

PART II

Section 8. Conditions of Contract and Contract Forms

Foreword

1. Part II includes two types of standard Contract forms for Consulting Services (a Time-Based Contract and a Lump-Sum Contract) that are based on the contract forms included in the harmonized Request for Proposals (RFP) (Master Document for Selection of Consultants prepared by participating Multilateral Development Banks (MDBs)).
2. **Time-Based Contract.** This type of contract is appropriate when it is difficult to define or fix the scope and the duration of the services, either because they are related to activities carried out by others for which the completion period may vary, or because the input of the consultants required for attaining the objectives of the assignment is difficult to assess. In time-based contracts the Consultant provides services on a timed basis according to quality specifications, and Consultant's remuneration is determined on the basis of the time actually spent by the Consultant in carrying out the Services and is based on (i) agreed upon unit rates for the Consultant's experts multiplied by the actual time spent by the experts in executing the assignment, and (ii) reimbursable expenses using actual expenses and/or agreed unit prices. This type of contract requires the Client to closely supervise the Consultant and to be involved in the daily execution of the assignment.
3. **Lump-Sum Contract.** This type of contract is used mainly for assignments in which the scope and the duration of the Services and the required output of the Consultant are clearly defined. Payments are linked to outputs (deliverables) such as reports, drawings, bill of quantities, bidding documents, or software programs. Lump-sum contracts are easier to administer because they operate on the principle of a fixed price for a fixed scope, and payments are due on clearly specified outputs and milestones. Nevertheless, quality control of the Consultant's outputs by the Client is paramount.
4. The templates are designed for use in assignments with consulting firms and shall not be used for contracting of individual experts. These standard Contract forms are to be used for complex and/or large value assignments, and/or for contracts above US\$300,000 equivalent or more unless otherwise approved by the AIFFP Financier.

TIME-BASED FORM OF CONTRACT
STANDARD FORM OF CONTRACT

Consultant's Services

Time-Based

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CONTRACT FOR CONSULTANT'S SERVICES Time-Based

Project Name _____

Assignment Title:_____

Contract No. _____

between

[Name of the Client]

and

[Name of the Consultant]

Dated: _____

I. Form of Contract

TIME-BASED

(Text in brackets [] is optional; all notes should be deleted in the final text)

This CONTRACT (hereinafter called the “Contract”) is made the *[number]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Client or Recipient]* (hereinafter called the “Client”) and, on the other hand, *[name of Consultant]* (hereinafter called the “Consultant”).

[If the Consultant consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Client”) and, on the other hand, a Joint Venture (name of the JV) consisting of the following entities, each member of which will be jointly and severally liable to the Client for all the Consultant’s obligations under this Contract, namely, [name of member] and [name of member] (hereinafter called the “Consultant”).]

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
 - (b) the Consultant, having represented to the Client that it has the required professional skills, expertise and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract; and
 - (c) the Client has received *[or has applied for]* *[a loan [and]]*/ *[a grant]* from the AIFFP Financier toward the cost of the Services and intends to apply a portion of the proceeds of this *[loan and/or grant]* to eligible payments under this Contract, it being understood that (i) payments by the AIFFP Financier will be made only at the request of the Client and upon approval by the AIFFP Financier; (ii) such payments will be subject, in all respects, to the terms and conditions of the financing agreement, including prohibitions on the disbursement or drawdown of funding for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the AIFFP Financier, will be made to or for the benefit of a Restricted Party (defined in the Instructions to Consultants); and (iii) no party other than the Client shall derive any rights from the financing agreement or have any claim to the *[loan /grant]* proceeds.
-

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract (including Attachment 1 “Fraud and Corruption”;
- (b) The Special Conditions of Contract;
- (c) Appendices:

Appendix A: Terms of Reference

Appendix B: Key Experts

Appendix C: Remuneration Cost Estimates

Appendix D: Reimbursables Cost Estimates

Appendix E: Form of Advance Payments Guarantee

Appendix F: Code of Conduct (ES)

In the event of any inconsistency between the documents, the following order of precedence shall prevail: the Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A; Appendix B; Appendix C and Appendix D; Appendix E; and Appendix F. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of *[Name of Client]*

[Authorized Representative of the Client – name, title and signature]

For and on behalf of *[Name of Consultant or Name of a Joint Venture]*

[Authorized Representative of the Consultant – name and signature]

[For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached.]

For and on behalf of each of the members of the Consultant [insert the name of the Joint Venture]

[Name of the lead member]

[Authorized Representative on behalf of a Joint Venture]

[add signature blocks for each member if all are signing]

II. General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) **“AIFFP”** means either of the following as the context requires:
 - (i) the Commonwealth of Australia acting through the Department of Foreign Affairs and Trade (hereinafter called “DFAT”) in relation to funding under the Australian Infrastructure Financing Facility for the Pacific; and
 - (ii) the funding program established by the Government of Australia as the Australian Infrastructure Finance Facility for the Pacific provided through grants and loans, with Export Finance Australia as it is the lender of record.
 - (b) **“AIFFP Financier”** means AIFFP and EFA.
 - (c) **“Applicable Law”** means the laws and any other instruments having the force of law in the Client’s country, or in such other country as may be specified in the **Special Conditions of Contract (SCC)**, as they may be issued and in force from time to time.
 - (d) **“Child Exploitation, Abuse and Harm”** or **“CHEAH”** means the following:
 - (i) **Child Abuse** means physical abuse, neglect, emotional abuse, sexual abuse or ill-treatment.
 - (ii) **Child Exploitation** means one or more of the following:
 - committing or coercing another person to commit an act or acts of abuse against a child;
 - possessing, controlling, producing, distributing, obtaining or transmitting child exploitation material;
 - committing or coercing another person to commit an act or acts of grooming or online grooming; or
 - using a minor for profit, labour, sexual gratification, or some other personal or financial advantage.
 - (iii) **Child Harm** means any detrimental effect on a child’s physical, psychological or emotional wellbeing. Harm may be caused by financial, physical or emotional abuse, neglect, and/or sexual abuse or exploitation whether intended or unintended.

- (e) **“Client”** means the implementing agency that signs the Contract for the Services with the Selected Consultant.
- (f) **“Client’s Personnel”** refers to the staff, labour and other employees (if any) of the Client engaged in fulfilling the Client’s obligations under the Contract; and any other personnel identified as Client’s Personnel, by a notice from the Client to the Consultant.
- (g) **“Consultant”** means a legally-established professional consulting firm or entity selected by the Client to provide the Services under the signed Contract.
- (h) **“Consultant’s Personnel”** refers to the staff, labour, other employees (if any) and Sub-consultants of the Consultant engaged in fulfilling the Consultant’s obligations under the Contract; and any other personnel identified as Consultant’s Personnel, by a notice from the Consultant to the Client.
- (i) **“Contract”** means the legally binding written agreement signed between the Client and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- (j) **“Contractor”** means the person named as contractor in the contract to be supervised by the Consultant.
- (k) **“Contractor’s Personnel”** means personnel whom the Contractor utilises in the execution of its contract, including the staff, labour and other employees of the Contractor and each subcontractor; and any other personnel assisting the Contractor in the execution of the contract to be supervised by the Consultant.
- (l) **“COVID-19 Event”** means an event or disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Services caused as a direct result of the COVID-19 Pandemic, provided that the adverse effect is one which the Consultant could not have avoided or overcome by the taking of all reasonable steps (but without the need to expend additional costs).
- (m) **“COVID-19 Pandemic”** means the disease known as Coronavirus (COVID-19) which was classified as a pandemic by the World Health Organisation on 11 March 2020.
- (n) **“Criminal Code Act”** means the list of organisations that are specified as a “terrorist organisation” by regulations made under the Criminal Code Act 1995 (Cth) (this list is currently available at

<https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>).

