

STANDARD BIDDING DOCUMENTS

# Procurement of Goods

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# Procurement of Goods

(Above Nu. 0.500 Million)



Royal Government of Bhutan  
Ministry of Finance

2019

## **PREFACE**

This Standard Bidding Document for the Procurement of Goods have been prepared by the Ministry of Finance to be used for the Procurement of Goods through National and International Competitive Bidding in projects that are financed in whole or in part by the Royal Government of Bhutan (RGoB). It should be used in conjunction with the Procurement Rules and Regulations 2019. This document will come into effect from 1<sup>st</sup> July, 2019.

For any comments or clarifications on this Standard Bidding Document contact:

Government Procurement and Property Management Division  
Department of National Properties  
Ministry of Finance  
Royal Government of Bhutan

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# SAMPLE FORMAT FOR INVITATION FOR BIDS

## Invitation for Bids (IFB)

### Bhutan

#### [PEERS]

#### [Procurement of Equipment]

1. The **UWICER, Lamai Goempa, Bumthang** now invites sealed Bids from eligible and qualified Bidders for **[Equipment at UWICER, Lamai Goempa, Bumthang]**.<sup>1</sup>
2. Bidding will be conducted through the International/National [**National**] Competitive Bidding procedures specified in the RGoB Procurement Rules and Regulations, and is open to all Bidders from Countries as defined in Section V of the Bidding Documents<sup>2</sup>.
3. Interested eligible Bidders may obtain further information from **[Ninjur Wangmo, Store Asst., UWICER, Lamai Goempa, nwangmo@uwice.gov.bt]** and inspect the Bidding Documents at the address given below **[The Director, Ugyen Wangchuck Institute for Conservation and Environment Research, Lamai Goempa, Bumthang]** from **[9:00 AM – 5:00PM]**<sup>3</sup>..
4. Qualification requirements include: **[Eligible Bhutanese firms with valid trade licence & clearance]**. A margin of preference for eligible national suppliers and joint ventures/consortia/associations may be applied.
5. A complete set of Bidding Documents in **[English]** may be purchased by interested Bidders upon payment of a non refundable fee of<sup>4</sup> **[Nu. 100/-]** or in **[insert amount in specified convertible currency]**. The method of payment will be **[Cash payment]**<sup>5</sup>. The Bidding Documents may be downloaded free of cost from the purchaser's website **[www.uwicer.gov.bt]**.
6. Bids must be delivered to the address below at or before **[UWICER, Lamai Goempa, Bumthang on 12/01/2023, 11:00AM]**. Electronic bidding **["shall not"]** be permitted. Late Bids will be rejected. Bids will be opened physically in the presence of the Bidders' representatives who choose to attend in person or on-line at the address below at **[Lamai Goempa, Bumthang, 12/01/2023 on 3:30PM]**.
7. All Bids shall be accompanied by a Bid Security of **[Nu.35000 /-]**
8. The address(es) referred to above is (are): **[The Director, Ugyen Wangchuck Institute for Conservation & Environment Research, Lamai Goempa, Bumthang, Department of Forest & Park Services, 03631326]**

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1 A brief description of the type(s) of Goods should be provided, including quantities, location of Project, required delivery period and other information necessary to enable potential Bidders to decide whether or not to respond to the Invitation. The Bidding Documents may require Bidders to have specific experience or capabilities; such requirements should also be included in this paragraph.

2 Occasionally, contracts may be financed out of special funds that would restrict eligibility to a particular group of countries. When this is the case, it should be mentioned in this paragraph

3 For example, 9.00 AM to 5.00 PM.

4 The fee should defray printing and delivery costs; it should not be so high as to deter competition.

5 For example, cashier's check, direct deposit to specified account number, etc

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**Bidding Documents for [Procurement of Equipment]**

**Procuring Agency [UWICER]**

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# **PART 1**

## **BIDDING PROCEDURES**

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## A. SUBMISSION AND OPENING OF BIDS

### 28. Submission, Sealing and Marking of Bids

Bids shall be delivered by hand, courier or registered post. The Bidder shall seal the original Bid and the number of copies stipulated in the BDS, including alternative Bids if permitted in accordance with ITB Clause 17, in separate inner envelopes contained within one outer envelope. All envelopes shall be sealed with adhesive or other sealant to prevent reopening.

The inner envelopes shall:

- (a) be signed across their seals by the person authorized to sign the Bid on behalf of the Bidder; and
- (b) be marked “ORIGINAL”, “ALTERNATIVE” (if any) and “COPIES”;

The outer envelope shall:

- (a) be marked “Confidential”;
- (b) be addressed to the Purchaser at the address<sup>14</sup> provided in the BDS;
- (c) bear the name and identification number of the Contract as defined in the BDS; and
- (d) provide a warning not to open before the specified time and date for Bid Opening as defined in the BDS.

In addition to the identification required in ITB Sub-Clause 28.2, the inner envelopes shall indicate the name and address of the Bidder, to enable the Bid to be returned unopened in case it is declared late pursuant to ITB Clause 30.

