

GENERAL CONDITIONS OF CONTRACT

1.1 General Provisions

1.2 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Applicable Law” means the laws and any other instruments having the force of law in Eswatini, as they may be issued and in force from time to time.
- b) “Consultant” means any private or public entity that will provide the Services to the Fund under the Contract.
- c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, i.e. these General Conditions (GCC), the Special Conditions (SCC), and the Appendices.
- d) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 2.1.
- f) “GCC” means these General Conditions of Contract.
- g) “Government” means the Government of Swaziland.
- h) “Local Currency” means Lilangeni (SZL).
- i) “Member” means any of the entities that make up the joint venture/consortium/association, and “Members” means all these entities.
- j) “Party” means the Fund or the Consultant, as the case may be, and “Parties” means both of them.
- k) “Personnel” means persons hired by the Consultant or by any Sub-Consultant(s) and assigned to the performance of the Services or any part thereof.
- l) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- m) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- n) “Sub-Consultant s” means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- o) “In writing” means communicated in written form with proof of receipt.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Notices

1.5.1 Delivery of Notice

Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

1.5.2 Change of Address

A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SCC.

1.6 Location

The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Eswatini or elsewhere, as the Fund may approve.

1.7 Authority of Member in Charge

In case the Consultant consists of a joint venture/ consortium/ association of more than one entity, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Fund under this Contract, including without limitation the receiving of instructions and payments from the Fund.

1.8 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Fund or the Consultant may be taken or executed by the officials specified in the SCC.

1.9 Taxes and Duties

The Consultant, Sub-Consultant s, and their Personnel shall pay such indirect taxes, duties, fees, and other impositions levied under the Applicable Law as specified in the SCC, the amount of which is deemed to have been included in the Contract Price.



2. Fraud and Corruption

Consultant(s) should be aware that a Consultant who engages in corrupt, collusive or fraudulent practices will have their proposals rejected or Contract terminated in accordance with Clause GCC (c), and may further be subject to prosecution under the laws of Eswatini.

2.1 Commission and Fees

It is required that the successful Consultant will disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

3. Commencement, Completion, Modification and Termination of Contract

4. Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both Parties or at such other later date as may be stated in the SCC. The date the Contract comes into effect is defined as the Effective Date.

5. Commencement of Services

The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

6. Expiration of Contract

Unless terminated earlier pursuant to Clause GCC 2.6, this Contract shall expire at the end of the time period after the Effective Date, as specified in the SCC.

7. Modifications or Variations

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the Scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

8. Force Majeure

8.1 Definition



For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party’s performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

8.2 No Breach of Contract

The failure of a Party to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

8.3 Extension of Time

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

8.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

8.5 Termination

8.5.1 By the Fund

The Fund may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GCC 2.6.1. In such an occurrence the Fund shall give not less than thirty (30) days’ written notice of termination to the Consultant, and sixty (60) days’ in the case of the event referred to in (e).

- a) If the Consultant does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the Fund may have subsequently approved in writing.
- b) If the Consultant becomes insolvent or bankrupt.



- c) If the Consultant, in the judgment of the Fund has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- d) If, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- e) If the Fund, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- f) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8 hereof.

8.5.2 By the Consultant

The Consultant(s) may terminate this Contract, by not less than thirty (30) days' written notice to the Fund, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause GCC 2.6.2:

- a) If the Fund fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 7 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- c) If the Fund fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8 hereof.

8.6 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GCC 2.6.1 or GCC 2.6.2, the Fund shall make the following payments to the Consultant:

- a) Payment pursuant to Clause GCC 6 for Services satisfactorily performed prior to the effective date of termination;
- b) Except in the case of termination pursuant to paragraphs (a) through (c), and (f) of Clause **GCC**, **reimbursement** of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel and their eligible dependents.



8. Obligations of the Consultant

8.1 General

8.1.1 Standard of Performance

The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Fund, and shall at all times support and safeguard the Fund's legitimate interests in any dealings with Sub-Consultant(s) or third Parties.

8.1.2 Conflict of Interests

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

8.1.3 Consultant is Not to Benefit from Commissions, Discounts, etc.

The payment of the Consultant pursuant to Clause GCC 6 shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel, any Sub-Consultants, and agents of either of them similarly shall not receive any such additional payment.

8.1.4 Consultant and Affiliates Not to be Otherwise Interested in Project.

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant(s) and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

8.1.5 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultant(s) and their Personnel not to engage, either directly or indirectly, in any



business or professional activities which would conflict with the activities assigned to them under this Contract.

8.1.6 Confidentiality

Except with the prior written consent of the Fund, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

8.1.7 Insurance to be Taken Out by the Consultant

The Consultant (a) shall take out and maintain, and shall cause any Sub-Consultant(s) to take out and maintain, at their (or the Sub-Consultant s', as the case may be) own cost but on terms and conditions approved by the Fund, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Fund's request, shall provide evidence to the Fund showing that such insurance has been taken out and maintained and that the current premiums have been paid.

8.1.8 Consultant's Actions Requiring Agency's Prior Approval

The Consultant shall obtain the Fund's prior approval in writing before taking any of the following actions:

- (a) Entering into a subcontract for the performance of any part of the Services,
- (b) Appointing such members of the Personnel not listed by name in Appendix C, and
- (c) Any other action that may be specified in the SCC.

8.1.9 Reporting Obligations

- (a) The Consultant shall submit to the Fund the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.
- (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

8.1.10 Documents Prepared by the Consultant to be the Property of the Fund

- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the Fund, and the Consultant shall,



not later than upon termination or expiration of this Contract, deliver all such documents to the Fund, together with a detailed inventory thereof.

- (b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SCC.

8.1.11 Consultant 's Personnel

8.1.11.1 Description of Personnel

The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultant(s) as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Consultant 's Key Personnel are described in Appendix C. The Key Personnel and Sub-Consultant(s) listed by title as well as by name in Appendix C are hereby approved by the Fund.

8.1.11.2 Removal and/or Replacement of Personnel

Except as the Fund may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.

- (a) If the Fund finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Fund's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Fund.
- (b) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

9. Obligations of the Fund

9.1 Assistance

The Fund shall use its best efforts to provide the Consultant such assistance as specified in the SCC.

9.2 Change in the Applicable Law Related to Taxes and Duties



If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Clauses GCC 6.2 (a) or (b), as the case may be.

9.3 Payments to the Consultant

Payment shall be based on agreed fee rates for nominated personnel and certain type or grade of personnel and reimbursable items, such as transportation and subsistence, using either actual expenses or the agreed unit prices.

9.4 Contract Unit Prices and Reimbursable

- (a) The unit prices and reimbursable payable in the currency is set forth in the SCC.
- (b) The unit price and reimbursable payable in local currency is set forth in the SCC.
- (c)

9.5 Payment for Additional Services

For the purpose of determining the remuneration due for additional services as may be agreed under Clause 2.4, a breakdown of the unit prices and reimbursable is provided in Appendices D and E.

9.6 Terms and Conditions of Payment

Payments will be made to the account of the Consultant and according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC, the first payment shall be made against the provision by the Consultant of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SCC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the Fund shall have approved in writing. Any other payment shall be made after the conditions listed in the SCC for such payment have been met, and the Consultant has submitted an invoice to the Fund specifying the amount due.

9.7 Good Faith

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



10. Settlement of Disputes

10.1 Amicable Settlement

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

10.2 Dispute Resolution

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SCC.