- (o) **“Day”** means a working day unless indicated otherwise.
- (p) **“Debarment List”** means any publicly-available debarment list of any one of the following institutions: African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group.
- (q) **“DFAT”** means the Australian Government Department of Foreign Affairs and Trade.
- (r) **“Export Finance Australia”** or **“EFA”** means the Export Finance and Insurance Corporation established under the *Export Finance and Insurance Corporation Act 1991* (Cth).
- (s) **“ES”** means environmental and social (including SEAH, CHEAH and Modern Slavery).
- (t) **“Effective Date”** means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- (u) **“Experts”** means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant or Sub-consultant or JV member(s) assigned by the Consultant to perform the Services or any part thereof under the Contract.
- (v) **“Foreign Currency”** means any currency other than the currency of the Client’s country.
- (w) **“Financing Recipient”** means the person (if any) named as the Financing Recipient in the Contract Data.
- (x) **“GCC”** means these General Conditions of Contract.
- (y) **“Government”** means the government of the Client’s country.
- (z) **“Joint Venture (JV)”** means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
- (aa) **“Key Expert(s)”** means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (bb) **“Laws”** means any applicable common law, principles of equity, statute and official directive of any public authority (and

a reference to statute includes any rule, regulation ordinance, by law, statutory instrument, order or notice and other instruments under them, and in each case, consolidations, amendments, re-enactments or replacements of any of them).

- (cc) **“Local Currency”** means the currency of the Client’s country.
- (dd) **“Modern Slavery”** has the meaning given to that term in Clause GCC 33.
- (ee) **“Modern Slavery Prevention and Response Obligations”** means the Consultant’s obligations in regards to the prevention of and response to modern slavery as set forth in Clause GCC 31, 32 and 33.
- (ff) **“Non-Key Expert(s)”** means an individual professional provided by the Consultant or its Sub-consultant to perform the Services or any part thereof under the Contract.
- (gg) **“Party”** means the Client or the Consultant, as the case may be, and **“Parties”** means both of them.
- (hh) **“Restricted Party”** means:
 - (i) a person listed on any Sanctions List;
 - (ii) a person that has a primary place of business in, or is incorporated or organised under the Laws of a country or territory that is the target of country-wide or territory-wide Sanctions;
 - (iii) any person or entity that is a target of Sanctions (including by way of beneficial ownership); or
 - (iv) a person directly or indirectly engaged in preparing, planning, assisting in or the doing of a terrorist act.
- (ii) **“Sanctions”** means the trade or economic sanctions, Laws, regulations, embargoes or restrictive measures administered, enacted or enforced by:
 - (i) Australia;
 - (ii) the United Nations;
 - (iii) the United States;
 - (iv) the European Union;
 - (v) the United Kingdom;
 - (vi) the Client’s Country; or
 - (vii) the respective governmental institutions and agencies of any of the foregoing, including DFAT, Office of Foreign Assets Control of the US Department of Treasury, the

United States Department of State and Her Majesty's Treasury,

collectively, paragraphs (a) - (g) of this definition are the Sanctions Authorities and each a Sanctions Authority.

- (jj) **"Sanctions Authority"** has the meaning given to it in the definition of "Sanctions".
- (kk) **"Sanctions List"** means the Consolidated List of DFAT, the Criminal Code Act List, the 'Specially Designated Nationals and Blocked Persons' list maintained by the Office of Foreign Assets Control of the US Department of Treasury, the Consolidated List of Targets and the Investment Ban List maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of Sanctions designation made by, any of the Sanctions Authorities (as defined in the definition of "Sanctions"), including any sanctions list of the Client's Country which the Consultant is notified of.
- (ll) **"SCC"** means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- (mm) **"Services"** means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (nn) **"Sexual Exploitation, Abuse and Harassment" "(SEAH)"** means the following:
 - (i) **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.
 - (ii) **Sexual Abuse** is defined as the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. It covers sexual offences including but not limited to: attempted rape (which includes attempts to force someone to perform oral sex); and sexual assault (which includes non-consensual kissing and touching).
 - (iii) **Sexual Harassment** is defined as unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature or engages in other unwelcome conduct of a sexual nature by the Consultant's Personnel or Sub-Consultant's Personnel, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or

intimidated. Sexual harassment can be perpetrated against beneficiaries, community members, citizens, other Consultant's Personnel, Contractor's Personnel as well as Sub-consultant's Personnel or Client's Personnel.

- (oo) **"SEAH Prevention and Child Prevention and Response Obligations"** means the Consultant's obligations with regards to the prevention of and response to SEAH and CHEAH as set forth in Clauses GCC 20, 36, 37 and 38.
- (pp) **"Site"** means the land and other places where works are to be executed and/or facilities to be installed, and such other land or places as may be specified in the Contractor's contract as forming part of the Site.
- (qq) **"Sub-consultants"** means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.
- (rr) **"Third Party"** means any person or entity other than the Government, the Client, the Consultant, or a Sub-consultant.

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| 2. Relationship between the Parties | 2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder. |
| 3. Law Governing Contract | 3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law. |
| 4. Language | 4.1. This Contract has been executed in the language specified in the SCC, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. |
| 5. Headings | 5.1. The headings shall not limit, alter or affect the meaning of this Contract. |
| 6. Communications | 6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC. |

- 6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.
- 7. Location**
- 7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
- 8. Authority of Member in Charge**
- 8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
- 9. Authorized Representatives**
- 9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the **SCC**.
- 10. Fraud and Corruption**
- 10.1. The parties acknowledge and agree that the AIFFP Financier requires compliance with and observance of (including by the Client and the Consultant, the Consultant's Personnel, and any Sub-consultant) the AIFFP fraud and corruption requirements as set forth in Attachment 1 to the GCC.
- a. Commissions and Fees**
- 10.2. The Client requires the Consultant 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 selection 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. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 11. Effectiveness of Contract**
- 11.1. This Contract shall come into force and effect on the date (the "Effective Date") of the Client's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.
- 12. Termination of Contract for**
- 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**,

Failure to Become Effective	either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
13. Commencement of Services	13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC .
14. Expiration of Contract	14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC .
15. Entire Agreement	15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
16. Modifications or Variations	<p>16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.</p> <p>16.2. In cases of substantial modifications or variations, the prior written consent of the AIFFP Financier is required.</p>
17. Force Majeure	
a. Definition	<p>17.1. For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.</p> <p>17.2. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Experts, Sub-consultants or agents or employees, (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this</p>

Contract, and avoid or overcome in the carrying out of its obligations hereunder, or (iii) any COVID-19 Event.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract

17.4. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken

17.5. A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7. Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8. During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.

17.9. In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 58 & 59.

d. COVID-19 Events

17.10. This Clause GCC 17d. applies to COVID-19 Events and not to any other events that arise as a consequence of a different pandemic.

17.11. Despite any other provision of this Contract, if the Consultant is unable to perform or is delayed in performing an obligation under the Contract (other than an obligation to pay money), by reason of a COVID-19 Event (**Affected Obligation**), the Consultant must give the Client a written notice which:

- (a) sets out details of the COVID-19 Event (including the effect of the event on the Affected Obligation or the Contract and details of insurance available to mitigate damage if any);
- (b) estimates the likely period of time that the Consultant will not be able to perform, or will be delayed in performing, the Affected Obligation; and
- (c) provides details of any action that it has taken, or proposes to take, to remedy the effect of the COVID-19 Event on the Affected Obligation and any likely cost or time consequences.

17.12. Upon receipt of a notice under Clause GCC 17.11 the Client will advise the Consultant in writing whether the Client agrees that a COVID-19 Event has occurred, in which case the remainder of this clause 8.13 will apply.

