

## **Volume III**

### **PART 3 – CONDITIONS OF CONTRACT and CONTRACT FORMS**

**Section VIII – General Conditions of Contract (GCC)**

**Section IX – Particular Conditions of Contract (PCC)**

**Section X - Contract Forms**

## **Section VIII - General Conditions of Contract**

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

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## General Conditions of Contract

### A. General

#### 1. Definitions

1.1 Boldface type is used to identify defined terms.

- (a) The Accepted Contract Amount means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) The Activity Schedule is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- (c) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
- (d) Bank means the financing institution **named in the PCC**.
- (e) Bill of Quantities means the priced and completed Bill of Quantities forming part of the Bid.
- (f) Compensation Events are those defined in GCC Clause 42 hereunder.
- (g) The Completion Date is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
- (h) The Contract is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- (i) The Contractor is the party whose Bid to carry out the Works has been accepted by the Employer.
- (j) The Contractor's Bid is the completed bidding document submitted by the Contractor to the Employer.
- (k) The Contract Price is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- (l) Days are calendar days; months are calendar months.
- (m) Day works are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (n) A Defect is any part of the Works not completed in

accordance with the Contract.

- (o) The Defects Liability Certificate is the certificate issued by Project Manager upon correction of defects by the Contractor.
- (p) The Defects Liability Period is the period **named in the PCC** pursuant to Sub-Clause 34.1 and calculated from the Completion Date.
- (q) Drawings means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (r) The Employer is the party who employs the Contractor to carry out the Works, **as specified in the PCC**.
- (s) Equipment is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (t) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (u) The Initial Contract Price is the Contract Price listed in the Employer's Letter of Acceptance.
- (v) The Intended Completion Date is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (w) Materials are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (x) Plant is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (y) The Project Manager is the person **named in the PCC** (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (z) PCC means Particular Conditions of Contract.
- (aa) The Site is the area **defined as such in the PCC**.
- (bb) Site Investigation Reports are those that were included in the bidding documents and are factual and interpretative reports about the surface and subsurface

conditions at the Site.

- (cc) Specification means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (dd) The Start Date is **given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (ee) A Subcontractor is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- (ff) Temporary Works are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (gg) A Variation is an instruction given by the Project Manager which varies the Works.
- (hh) The Works are what the Contract requires the Contractor to construct, install, and turn over to the Employer, **as defined in the PCC**.

## 2. Interpretation

- a. In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.
- b. If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- c. The documents forming the Contract shall be interpreted in the following order of priority:
  - a) Agreement,
  - b) Letter of Acceptance,
  - c) Contractor's Completed Letter of Bid,
  - d) the addenda (if any),
  - e) Particular Conditions of Contract,
  - f) General Conditions of Contract, including Appendix,
  - g) Specifications,
  - h) Drawings,
  - i) Bill of Quantities,<sup>1</sup> and

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<sup>1</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

- j) any other document **listed in the PCC** as forming part of the Contract.
- 3. Language and Law**
- 3.1 The language of the Contract shall be the language **specified in the PCC** and the law governing the Contract shall be the current laws of Lao PDR.
- 3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in Lao PDR when
- (a) as a matter of law or official regulations, Lao PDR prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 4. Project Manager's Decisions**
- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.
- 5. Delegation**
- 5.1 Otherwise **specified in the PCC**, the Project Manager may delegate any of his duties and responsibilities to other people except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.
- 6. Communications**
- 6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.
- 7. Subcontracting**
- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.
- 8. Other Contractors**
- 8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.



- 9. Personnel and Equipment**
- 9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.
- 9.3 If the Employer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.
- 10. Employer's and Contractor's Risks**
- 10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 11. Employer's Risks**
- 11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
    - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
    - (ii) negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
  - (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in the Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
- (a) a Defect which existed on the Completion Date,
  - (b) an event occurring before the Completion Date, which

- was not itself an Employer's risk, or
- (c) the activities of the Contractor on the Site after the Completion Date.
- 12. Contractor's Risks**
- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risks are Contractor's risks.
- 13. Insurance**
- 13.1 The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5 Both parties shall comply with any conditions of the insurance policies.
- 14. Site Data**
- 14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.
- 15. Contractor to Construct the Works**
- 15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 16. The Works to Be Completed**
- 16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the

