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- 2.6.5 Within 28 days after the issuance of the Engineer's certificate under Clause 2.6.3 above the Contractor will submit a final account to the Engineer together with reasonable documentation required to enable the Engineer to ascertain the final contract value. Within 42 days after receipt of this information the Engineer will issue the final certificate. The Employer will pay to the Contractor the amount due thereon with 30 days of the issuance of the final certificate.
- 2.6.6 The final certificate will, except in the case of fraud or dishonesty relating to or affecting any matter dealt with in the certificate, be conclusive evidence as to the sum due to the Contractor under or arising out of the contract, subject to Clause 2.6.5 above, unless either party has within 28 days after the issuance of the final certificate given notice under Clause 2.10 below.
- 2.6.7 Failure of the Engineer to certify or the Employer to make payment in accordance with the Contract will require the Owner to pay the Contractor interest on the amount which should have been certified on its final due date or paid on its final due date a daily basis at a rate equivalent to the base lending rate of the Central Bank of Eswatini. Except that no interest on the overdue payments will be made unless it is claimed by the Contractor and documented within one month of its being payable.

### **2.7 ASSIGNMENT AND SUB-LETTING**

- 2.7.1 Neither the Employer or the Contractor will assign the Contract or any part thereof or any benefit or interest therein or there under without the written consent of the other party.
- 2.7.2 The Contractor will not sub-let the whole of the Works nor will the Contractor sub-let any part of the Works without written consent of the Engineer which consent will not be unreasonably withheld.
- 2.7.3 The Contractor will be responsible for any acts, defaults, or neglects of any sub-contractor, his agents, servants or workmen in the execution of the Works or any part thereof as if they were the acts, defaults or neglects of the Contractor.

### **2.8 STATUTORY OBLIGATIONS**

## **GENERAL CONDITIONS OF CONTRACT**

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- 2.8.1 The Contractor will, subject to Clause 2.8.3 below, comply with and give all notices required by any statute, statutory instrument, rule or order or any regulation or bye law applicable to the construction of the Works, hereafter called the Statutory Requirements, and will pay all fees and charges which are payable in respect thereof.
- 2.8.2 The Employer will be responsible for obtaining in due time any consent, approval, license or permission but only to the extent that the same may be necessary for the Works in their permanent form.
- 2.8.3 The Contractor will not be liable for any failure to comply with the Statutory Requirements where and to the extent that such failure results from the Contractor having carried out the Works in accordance with the Contract or with instruction of the Engineer.

### **2.9 LIABILITIES AND INSURANCE**

#### **2.9.1 Insurance of the Works:**

- a. The Contractor will maintain the insurance specified in the appendix in the joint names of the Contractor and the Employer in respect to the Permanent Works and the Temporary Works, including for the purpose of this clause any unfixed materials or other things delivered to the Site for incorporation therein, to their full value against all loss and damage whatever cause arising other than the Excepted Risks, for which he is responsible under the terms of the Contract.
- b. Such insurance will be that the Employer and the Contractor are covered for the period specified in Clause 2.3 above and are also covered for loss or damage arising during the Defects Correction Period from such cause occurring prior to the commencement of the Defects Correction Period and for any loss or damage occasioned by the Contractor in the course of any operation carried out by him for the purpose of complying with his obligation under Clauses 2.2 and 2.5 above.
- c. The Contractor will not be liable to insure against the necessity for the repair or reconstruction of any work constructed with materials or workmanship not in accordance with the requirements of the Contract.
- 2.9.2 The Contractor will indemnify and keep the Employer indemnified against all losses and claims for injury and damage to any person or





## GENERAL CONDITIONS OF CONTRACT

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property whatsoever, except for the matter for which the Contractor is responsible under Clause 2.9.1 above, which may arise out of or in consequence to the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereof and subject to Clauses 2.9.3 and 2.9.4 below.

2.9.3 The liability of the Contractor to indemnify the Employer under Clause 2.9.2 above will be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer, his servants or agents or other contractors not employed by the Contractor may have contributed to the said loss, injury or damage.

