

## SECTION VII. GENERAL CONDITIONS OF CONTRACT (GCC)

### TABLE OF CLAUSES

<b>A. General .....</b>	<b>7-3</b>
1. Definitions.....	7-3
2. Interpretation .....	7-5
3. Language and Law .....	7-5
4. Project Manager's Decisions.....	7-5
5. Delegation .....	7-5
6. Communications.....	7-5
7. Subcontracting.....	7-5
8. Setting Out.....	7-6
9. Other Contractors .....	7-6
10. Personnel .....	7-6
11. Employer's and Contractor's Risks .....	7-7
12. Employer's Risks .....	7-8
13. Contractor's Risks.....	7-8
14. Insurance.....	7-8
15. Queries about the Special Conditions of Contract.....	7-8
16. Contractor to Construct the Works.....	7-8
17. The Works to Be Completed by the Intended Completion Date.....	7-8
18. Approval by the Project Manager .....	7-9
19. Safety .....	7-9
20. Discoveries .....	7-9
21. Possession of the Site .....	7-9
22. Access to the Site .....	7-10
23. Instructions, Inspections and Audits .....	7-10
24. Disputes .....	7-10
25. Procedure for Disputes .....	7-10
26. Replacement of Adjudicator .....	7-11
<b>B. Time Control .....</b>	<b>7-11</b>
27. Program.....	7-11
28. Progress Reports.....	7-12
29. Extension of the Intended Completion Date .....	7-12
30. Acceleration.....	7-12
31. Delays Ordered by the Project Manager .....	7-13
32. Management Meetings .....	7-13
33. Early Warning .....	7-13
<b>C. Quality Control.....</b>	<b>7-14</b>
34. Identifying Defects .....	7-14
35. Tests.....	7-14
36. Correction of Defects .....	7-14
37. Uncorrected Defects .....	7-14
<b>D. Cost Control.....</b>	<b>7-14</b>
38. Bill of Quantities.....	7-14
39. Changes in the Quantities.....	7-15

40. Variations .....	7-16
41. Payments for Variations.....	7-17
42. Cash Flow Forecasts .....	7-17
43. Payment Certificates.....	7-17
44. Payments .....	7-18
45. Compensation Events for allowing time extension .....	7-19
46. Tax.....	7-20
47. Currencies .....	7-20
48. Price Adjustment.....	7-20
49. Retention .....	7-21
50. Liquidated Damages.....	7-21
51. Advance Payment.....	7-22
52. Securities.....	7-23
53. Day works.....	7-23
54. Cost of Repairs.....	7-23
<b>E. Completion of the Contract.....</b>	<b>7-23</b>
55. Completion .....	7-23
56. Taking Over .....	7-24
57. Final Account.....	7-24
58. Operating and Maintenance Manuals .....	7-24
59. Termination.....	7-25
60. Corrupt or Fraudulent Practices .....	7-26
61. Payment upon Termination.....	7-28
62. Property.....	7-28
63. Release from Performance .....	7-28

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**General Conditions of Contract****A. General****1. Definitions**

1.1. Boldface type is used to identify defined terms.

- (a) 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 Clauses 25 and 26 hereunder.
- (b) **Bill of Quantities** summary of the units and unit prices of the items proposed under the contract.
- (c) **Compensation Events** are those defined in GCC Clause 45 hereunder.
- (d) The **Completion Date** is the date of completion of the Works as certified by the Employer, in accordance with GCC Sub-Clause 55.1.
- (e) The **Contract** is a formal agreement in writing entered into 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.
- (f) The **Contractor** is an individual or legal entity entering into a contract after its Bid to carry out the Works has been accepted by the Employer.
- (g) The **Contractor's Bid** is the completed Bidding document submitted by the Contractor to the Employer.
- (h) The **Contract Price** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.
- (i) **Days** are calendar days; months are calendar months.
- (j) **Day works** 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.
- (k) A **Defect** is any part of the Works not completed in accordance with the Contract.
- (l) The **Defects Liability Certificate** is the certificate issued by the Employer upon correction of defects by the Contractor.
- (m) The **Defects Liability Period** is the period named in SCC Sub-Clause 36.1 and calculated from the Completion Date.
- (n) **Drawings** include calculations and other information provided or approved by the Employer for the execution of the Contract.
- (o) The **Employer** is the Government Agency which enters into a Contract with a Contractor to carry out the Works, as specified in the SCC. The terms "Procuring Agency", "Purchaser", or "Employer" is synonymous.
- (p) **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