<b>by the Intended Completion Date</b>	Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
<b>17. Approval by the Project Manager</b>	<p>17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.</p> <p>17.2 The Contractor shall be responsible for design of Temporary Works.</p> <p>17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.</p> <p>17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.</p> <p>17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.</p>
<b>18. Safety</b>	18.1 The Contractor shall be responsible for the safety of all activities on the Site.
<b>19. Discoveries</b>	19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
<b>20. Possession of the Site</b>	20.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date <b>stated in the PCC</b> , the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.
<b>21. Access to the Site</b>	21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

- 22. Instructions, Inspections and Audits**
- 22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.
- 22.3 The Contractor shall permit and shall cause its Subcontractors and sub-consultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 22.2 constitute an obstructive practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).
- 23. Appointment of the Adjudicator**
- 23.1 The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2 Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the PCC** at the request of either party, within 14 days of receipt of such request.
- 24. Procedure for Disputes**
- 24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types

**specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.

24.4 The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place **specified in the PCC**.

## 25. Corrupt and Fraudulent Practices

25.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Appendix to the GCC.

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

## B. Time Control

### 26. Program

26.1 Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

26.2 An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the

- Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.
- 27. Extension of the Intended Completion Date**
- 27.1 The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 27.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.
- 28. Acceleration**
- 28.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 28.2 If the Contractor's priced proposals for acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.
- 29. Delays Ordered by the Project Manager**
- 29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.
- 30. Management Meetings**
- 30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.
- 31. Early Warning**
- 31.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances

that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

- 31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

### **C. Quality Control**

- 32. Identifying Defects**      32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 33. Tests**              33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.
- 34. Correction of Defects**      34.1 The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 34.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.
- 35. Uncorrected Defects**      35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

### **D. Cost Control**

- 36. Contract Price<sup>2</sup>**              36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is

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<sup>2</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace GCC Sub-Clauses 36.1 and 36.2, as follows:

36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The activities on the Activity Schedule shall be coordinated with the activities on the Program.

used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

- 37. Changes in the Contract Price<sup>3</sup>**
- 37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager may adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
- 37.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.
- 38. Variations**
- 38.1 All Variations shall be included in updated Programs<sup>4</sup> produced by the Contractor.
- 38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- 38.3 If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- 38.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- 38.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 37.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost

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36.2 The Contractor shall show delivery of Materials to the Site separately on the Activity Schedule if payment for Materials on Site shall be made separately.

<sup>3</sup> In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule," and replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:

37.1 The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

<sup>4</sup> In lump sum contracts, add "and Activity Schedules" after "Programs."



per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work.<sup>5</sup>

- 39. Cash Flow Forecasts**      39.1 When the Program,<sup>6</sup> is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.
- 40. Payment Certificates**
- 40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 40.3 The value of work executed shall be determined by the Project Manager.
- 40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.<sup>7</sup>
- 40.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- 41. Payments**
- 41.1 Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 28 days of the date of each certificate. If the Employer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- 41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the

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<sup>5</sup> In lump sum contracts, delete this paragraph.

<sup>6</sup> In lump sum contracts, add "or Activity Schedule" after "Program."

<sup>7</sup> In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."

Contract Price.

41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

**42. Compensation Events**

42.1 The following shall be Compensation Events:

- (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to GCC Sub-Clause 20.1.
- (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
- (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
- (d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- (e) The Project Manager unreasonably does not approve a subcontract to be let.
- (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
- (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
- (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
- (i) The advance payment is delayed.
- (j) The effects on the Contractor of any of the Employer's Risks.
- (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

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

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

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

#### **43. Tax**

43.1 The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 28 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

#### **44. Currencies**

44.1 Where payments are made in currencies other than the currency of the Employer's country **specified in the PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

#### **45. Price Adjustment**

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

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

where:

P is the adjustment factor;

A and B are coefficients **specified in the PCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price; and

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

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

#### **46. Retention**

46.1 The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion

of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 51.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.

**47. Liquidated Damages**

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

47.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 41.1.