If the outer envelope is not sealed and marked as above, the Purchaser shall assume no responsibility for the misplacement or premature opening of the Bid.

In the Two-Stage Process, Bidders shall be advised to submit only the technical proposal in the first stage. In the second stage, Bidders shall be requested to submit both their technical proposals as modified and agreed with the Purchaser and the financial proposals based on the modified technical proposal simultaneously in two separate sealed envelopes.

When so specified in the BDS Bidders shall have the option of submitting their Bids electronically. Bidders submitting Bids electronically shall follow the procedures specified in the BDS.

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<sup>14</sup> The receiving address shall be an office that is staffed during normal working hours by personnel authorized to certify time and date of receipt and assure safe-keeping until Bid opening. A post office address is not to be used. The address must be the same as the receiving address described in the Invitation for Bids.



## Section I. Instructions to Bidders

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**29. Deadline for Submission of Bids** Bids shall be delivered by hand, courier or registered post to the Purchaser at the address and no later than the date and time indicated in the BDS.

The Purchaser may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Documents in accordance with ITB Clause 9, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

**30. Late Bids** 30.1. The Purchaser shall not consider any Bid that is submitted after the deadline for submission of Bids. Any Bid received by the Purchaser after the deadline for submission of Bids shall be declared late, rejected, and returned unopened to the Bidder.

**31. Withdrawal, Substitution and Modification of Bids** A Bidder may withdraw, substitute or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 28, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB Sub-Clause 27.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Bid must accompany the respective written notice. All notices must be:

- (a) submitted in accordance with ITB Clauses 27 and 28 (except that withdrawal notices do not require copies) and, in addition, the respective envelopes shall be clearly marked "**Withdrawal**", "**Substitution**" or "**Modification**," and
- (b) received by the Purchaser prior to the deadline prescribed for submission of Bids, in accordance with ITB Clause 29.

Bids requested to be withdrawn in accordance with ITB Sub-Clause 31.1 shall be returned unopened to the Bidders.

No Bid may be withdrawn, substituted or modified in the interval between the deadline for submission of Bids and the expiry of the period of Bid validity specified by the Bidder on the Bid Submission Sheet or any extension thereof.

Withdrawal of a bid between the deadline for submission of bids and expiration of the period of bid validity specified in the BDS or as extended pursuant to Clause 25.1, may result in the forfeiture of the Bid Security pursuant to Clause 26.6. If the lowest or the lowest evaluated bidder withdraws his bid between the periods specified in this clause, the bid security of the bidder shall be forfeited and in addition, the bidder shall pay to the employer the positive difference of sum, if any, with the next lowest bidder within fourteen (14) days of his withdrawal. If the bidder fails to pay the difference within the said date, the bidder shall be debarred by a competent authority as per law. In the case of framework contracts, the bid security shall be forfeited and the supply of the particular item will be re-tendered.

## SECTION II. BID DATA SHEET

- A. Introduction.....
- B. Bidding Documents.....
- C. Qualification Criteria.....
- D. Preparation of Bids.....
- E. Submission and Opening of Bids.....
- F. Evaluation and Comparison of Bids.....
- G. Award of Contract.....

Section II: Bid Data Sheet (BDS)

**SECTION II. BID DATA SHEET**

| <b>A. INTRODUCTION</b>           |   |
|----------------------------------|---|
| <b>ITB 1.1</b>                   | The Purchaser is: <i>[Ugyen Wangchuck Institute for Conservation and Environment Research, Lamai Goempa, Bumthang]</i>  |
| <b>ITB 1.1</b>                   | The name, identification number and number of lots within this procurement are: _____<br><i>[insert name, identification number and number of lots ]</i>  |
| <b>ITB 3.1</b>                   | Category of trade License eligible for this bidding process is: <i>[Production and Manufacturing Service of Trade]</i>  |
| <b>ITB 5.1</b>                   | All goods and related services to be supplied under the contract shall comply with..... <i>[If any specify requirements to comply with laws related to environment and others as case may be .For e.g. ozone depleting substances prohibition].</i>                             |
| <b>B. BIDDING DOCUMENTS</b>      |   |
| <b>ITB 8.2</b>                   | For <b>clarification of Bid purposes</b> only, the Purchaser’s address is:<br>Attention: <i>[Ninjur Wangmo]</i><br>Address: <i>[Store Asst., UWICER, Lamai Goempa, Bumthang], Bhutan</i><br>Facsimile number: <i>[03-631935]</i><br>Electronic mail address: <i>[Shall not]</i> |
| <b>C. QUALIFICATION CRITERIA</b> |   |
| <b>10.1</b>                      | The minimum amount of financial resource is Nu. <i>[specify minimum amount of financial resources if required and evidence to be submitted by the bidder]</i>   |
| <b>11.1 (a)</b>                  | The minimum number of years of experience in the supply of goods and related services is: <i>[specify the number of years of experience if required and the evidence to be submitted by the bidder]</i>   |
| <b>11.1 (b)</b>                  | The specific experience in the supply of similar goods and related services is: <i>[specific experience requirement in terms of value and number of similar supplies if required and the evidence to be submitted by the bidder]</i>  |
| <b>11.1 (c)</b>                  | The minimum production capacity or availability of equipment is: <i>[specify the minimum production capacity or equipments availability if required and the evidence to be submitted by the bidder]</i>   |
| <b>D. PREPARATION OF BIDS</b>    |   |
| <b>ITB 13.1</b>                  | The language of the Bid is: <i>[English]</i> _____  |
| <b>ITB 14.1 (j)</b>              | The bidders shall submit a signed Integrity Pact: <i>[No]</i>   |
| <b>ITB 14.1 (k)</b>              | The Bidder shall submit with its Bid the following additional documents:<br><i>[“none”]</i>   |