- (q) The **Initial Contract Price** is the Contract Price listed in the Employer's Letter of Acceptance.
- (r) 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 Employer by issuing an extension of time or an acceleration order.
- (s) **In writing** is in any written form, including electronic mail.
- (t) **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (u) **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical or biological function.
- (v) 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 Employer) who is responsible for supervising the execution of the Works and administering the Contract.
- (w) **SCC** is the Special Conditions of Contract.
- (x) **Secured Advance**: Secured advance can be given for non-perishable materials only. Materials such as cement/bamboo cannot be eligible for the secured advance. No secured advance shall be given on account of plants & machineries.
- (y) The **Site** is the area defined as such in the SCC.
- (z) **Site Investigation Reports** are those that were included in the Bidding Documents and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (aa) **Specifications** mean the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (bb) 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.
- (cc) 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.
- (dd) **Temporary Works** are works designed, constructed, installed and removed by the Contractor that are needed for construction or installation of the Works.
- (ee) A **Variation** is an instruction given by the Project Manager which varies the Works.
- (ff) The **Works** are what the Contract requires the Contractor to construct, install and turn over to the Employer, as defined in the SCC.

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- 2. Interpretation**
- 2.1. In interpreting these GCC, singular also means plural, male also means female or neuter, and the other way around. 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:
- (1) Contract,
  - (2) Letter of Acceptance,
  - (3) Contractor's Bid,
  - (4) Special Conditions of Contract,
  - (5) General Conditions of Contract,
  - (6) Specifications,
  - (7) Drawings,
  - (8) Bill of Quantities, and
  - (9) 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.
- 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. The Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may cancel any delegation after notifying the Contractor.
- 6. Communications**
- 6.1. Communications between parties that are referred to in the Conditions shall be effective only when in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission. A notice shall be effective only when it is delivered.
- 7. Subcontracting**
- 7.1. The Contractor may subcontract with the approval of the Employer provided such provisions exist in contract document, but shall not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

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- 8. Setting Out**
- 8.1. The Contractor shall be responsible for setting out the Works and for ensuring the correctness of the positions, levels, dimensions and alignment of the Works. At any time during the execution of the Works, he shall correct any error at his own expense when required to do so by the Employer. Boreholes, exploratory excavations or soil testing may be done if instructed by the Employer. In case, cost of boreholes or exploratory excavations or soil testing is not included in the Contract Price, the cost shall be borne by the Employer. The contractor shall provide all facilities like labor and instruments, and shall co-operate with the Engineer-in-Charge to check all alignments, grades, levels and dimensions. Such checking shall not relieve the contractor of his own responsibility of maintaining the accuracy of the work.
- 9. Other Contractors**
- 9.1. 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.
- 10. Personnel**
- 10.1. The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the SCC, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Schedule. If the Contractor fails to deploy the personnel as committed in the Bid document, the employer shall stop the work if the quality of work is going to suffer or otherwise deduct the salaries of such personnel at a rate stipulated in the Special Condition of Contract per month per personnel for every month of absence of such personnel from the site. Such deductions shall continue till such time that the Contractor deploys the key personnel acceptable to the employer. If the Contractor fails to deploy such key personnel within one to four months, the deductions shall be discontinued and the contractor's failure to deploy such personnel shall be treated as a fundamental breach of contract.
- This shall also apply to the commitment of employment to Bhutanese. However in this case Contract may not be terminated but wage rates as mentioned in the SCC shall be deducted for the duration of the contract.