**48. Bonus**

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

**49. Advance Payment**

49.1 The Employer shall make advance payment to the Contractor of the amounts **stated in the PCC** by the date **stated in the PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

49.3 The advance payment shall be repaid by deducting

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

- 50. Securities**      50.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 days from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.
- 51. Dayworks**      51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 51.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.
- 52. Cost of Repairs**      52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

### **E. Finishing the Contract**

- 53. Completion**      53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.
- 54. Taking Over**      54.1 The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.
- 55. Final Account**      55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the

Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

**56. Operating and Maintenance Manuals**

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

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

- 57. Termination**
- 57.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 57.2 Fundamental breaches of Contract shall include, but shall not be limited to, the following:
- (a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 28 days;
  - (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 84 days of the date of the Project Manager's certificate;
  - (e) the Project Manager gives Notice that failure to correct a particular Defect or catch up the progress in accordance with the approved program is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - (f) the Contractor does not maintain a Security, which is required;
  - (g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
  - (h) if the Contractor, in the judgment of the Employer, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving written notice to the Contractor, terminate the Contract and expel him from the Site.
- 57.3 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.
- 57.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 57.5 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- 58. Payment upon Termination**
- 58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a

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

58.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

**59. Property**

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

**60. Release from Performance**

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

**61. Suspension of Bank Loan or Credit**

61.1 In the event that the Bank suspends the Loan or Credit to the Employer, from which part of the payments to the Contractor are being made:

- (a) The Employer is obligated to notify the Contractor of such suspension within 7 days of having received the Bank's suspension notice.
- (b) If the Contractor has not received sums due it within the 28 days for payment provided for in Sub-Clause 40.1, the Contractor may immediately issue a 14-day termination notice.



## Section IX - Particular Conditions of Contract

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

### Part A - Contract Data

*NOTE: The bidder shall attach to his bid a signed copy of Section IX Part A - Contract Data to indicate concurrence.*

<b>A. General</b>	
<b>GCC 1.1 (d)</b>	The financing institutions are: <i>The World Bank and the Government of the Lao PDR.</i>
<b>GCC 1.1 (h)</b>	The Contractor shall maintain the Works during the Contract Period.
<b>GCC 1.1 (s)</b>	The Employer is: <i>Department of Public Works and Transport, Phongsaly Province</i>
<b>GCC 1.1 (v)</b>	The Date of Completion for the whole of the Works shall be <i>1,095 days (36 months) from the Start Date.</i>
<b>GCC 1.1 (y)</b>	The Project Manager is <i>Head of the Road Office of the DPWT</i>
<b>GCC 1.1 (aa)</b>	The Site shall be <i>7.50 m</i> wide strip either side of the road centre-line along <i>Road Nos. 1233 located in Khoua district, Road Nos. 1233 located in Samphanh district, and Road Nos. 1205 and 1237 located in May district of Oudomxai Province, as shown in the map GEN-01. Note: the corridor may be narrowed through built-up areas.</i>
<b>GCC 1.1 (dd)</b>	The Start Date shall be <i>twenty-eight days (28) after Contract Award</i>
<b>GCC 1.1 (hh)</b>	The Works consist of: <ul style="list-style-type: none"> <li>a) <i>Performance-Based Routine maintenance works</i> that are assessed qualitatively against service levels that describe the standards the contractor is required to achieve and paid for through a monthly price per km. Payments are reduced if the service levels are not achieved. These Works represent measures and actions to be performed on the project roads including all objects, buildings and installations as defined in the Schedules and Employers Requirements during the whole year, in order to maintain the traffic mobility and technical integrity and functionality of the road and to ensure undisturbed and safe traffic for which purpose the Road was built for. They encompass administrative duties, inspections, maintenance works of road, bridges and other road assets and all</li> </ul>