## Section II: Bid Data Sheet (BDS)

|   |  |
|---|--|
| <b>ITB 17.1</b>   | Alternative Bids [ <i>“shall not be”</i> ] permitted.<br><i>[If alternatives shall be considered, insert:<br/>“A Bidder may submit an alternative Bid only with a Bid for the Goods as specified in Section VI, Schedule of Supply, 3, Technical Specifications (the “base case”). The Purchaser shall only consider the alternative Bid(s) offered by the Bidder whose Bid for the base case was determined to be the lowest-evaluated Bid.”<br/>or<br/>“A Bidder may submit an alternative Bid with or without a Bid for the base case. The Purchaser shall consider Bids offered for alternatives as specified in the Technical Specifications of Section VI, Schedule of Supply. All Bids received for the base case, as well as alternative Bids meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures as are specified in ITB Clause 41.”]</i> |
| <b>ITB 18.5</b>   | The Incoterms edition is: <i>[2021]</i>  |
| <b>ITB 18.6 (a)<br/>(iii), (b) (ii)<br/>and (c) (v)</b> | The final destination (Project Site) is: <i>[Lamai Goempa &amp; its Sub Centre (Darla, Khebethang, Gelephu &amp; Thimphu) ]</i> .  |
| <b>ITB 18.6(b) (i)<br/>and (c)(v)</b>                   | Place of destination: <i>[Lamai Goempa and the Sub Centre]</i>   |
| <b>ITB 19.1</b>   | The prices quoted by the Bidder [ <i>“shall not”</i> ] be adjustable. If prices shall be adjustable, the methodology is specified in Section III, Evaluation and Qualification Criteria.   |
| <b>ITB 20.1</b>   | The Bidder [ <i>“is”</i> ] required to quote in Ngultrum (BTN) the portion of the Bid Price that corresponds to expenditures incurred in Ngultrum (BTN) in Bhutan.   |
| <b>ITB 23.3</b>   | The period of time for which the Goods are expected to be functioning (for the purpose of spare parts, special tools, etc) is <i>[12 months and above]</i> .   |
| <b>ITB 24.1 (a)</b>                                     | Manufacturer’s authorization [ <i>“is not”</i> ] required.   |
| <b>ITB 24.1 (b)</b>                                     | After sales maintenance, repair, spare parts stocking and related services [ <i>“are”</i> ] required, and the Bidder therefore [ <i>“is”</i> ] required to be represented by a suitably equipped and able agent in Bhutan.   |
| <b>ITB 25.1</b>   | The Bid validity period shall be <i>[365]</i> days.  |
| <b>ITB 26.1</b>   | The amount and currency of the Bid Security is <i>[Nu. 35000/-]</i> .  |
| <b>E. SUBMISSION AND OPENING OF BIDS</b>                |  |
| <b>ITB 27.1 and 28.1</b>                                | In addition to the original of the Bid, the number of copies is: <i>[1]</i> .  |
| <b>ITB 28.3 (c)</b>                                     | The name and identification number of the Contract is <i>[insert name and identification number]</i> .   |
| <b>ITB 28.3 (d)</b>                                     | The time and date for Bid Opening is <i>[3:30PM]</i> Bhutan time on <i>[12/01/2023]</i> .  |

Section II: Bid Data Sheet (BDS)