17.13. The Consultant must:

- (a) arrange a meeting with the Client within 24 hours' of receipt of a notice under Clause GCC 17.11 above;
- (b) take all reasonable steps to avoid, remove or limit the effects of the COVID-19 Event on the Affected Obligation as quickly as possible and re-commence performing the Affected Obligation soon as possible;
- (b) give weekly written notice to the Client on the status of the COVID-19 Event and its effect on the Affected Obligation; and
- (c) notify the Client in writing as soon as the COVID-19 Event and its effect on the Affected Obligation ceases.

17.14. Provided that the Consultant has complied, or is continuing to comply, with the obligations in Clause GCC 17.11 and Clause GCC 17.13, no failure or omission by the Consultant to perform the Affected Obligation will be a breach of this Contract in so far as the failure or omission in the performance of such obligation by the Consultant is caused by the COVID-19 Event specified in the written notice to the Client.

- 17.15. In response to a written notice given by the Consultant under Clause GCC 17.11, the Client may, in its discretion (but acting reasonably):
- (a) request that the Consultant submits a written claim for an extension of time to the performance of the Services in accordance with the Contract, for assessment in accordance with the Contract;
 - (b) request that the Consultant submits, in accordance with, and based on any rates and prices set out in, the Contract, a written claim for the Consultant's reasonable costs incurred as a direct result of any delay in completion of the Services, for assessment in accordance with the Contract;
 - (c) direct a suspension of the relevant obligation, so far and for so long as it is affected by the COVID-19 Event;
 - (d) direct a suspension of the Contract;
 - (e) reduce the scope of the Services; and/or
 - (f) terminate the Contract if, in the Client's view, the performance by the Consultant of the Contract in accordance with its terms is, becomes, or is likely to become, impracticable or inconsistent with Australian Government policy, in which case the provisions Clause GCC 19a. will apply.
- 17.16. During the period of the COVID-19 Event, the Client may, but is not obliged to, make alternative arrangements for the performance of any Affected Obligation, including engaging another person to perform the Affected Obligation without incurring any liability to the Consultant. Where the Client exercises its rights under this clause, the Client will notify the Consultant in writing that the Affected Obligation is no longer required and the Contract will be deemed to have been varied accordingly.
- 17.17. During the period of the COVID-19 Event, unless otherwise agreed by the parties, the Client is only liable to pay the Consultant for Services performed by the Consultant in accordance with the Contract.
- 17.18. The Consultant waives any right to make any claim under the Contract, whether for time, cost, profit or loss of profit or opportunity, for any disruptions or restrictions to the Consultant, or for any directions issued or actions taken by the Client, in relation to the COVID-19 Pandemic or any COVID-19 Event except as expressly permitted under this Clause GCC 17d.

- 18. Suspension** 18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.
- 19. Termination** 19.1. This Contract may be terminated by either Party as per provisions set up below:
- a. By the Client** 19.1.1 The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):
- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
 - (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
 - (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 60.1;
 - (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
 - (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
 - (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.
- 19.1.2 If the Consultant, in the judgment of the Client has engaged in Fraud and Corruption, as defined in paragraph 2 of Attachment 1 to the GCC, in competing for or in executing the Contract,

then the Client may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the Contract.

b. By the Consultant

19.1.3 The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 60.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 60.1.
- (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25 and to cooperate and assist in any inspection or investigation, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5 Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close and (where requested by the Client) to assign the Sub-consultants agreements used to perform these Services to the Client in a prompt and orderly manner and shall make every

reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.

e. Payment upon Termination

19.1.6 Upon termination of this Contract, the Client shall make the following payments to the Consultant:

- (a) remuneration for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures for expenditures actually incurred prior to the effective date of termination; and pursuant to Clause GCC 52;
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

20. General

a. Standard of Performance

20.1. The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.

20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-consultants as are required to carry out the Services.

20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-consultants as may be approved in advance by the Client or otherwise with the Client's prior written consent. The Consultant shall retain full responsibility for the Services and shall ensure that proposed Key Experts or Sub-consultants are not on a Debarment List and are not a Restricted Party and shall take reasonable steps (including

actively monitoring its Sub-consultants) to ensure its Sub-consultants are not involved in Modern Slavery.

20.4. The Consultant shall require that its Sub-Consultants and Key Experts execute the Services in accordance with this Contract, including complying with the relevant ES requirements, SEAH, CHEAH and Modern Slavery Prevention and Response Obligations to the extent all subcontracts relating to the Services shall include provisions which entitle the Client to require the subcontract to be assigned to the Client under Clause GCC 19.1.5.

**b. Law
Applicable to
Services**

20.5. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.

20.6. The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

21. Conflict of Interest

21.1. The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

**a. Consultant
Not to Benefit
from
Commissions,
Discounts, etc.**

21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 51 through 57) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-consultants, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.

21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Procurement Regulations, and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.

**b. Consultant
and Affiliates
Not to Engage**

21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting

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| <p>in Certain Activities</p> | <p>from or directly related to the Consultant's Services for the preparation or implementation of the project.</p> |
| <p>c. Prohibition of Conflicting Activities</p> | <p>21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-consultants not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.</p> |
| <p>d. Strict Duty to Disclose Conflicting Activities</p> | <p>21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-consultants shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Contract.</p> |
| <p>22. Confidentiality</p> | <p>22.1. Except with the prior written consent of the Client or where the confidential information is being disclosed to the AIFFP Financier for the purposes of clause GCC 25, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services (including the terms and parties of this Contract and any other document supplied in connection with the Services which either specifically indicated as being confidential or by their nature reasonably ascertainable as being confidential), nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.</p> |
| <p>23. Liability of the Consultant</p> | <p>23.1. Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.</p> |
| <p>24. Insurance to be taken out by the Consultant</p> | <p>24.1. The Consultant (i) shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.</p> |
| <p>25. Accounting, Inspection and Auditing</p> | <p>25.1. The Consultant must at all times maintain, and shall make all reasonable efforts to cause its Sub-consultants to maintain, full, separate, accurate, up-to-date and systematic accounts, records</p> |

and books in respect of the Services and this Contract and any payments received under it, including operational records, financial records and records in relation to the payments in such form and detail as will clearly identify relevant time changes and costs. Such records, books and accounts must, without limitation:

- (a) record all operational activities in relation to this Contract, including to enable the prevention, detection and investigation of fraudulent activity as required under this contract, including Clause GCC 10 and Attachment 1 to the GCC;
- (b) record amounts paid to the Consultant on account of or otherwise in accordance with this Contract;
- (c) enable all receipts and expenses related to this Contract to be identified and reported in accordance with this Contract;
- (d) be kept in a manner that permits them to be conveniently and properly audited or reviewed;
- (e) enable the extraction of all information relevant to this Contract; and
- (f) retain and require its Sub-consultants to retain for a period of seven years after the expiry or termination of this contract, all records, books and accounts relating to the project and the funds received.

25.2. The Consultant shall permit and shall cause its agents (where declared or not), subcontractors, subconsultants, service providers, suppliers, and personnel, to permit the Client and AIFFP Financier and/or persons appointed by the AIFFP Financier, at reasonable times and on giving reasonable notice, to:

- (a) access and inspect, during the term of the Contract and for up to seven (7) years from the completion of the Services:
 - (i) the premises, facilities or construction sites where the Services are performed;
 - (ii) premises where materials described in Clause GCC 25.2(c) are kept; or
 - (iii) premises which are otherwise used or occupied by the Consultant,for the purpose of the project;

- (b) inspect assets, services or supplies purchased using the remuneration paid to the Consultant pursuant to Clause GCC 51 of this Contract; or
- (c) inspect accounts (including business and financial records), records, books and other documents relating to the procurement process, selection, contract execution and/or arising out of or connected to the project and this Contract, however stored, in the custody or under the control of the Consultant or its personnel; or
- (d) to take copies and to have such accounts, records, books and other documents audited by auditors appointed by the AIFFP Financier.