	<p>required measures and actions to be performed during the whole year, including minor emergency works.</p> <p><b>b) Initial Maintenance Works</b> are required to be completed prior to application of performance-based contract to repair short stretches of road sections that are not meeting required service levels. The works are specified, measured and paid for in terms of quantities of actual work completed and unit rates included in a separate Bills of Quantities. These Works mainly consist of heavy grading, ditch clearing and spot-filling with gravel materials. These works are to be applied only on gravel roads.</p> <p><b>c) Emergency Works</b> for which a provisional sum will be included in the Contract and actual work completed will be measured and paid for in terms of quantities of actual work completed and unit rates included in a separate Bills of Quantities. These Works consist of immediate maintenance actions needed to reopen a road or ensure safety, such as, the rehabilitation of localized sections of road damaged by flood or landslip and debris, reinstatement of bridges, repair of washouts, etc which are unforeseen at the time of preparing the annual road maintenance program.</p>
<b>GCC 2.2</b>	Sectional Completions are: <i>Not Applicable</i>
<b>GCC 2.3(i)</b>	<p>The following documents also form part of the Contract:</p> <p><b>a) Management Strategies and Implementation Plans (MSIP) for managing Environmental, Social, Health and Safety (ESHS) risks.</b></p> <p><b>b) Environmental Code of Practice (ECOP)</b></p>
<b>GCC 3.1</b>	The language of contract is <i>English</i> .
<b>GCC 5.1</b>	The Project manager <i>may</i> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	Schedule of other contractors: <i>Not Applicable</i>
<b>GCC 13.1</b>	<p>The minimum insurance amounts and deductibles shall be:</p> <p>(a) for loss or damage to the Works, Plant and Materials: <i>equivalent to the Contract Price (US\$20,000.00 maximum deductible)</i>.</p> <p>(b) for loss or damage to Equipment: <i>equivalent to the equipment price without deductibles</i></p> <p>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: <i>US\$50,000.00 on any of an unlimited number of occasions without deductibles</i></p> <p>(d) for personal injury or death:</p> <p>(i) of the Contractor's employees: <i>US\$10,000.00 for each death or permanent disability with no deductible; daily compensation for temporary injury up to a maximum of 360 days, with 15 days maximum deductible (worker's compensation)</i>.</p> <p>(ii) of other people: <i>US\$10,000.00 for each death or permanent disability with no deductible</i>.</p>

<b>GCC 14.1</b>	Site Data are: <b><i>Strip Maps for Initial Maintenance Works</i></b>
<b>GCC 18</b>	Add a new paragraph 18.2: The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel and to provide a safe work environment. The Contractor shall conduct health and safety programs for workers employed under the project and shall disseminate information on sexually transmitted diseases including HIV/AIDS to employees and local communities surrounding the Project sites.
<b>GCC 20.1</b>	The Site Possession Date(s) shall be: <b><i>same as the start date</i></b>
<b>GCC 21</b>	Add a new paragraph 21.2: The Contractor shall comply with (if required) (i) the measures and requirements set forth in the resettlement plan to the extent it concerns impacts on affected people during construction; and (ii) any corrective or preventive actions set out in safeguards monitoring reports that the Employer will prepare from time to time.
<b>GCC 23.1 &amp; GCC 23.2</b>	Appointing Authority for the Adjudicator: <b><i>Lao Adjudication Board</i></b>
<b>GCC 24.3</b>	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <b><i>US\$25.00 which shall include reimbursable expenses such as transportation, accommodation (if any), communications etc.</i></b>
<b>GCC 24.4</b>	Institution whose arbitration procedures shall be used: The dispute shall be referred to arbitration in accordance with the laws of Lao PDR. <b><i>Law on Resolution of Economic Disputes No. 02/NA (19 May 2005)</i></b> The place of arbitration shall be: <b><i>Oudomxai Province, Lao PDR</i></b>
<b>B. Time Control</b>	
<b>GCC 26.1</b>	The Contractor shall submit for approval a Program for the Works within <b><i>fourteen (14)</i></b> days from the date of the Letter of Acceptance.
<b>GCC 26.3</b>	The period between Program updates is <b><i>sixty (60)</i></b> days. The amount to be withheld for late submission of an updated Program is <b><i>1% of the Contract price.</i></b>
<b>GCC 31</b>	Add a new paragraph 31.3: The Contractor shall provide the DPWT/Road Office with a written notice of any unforeseeable environmental or resettlement risks or impacts that arise during construction of Works, which were not considered in the environmental management plan or the resettlement plan.
<b>C. Quality Control</b>	
<b>GCC 34.1</b>	The Defects Liability Period is: <b><i>Not Applicable.</i></b>
<b>D. Cost Control</b>	
<b>GCC 44.1</b>	The currency of the Employer's country is: <b><i>Lao Kip (LAK).</i></b>