Similarly, if the committed equipments are not available at site, the hiring charges of such equipments shall be deducted at a rate stipulated in the SCC per month for every month of absence for a period of one to four months after which the deductions shall be discontinued and the contractor's failure to produce such equipments at site shall be treated as a fundamental breach of contract.

10.2. The Contractor shall pay rates of wages and observe conditions of labor which are not lower than the general level of wages and conditions in Bhutan. The Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's personnel. The Contractor shall comply with all relevant labor laws applicable to the Contractor's personnel, including their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor is required, to the extent practicable and reasonable, to employ national staff and labor with appropriate qualifications and experience.

10.3. The Contractor shall not engage child labor and shall conform to the labor laws/acts, rules and regulations of Bhutan in the execution of Contract work. A child who has not attained the age of 18 years shall not be employed in any work as a laborer. During the continuance of the Contract the Contractor and his Subcontractors shall abide at all times with the labor laws/acts, rules and regulations, including child labor, related enactment and rules made there under.

**11. Employer's and Contractor's Risks**

11.1. 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.

**12. Employer's Risks**

12.1. 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 Bhutan.



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- 13. Contractor's Risks** 13.1. From the Start Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials and Equipment) which are not Employer's risks are Contractor's risks.
- 14. Insurance** 14.1. 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 to be built into the works.
- 14.2. 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. Payments received from insurers shall be used for the rectification of loss or damage.
- 14.3. If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due from the Contractor to the Employer.
- 14.4. Alterations to the terms of insurance shall not be made without the approval of the Project Manager.
- 14.5. Both parties shall comply with any conditions of the insurance policies.
- 15. Queries about the Special Conditions of Contract** 15.1. The Project Manager shall clarify queries on the SCC.
- 16. Contractor to Construct the Works** 16.1. The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 17. The Works to Be Completed by the Intended Completion Date** 17.1. 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.



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- 18. Approval by the Project Manager**
- 18.1. The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, who is to approve them if they comply with the Specifications and Drawings.
- 18.2. The Contractor shall be responsible for design of Temporary Works.
- 18.3. The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 18.4. The Contractor shall obtain approval of third parties to design the Temporary Works, where required.
- 18.5. 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 use.
- 19. Safety**
- 19.1. The Contractor shall be responsible for the safety of all activities on the Site.
- 19.2. The Contractor shall assume full responsibility and comply with all applicable safety regulations for the adequacy and safety of site operations and methods of construction and he shall adopt measures to prevent injuries to persons or damage to properties or utilities. He shall hold the Employer harmless from any liability for loss or damage resulting from his failures to take the necessary precautions. He shall avoid undue interference with private business, public travel, or with the work of other contractors. He shall take steps to protect the environment and to minimize noise, pollution or other undesirable effects resulting from his method of operation.
- 20. Discoveries**
- 20.1. Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Employer's instructions for dealing with them.
- 20.2. All materials obtained during excavation from the site and that have not been accounted for in the bid shall be the property of the Employer and the contractor shall take care of useful materials obtained during the execution of the Works and stack at place designated by the Employer. An arrangement shall be made between the Contractor and the Employer for the use and disposal of such materials according to the laws of the kingdom of Bhutan.
- 21. Possession of the Site**
- 21.1. 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.

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- 21.2. Within 14 days of possession of site the contractor shall erect an information board as specified in SCC.
- 22. Access to the Site**
- 22.1. The Contractor shall allow the Project Manager and any person authorized by the Employer 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.
- 23. Instructions, Inspections and Audits**
- 23.1. The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 23.2. The Contractor shall give notice to the Project Manager whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Project Manager shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that he does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Project Manager, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.
- 23.3. The Contractor shall permit the Employer and/or persons appointed by the Employer to inspect the Site and/or the accounts and records of the Contractor and its Subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer if so required by the Employer. The Contractor's attention is drawn to GCC Sub-Clause 60.1 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended materially to impede the exercise of the Employer's inspection and audit rights provided for under GCC Sub-Clause 23.3 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to ITB Sub-Clause 2.1 (c) of the Instructions to Bidders within the Bidding Documents that preceded the placement of the Contract of which these GCC form a part).
- 24. 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.
- 25. Procedure for Disputes**
- 25.1. The Adjudicator shall give a decision in writing within 30 days of receipt of a notification of a dispute.
- 25.2. Unless otherwise agreed, the parties shall comply with the adjudication procedure published by appointing authority specified in SCC.