26. Reporting Obligations

26.1. The Consultant shall submit to the Client the reports and documents specified in **Appendix A**, in the form, in the numbers and within the time periods set forth in the said Appendix.

27. Proprietary Rights of the Client in Reports and Records

27.1. Unless otherwise indicated in the **SCC**, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

27.2. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the **SCC**.

28. Equipment, Vehicles and Materials

28.1. Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and

materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2. Any equipment or materials brought by the Consultant or its Experts into the Client's country for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

29. Health and Safety

29.1. The Consultant 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) provide or cause to be provided health and safety training of Experts as appropriate and maintain training records;
- (d) put in place workplace processes for Experts 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;
- (e) Experts 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. Experts shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal; and
- (f) establish and implement a system for regular (not less than six-monthly) review of health and safety performance and the working environment.

30. Code of Conduct

30.1. The Consultant shall have a Code of Conduct for the Experts.

The Consultant shall take all necessary measures to ensure that each Expert is made aware of the Code of Conduct including specific behaviors that are prohibited, and understands the consequences of engaging in such prohibited behaviors.

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

The Consultant shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site, 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 Experts, Contractor's Personnel, Client's Personnel and the local community.

The Consultant shall take all necessary measures to ensure all of its Experts comply with its Code of Conduct.

30A. Restricted Practices, Debarment and preventing financing of Terrorism

30A.1 Equipment, material, and services required for the Services shall not have their origin:

- (a) in a country on a Sanctions List.
- (b) from a Restricted Party
- (c) from a party on a Debarment List

The Consultant shall also ensure that it, and its Sub-contractors, at all times during the Contract are not Restricted Parties, and are not on a Debarment List.

In addition to the above, the Contractor shall, and shall procure that each of its Sub-consultants will ensure that no funds are used, directly or indirectly, to provide support to individuals or entities who are a Restricted Party or are on a Debarment List.

The Consultant shall immediately notify the Client if the Consultant or any of the Consultant's Personnel or a Sub-consultant are or become:

- (a) a Restricted Person or a person associated with terrorism;
- (b) listed on a Debarment List;
- (c) subject to any proceedings or any informal process which could lead to listing on a Debarment List;
- (d) temporarily suspended from tendering from World Bank contracts by the World Bank, or by any other donor of development funding in relation to Contracts funded by that donor, pending the outcome of a sanctions process; or
- (e) the subject of an investigation (whether formal or informal) by the World Bank, the AIFFP Financier or another donor of development funding.

31. Forced Labour and Trafficking

31.1. The Consultant, including its Subconsultants, shall not employ or engage forced labour. Forced labour consists of any work or service, not voluntarily performed, that is exacted from an

individual under threat of force or penalty (whether against the victim or another person), and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour, serfdom or similar labour-contracting arrangements and regardless of whether or not escape from the condition is practically possible for the victim or if the victim has attempted to escape from the condition (**Forced Labour**).

No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as:

- (a) 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; and
- (b) any other act which would constitute trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27) (**Trafficking**).

32. Child Labour

32.1. The Consultant, including its Subconsultants, shall not employ or engage child labour. For this purpose, Child Labour is defined as:

- (c) any work or service performed by a child under the age of 16 unless the national law specifies a higher age as the minimum age (the minimum age).
- (d) any work or service performed by 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; and
- (e) any other conduct that constitutes the worst forms of child labour under Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

The Consultant, including its Subconsultants, 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

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

33. Modern Slavery

33.1. In this clause, Modern Slavery means:

- (a) any conduct prohibited under Clauses GCC 31 and 32; and
- (b) any other activity, practice or conduct that:
 - (i) causes a person to enter into or remain in slavery or a slavery-like condition;
 - (ii) is otherwise prohibited or defined as ‘modern slavery’ for the purposes of any offence under any applicable laws concerned with anti-slavery or human trafficking in a relevant jurisdiction.

Without limiting its obligations under Clauses GCC 31 and 32, the Consultant:

- (a) must take reasonable steps to identify, assess, address and investigate risks of Modern Slavery practices in the operations and supply chain used in performing the Contract, and including that of its Sub-consultants,
- (b) must implement and maintain the necessary measures to prevent and remediate Modern Slavery in its operations and supply chain used in performing the project, including implementing appropriate due diligence, risk

- assessment and remediation programs and any specific requirements set out in the Terms of Reference (TORs);
- (c) comply with all applicable Laws relating to Modern Slavery from time to time in force and upon request, provide verification evidence as to validate compliance with applicable Laws relating to Modern Slavery;
- (d) require its Sub-consultants, suppliers and manufacturers to immediately notify the Consultant of any incidents of Modern Slavery;
- (e) immediately notify the Client of any actual or alleged incident of Modern Slavery on the site, or premises of Sub-consultants, suppliers or manufacturers;

Where any incident of Modern Slavery is identified in relation to the Contractor's Personnel or a Sub-consultant the Consultant shall take measures to remedy, or require the Sub-consultant to take appropriate steps to remedy, the incident..

Without limiting the above, where any incident of Modern Slavery has been confirmed in relation to the Contractor, its Personnel or a Sub-Consultant, the Client may apply remedies which may include some of all of the following:

- (a) the Client requiring the Consultant to remove the involved Personnel, Sub-consultant or any of its involved personnel, or any involved agent or affiliate;
- (b) the Client requiring the termination of a subcontract ;
- (c) suspension of Contract payments until the breach is remedied to the satisfaction of the Client; or
- (d) termination of the Contract by the Client for default or cause in accordance with the termination clause of the Contract.

34. Workers' Organizations

- 34.1. In countries where the relevant labour laws recognise workers' rights to form and to join workers' organizations of their choosing and to bargain collectively without interference, the Consultant 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 labour laws substantially restrict workers' organizations, the Consultant shall enable alternative means for the Experts to express their grievances and protect their rights regarding working conditions and terms of employment. The Consultant shall not seek to influence or control these alternative means. The Consultant

shall not discriminate or retaliate against Experts 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.

35. Non-Discrimination and Equal Opportunity

35.1. The Consultant shall not make decisions relating to the employment or treatment of Experts on the basis of personal characteristics unrelated to inherent job requirements. The Consultant shall base the employment of Experts 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 Consultant shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with Clause GCC 34).

36. Experts Grievance Mechanism

36.1. The Consultant shall have a grievance mechanism for Experts, and where relevant the workers' organizations stated in Clause GCC 34, Client's Personnel or any other person including third parties, to raise workplace concerns (including Modern Slavery, SEAH and CHEAH). 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 Experts 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 Experts.

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, provided that they are properly designed and implemented, address concerns promptly, and are readily accessible to such Experts. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.

37. Training of Experts

- 37.1. The Consultant shall provide appropriate training to relevant Experts on ES aspects of the Contract, including appropriate sensitization on prohibition of SEAH, CHEAH and health and safety training referred to in Clause GCC 29.

As required under the Contract, the Consultant shall also allow appropriate opportunities for the relevant Experts to be trained on ES aspects of the Contract by the Client's Personnel.

The Consultant shall provide training on SEAH, CHEAH and Modern Slavery including its prevention, to any of its Experts who has a role to supervise other Experts.

38. SEAH and CHEAH prevention and response

- 38.1. AIFFP and the Client have a zero-tolerance approach to inaction in relation to preventing and responding to:

- (a) SEAH; and
- (b) CHEAH.

The Consultant, all Sub-consultants and any Consultant's Personnel shall prohibit and refrain from any SEAH or CHEAH directed at the Consultant's Personnel, Client's Personnel, community and other stakeholders or other persons in connection with the Contract.

The Consultant shall implement a policy prohibiting SEAH and CHEAH and ensure that all Consultant's Personnel and all Sub-contractors understand and operate in accordance with the requirements of this clause.

