirty (30) days following the date of completion of the Service Provider's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the Special Conditions of Contract.

25.1 The Procuring Entity's representative shall have the right to inspect and/or test the Goods for conformity with Contract Specifications at no extra cost to the Procuring Entity. The Special Conditions of Contract and the Technical Specifications shall specify the nature of inspection and tests the Procuring Entity requires to and where they are to be conducted. The Procuring Entity shall notify the Service Provider in writing, in a timely manner, of the authorized representative for these purposes.

25.2 The inspections and tests may be conducted on the premises of the Service Provider or Subcontractor's, at point of delivery, and/or at the Goods final destination. If conducted on the premises of Service Provider or its Subcontractor's, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.

25.3 Should any inspected or tested Goods fail to conform to the Specifications, the Procuring Entity may reject the Goods, and the Service Provider shall either replace the rejected goods or make the necessary alterations to meet specification requirements at no cost to the Procuring Entity.

25.4 The Procuring Entity's right to inspect, test and, where necessary, reject the Goods after the Goods arrival in the Kingdom of Eswatini shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the Goods' shipment from the country of origin. No provision under Clause 7 of the GCC shall in any way release the Service Provider from any warranty or other obligations under this Contract.

26. NOTICES

25.5 Where a sample is furnished by the Service Provider, the Goods shall be equivalent thereto in every respect.

25.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing by personal delivery, mail, or e-mail or facsimile and if by e-mail or facsimile, confirmed in writing to the other party's address specified in the Special Conditions of Contract

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Each party may change such address by notice to the other party;

25.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

SECTION FIVE – SPECIAL CONDITIONS OF CONTRACT

GCC Clause No	GCC Subject	Special Conditions
1.1 (e)	Name and Address of the Procuring Entity	<p><u>Procuring Entity:</u> Client Name: National Disaster Management Agency (NDMA) Address : P. O. Box 8909, Mbabane, Eswatini Phone No. : +268 2409 5500 Contact Person: Diana Simelane</p>
8.	Delivery and Documents	
8.1	Delivery of goods and services	Delivery of the services shall be made by the Service Provider in accordance with the terms specified in the Schedule of Requirements
8.2	Documentation to be delivered by the Service Provider	Delivery documents are normally: Delivery Notes, job cards and the invoice
9.	Insurance	
9.1	Insurance	Goods must be fully insured. The Insurance shall be in an amount equal to 110% of the CIP value of the goods from “warehouse” to “warehouse” on All risks basis, including War Risks and Strikes.
12	Payment	
12.1	The Method and conditions of payment	Payments shall be made promptly by the Procuring Entity, but in no case later than 30 days after submission of an invoice or claim by the Service Provider accompanied by a letter of satisfactory inspection from the Official at the Delivery Point
16	Liquidated Damages	
16.1	Liquidated Damages	Liquidated damages will apply to any delayed portion of the contract and will be a deduction of payment

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		equivalent to half of one percent (0.5%) of the delayed portion per week of delay up to a maximum of 10% (Ten Percent)
24	Performance Security	No performance Security is required
25	Site Inspection	Will be carried out as stated in section 25 of the Contract Terms and Conditions.
26	Notices:	
26.1	Procuring Entity's address for notice purposes:	<i>Will be completed when contract is awarded</i>
	Service Providers address for notice purposes:	<i>Will be completed when contract is awarded</i>

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