25.3. The Adjudicator shall be paid by the hour at the rate specified in the BDS and 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. If the rates are not specified in SCC, the parties shall comply with the rates fixed by appointing authority in schedule of fees. Either party may refer a decision of the Adjudicator to an Arbitrator within 30 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 30 days, the Adjudicator's decision shall be final and binding.

25.4. The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place specified in the SCC.

## **26. Replacement of Adjudicator**

26.1. 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.

### **B. Time Control**

## **27. Program**

27.1. 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.

27.2. The Contractor shall submit to the project manager for approval at intervals no longer than the period stated in the SCC a revised programme or if at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen behind or ahead the current programme under Sub-Clause 27.1 [Program],

Other than as a result of a cause listed in Sub-Clause 45 [Compensation Event], then the Project Manager may instruct the Contractor to submit, under Sub-Clause 27.2 [Program], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

The contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of contractor's personnel and/or Goods, at the risk and cost of the Contractor.

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Additional costs of revised methods including acceleration measures, instructed by the Project Manager to reduce delays resulting from causes listed under Sub-Clause 45 [Extension of Time for Completion] shall be paid by the Employer.

27.3. 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 Employer again at any time. A revised Program shall show the effect of Variations.

**28. Progress Reports**

28.1. Unless otherwise stated in the SCC, monthly progress reports shall be prepared by the Contractor and submitted to the Project Manager. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates. Reporting shall continue until the Contractor has completed all works. The report shall include:

- (a) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.
- (b) copies of quality assurance documents, test results and certificates of Materials;
- (c) charts and detailed descriptions of progress, including each stage of design (if any), delivery to Site, construction, erection and testing; and including the stages for work by subcontractor; and
- (d) any other details specified in SCC

**29. Extension of the Intended Completion Date**

29.1. The Project Manager shall extend the Intended Completion Date if 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.

29.2. 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 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.

**30. Acceleration**

30.1. 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.

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- 30.2. If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 31. Delays Ordered by the Project Manager**
- 31.1. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 32. Management Meetings**
- 32.1. Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 32.2. The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting. 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.
- 33. Early Warning**
- 33.1. 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.
- 33.2. 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.
- 33.3. If the Contractor considers himself to be entitled to any extension of Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 33.4. If the Contractor fails to give notice of a claim within such period of 30 days, the Employer shall be discharged from all liability in connection with the claim.

**C. Quality Control**

- 34. Identifying Defects** 34.1. 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 to ensure the quality of works executed. 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. The Project Manager at the end of the Contract shall issue a Performance score on Quality out of a total of 70 points based on the guidelines issued by Construction Development Board (CDB).
- 35. Tests** 35.1. If the Project Manager instructs the Contractor to carry out a test not specified in the Specifications to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 36. Correction of Defects** 36.1. The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 36.2. 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.
- 37. Uncorrected Defects** 37.1. 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 to the Employer. At the option of the Employer, payment of such costs may be made in whole or in part by the Employer deducting and keeping for itself appropriate amounts from the Retention Money and/or claiming against any bank guarantee provided by the Contractor pursuant to GCC Sub-Clause 49.3.

**D. Cost Control**

- 38. Bill of Quantities<sup>42</sup>** 38.1. The Bill of Quantities shall contain items for the construction, installation, testing and commissioning work to be done by the Contractor.
- 38.2. The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.