The Consultant:

- (a) shall put in place an effective mechanism for receiving and promptly addressing allegations of SEAH from the Consultant's Personnel or Client's Personnel or any other person including third parties; and
- (b) must (in addition to the requirements set out in this Clause GCC 38) directly report to the Client any suspected or alleged incidents of SEAH or CHEAH.

The Client may investigate (either directly or through a third party) allegations of SEAH or CHEAH as it determines

appropriate. The Consultant shall fully cooperate with any investigation conducted by the Client regarding breach of this provision. The Consultant will ensure that any incident of SEAH or CHEAH investigated by the Client has been resolved to the Client and AIFFP's satisfaction.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANTS

- 39. Description of Key Experts**
- 39.1. The title, agreed job description, minimum qualification and time-input estimates to carry out the Services of each of the Consultant's Key Experts are described in **Appendix B**.
- 39.2. If required to comply with the provisions of Clause GCC 20a, adjustments with respect to the estimated time-input of Key Experts set forth in **Appendix B** may be made by the Consultant by a written notice to the Client, provided (i) that such adjustments shall not alter the original time-input estimates for any individual by more than 10% or one week, whichever is larger; and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 51.2.
- 39.3. If additional work is required beyond the scope of the Services specified in **Appendix A**, the estimated time-input for the Key Experts may be increased by agreement in writing between the Client and the Consultant. In case where payments under this Contract exceed the ceilings set forth in Clause GCC 51.2, the Parties shall sign a Contract amendment.
- 40. Replacement of Key Experts**
- 40.1. Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.
- 40.2. Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall, within 2 weeks, provide for the Client's consideration, CVs for a minimum of three proposed replacement Key Experts, of equivalent or better qualifications and experience to the incumbent.

41. Approval of Additional Key Experts

41.1. If during execution of the Contract, additional Key Experts are required to carry out the Services, the Consultant shall submit to the Client for review and approval a copy of their Curricula Vitae (CVs). If the Client does not object in writing (stating the reasons for the objection) within twenty-two (22) days from the date of receipt of such CVs, such additional Key Experts shall be deemed to have been approved by the Client.

The rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts position which require similar qualifications and experience.

42. Removal of Experts or Sub-consultants

42.1. If the Client finds that any of the Experts or Sub-consultant:

- (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 Services;
- (f) undertakes behaviour which breaches the Code of Conduct for Experts (ES);

the Consultant shall, at the Client's written request, provide a replacement.

42.2. In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.

42.3. Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Client.

42.4. Subject to the requirements in Clause GCC 42.3, and notwithstanding any requirement from the Client to request a replacement, the Consultant shall take immediate action as appropriate in response to any violation of (a) through (f) above. Such immediate action shall include:

- (a) removing (or causing to be removed) from the Site or other places where the Services are being carried out, any Expert who engages in (a) to (f) above; and

- (b) if required by the Client, conducting independent investigation(s) into any violation of (a) through (f) and provide a report on the matter to the Client, within a reasonable period.

**43. Replacement/
Removal of Experts
– Impact on
Payments**

- 43.1. Except as the Client may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Experts provided as a replacement shall not exceed the remuneration which would have been payable to the Experts replaced or removed.

**44. Working Hours,
Overtime, Leave,
etc.**

- 44.1. Working hours and holidays for Experts are set forth in **Appendix B**. To account for travel time to/from the Client's country, experts carrying out Services inside the Client's country shall be deemed to have commenced or finished work in respect of the Services such number of days before their arrival in, or after their departure from, the Client's country as is specified in **Appendix B**.
- 44.2. The Experts shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in **Appendix B**, and the Consultant's remuneration shall be deemed to cover these items.
- 44.3. Any taking of leave by Key Experts shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and or impact adequate supervision of the Services.

E. OBLIGATIONS OF THE CLIENT

**45. Assistance and
Exemptions**

- 45.1. Unless otherwise specified in the **SCC**, the Client shall use its best efforts to:
- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
 - (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits, and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.

- (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
- (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (e) Assist the Consultant and the Experts and any Sub-consultants employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in the Client's country according to the applicable law in the Client's country.
- (f) Assist the Consultant, any Sub-consultants and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in the Client's country, of bringing into the Client's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

46. Access to Project Site

46.1. The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site or sites in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to a project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the wilful default or negligence of the Consultant or any Sub-consultants or the Experts of either of them.

47. Change in the Applicable Law Related to Taxes and Duties

47.1. If, after the date of this Contract, there is any change in the applicable law in the Client's country with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 51.2.

- 48. Services, Facilities and Property of the Client**
- 48.1. The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (**Appendix A**) at the times and in the manner specified in said **Appendix A**.
- 48.2. In case that such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services, (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 51.3.
- 49. Counterpart Personnel**
- 49.1. The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in **Appendix A**.
- 49.2. If counterpart personnel are not provided by the Client to the Consultant as and when specified in **Appendix A**, the Client and the Consultant shall agree on (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Client to the Consultant as a result thereof pursuant to Clause GCC 51.3.
- 49.3. Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.
- 50. Payment Obligation**
- 50.1. In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

- 51. Ceiling Amount**
- 51.1. An estimate of the cost of the Services is set forth in **Appendix C** (Remuneration) and **Appendix D** (Reimbursable expenses).

51.2. Payments under this Contract shall not exceed the ceilings in foreign currency and in local currency specified in the **SCC**.

51.3. For any payments in excess of the ceilings specified in GCC 51.2, an amendment to the Contract shall be signed by the Parties referring to the provision of this Contract that evokes such amendment.

52. Remuneration and Reimbursable Expenses

52.1. The Client shall pay to the Consultant (i) remuneration that shall be determined on the basis of time actually spent by each Expert in the performance of the Services after the date of commencing of Services or such other date as the Parties shall agree in writing; and (ii) reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services.

52.2. All payments shall be at the rates set forth in **Appendix C** and **Appendix D**.

52.3. Unless the **SCC** provides for the price adjustment of the remuneration rates, said remuneration shall be fixed for the duration of the Contract.

52.4. The remuneration rates shall cover: (i) such salaries and allowances as the Consultant shall have agreed to pay to the Experts as well as factors for social charges and overheads (bonuses or other means of profit-sharing shall not be allowed as an element of overheads), (ii) the cost of backstopping by home office staff not included in the Experts' list in **Appendix B**, (iii) the Consultant's profit, and (iv) any other items as specified in the **SCC**.

52.5. Any rates specified for Experts not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Client, once the applicable remuneration rates and allowances are known.

53. Taxes and Duties

53.1. The Consultant, Sub-consultants and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the **SCC**.

53.2. [As an exception to the above, and were stated in the **SCC**, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.]

54. Currency of Payment

54.1. Any payment under this Contract shall be made in the currency(ies) specified in the **SCC**.

55. Mode of Billing and Payment

55.1. Billings and payments in respect of the Services shall be made as follows:

- (a) Advance payment. Within the number of days after the Effective Date specified in the **SCC**, the Client shall pay to the Consultant an advance payment as specified in the **SCC**. Unless otherwise indicated in the **SCC**, an advance payment shall be made against an advance payment bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the **SCC**. Such guarantee (i) is to remain effective until the advance payment has been fully set off, and (ii) is to be in the form set forth in **Appendix E**, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal installments against the statements for the number of months of the Services specified in the **SCC** until said advance payments have been fully set off.
- (b) The Itemized Invoices. As soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the Services, or after the end of each time interval otherwise indicated in the **SCC**, the Consultant shall submit to the Client, in duplicate, itemized invoices, accompanied by the receipts or other appropriate supporting documents, of the amounts payable pursuant to Clauses GCC 54 and GCC 55 for such interval, or any other period indicated in the **SCC**. Separate invoices shall be submitted for expenses incurred in foreign currency and in local currency. Each invoice shall show remuneration and reimbursable expenses separately.
- (c) The Client shall pay the Consultant's invoices within sixty (60) days after the receipt by the Client of such itemized invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Consultant, the Client may add or subtract the difference from any subsequent payments.
- (d) The Final Payment .The final payment under this Clause shall be made only after the final report and a final invoice, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the Client. The Services shall be deemed completed and finally accepted by the Client and the final report and final invoice shall be deemed approved by the Client as satisfactory ninety (90)

calendar days after receipt of the final report and final invoice by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount that the Client has paid or has caused to be paid in accordance with this Clause in excess of the amounts payable in accordance with the provisions of this Contract shall be reimbursed by the Consultant to the Client within thirty (30) days after receipt by the Consultant of notice thereof. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final invoice approved by the Client in accordance with the above.