<b>GCC 45.1</b>	The Contract <i>is</i> subject to price adjustment in accordance with GCC Clause 45.
<b>GCC 46.1</b>	The proportion of payments retained is: <b><i>Not Applicable</i></b>
<b>GCC 49.1</b>	The Advance Payments shall be: <b><i>ten percent (10%)</i></b> of the contract price and shall be paid to the Contractor no later than <b><i>thirty (30) days after furnishing to the Employer the unconditional bank guarantee for the Advance Payment</i></b>
<b>GCC 50.1</b>	An Advance Payment Guarantee is required
<b>E. Finishing the Contract</b>	
<b>GCC 53.1</b>	Delete Clause GCC 53.1 and substitute: At the end of the Performance-Based Works, the Contractor shall request the DPWT/Road Office to issue a Completion Certificate and the DPWT/Road Office shall do so upon deciding that the Contractor has complied with all Service Levels and all other requirements of the Contract.
<b>GCC 57.2 (g)</b>	The maximum number of days is: <b><u>Not Applicable</u></b>
Additional Clause: <b>Social Requirements</b>	
<b>GCC 62</b>	<ul style="list-style-type: none"> <li>• The Contractor shall (a) not use child labor; (b) provide equal pay for equal work of equal value regardless of gender, ethnicity or caste; and (c) not use forced labor. "Child" means a child below the statutory minimum age as specified in the Labour Law of Lao PDR (43/NA of 24.12.2013) or any amendment thereto;</li> <li>• The Contractor shall provide equal opportunity of employment independent of gender or ethnicity. The Contractor will be required to demonstrate that he does not practice discrimination against women in the employment of local personnel; and respect the right of women to be employed in accordance with the Law;</li> <li>• Ensure that conflicts with local power holders and local communities are avoided;</li> <li>• Where land acquisition and resettlement of are required and inevitable, civil work will not start until compensation and necessary support has been provided to the project affected households;</li> <li>• Implement the contract or civil work in a way that fully respects ethnic group's dignity, human rights, and cultural uniqueness and so that they do not suffer adverse effects during the construction;</li> <li>• Ensure that project stakeholders especially project affected people are adequately consulted and, where necessary focus group meetings are conducted with both men and women to identify any project-related and other issues related to the subproject implementation.</li> </ul>
Additional Clauses: <b>Environmental Requirements</b>	
<b>GCC 63</b>	The Contractor shall comply with all applicable national, provincial, and local environmental laws and regulations. The Contractor shall (a) establish an operational system for managing environmental impacts, (b)

	carry out all of the monitoring and mitigation measures set forth in the Environmental Codes of Practice, (c) comply with any corrective or preventative actions set out in safeguards monitoring reports that the Employer will prepare from time to time, and (d) allocate the budget required to ensure that such measures are carried out. The Contractor shall submit quarterly reports on the carrying out of such measures to the Employer.
<b>GCC 64</b>	The Contractor shall provide the Employer with monthly reports of its activities, including each of its obligations in Sub-Clauses 18.2, 21.2, 31.3 and 62 and 63. If the contractor fails to comply with the required reporting in a month, 2% deduction of total payable amount will be made.