**39. Changes in the Quantities**

- 39.1. If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than twenty percent (20%), provided the cost of variation beyond twenty percent (20%) limit exceeds one percent (1%) of the Initial Contract Value the Employer shall adjust the quoted rate up or down to allow for the change. Only when both conditions are met then the quoted rate shall be changed.
- (a) If the quantity of work executed exceeds the quantity of the item in BOQ beyond the higher specified limit the Employer shall fix the market rate (which may be lower or higher than the quoted rate) to be applied for the additional quantity of the work executed.
- (b) If the quantity of work executed is less than the quantity of the item in BOQ lesser than the lower specified limit, the Employer shall fix the market rate based on the submission of the contractor (which may be lower/higher than the quoted rate) to be applied for whole of the quantity of the work so executed for that particular item.
- 39.2. The rates shall not be adjusted from changes in quantities if thereby the Initial Contract Price is exceeded by more than five percent (5%), except with the prior approval of the procuring agency in consultation with the Tender Committee.
- 39.3. For works upto Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total cost of such deviations exceeds twenty percent (20%) of the initial contract price; prior approval shall be sought from the Competent Authority (Finance Committee constituted in respective agency).
- 39.4. For works above Nu. 50 million, when quantity deviation exceeds twenty percent (20%) from the quantity in BOQ and the total cost of such deviations exceeds twenty percent (20%) of the initial contract price; the procuring agency shall seek prior approval of the Competent Authority (Public Investment Board/Public Investment Coordination Committee).
- 39.5. 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.



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**40. Variations**

- 40.1. The Project Manager shall order any variation of the form, quality or quantity of the Works or any part thereof that may, in his opinion, be necessary. Each variation may include, but is not limited to, any of the following:
- (a) increase or decrease in the quantity of any work included in the Contract,
  - (b) omission of any item of work,
  - (c) change in the character or quality or kind of any such work,
  - (d) change in the levels, lines, position and dimensions of any part of the works,
  - (e) additional work of any kind (not exceeding twenty percent (20%) of the initial contract amount, or the maximum threshold value for the use of Limited Tender whichever is lower), or
  - (f) change in any specified sequence or timing of construction activities.
- 40.2. For works upto Nu. 50 Million, if the value of additional work exceeds twenty percent (20%) of the initial contract price, the procuring agency shall seek prior approval of the Competent Authority (Finance Committee constituted in respective agency).
- 40.3. For works above Nu. 50 Million, if the value of additional work exceeds twenty percent (20%) of the initial contract price, the procuring agency shall seek prior approval of the Competent Authority (Public Investment Board/Public Investment Coordination Committee).
- 40.4. The Project Manager shall make any such variation by issuing written instructions to the Contractor and ensure that such variations are duly noted in the Site Order Register. A variation made shall not, in any way, vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with GCC Clause 41.
- 40.5. The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Project Manager stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence of the progress of the Works. Upon receiving this notice, the Project Manager shall cancel, confirm or vary the instruction.
- 40.6. All Variations shall be included in updated Programs<sup>44</sup> produced by the Contractor.

**41. Payments for Variations**

41.1. The Contractor shall provide the Project Manager analysed rate for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the analysed rates, which shall be given within seven days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

41.2. If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of Project Manager, the quantity of work above the limit stated in GCC Sub-Clause 39.1 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.

41.3. 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.

41.4. If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

41.5. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

**42. Cash Flow Forecasts**

42.1. 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.

**43. Payment Certificates**

43.1. The Contractor shall submit to the Project Manager monthly statements of the value of the work executed, based on the Contractor's records, less the cumulative amount certified previously.

43.2. The Project Manager shall check the Contractor's monthly statement (running account bills) and certify the amount to be paid to the Contractor latest by 30 working days from the date of receipt of contractor's monthly statement in correct and complete form.

43.3. The value of work executed shall be determined by the Project Manager.

43.4. The value of work executed shall comprise the value of the quantities of the items in the Bill of Quantities completed and measurement thereof shall be carried out jointly by the Project Manager, or his Representative, and the Contractor. The Project Manager, or his Representative, shall record the value of the work executed in a measurement book for the purposes of verifying the Contractor's monthly statements. The measurement book shall be signed by the Project Manager or his Representative, and countersigned by the Contractor.