- (e) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.
- (f) With the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Consultant of any obligations hereunder.

56. Interest on Delayed Payments

56.1. If the Client had delayed payments beyond thirty (30) days after the due date stated in Clause GCC 55.1 (c), interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the **SCC**.

G. FAIRNESS AND GOOD FAITH

57. Good Faith

57.1. The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

H. SETTLEMENT OF DISPUTES

58. Amicable Settlement

58.1. The Parties shall seek to resolve any dispute amicably by mutual consultation.

58.2. If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be

amicably settled within fourteen (14) days following the response of that Party, Clause GCC 59.1 shall apply.

- 59. Dispute Resolution** 59.1. Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the **SCC**.

II. General Conditions Attachment 1

Fraud and Corruption

(Text in this Attachment shall not be modified)

1. Purpose

1.1 This annex applies with respect to procurement under projects financed through the Australian Infrastructure Financing Facility for the Pacific, including through grants from AIFFP and loans from EFA.

1.2 The Consultant should also refer to:

(i) the DFAT Fraud Control Toolkit for funding recipients. Version 1.3, February 2019 which can be [found](https://www.dfat.gov.au/sites/default/files/fraud-control-toolkit-for-funding-recipients.pdf) here: <https://www.dfat.gov.au/sites/default/files/fraud-control-toolkit-for-funding-recipients.pdf>, which sets out principles for reducing fiduciary risk and minimizing fraud; and

(ii) the OECD Guidelines for Multinational Enterprises which set out best practice principles and standards for responsible business conduct.

2. Defined Terms

In this section, the following terms have the meanings set out below:

(i) “Corrupt Activity” means any Corrupt Practice or Fraud which has been:

(1) found by any court in any local or foreign jurisdiction to render a matter illegal, void, voidable or unenforceable under its governing law;

(2) admitted to by the person initiating or engaging in that activity to have taken place;

(3) found as part of any publicly-available arbitral award in any local or foreign jurisdiction to constitute an offence under any applicable law;

(4) found by any court in any local or foreign jurisdiction to constitute an offence under any applicable law (including within Australia, under the Criminal Code Act 1995 (Cth) and any equivalent state based law); or

(5) the subject of equivalent measures in relation to contravening any applicable law.

(ii) “Corrupt Practice” is any activity which would in the ordinary course of business be understood to be corrupt, wrongful, dishonest or a criminal act or omission, or to constitute bribery (including without limitation, the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of another

party to obtain or retain business, or a business or personal advantage [(whether or not for oneself or a third party)). For the avoidance of doubt, this includes all forms of bribery (including any bribery of public officials or any other person).

- (iii) “Debarment List” means any publicly-available debarment list of any one of the following institutions: African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group.
- (iv) “Fraud” is means dishonestly obtaining benefit or causing a loss, by deception or other means, and includes incidents of attempted, alleged, suspected or detected fraud.
- (v) [“equivalent measures” includes resolutions of fraud, bribery or corrupt practice violations using deferred prosecution agreements or non-prosecution agreements, as well as those resulting from any formal admission or voluntary self-reporting.]

3. Requirements

3.1 AIFFP requires that Financing Recipients (including beneficiaries of financing under the AIFFP); applicants/proposers, consultants, contractors and suppliers; any sub-contractors, sub-consultants, service providers or suppliers; any agents (whether declared or not); and any of their personnel, observe the highest standard of ethics during the procurement process, selection and contract execution of contracts financed under the AIFFP, and refrain from Corrupt Practices and Fraud.

3.2 To this end:

- (a) AIFFP will reject a proposal for award if an AIFFP Financier determines that the firm or individual recommended for award of the Contract, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in Corrupt Practices or Fraud in competing for the contract in question;
- (b) AIFFP may recognise a firm or individual that has, directly or indirectly, engaged in Corrupt Practices or Fraud in competing for the Contract as ineligible, for a period determined by AIFFP (i) to be awarded or otherwise benefit from a contract financed under the AIFFP Program, financially or in any other manner; (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a contract financed under the AIFFP Program; and (iii) to receive the proceeds of any grant or loan made by an AIFFP Financier or otherwise to participate further in the preparation or implementation of any project financed by an AIFFP Financier;
- (c) AIFFP will recognize a Consultant as ineligible to be awarded the Contract or a contract funded under the AIFFP if the Consultant, or subcontractor who has a direct contract with the proposer:
 - (i) is at any time during the procurement, on a Debarment List;

- (ii) is currently under charge in any court, formally under investigation by public prosecutors for Corrupt Activity, or involved in a process which might result in such party becoming subject to Equivalent Measures for Corrupt Activity; or
 - (iii) has engaged in Corrupt Activity within the past 5 years.
- (d) In addition to the legal remedies of the AIFFP Financier set out in the relevant legal agreement, AIFFP may take other appropriate actions, including declaring misprocurement, if AIFFP determines at any time that representatives of the Financing Recipient or of a recipient of any part of the proceeds of the loan or grant engaged in Corrupt Practices or Fraud during the procurement process, selection and/or execution of the contract in question, without the Financing Recipient having taken timely and appropriate action satisfactory to AIFFP to address such practices when they occur, including by failing to inform AIFFP in a timely manner at the time they knew of the practices;
- (e) AIFFP requires that clauses be included in proposal documents and in contracts financed by an AIFFP Financier requiring applicants/proposers, consultants, contractors, and suppliers; and their sub-contractors, sub-consultants, service providers, suppliers, agents, personnel:
 - (i) to not engage in Corrupt Practices or Fraud;
 - (ii) to institute, maintain and comply in all material respects with adequate internal procedures and controls, in compliance with AIFFP requirements and applicable laws of the Recipient country, preventing the participation in Fraud or other Corrupt Practices;
 - (iii) to permit the Client and the AIFFP Financier to investigate any alleged or suspect Corrupt Practice or Fraud and to this end to inspect¹ all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Client or the AIFFP Financier; and
- (f) to record all operational activities in relation to the Contract, including to enable the prevention, detection and investigation of Corrupt Practices or Fraud.