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|--|--|
| <p><b>ITB 28.7</b></p>                             | <p>Bidders [<i>“shall not”</i>] have the option of submitting their Bids electronically.</p> <p>If Bidders shall have the option of submitting their Bids electronically, the electronic bidding submission procedures shall be: [<i>insert a description of the electronic bidding submission procedures</i>]</p>   |
| <p><b>ITB 29.1</b></p>                             | <p>For Bid submission purposes, the Purchaser’s address is:<br/>         Attention: [<b>The Director</b>]<br/>         Address: [<b>Ugyen Wangchuck Institute for Conservation and Environment Research, Lamai Goempa, Bumthang</b>], Bhutan.<br/>         The deadline for the submission of Bids is:<br/>         Date: [<i>12/01/2023</i>]<br/>         Time: [<i>11:00AM</i>] Bhutan time.</p> |
| <p><b>ITB 32.1</b></p>                             | <p>The Bid Opening shall take place at:<br/>         Address: [<b>Ugyen Wangchuck Institute for Conservation and Environment Research, Lamai Goempa, Bumthang</b>], Bhutan.<br/>         Date: [<i>12/01/2023</i>]<br/>         Time: [<i>3:30PM</i>] Bhutan time.</p>   |
| <p><b>F. EVALUATION AND COMPARISON OF BIDS</b></p> |  |
| <p><b>ITB 39.1</b></p>                             | <p>Bid prices expressed in different currencies shall be converted into Ngultrum (BTN).</p> <p>Price written in word will overrule the price in number (including total price).</p> <p>The source of exchange rates shall be the Royal Monetary Authority of Bhutan.</p> <p>The date for the exchange rates shall be the date of Bid Opening, as prescribed in ITB Sub-Clause 32.1.</p>            |
| <p><b>ITB 40.1</b></p>                             | <p>A margin of ten percent (10%) Domestic Preference [<b>shall</b>] apply.</p>   |
| <p><b>ITB 41.3 (a)</b></p>                         | <p>Evaluation will be done for [<i>Items</i>]</p> <p><b><i>Bids will be evaluated for each item and the Contract will comprise the item(s) awarded to the successful Bidder.</i></b></p>   |

Section II: Bid Data Sheet (BDS)

|                                    |  |
|------------------------------------|--|
| <p><b>ITB 41.3 (e)</b></p>         | <p>The adjustments shall be determined using the following criteria from amongst those set out in Section III, Evaluation and Qualification Criteria: <i>[refer to Schedule III, Evaluation and Qualification Criteria; insert complementary details if necessary]</i></p> <p>(a) Deviation in payment schedule: <i>[ No]. If Yes insert the adjustment factor]</i></p> <p>(b) The cost of major replacement components, mandatory spare parts, and service: <i>[ No]. If Yes, insert the methodology and criteria]</i></p> <p>(c) The availability in Bhutan of spare parts and after-sales services for the equipment offered in the Bid <i>[No]. If Yes, insert the methodology and criteria]</i></p> <p>(d) The projected operating and maintenance costs during the life of the Equipment <i>[Yes] [Warranty at least for a year]</i></p> |
|                                    | <p>(e) The performance and productivity of the equipment offered: <i>[Yes ] If Yes, []</i></p> <p>(f) <i>[Insert any other specific criteria]</i></p>  |
| <p><b>ITB 41.6</b></p>             | <p>Bidders <b><i>["shall not"]</i></b> be allowed to quote separate prices for one or more lots. <i>[refer to Section III, Evaluation and Qualification Criteria for the evaluation methodology, if appropriate]</i></p>   |
| <p><b>G. AWARD OF CONTRACT</b></p> |  |
| <p><b>ITB 47.1</b></p>             | <p>The maximum percentage by which quantities may be increased is <u><i>[10]</i></u> %</p> <p>The maximum percentage by which quantities may be decreased is <u><i>[10]</i></u> %</p>  |

Section II: Bid Data Sheet (BDS)

**Price Schedule Forms**

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in Column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Supply.]*

| <b>Sl</b> | <b>Item</b>   | <b>Specification</b>   | <b>Unit</b> | <b>Price</b> |
|-----------|---|--|-------------|--------------|
| 1         | Drone (Equivalent to DJI Phantom 4 or above)              | Multispectral  | Per Nos     |              |
| 2         | Solar lighting and charging system (Equivalent to Gdlite) | 3 plus   | Per Nos     |              |
| 3         | Increment borer   | Length 250 mm, 4.3 mm core diam. 3-threads   | Per Nos     |              |
| 4         | Increment borer   | Length 350 mm, 5.15 core diam. 3-threads   | Per Nos     |              |
|           | Increment borer   | Length 450 mm, 4.3 diam. 3-threads   | Per Nos     |              |
| 5         | Digital Soil NPK Tester                                   | Soil npk tester has an automatic switch-off function. After about 15 seconds without pushing buttons, the meter will be switched off automatically. It has customized special stainless steel materials as sensors to realize rapid determination of soil available (Model: RS-*-SC-1) | Per Nos     |              |

# **PART 3**

## **CONTRACT**



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## SECTION VII. GENERAL CONDITIONS OF CONTRACT

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## SECTION VII. GENERAL CONDITIONS OF CONTRACT

1. **Definitions** The following words and expressions shall have the meanings hereby assigned to them:

- (a) **Award of Contract** means the decision of the Purchaser to enter into a Contract with the Supplier for supply and delivery of the specified Goods, including any Related Services.
- (b) **Bid** means an offer to supply Goods, including any Related Services, made in accordance with the terms and conditions set out in the Bidding Documents that preceded the placement of the Contract of which these GCC form a part. The term “tender” is synonymous with the term “Bid”.
- (c) **Bidder** means an eligible individual or legal entity that participated in the bidding process governed by the Bidding Documents that preceded the placement of the Contract of which these GCC form a part.
- (d) **Bidding Documents** means the set of Bidding Documents that preceded the placement of the Contract of which these GCC form a part, which were sold or issued by the Purchaser to potential Bidders, and in which the specifications, terms and conditions of the proposed procurement were prescribed.
- (e) **Contract Documents** means the documents listed in the Contract Agreement, including any amendments thereto.
- (f) **Contract Price** means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom as may be made pursuant to the Contract.
- (g) **Day** means calendar day.
- (h) **Delivery** means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract Documents.
- (i) **GCC** means the General Conditions of Contract.
- (j) **Goods** means all of the commodities, raw materials, machinery and equipment, and/or other materials, including any object in solid, liquid or gaseous form that has an economic utility or value and which can be exchanged or traded, that the Supplier is required to supply to the Purchaser under the Contract.
- (k) The **Project Site**, where applicable, means the place named in the SCC.
- (l) **Purchaser** means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (m) **Related Services** means the services incidental to the supply of the Goods, such as insurance, installation, training and initial maintenance and other obligations of the Supplier under the Contract

## Section VII. General Conditions of Contract

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- (n) **SCC** means the Special Conditions of Contract.
- (o) **Subcontractor** means any natural person, private or government entity, or a combination thereof, including its legal successors and permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (p) **Supplier** means the natural person, private or government entity, or a combination of the above, whose Bid to perform the Contract has been accepted by the Purchaser and is named as such in the Agreement, and includes the legal successors or permitted assigns of the Supplier.

**2. Contract Documents** 2.1. Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary and mutually explanatory. The Contract Agreement shall be read as a whole.

**3. Fraud and Corruption** If the Purchaser determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract then the Purchaser may, after giving fourteen (14) days notice to the Supplier, terminate the Supplier's employment under the Contract and cancel the Contract, and the provisions of GCC Clause 36 shall apply as if such termination has been made under GCC Sub-Clause 36.1.

Should any employee of the Supplier be determined to have engaged in corrupt, fraudulent, collusive, coercive or obstructive practice during the purchase of the Goods, then that employee shall be removed.

For the purposes of this Sub-Clause:

- (a) "corrupt practice"<sup>17</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value<sup>18</sup> to influence improperly the actions of another party;
- (b) "fraudulent practice"<sup>19</sup> is any intentional 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;

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<sup>17</sup> "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes staff and employees of other organizations (including any institutions providing finance for the Goods) taking or reviewing procurement decisions.

<sup>18</sup> "anything of value" includes, but is not limited to, any gift, loan, fee, commission, valuable security or other asset or interest in an asset; any office, employment or contract; any payment, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part; any other services, favour or advantage, including protection from any penalty or disability incurred or apprehended or from any action or proceeding of a disciplinary or penal nature, whether or not already instituted and including the exercise or the forbearance from the exercise of any right or any official power or duty.

<sup>19</sup> a "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.

## Section VII. General Conditions of Contract

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- (c) “collusive practice”<sup>20</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (d) “coercive practice”<sup>21</sup> is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (e) “obstructive practice” is
  - (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order materially to impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - (ii) acts intended materially to impede the exercise of the inspection and audit rights of the Purchaser and/or any other relevant RGoB agency provided for under GCC Clause 11.

3.4. Any communications between the Supplier and the Purchaser related to matters of alleged fraud or corruption must be made in writing.

### 4. Interpretation

If the context so requires it, singular means plural and vice versa.

#### Incoterms

- (a) Unless inconsistent with any provision of the Contract or otherwise specified in the SCC, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIF, CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the SCC and published by the International Chamber of Commerce in Paris, France.

#### Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

#### Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

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<sup>20</sup> “parties” refers to participants in the procurement process (including public officials) and an “improper purpose” includes attempting to establish bid prices at artificial, non competitive levels.

<sup>21</sup> a “party” refers to a participant in the procurement process or contract execution.

## Section VII. General Conditions of Contract

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### Non-waiver

- (a) Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

### Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

- 5. Language** The Contract, as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SCC, in which case, for purposes of interpretation of the Contract, the translation shall govern.

The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

### **6. Joint Venture, Consortium or Association**

- 6.1. If the Supplier is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium or association. The composition or the constitution of the joint venture, consortium or association shall not be altered without the prior consent of the Purchaser.

### **7. Eligibility**

- 7.1. The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

7.2. All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured or processed; or through manufacture, processing or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

#### 8. Notices

Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form, including electronic communication, with proof of receipt.

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

#### 9. Governing Law

9.1. The Contract shall be governed by and interpreted in accordance with the laws of Bhutan.

#### 10. Settlement of Disputes

The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute. No arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

Notwithstanding any reference to arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) The Purchaser shall pay the Supplier any monies due the Supplier.