43.5. The value of work executed shall include the valuation of Variations and Compensation Events.

43.6. 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. Payments**

44.1. Payments shall be adjusted for deductions for advance payments, taxes, retention money and any other dues. The Employer shall pay the Contractor within 30 working days from the date of receipt of correct and verified bills/invoices in complete form by the Finance Section.

44.2. If the Employer makes a late payment, the Contractor shall be paid interest only on the late payment amount 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 overdraft facilities availed from respective financial institutes.

44.3. 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 not be paid interest upon the delayed payment as set out in this clause.

44.4. Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

44.5. 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.

**45. Compensation Events for allowing time extension**

45.1. The following shall be Compensation Events allowing for time extension:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 21.1.
- (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, Specifications 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 if provided in SCC.
- (f) 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.
- (g) Other contractors, public authorities, utilities or the Employer do not work within the dates and other constraints stated in the Contract, and they cause delay.
- (h) Other Compensation Events described in the SCC or determined by the Employer and force majeure. "Force Majeure" means an exceptional event or circumstance:
  - (i) which is beyond a Party's control,
  - (ii) which such Party could not reasonably have provided against before entering into the Contract,
  - (iii) which, having arisen, such Party could not reasonably have avoided or overcome, and
  - (iv) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (i) to (iv) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (iv) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

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However, force majeure shall not include the following;

- (i) rainfall
- (ii) snowfall
- (iii) strikes in other countries
- (iv) non-availability of laborer and materials such as timbers, boulders, sand, and other materials
- (v) difficulty and risky terrain and remoteness of site

45.2. If a Compensation Event would prevent the work being completed before the Intended Completion Date, the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Intended Completion Date shall be extended.

45.3. The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning.

#### 46. Tax

46.1. The prices bid by the contractor shall include all duties, taxes and levies that may be levied in accordance with the laws and regulations in being as of the date 30 days prior to the closing date for submission of bids.

#### 47. Currencies

47.1. Where payments are made in currencies other than Ngultrum (Nu), the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

#### 48. Price Adjustment

48.1. If during the contract, there is an increase or decrease in the cost of materials as reflected by the Material Index Numbers published by the National Statistical Bureau (NSB), a corresponding increase or decrease in the payment to the contractor or recoverable from the Contractor shall be effected on the basis of the following formulae, such calculation being done for every successive period of 3 months after the 12th month of the Contract duration:  
Adjustment for variation of material prices:

$$V = W \times 0.80 \times 0.75 \times (M - M_0) / M_0$$

where:

V = amount of variation for materials payable to/recoverable from the contractor for the period under review;

W = value of the work done during the period under review minus (amount of secured advance recovered in the same period + value of works executed under variations for which the variations are paid in the new rate);

M<sub>0</sub> = Material Index for the month in which the tender was submitted;

M = the average value of the above Index Number for the 3 months period under review;

48.2. For the applications of the above formulae, the appropriate Index Numbers published by the National Statistical Bureau shall be adopted.

48.3. To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

48.4. Price Adjustment shall apply only for work carried out within the stipulated time or extensions granted by the Procuring Agency and shall not apply to work carried out beyond the stipulated time for reasons attributable to the Contractor.

#### **49. Retention**

49.1. The Employer shall retain ten percent (10%) from each payment due to the Contractor in the proportion stated in the SCC until Completion of the whole of the Works as retention money.

49.2. On completion of the whole of the works, half the total amount retained shall be repaid to the Contractor and half when defects liability period has passed and the Engineer has certified that all defects notified by the Engineer to the Contractor before the end of this period have been corrected.

49.3. On completion of the whole of the works, the contractor may substitute the balance half of retention money by an unconditional bank guarantees. In the case of contracts beyond duration of 12 months, substitution of retention money by such a bank guarantee may be allowed on completion of 50% of the value of contract and duly certified by the Project Manager. The bank guarantee shall be valid until the issue of No Defects Liability Certificates by the Project Manager that all defects notified by the Project Manger to the Contractor have been rectified to his satisfaction before the end of this period. If the Contractor fails to remedy any reported defect within the Defect Liability Period, the Employer shall withhold the payment or realize claims from the bank guarantee of an amount which in the opinion of the Employer represents the cost of the defect to be remedied.