¹ Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by AIFFP or persons appointed by AIFFP to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

III. Special Conditions of Contract

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of the Independent State of Papua New Guinea
4.1	The language is: English.
6.1 and 6.2	<p>The addresses are <i>[fill in at negotiations with the selected firm]:</i></p> <p>Client : _____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted): _____</p> <p>Consultant : _____</p> <p>Attention : _____</p> <p>Facsimile : _____</p> <p>E-mail (where permitted) : _____</p>
8.1	<p><i>[Note: If the Consultant consists only of one entity, state “N/A”;</i> <i>OR</i> <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i></p> <p>The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Client: <i>[name, title]</i> _____</p> <p>For the Consultant: <i>[name, title]</i> _____</p>
11.1	<p><i>[Note: If there are no effectiveness conditions, state “N/A”]</i></p> <p><i>OR</i></p>

	<p><i>List here any conditions of effectiveness of the Contract, e.g., approval of the Contract by the AIFFP Financier, effectiveness of the AIFFP Financer [loan/grant], receipt by the Consultant of an advance payment, and by the Client of an advance payment guarantee (see Clause SCC55.1(a)), etc.]</i></p> <p>The effectiveness conditions are the following:</p> <p>Receipt of No Objection Letter from AIFFP Effectiveness of the AIFFP Financer loan</p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ 4 months _____</p>
13.1	<p>Commencement of Services:</p> <p>The number of days shall be _____ 14 _____.</p> <p>Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Client in writing as a written statement signed by each Key Expert.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be _____ 36 months _____</p>

23.1

The following limitation of the Consultant's Liability towards the Client can be subject to the Contract's negotiations:

"Limitation of the Consultant's Liability towards the Client:

(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client's property, shall not be liable to the Client:

- (i) for any indirect or consequential loss or damage; and**
- (ii) for any direct loss or damage that exceeds one times the total value of the Contract.**

(b) This limitation of liability shall not

(i) affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services.

(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law

[Notes to the Client and the Consultant: Any suggestions made by the Consultant in the Proposal to introduce exclusions/limitations of the Consultant's liability under the Contract should be carefully scrutinized by the Client and discussed with the AIFFP Financier prior to accepting any changes to what was included in the issued RFP. In this regard, the Parties should be aware of the AIFFP Financier's policy on this matter which is as follows:

To be acceptable to the AIFFP Financier, any limitation of the Consultant's liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Client, and (b) the Consultant's ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Consultant's liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the AIFFP Financier. Also, the Consultant's liability

	<p><i>should never be limited for loss or damage caused by the Consultant's gross negligence or willful misconduct.</i></p> <p><i>The AIFFP Financier does not accept a provision to the effect that the Client shall indemnify and hold harmless the Consultant against Third Party claims, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Client to the extent permissible by the law applicable in the Client's country.]</i></p>
24.1	<p>The insurance coverage against the risks shall be as follows:</p> <ul style="list-style-type: none"> (a) Professional liability insurance, with a minimum coverage of AUD10,000,000 (b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in the Client's country by the Consultant or its Experts or Sub-consultants, with a minimum coverage of in accordance with the applicable law in the Client's country. (c) Third Party liability insurance, with a minimum coverage of in accordance with the applicable law in the Client's country. (d) employer's liability and workers' compensation insurance in respect of the experts and Sub-consultants in accordance with the relevant provisions of the applicable law in the Client's country, as well as, with respect to such Experts, any such life, health, accident, travel, or other insurance as may be appropriate; and (e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant's property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.
27.1	N/A
27.2	The Consultant shall not use these documents and related information for purposes unrelated to this Contract without the prior written approval of the Client.]
51.2	<p>The ceiling in foreign currency or currencies is: <u> </u> <i>[insert amount and currency for each currency]</i> [indicate: inclusive or exclusive] of local indirect taxes.</p>

	<p>The ceiling in local currency is: _____ <i>[insert amount and currency] [indicate: inclusive or exclusive] of local indirect taxes.</i></p> <p>Any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall <i>[insert as appropriate: “be paid” or “reimbursed”]</i> by the Client <i>[insert as appropriate: “for” or “to”]</i> the Consultant.</p> <p>The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract’s negotiations on the basis of the estimates provided by the Consultant in Form FIN-2 of the Consultant’s Financial Proposal.]</i></p>
52.3	<p>Price adjustment on the remuneration applies</p> <p>Payments for remuneration made in [foreign <i>and/or</i> local] currency shall be adjusted as follows:</p> <p>(1) Remuneration paid in foreign currency on the basis of the rates set forth in Appendix C shall be adjusted every 12 months (and, the first time, with effect for the remuneration earned in the 13th calendar month after the date of the Contract Effectiveness date) by applying the following formula:</p> $R_f = R_{fo} \times \frac{I_f}{I_{fo}} \quad \left\{ \text{or} \quad R_f = R_{fo} \times \left[0.1 + 0.9 \frac{I_f}{I_{fo}} \right] \right\}$ <p>where</p> <p>R_f is the adjusted remuneration;</p> <p>R_{fo} is the remuneration payable on the basis of the remuneration rates (Appendix C) in foreign currency;</p> <p>I_f is the official index for salaries in the country of the foreign currency for the first month for which the adjustment is supposed to have effect; and</p> <p>I_{fo} is the official index for salaries in the country of the foreign currency for the month of the date of the Contract.</p> <p>The Consultant shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_f and I_{fo} in the adjustment formula for remuneration paid in foreign currency: <i>[Insert the name, source institution, and necessary identifying characteristics of the index for foreign currency, e.g. “Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted; U.S. Department of Labour, Bureau of Labour Statistics”]</i></p>

	<p>(2) Remuneration paid in local currency pursuant to the rates set forth in Appendix D shall be adjusted every <i>[insert number]</i> months (and, for the first time, with effect for the remuneration earned in the <i>[insert number]</i>the calendar month after the date of the Contract) by applying the following formula:</p> $R_l = R_{lo} \times \frac{I_l}{I_{lo}} \quad \{ \text{or} \quad R_l = R_{lo} \times [0.1 + 0.9 \frac{I_l}{I_{lo}}] \}$ <p>where</p> <p>R_l is the adjusted remuneration;</p> <p>R_{lo} is the remuneration payable on the basis of the remuneration rates (Appendix D) in local currency;</p> <p>I_l is the official index for salaries in the Client's country for the first month for which the adjustment is to have effect; and</p> <p>I_{lo} is the official index for salaries in the Client's country for the month of the date of the Contract.</p> <p>The Client shall state here the name, source institution, and any necessary identifying characteristics of the official index for salaries corresponding to I_l and I_{lo} in the adjustment formula for remuneration paid in local currency: <i>[Insert the name, source institution, and necessary identifying characteristics of the index for foreign currency]</i></p> <p>(3) Any part of the remuneration that is paid in a currency different from the currency of the official index for salaries used in the adjustment formula, shall be adjusted by a correction factor X_0/X. X_0 is the number of units of currency of the country of the official index, equivalent to one unit of the currency of payment on the date of the contract. X is the number of units of currency of the country of the official index, equivalent to one unit of the currency of payment on the first day of the first month for which the adjustment is supposed to have effect.</p>
53.1 and 53.2	<p><i>[AIFFP Drafting Note – The Consultancy Contract and ITB assumes the Contractor will be paid a price that is exclusive of indirect local taxes PLUS any such taxes paid, or be exempted from those. These provisions will need to be amended if AIFFP adopts an approach of requiring bids to be INCLUSIVE of local indirect taxes, and payment on that basis.] [The AIFFP Financier leaves it to the Client to decide whether the Consultant (i) should be exempted from indirect local tax, or (ii) should be reimbursed by the Client for any such tax they might have to pay (or that the Client would pay such tax on behalf of the Consultant)]</i></p>