## Section VII. General Conditions of Contract

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- 11. Inspections and Audit** 11.1. The Supplier shall permit the Purchaser and/or persons appointed by the Purchaser to inspect the Supplier's offices and/or the accounts and records of the Supplier and its Subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Purchaser if so required by the Purchaser. The Supplier's attention is drawn to GCC Clause 3, which provides, inter alia, that acts intended materially to impede the exercise of the inspection and audit rights provided for under this GCC Sub-Clause 11.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under ITB Sub-Clause 2.1 (c) of the Instructions to Bidders that preceded the placement of the Contract of which these GCC form a part).
- 12. Scope of Supplies** The Goods and Related Services to be supplied shall be as specified in the Schedule of Supply.
- Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery of the Goods and Completion of the Related Services as if such items were expressly mentioned in the Contract.
- 13. Delivery and Documents** 13.1. Subject to GCC Sub-Clause 34.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the delivery and completion requirements specified in the Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.
- 14. Supplier's Responsibilities** 14.1. The Supplier shall supply all the Goods and Related Services included in the Scope of Supplies in accordance with GCC Clause 12, and the delivery and completion requirements as per GCC Clause 13.
- 15. Purchaser's Responsibilities** 15.1. Whenever the supply of Goods and Related Services requires that the Supplier obtain permits, approvals and/or import and other licenses or similar permissions from Bhutanese public authorities, the Purchaser shall, if so required by the Supplier, use its best efforts to assist the Supplier in complying with such requirements in a timely and expeditious manner, but without incurring any costs.
- 16. Contract Price**The Contract Price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto or deductions there from as may be made pursuant to the Contract.
- Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Bid, with the exception of any price adjustments authorized in the SCC.

## Section VII. General Conditions of Contract

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### **17. Terms of Payment**

The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.

The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 13 and upon fulfillment of all the obligations stipulated in the Contract.

Payments shall be made promptly by the Purchaser, no later than thirty (30) days after the submission of verified invoice or request for payment by the Supplier, and the Purchaser has accepted it.

The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Bid Price is expressed.

In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the SCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

**18. Taxes and Duties** For Goods manufactured outside Bhutan the Supplier shall bear and pay all applicable taxes, stamp duties, licence fees and other similar levies imposed outside Bhutan.

For Goods manufactured within Bhutan the Supplier shall bear and promptly pay all applicable taxes, duties, licence fees and other similar levies incurred until delivery of the contracted Goods to the Purchaser.

If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Bhutan the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**19. Performance Security** The Supplier shall, within fifteen (15) working days of the notification of contract award, provide a Performance Security for the due performance of the Contract in the amount and currency specified in the SCC.

The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.



## Section VII. General Conditions of Contract

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The Performance Security shall be denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Purchaser, shall be valid until the successful completion of the Supplier's performance obligations under the Contract, including any warranty obligations, and shall be in one of the forms stipulated by the Purchaser in the SCC.

The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC,.

- 20. Copyright** 20.1. The copyright in all drawings, documents and other materials containing data and information furnished to the Purchaser by the Supplier shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

- 21. Confidential Information** The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor(s) such documents, data and other information as it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its/their work under the Contract, in which event the Supplier shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 21.

The Purchaser shall not use such documents, data and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data and other information received from the Purchaser for any purpose other than the design, procurement or other work and services required for the performance of the Contract.

The obligation of a party under GCC Sub-Clauses 21.1 and 21.2 above, however, shall not apply to information that:

- (a) the Purchaser or Supplier needs to share with the RGoB or other institutions participating in the financing of the Contract;
- (b) now or hereafter enters the public domain through no fault of that party;

## Section VII. General Conditions of Contract

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- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

The above provisions of GCC Clause 21 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

The provisions of GCC Clause 21 shall survive completion or termination, for whatever reason, of the Contract.

### **22. Subcontracting**

The supplier shall not subcontract, in whole or in part, their obligations under this Contract, except with the prior written consent of the purchaser.

Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

### **23. Specifications and Standards**

Technical Specifications and Drawings:

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards stipulated in Section VI, Schedule of Supply and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the editions or the revised versions of such codes and standards shall be those specified in the Schedule of Supply. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 34.

### **24. Packing and Documents**

24.1. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case sizes and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

## Section VII. General Conditions of Contract

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24.2. The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.

### 25. Insurance

25.1. Unless otherwise specified in the SCC the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

### 26.

#### Transportation

26.1. Unless otherwise specified in the SCC, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

### 27. Inspections and Tests

At its own expense and at no cost to the Purchaser the Supplier shall carry out all such tests and/or inspections of the Goods and Related Services as are specified in the SCC.

The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Bhutan as specified in the SCC. Subject to GCC Sub-Clause 27.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 27.2, provided that the Purchaser bears all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

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The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 27.4.

The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 27.6, shall release the Supplier from any warranties or other obligations under the Contract.

### **28. Liquidated Damages**

28.1. Except as provided for under GCC Clause 33, if the Supplier fails to deliver any or all of the Goods by the date(s) of delivery or fails to perform the Related Services within the period specified in the Contract, the Purchaser may, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 36.

### **29. Warranty**

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Subject to GCC Sub-Clause 23.1 (b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials and workmanship, under normal use in the conditions prevailing in Bhutan.

Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

## Section VII. General Conditions of Contract

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Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

If, having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

### **30. Patent Indemnity** The Supplier shall, subject to the Purchaser's compliance with GCC

Sub-Clause 30.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in Bhutan; and
- (b) the sale in any country of the products produced by the Goods. Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or reasonably to be inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Supplier, pursuant to the Contract.

If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 30.1, the Purchaser shall promptly give the Supplier notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

If the Supplier fails to notify the Purchaser within thirty (30) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

## Section VII. General Conditions of Contract

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30.5. The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification or other documents or materials provided or designed by or on behalf of the Purchaser.

### **31. Limitation of Liability**

Except in cases of gross negligence or willful misconduct:

- (a) neither party shall be liable to the other party, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

### **32. Change in Laws and Regulations**

32.1. Unless otherwise specified in the Contract if, after the date thirty (30) days prior to the date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated or changed in Bhutan (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery/ Completion Schedule and/or the Contract Price, then such Delivery/ Completion Schedule and/or Contract Prices shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Sub-Clause 16.2.

### **33.**

#### **Force Majeure**

33.1. The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

## Section VII. General Conditions of Contract

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For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**34. Change Orders and Contract Amendments** The Purchaser may at any time order the Supplier through notice in accordance with GCC Clause 8 to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within thirty (30) days from the date of the Supplier’s receipt of the Purchaser’s change order.

Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment by the parties.

## Section VII. General Conditions of Contract

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- 35. Extensions of Time** If at any time during performance of the Contract the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

Except in case of Force Majeure, as provided under GCC Clause 33, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 28, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 35.1.

**36. Termination** Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Sub-Clause 35.1; or
  - (ii) if the Supplier fails to perform any other obligation under the Contract; or
  - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 36.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

Termination for Insolvency

The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination shall be without compensation to the Supplier, provided that such termination shall not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.



Termination for Convenience.

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

**37. Export  
Restriction**

37.1. Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to Bhutan, or to the use of the products/Goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/Goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 36.3.

Section VIII. Special Conditions of Contract

| <b>SECTION VIII. SPECIAL CONDITIONS OF CONTRACT</b>   |   |
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| The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. <i>[The Purchaser shall select and insert the appropriate wording using the sample below or other acceptable wording and delete the text in italics.]</i> |   |
| <b>1.1 (k)</b>  | The Project Site(s)/Final Destination(s) is/are; [ <i>Lamai Goempa and Sub Centre ( Darla, Khebeythang, Gelephu &amp; Changaphu, Thimphu) ]</i> ]   |
| <b>1.1 (l)</b>  | The Purchaser is: [ <i>UWICER</i> ]   |
| <b>GCC 4.2 (a)</b>  | The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties there under shall not be as prescribed by Incoterms, they shall be as prescribed by: <i>[exceptional; refer to other internationally accepted trade terms ]</i>  |
| <b>GCC 4.2 (b)</b>  | The version of Incoterms shall be: <i>[insert date of current edition]</i>  |
| <b>GCC 5.1</b>  | The language shall be: [ <i>English</i> ]   |
| <b>GCC 8.1</b>  | For <u>notices</u> , the addresses shall be:<br><br>For the Purchaser:<br>Attention: [ <i>The Director</i> ]<br>Address: [ <i>UWICER, Lamai Goempa, Bumthang</i> ], Bhutan<br>Telephone: [ <i>03-631926</i> ]<br>Facsimile number: [ <i>03631925</i> ]<br>E-mail address: [ <i>ktshering@uwice.gov.bt</i> ]s  |
| <b>GCC 9</b>  | The governing law shall be the <u>law of the Kingdom of Bhutan.</u>   |
| <b>GCC 10.2</b>   | The rules of procedure for arbitration proceedings pursuant to GCC Sub-Clause 10.2 shall be as follows:<br><br><i>[The Bidding Documents should contain one clause to be retained in the event of a Contract with a foreign Supplier and one clause to be retained in the event of a Contract with a Bhutanese Supplier. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC Sub-Clause 10.2 in the Bidding Documents.</i><br><br><i>“Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and Clause 10.2 (b) shall be retained in the case of a Contract with a Bhutanese Supplier.”]</i><br><br><b>(a) Contract with a foreign Supplier:</b><br><i>[For Contracts entered into with foreign suppliers, international commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Purchaser may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.]</i> |

Section VIII. Special Conditions of Contract

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|                        | <p><b><i>If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</i></b></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><b><i>If the Purchaser chooses the Rules of ICC, the following sample clause should be inserted:</i></b></p> <p>GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.</p> <p><b><i>If the Purchaser chooses the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, the following sample clause should be inserted:</i></b></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.</p> |
|                        | <p><b><i>If the Purchaser chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:</i></b></p> <p>GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p><b><i>(b) Contract with a Bhutanese Supplier:</i></b></p> <p>In the case of a dispute between the Purchaser and a Bhutanese Supplier, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Bhutan.</p>  |
| <p><b>GCC 13.1</b></p> | <p>Details of Shipping and other Documents to be furnished by the Supplier are <i>[insert the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory shipping details etc].</i></p> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>   |