#### **50. Liquidated Damages**

50.1. 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 ten percent (10%) of the Initial Contract Price. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

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**51. Advance Payment**

51.1. The Employer shall make advance payment to the Contractor of the amount stated in the SCC (mobilization) by the date stated in the SCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. 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.

51.2. The secured advances shall be paid to the contractor as specified in SCC on the following conditions:

- (a) The materials shall be in accordance with the specifications and shall not be in excess of the requirements;
- (b) The materials shall be delivered at the site of the works, properly stored and protected against loss, damage or deterioration;
- (c) A declaration shall be given by the contractor passing on the lien on the rights of the materials to the Procuring Agency.
- (d) The amount of the secured advance shall not be more than seventy five percent (75%) of the cost of materials delivered at the site of works which shall be supported by the original invoices/bills from the suppliers. All materials imported from other countries shall be supported by Bhutan Sales Tax Receipts or Customs Clearance. In case of fabrication works off site, secured advance may be paid to the Contractor after site inspection is carried out by the Procuring Agency at the cost of the contractor, submission of proof of payment (work order) and submission of supply order.

The secured advance shall be recovered from the interim progress payments in the months in which these materials are used in the works.

51.3. The Contractor is to use the advance payment only to pay for, Equipments, Plant, Materials and mobilization expenses required specifically for execution of the Contract. The contractor shall demonstrate that advance has been used in this way by supplying copies of invoices or other documents to the project manager. The manager shall encash the advance guarantee if the contractor is in breach of its obligation by using the advance payment for purpose other than the costs of mobilization in respect of the works.

51.4. 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. The Mobilization Advance shall be recovered when eighty percent (80%) of the contract is executed. 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.



**52. Securities**

52.1. The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount specified in the SCC by a bank 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 30 days from the date of issue of the Certificate of Completion.

52.2. Following the successful completion of the Contract, the Employer shall return the Performance Security to the Contractor within 14 days of receipt of the Certificate of Completion.

52.3. The Employer shall encash the performance security to avoid it becoming invalid in case of failure by contractor to extend the validity.

52.4. The performance security (*including additional performance security obtained under abnormally low pursuant to ITB Clause 31 and seriously unbalanced and/or frontloaded bid pursuant to ITB Clause 32*) shall be payable to the employer as compensation for any loss resulting from the contractor's failure to complete its obligations under the contract.

**53. Day works**

53.1. If applicable, the Day works rates in the Contractor's Bid shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

53.2. All work to be paid for as Day works 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 2 days of the work being done.

53.3. The Contractor shall be paid for Day works subject to obtaining signed Day works forms and at the rate quoted for Day works.

**54. Cost of Repairs**

54.1. 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. Completion of the Contract****55. Completion**

55.1. 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 work is completed.

55.2. An on-time completion out of a total of thirty percent (30%) scoring shall be done by the Program Manager. The contractor shall be penalized under this component if he fails to deliver the project as per the initial time-lines committed in the Program.

The site engineer shall penalize the contractor to an extent of thirty percent (30%). The quantum of penalty could vary as following:

- (i) Ten (10%) percent for a minor default  
(if the final completion of the project is delayed by 10 - 15% as compared to original project duration)
- (ii) Twenty percent (20%) for a medium default  
(if the final completion of the project is delayed by 15 - 25% as compared to original project duration)
- (iii) Thirty percent (30%) for a major default  
(if the final completion of the project is delayed by 25% or more as compared to original project duration)

55.3. At the time of taking over the work, the project Manager shall ensure that the contractor constructs a permanent information board as specified in SCC:

#### **56. Taking Over**

56.1. The Employer shall take over the Site and the Works and shall issue the completion Certificate within 7 days of taking over. The completion certificate shall include the following mandatory information:

- (i) Name of Contract firm
- (ii) Name of Proprietor
- (iii) CDB Registration No.
- (iv) Trade License No.
- (v) Contract Amount
- (vi) Year of Completion
- (vii) Award order No. with Date.