## Part B - Specific Provisions

<b>D. COST CONTROL</b>	
<b>Cl.45 Price Adjustment</b>	<p>The amounts payable to the Contractor shall be adjusted in respect of the rise or fall in the costs of Labour, Contractor’s Equipment, Materials, and other inputs to the Works, by the addition or subtraction of the amounts determined by the formula prescribed in this Clause.</p> <p>In accordance with GCC 45.1 the adjustment formula is:</p> $P = A + B I^m/I^o$ <p>Where:</p> <p style="padding-left: 20px;">P is the adjustment factor;</p> <p style="padding-left: 20px;">A and B are coefficients as specified below, representing the non adjustable and adjustable portions, respectively, of the Contract Price; and</p> <p style="padding-left: 20px;">I<sub>m</sub> is the index prevailing at the end of the month being invoiced and I<sub>o</sub> is the index prevailing 28 days before Bid opening for inputs payable:</p> <p>and where:     <math>I_o = c \cdot L_{Lo} + d \cdot M_o + e \cdot E_o + f \cdot F_o</math></p> <p style="padding-left: 40px;"><math>I_m = c \cdot L_{Lm} + d \cdot M_m + e \cdot E_m + f \cdot F_m</math></p> <p>In all indices:</p> <p>The subscript “o” indicates the value of the index on the day 28 days before the closing date for bidding, namely 10 August 2018.</p> <p>The subscript “m” indicates the value of the index on the first day of month "m" (ie based on data collected during the previous month and published during month "m").</p> <p>Where:</p> <p>"M" is the unweighted average of the indices for construction materials (“M”), steel (“S”), asphalt (“A”) and cement (“C”) from the monthly construction price escalation factors published by the Thai Ministry of Commerce.</p> <p>"E" is the index for equipment (“E”) from the monthly construction price escalation factors published by the Thai Ministry of Commerce.</p> <p>"F" is the retail price of diesel (gasoil) per litre as given by the Lao State Fuel Company relating to the distribution centre nearest to the Contract site.</p> <p>Sources of indices:</p> <ul style="list-style-type: none"> <li>▪ The Thai indices for materials and equipment can be obtained from the Office of Commercial Affairs of the Thai Embassy in Vientiane or via the Internet on: <a href="http://www.indexpr.moc.go.th/">http://www.indexpr.moc.go.th/</a></li> <li>▪ Fuel prices on the Lao State Fuel website: <a href="http://www.laosfc.com/fuel-cost/present-en/">http://www.laosfc.com/fuel-cost/present-en/</a></li> <li>▪ and Rates of exchange (<i>if required</i>) may be obtained on the BCEL website: <a href="http://www.bcellaos.com/exchange-rates.php">http://www.bcellaos.com/exchange-rates.php</a></li> </ul>

The price Adjustment Coefficients shall be:

Cost Element	Coefficient	Value
Non-adjustable	A	Fixed (not less than 0.70)
Adjustable $B = c + d + e + f$	B	(100 - A)
Labour	c	0.03 to 0.06
Materials	d	0.08 to 0.11
Equipment	e	0.06 to 0.09
Fuel	f	0.05 to 0.06
TOTAL	$A + c + d + e + f$	1.00

The other definitions remain as given in Clause 45 in the General Conditions of Contract. It was noted that if the Works are not completed by the Intended Completion Date Sub-Clause 47.1 will apply.

The starting indices for labour ( $L_{LO}$ ), materials ( $M_O$ ), equipment ( $E_O$ ) and fuel ( $F_O$ ) were agreed as:

Elements	Base Indices
Non-adjustable	70%
Labour ( $L_{LO}$ )	<i>value of index or "x" percent per annum</i>
Materials ( $M_O$ ) = Av. (M+S+C+A) for end of (month & year - closest to 28 days before the closing date for bidding)	<i>value of average of indices</i>
Equipment ( $E_O$ ) for end (month & year - closest to 28 days before the closing date for bidding)	<i>value of index</i>
Fuel ( $F_O$ ) as on (date closest to 28 days before the closing date for bidding)	<i>Kip (cost per litre in contract area)</i>

## **APPENDIX A**

### **World Bank's Policy on Corrupt and Fraudulent Practices**

#### **Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, dated January 2011, revised July 2014:**

##### **“Fraud and Corruption:**

1.16 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.<sup>8</sup> In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>9</sup>
  - (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>10</sup>
  - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>11</sup>
  - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>12</sup>
  - (v) “obstructive practice” is
    - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
    - (bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or 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, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

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<sup>8</sup> In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

<sup>9</sup> For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>10</sup> For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>11</sup> For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

<sup>12</sup> For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.



- (c) will declare mis-procurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,<sup>13</sup> including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated<sup>14</sup>;
- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.”