Section VIII. Special Conditions of Contract

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| <p><b>GCC 16.2</b></p> | <p>The prices charged for the Goods supplied and the related Services performed [insert “shall” or “shall not,” as appropriate] be adjustable.</p> <p>If prices are adjustable, the following method shall be used to calculate the price adjustment [see attachment to these SCC for a sample Price Adjustment Formula]</p>  |
| <p><b>GCC 17.1</b></p> | <p><b>Sample provision</b></p> <p>GCC 17.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>Payment for Goods supplied from abroad:</b><br/>Payment of the foreign currency portion shall be made in ( _____ )</p> <p>(i) <b>Advance Payment:</b> Ten percent (10%) of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of a claim and an advance payment guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in the Bidding Documents.</p>  |
|                        | <p>(ii) <b>On Shipment:</b> Eighty percent (80%) of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country, upon submission of the documents specified in GCC Clause 13.</p> <p>(iii) <b>On Acceptance:</b> Ten percent (10%) of the Contract Price of the Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser.</p> <p>Payment of the local currency portion shall be made in Bhutanese Ngultrum (BTN) within thirty (30) days of presentation of a claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed.</p> <p><b>Payment for Goods and Services supplied from within Bhutan:</b><br/>Payment for Goods and Services supplied from within Bhutan shall be made in _____ [currency], as follows:</p> <p>(i) <b>Advance Payment:</b> Ten percent (10%) of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a simple receipt and an advance payment guarantee for the equivalent amount and in the form provided in the Bidding Documents.</p> <p>(ii) <b>On Delivery:</b> Eighty percent (80%) of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13.</p> <p>(iii) <b>On Acceptance:</b> The remaining ten percent (10%) of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Purchaser.</p> |
| <p><b>GCC 17.5</b></p> | <p>The payment delay period after which the Purchaser shall pay interest to the supplier shall be [insert number] days.</p> <p>The interest rate that shall be applied is [insert number] %</p>   |

Section IX. Contract Forms

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| <p><b>GCC 19.1</b></p>          | <p>The amount of the Performance Security shall be: <u>[insert amount and currency]</u></p> <p><i>[The amount of the Performance Security is usually expressed as a percentage of the Contract Price. The percentage varies according to the Purchaser's perceived risk and impact of non-performance by the Supplier. A figure of ten percent (10%) is used under normal circumstances]</i></p>   |
| <p><b>GCC 19.3</b></p>          | <p>The types of acceptable Performance Securities are:</p> <p>(i) <u>Unconditional bank guarantee issued by financial institution located in Bhutan and acceptable to the Purchaser, in the form provided for in the Contract or in any other form acceptable to the Purchaser, or</u></p> <p>(ii) Cash warrant, or</p> <p>(iii) Demand draft.</p>   |
| <p><b>GCC 19.4</b></p>          | <p>Discharge of Performance Security shall take place: <u>[insert date if different from the one indicated in GCC Sub-Clause 19.4]</u></p>   |
| <p><b>GCC 24.2</b></p>          | <p>The packing, marking and documentation within and outside the packages shall be: <u>[insert in detail the type of packing required, the markings on the packing, and all documentation required]</u></p>  |
| <p><b>GCC 25.1</b></p>          | <p>The insurance coverage shall be as <u>specified in the Incoterms.</u></p> <p>If not in accordance with Incoterms, insurance shall be as follows:</p> <p><i>[insert specific insurance provisions agreed upon, including coverage, currency and amount]</i></p>  |
| <p><b>GCC 26.1</b></p>          | <p>Responsibility for transportation of the Goods shall be as <u>specified in the Incoterms.</u></p> <p>If not in accordance with Incoterms, responsibility for transportation shall be as follows: <i>[insert "The Supplier is required under the Contract to transport the Goods to a specified place of final destination within Bhutan, defined as the Project Site. Transport to such place of destination in Bhutan, including insurance and storage as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price"; or any other agreed upon trade terms (specify the respective responsibilities of the Purchaser and the Supplier)]</i></p> |
| <p><b>GCC 27.1</b></p>          | <p>The inspections and tests shall be: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i></p>  |
| <p><b>GCC 27.2</b></p>          | <p>Inspections and tests shall be conducted at: <i>[Lamai Goempa or Sub Center]</i></p>  |
| <p><b>GCC 28.1</b></p>          | <p>The liquidated damages shall be: <b>[3%] % per week.</b></p>  |
| <p><b>GCC 28.1</b></p>          | <p>The maximum amount of liquidated damages shall be: <u>[5] %.</u></p>  |
| <p><b>GCC 29.3</b></p>          | <p>The period of validity of the Warranty shall be: <u>[365] days.</u></p> <p>For the purposes of the Warranty the place(s) of final destination(s) shall be: <u>[UWICER (Sub-Center Included)]</u></p>  |
| <p><b>GCC 29.5 and 29.6</b></p> | <p>The period for repair or replacement shall be: <b>[15] days.</b></p>  |