	<p>The Client warrants that <i>[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract's negotiations (Form FIN-2, part B "Indirect Local Tax – Estimates")]:</i></p> <p><i>If ITC16.3 indicates a tax exemption status, include the following: “the Consultant, the Sub-consultants and the Experts shall be exempt from”</i></p> <p><i>OR</i></p> <p><i>If ITC16.3 does not indicate the exemption and, depending on whether the Client shall pay the withholding tax or the Consultant has to pay, include the following:</i></p> <p><i>“the Client shall pay on behalf of the Consultant, the Sub-consultants and the Experts,” OR “the Client shall reimburse the Consultant, the Sub-consultants and the Experts”]</i></p> <p>any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client's country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <ul style="list-style-type: none"> (a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of the Client's country), in connection with the carrying out of the Services; (b) any equipment, materials and supplies brought into the Client's country by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client; (d) any property brought into the Client's country by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of the Client's country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client's country, provided that: <ul style="list-style-type: none"> (i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of the Client's country in importing property into the Client's country; and (ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Client's
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	country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client's country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client's country.
54.1	The currency [currencies] of payment shall be the following: USD
55.1(a)	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in local currency] shall be made within <i>[insert number]</i> days after the Effective Date. The advance payment will be set off by the Client in equal installments against the statements for the first <i>[insert number]</i> months of the Services until the advance payment has been fully set off.</p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the currency(ies) of the advance payment.</p>
55.1(e)	<p>The accounts are:</p> <p>for foreign currency: <i>[insert account]</i>. for local currency: <i>[insert account]</i>.</p>
56.1	The interest rate is as published by the Bank of Papua New Guinea from time to time
59	<p><i>[In contracts with foreign consultants, AIFFP Financier requires that the international commercial arbitration in a neutral venue is used.]</i></p> <p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing</p>

	<p>agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to Chartered Institute of Arbitrators Australia for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, Chartered Institute of Arbitrators Australia shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by The President, Chartered Institute of Arbitrators, Australia.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to The President, Chartered Institute of Arbitrators, Australia to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure</u>. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators</u>. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators</u>. The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a)</p>

	<p>through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant's home country [<i>Note: If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties</i>] or of the Government's country. For the purposes of this Clause, "home country" means any of:</p> <ul style="list-style-type: none"> (a) the country of incorporation of the Consultant [<i>Note: If the Consultant consists of more than one entity, add: or of any of their members or Parties</i>]; or (b) the country in which the Consultant's [or any of their members' or Parties'] principal place of business is located; or (c) the country of nationality of a majority of the Consultant's [or of any members' or Parties'] shareholders; or (d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.
	<p>5. <u>Miscellaneous</u>. In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none"> (a) proceedings shall, unless otherwise agreed by the Parties, be held in Singapore; (b) the English language shall be the official language for all purposes; and (c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

IV. Appendices

APPENDIX A – TERMS OF REFERENCE

[This Appendix shall include the final Terms of Reference (TORs) worked out by the Client and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Client's input, including counterpart personnel assigned by the Client to work on the Consultant's team; specific tasks that require prior approval by the Client.]

Insert the text based on the Section 7 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 in the Consultant's Proposal. Highlight the changes to Section 7 of the RFP]

APPENDIX B - KEY EXPERTS

[Insert a table based on Form TECH-6 of the Consultant's Technical Proposal and finalized at the Contract's negotiations. Attach the CVs (updated and signed by the respective Key Experts) demonstrating the qualifications of Key Experts.]

[Specify Hours of Work for Key Experts: List here the hours of work for Key Experts; travel time to/ from the Client's country; entitlement, if any, to leave pay; public holidays in the Client's country that may affect Consultant's work; etc. Make sure there is consistency with Form TECH-6. In particular: one month equals twenty two (22) working (billable) days. One working (billable) day shall be not less than eight (8) working (billable) hours.]

APPENDIX C – REMUNERATION COST ESTIMATES

1. Monthly rates for the Experts:

[Insert the table with the remuneration rates. The table shall be based on [Form FIN-3] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-3] at the negotiations or state that none has been made.]

2. *[When the Consultant has been selected under Quality-Based Selection method, or the Client has requested the Consultant to clarify the breakdown of very high remuneration rates at the Contract's negotiations also add the following:*

“The agreed remuneration rates shall be stated in the attached Model Form I. This form shall be prepared on the basis of Appendix A to Form FIN-3 of the RFP “Consultants’ Representations regarding Costs and Charges” submitted by the Consultant to the Client prior to the Contract’s negotiations.

Should these representations be found by the Client (either through inspections or audits pursuant to Clause GCC 25.2 or through other means) to be materially incomplete or inaccurate, the Client shall be entitled to introduce appropriate modifications in the remuneration rates affected by such materially incomplete or inaccurate representations. Any such modification shall have retroactive effect and, in case remuneration has already been paid by the Client before any such modification, (i) the Client shall be entitled to offset any excess payment against the next monthly payment to the Consultants, or (ii) if there are no further payments to be made by the Client to the Consultants, the Consultants shall reimburse to the Client any excess payment within thirty (30) days of receipt of a written claim of the Client. Any such claim by the Client for reimbursement must be made within twelve (12) calendar months after receipt by the Client of a final report and a final statement approved by the Client in accordance with Clause GCC 55.1(d) of this Contract.”

Model Form I

Breakdown of Agreed Fixed Rates in Consultant's Contract

We hereby confirm that we have agreed to pay to the Experts listed, who will be involved in performing the Services, the basic fees and away from the home office allowances (if applicable) indicated below:

(Expressed in [insert name of currency])*

Experts		1	2	3	4	5	6	7	8
Name	Position	Basic Remuneration rate per Working Month/Day/Year	Social Charges ¹	Overhead ¹	Subtotal	Profit ²	Away from Home Office Allowance	Agreed Fixed Rate per Working Month/Day/Hour	Agreed Fixed Rate per Working Month/Day/Hour ¹
Home Office									
Work in the Client's Country									

1 Expressed as percentage of 1

2 Expressed as percentage of 4

* If more than one currency, add a table

Signature

Date

Name and Title: _____

APPENDIX D – REIMBURSABLE EXPENSES COST ESTIMATES

1. *[Insert the table with the reimbursable expenses rates. The table shall be based on [Form FIN-4] of the Consultant's Proposal and reflect any changes agreed at the Contract negotiations, if any. The footnote shall list such changes made to [Form FIN-4] at the negotiations or state that none has been made.*

2. *All reimbursable expenses shall be reimbursed at actual cost, unless otherwise explicitly provided in this Appendix, and in no event shall reimbursement be made in excess of the Contract amount.]*

APPENDIX E - FORM OF ADVANCE PAYMENTS GUARANTEE

[See Clause GCC 55.1(a) and SCC 55.1(a)]

{Guarantor letterhead or SWIFT identifier code}

Bank Guarantee for Advance Payment

Guarantor: _____ *[insert commercial Bank's Name, and Address of Issuing Branch or Office]*

Beneficiary: _____ *[insert Name and Address of Client]*

Date: _____ *[insert date]*_____

ADVANCE PAYMENT GUARANTEE No.: _____ *[insert number]*_____

We have been informed that _____ *[name of Consultant or a name of the Joint Venture, same as appears on the signed Contract]* (hereinafter called "the Consultant") has entered into Contract No. _____ *[reference number of the contract]* dated ____ *[insert date]*_____ with the Beneficiary, for the provision of _____ *[brief description of Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[insert amount in figures]* (_____) *[amount in words]* is to be made against an advance payment guarantee.

At the request of the Consultant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[amount in figures]* (_____) *[amount in words]*¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's a written statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Consultant is in breach of its obligation under the Contract because the Consultant:

- (a) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Consultant has failed to repay;
- (b) has used the advance payment for purposes other than toward providing the Services under the Contract.

¹ The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Client.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Consultant on its account number _____ at _____ *[name and address of bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Consultant as indicated in certified statements or invoices marked as “paid” by the Client which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of the payment certificate or paid invoice indicating that the Consultant has made full repayment of the amount of the advance payment, or on the ___ day of *_[month]_____*, *_[year]__*,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC Publication No. 758.

[signature(s)]

{Note: All italicized text is for indicative purposes only to assist in preparing this form and shall be deleted from the final product.}

² Insert the expected expiration date. In the event of an extension of the time for completion of the Contract, the Client would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Client might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Client’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

APPENDIX F - CODE OF CONDUCT

LUMP-SUM FORM OF CONTRACT

STANDARD FORM OF CONTRACT

Consultant's Services

Lump-Sum

[Not used]