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<sup>13</sup> A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

<sup>14</sup> A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

## APPENDIX B

### Environmental, Social, Health and Safety (ESHS)

#### Metrics for Progress Reports

##### *Metrics for regular reporting:*

environmental incidents or non-compliances with contract requirements, including contamination, pollution or damage to ground or water supplies;  
health and safety incidents, accidents, injuries and all fatalities that require treatment;  
status of all permits and agreements:

- i. work permits: number required, number received, actions taken for those not received;
- ii. status of permits and consents:
  - list areas/facilities with permits required (quarries, asphalt & batch plants), dates of application, dates issued (actions to follow up if not issued), dates submitted to resident engineer (or equivalent), status of area (waiting for permits, working, abandoned without reclamation, decommissioning plan being implemented, etc.);
  - list areas with landowner agreements required (borrow and spoil areas, camp sites), dates of agreements, dates submitted to resident engineer (or equivalent);
  - identify major activities undertaken in each area in the reporting period and highlights of environmental and social protection (land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation);
  - for quarries: status of relocation and compensation (completed, or details of activities and current status in the reporting period).

health and safety supervision:

- i. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
- ii. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);

worker accommodations:

- i. number of expats housed in accommodations, number of locals;
- ii. date of last inspection, and highlights of inspection including status of accommodations' compliance with national and local law and good practice, including sanitation, space, etc.;
- iii. actions taken to recommend/require improved conditions, or to improve conditions.

HIV/AIDS: provider of health services, information and/or training, location of clinic, number of non-safety disease or illness treatments and diagnoses (no names to be provided);

gender (for expats and locals separately): number of female workers, percentage of workforce, gender issues raised and dealt with (cross-reference grievances or other sections as needed);

training:

- i. number of new workers, number receiving induction training, dates of induction training;
- ii. number and dates of toolbox talks, number of workers receiving Occupational Health and Safety (OHS), environmental and social training;

- iii. number and dates of HIV/AIDS sensitization and/or training, no. workers receiving training (in the reporting period and in the past); same questions for gender sensitization, flag person training.
- iv. number and date of GBV /SEA sensitization and/or training, number of workers receiving training on code of conduct (in the reporting period and in the past), etc.

environmental and social supervision:

- i. environmentalist: days worked, areas inspected and numbers of inspections of each (road section, work camp, accommodations, quarries, borrow areas, spoil areas, swamps, forest crossings, etc.), highlights of activities/findings (including violations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;
- ii. sociologist: days worked, number of partial and full site inspections (by area: road section, work camp, accommodations, quarries, borrow areas, spoil areas, clinic, HIV/AIDS center, community centers, etc.), highlights of activities (including violations of environmental and/or social requirements observed, actions taken), reports to environmental and/or social specialist/construction/site management; and
- iii. community liaison person(s): days worked (hours community center open), number of people met, highlights of activities (issues raised, etc.), reports to environmental and/or social specialist /construction/site management.

Grievances: list new grievances (e.g. allegations of GBV / SEA) received in the reporting period and unresolved past grievances by date received, complainant, how received, to whom referred to for action, resolution and date (if completed), data resolution reported to complainant, any required follow-up (Cross-reference other sections as needed):

- (i) Community grievances

Traffic and vehicles/equipment:

- i. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
- ii. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
- iii. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).

Environmental mitigations and issues (what has been done):

- i. dust: number of working bowsers, number of waterings/day, number of complaints, warnings given by environmentalist, actions taken to resolve; highlights of quarry dust control (covers, sprays, operational status); % of rock/spoil lorries with covers, actions taken for uncovered vehicles;
- ii. erosion control: controls implemented by location, status of water crossings, environmentalist inspections and results, actions taken to resolve issues, emergency repairs needed to control erosion/sedimentation;
- iii. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken in the reporting period at each, and highlights of environmental and social

protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;

- iv. blasting: number of blasts (and locations), status of implementation of blasting plan (including notices, evacuations, etc.), incidents of off-site damage or complaints (cross-reference other sections as needed);
- v. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
- vi. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reus/recycled/disposed on-site;
- vii. details of tree plantings and other mitigations required undertaken in the reporting period;
- viii. details of water and swamp protection mitigations required undertaken in the reporting period.

compliance:

- i. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance;
- ii. compliance status of C-ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- iii. compliance status of GBV/SEA prevention and response action plan: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- iv. compliance status of Health and Safety Management Plan re: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance

other unresolved issues from previous reporting periods related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

## **Section X - Contract Forms**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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## Lao People's Democratic Republic

Peace Independence Democracy Unity Prosperity

### Ministry of Public Works and Transport Department of Public Works and Transport of XYZ Province

## Letter of Acceptance

[ on letterhead paper of the Employer]

.....[reference]..