#### **57. Final Account**

57.1. 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 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 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.

#### **58. Operating and Maintenance Manuals**

58.1. If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.

58.2. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount stated in the SCC from payments due to the Contractor.

**59. Termination**

- 59.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 59.2. Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
  - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) The Contractor fails to employ the personnel and equipment proposed pursuant to GCC clause 10.1,
  - (e) 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;
  - (f) the Project Manager gives notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - (g) the Contractor does not maintain a security, which is required;
  - (h) the Contractor subcontracts any or whole of the Works without the approval of the Employer;
  - (i) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as defined in the SCC; and
  - (j) in case of joint venture any or all parties fail to fulfil the contractual obligations.
  - (k) Fails to execute the contract in accordance with the contract, such failure being defined in SCC;
  - (l) refuses or is unable to execute and complete the Works and Services in the manner specified in the program furnished under GC Clause 27 at rates of progress that give reasonable assurance to the Employer that the Contractor can attain completion of the works and services by the Time for Completion as extended.

For fundamental breach of contract by contractor the employer shall give notice of a breach of contract for causes listed under GCC sub-clause 59.2 above and requiring the contractor to remedy the same. If the Contractor fails to remedy or to take steps to remedy the same within fifteen (15) days of its receipt of such notice, then the Employer may terminate the Contract forthwith by giving a notice of termination to the Contractor that refers to this GC Sub-Clause 59.2.

For fundamental breach of contract by employer the Contractor shall give a notice to the Employer thereof to remedy the breach within thirty (30) days of such notice and if the Employer is still unable to carry out any of its obligations under the Contract for any reason attributable to the Employer within thirty (30) days of the said notice, the Contractor may by a further notice to the Employer referring to this GC Sub-Clause 59.2, forthwith terminate the Contract.

59.3. 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 Sub-Clause 59.2 above, the Project Manager shall decide whether the breach is fundamental or not.

59.4. Notwithstanding the above, the Employer may terminate the Contract for convenience.

59.5. 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.

#### **60. Corrupt or Fraudulent Practices**

60.1. If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of GCC Sub-Clause 60.4 to 60.8 shall apply.

60.2. Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with GCC Sub-Clause 10.2

60.3. For the purposes of this Sub-Clause:

- (a) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (b) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

- (c) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (d) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (e) “obstructive practice” is
  - ⓐ deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order materially to impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - ⓑ acts intended materially to impede the exercise of the inspection and audit rights of the Employer and/or any other relevant RGoB agency provided for under GCC Clause 23.

60.4. will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

60.5. will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded an RGoB-financed contract if it at any time determines that they have, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an RGoB-financed contract;

60.6. Will have the right to require that a provision be included in Bidding Documents and in contracts financed by the RGoB, requiring Bidders, Suppliers, Contractors and their Subcontractors to permit the Purchaser, any organization or person appointed by the Purchaser and/or any relevant RGoB agency to inspect their accounts and records and other documents relating to their Bid submission and contract performance and to have them audited by auditors appointed by the Purchaser;

60.7. Requires that Bidders, as a condition of admission to eligibility, execute and attach to their bids an Integrity Pact Statement in the form provided in the Bidding Documents which shall also be signed by procuring agencies; and

60.8. Will report any case of corrupt, fraudulent, collusive, coercive or obstructive practice to the relevant RGoB agencies, including but not limited to the Anti-Corruption Commission (ACC) of Bhutan, for necessary action in accordance with the statutes and provisions of the relevant agency.

**61. Payment upon Termination**

61.1. 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 work not completed, as indicated in the SCC. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor to the Employer.

61.2. 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.

**62. Property**

62.1. All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the Employer if the contract is terminated because of a Contractors default.

**63. Release from Performance**

63.1. 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.