..... [date].....

To: ..... [name and address of the Contractor] .....

**Subject:** ..... [Notification of Award Contract No]. .....

This is to notify you that your Bid dated . . . . [insert date] . . . . for execution of the . . . . .  
.. [insert name of the contract and identification number, as given in the Appendix to Bid] . . . . .  
for the Accepted Contract Amount of . . . . . [insert amount in numbers and words and name  
of currency], as corrected and modified in accordance with the Instructions to Bidders is and  
taking into account the discount offered (delete if no discount) together with the  
Memorandum of Understanding dated (day/month/year) is hereby accepted by this  
Ministry.

You are requested to furnish the Performance Security within 28 days in accordance with  
the Conditions of Contract, using for that purpose the of the Performance Security Form  
included in Section IX (Contract Forms) of the Bidding Document.

**[Choose one of the following statements:]**

We accept that \_\_\_\_\_ [insert the name of Adjudicator proposed by the  
Bidder] be appointed as the Adjudicator.

**[or]**

We do not accept that \_\_\_\_\_ [insert the name of the Adjudicator proposed  
by the Bidder] be appointed as the Adjudicator, and by sending a copy of this Letter of  
Acceptance to \_\_\_\_\_ [insert name of the Appointing  
Authority], the Appointing Authority, we are hereby requesting such Authority to appoint the  
Adjudicator in accordance with ITB 41.1 and GCC 23.1.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement



## Lao People's Democratic Republic

Peace Independence Democracy Unity Prosperity

### Ministry of Public Works and Transport Department of Public Works and Transport of XYZ Province

## Contract Agreement

THIS AGREEMENT made the . . . . .day of . . . . ., . . . . ., between . . . . . [name of the Employer].. (hereinafter “the Employer”), of the one part, and[name of the Contractor] {for unincorporated joint ventures, add ”a joint venture formed pursuant to [name of JV founding agreement] dated [date of JV agreement], represented by [name of authorized representative of JV]} . . . . .(hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as . . . . .*[name of the Contract]*. . . . .should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in total amount of (Currency)*[Contract Price in figures and in words]* (hereinafter called “the Contract Price”).

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (i) the Letter of Acceptance
  - (ii) the Letter of Bid
  - (iii) the addenda Nos \_\_\_\_\_(if any)
  - (iv) the Particular Conditions
  - (v) the General Conditions of Contract, including appendix;
  - (vi) the Specification
  - (vii) the Drawings
  - (viii) Bill of Quantities;<sup>15</sup>and
  - (ix) any other document **listed in the PCC** as forming part of the Contract,

<sup>15</sup> In lump sum contracts, delete “Bill of Quantities” and replace with “Activity Schedule.”



3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Lao PDR. on the *(day/month/year)* specified above.

Signed by: .....  
for and on behalf of the Employer

Signed by: .....  
for and on behalf the Contractor

in the  
presence  
of: .....  
Witness, Name, Signature, Address, Date

in the  
presence  
of: .....  
Witness, Name, Signature, Address, Date

## Performance Security (Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** [insert name and Address of Employer]

**Date:** \_ [Insert date of issue]

**PERFORMANCE GUARANTEE No.:** [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that \_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. [insert reference number of the contract] dated [insert date] with the Beneficiary, for the execution of \_ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of [insert amount in figures] (\_\_\_\_\_) [insert amount in words],<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the .... Day of ....., 2...<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_  
[signature(s)]

<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 53.1. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer 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 Employer 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 Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

## Advance Payment Security

[Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** [Insert name and Address of Employer]

**Date:** [Insert date of issue]

**ADVANCE PAYMENT GUARANTEE No.:** [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. [insert reference number of the contract] dated [insert date] with the Beneficiary, for the execution of [insert name of contract and brief description of Works] (hereinafter called "the Contract").

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

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of [insert amount in figures] () [insert amount in words]<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number [insert number] at [insert name and address of Applicant's bank]..

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the [insert day] day of [insert month], 2 [insert year],<sup>2</sup> whichever is earlier.

<sup>1</sup> 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 Employer.

<sup>2</sup> Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer 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 Employer might consider

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, except that the supporting statement under Article 15(a) is hereby excluded.

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*[signature(s)]*

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*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 Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*