2.9.4 The Contractor will not be liable for or in respect of or to indemnify the Employer against any compensation of damage or respect:

- a. Damage to crops being on the site except in so far as possession has not been given the Contractor;
- b. The use or occupation of land, provided by the Employer, by the Works or any thereof or the purpose of constructing, completing and maintaining the Works including consequent losses of crops, or interference whether temporary or permanent with any right-of-way, light, air or water or other easement or quasi easement which are the unavoidable result of the construction of the Works in accordance with the Contract;
- c. The right of the Employer to construct the Works or any part thereof on, over, under, in or through any land;
- d. Damage, which is the unavoidable result of the construction of Works in accordance with the Contract;
- e. Injury or damage to persons or property resulting from any act or neglect or breach of statutory duty done or committed by the Engineer or the Employer, his agents or other contractors, not being employed by the Contractor, or for or in respect of any claims, demands, proceedings, damages, costs, charges and expenses in respect or in relation thereof.

2.9.5 The Employer will save harmless and indemnify the Contractor from and against all claims, demands, proceedings, damages, costs, charges and expenses in respect of the matters referred to in Clause 2.9.4 above. Provided that the Employer's liability to indemnify the Contractor under Clause 2.9.3 will always be reduced proportionately to the extent that the act or neglect of the Contractor and his sub-contractors, servants or agents may have contributed to the said injury or damage.



## **GENERAL CONDITIONS OF CONTRACT**

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- 2.9.6 The Contractor throughout the execution of the Works maintains insurance against damage, loss or injury for which he is liable under Clause 2.9.2 above. Such insurance shall be affected with an insurer and in terms approved by the Employer, which approval will not be unreasonably withheld, for at least the amount stated in the Appendix. The terms of such insurance will include a provision whereby in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy being brought or made against the Employer the insurer will indemnify the Employer against any such claims and any costs, charges and expenses in respect thereof.
- 2.9.7 The Contractor will comply with the terms of any policy issued in connection with the Contractor and will whenever required produce to the Employer the insurance policy or policies and the receipts for the payments of the current premiums.

### **2.10 DISPUTES**

- 2.10.1 Disputes and/or differences of any kind whatsoever arising between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works, including a dispute as to any act, error or omission of the Engineer, whether arising during the progress of the Works or after their completion, will be settled in accordance with the following provisions:

#### **a. Notice of Disputes**

A dispute, according to Clause 2.10.2 below, is deemed to arise when one party serves the other a notice in writing, hereinafter called the Notice of Dispute, stating the nature of the dispute, providing that no Notice of Dispute may be served unless the party wishing to do so has first taken any step or invoked any procedure available elsewhere in the Contract in connection with the subject of such dispute and the other party or the Engineer as the case may be has: taken such step as may be required, or been allowed a reasonable time to take any such action.

#### **b. Settlement of Disputes**

When a dispute arises between the Employer and the Contractor in connection with, or arising out of the Contract, or the execution of the Works, whether during the progress of the Works or after their completion and whether before or after the termination and abandonment or breach of the Contract, it will, in the first place, be referred to and settled by the Engineer who will, within a period of \_\_\_90\_\_\_ days after being requested by either party to do so, give written notice of his decision to the Employer and Contractor.



## **GENERAL CONDITIONS OF CONTRACT**

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Subject to arbitration, as herein provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and will forthwith be given effect to by the Employer and by the Contractor, who will proceed with the execution of the Works with all due diligence whether the Employer or the Contractor or the Contractor requires arbitration or not.

If the Engineer has given written notice of his decision to the Employer and the Contractor and no claim to arbitration has been communicated to him by either the Employer or the Contractor within a period of \_\_\_\_\_ days from receipt of such notice, the decision will remain final and binding upon the Employer and the Contractor. If the Engineer fails to give notice of his decision within a period of \_\_\_\_\_ days after being requested, or if either the Employer or the Employer or the Contractor is dissatisfied with any such decision, then and in such cases either the Employer or the Contractor may within \_\_\_\_\_ days after receiving such decision or within \_\_\_\_\_ days after the expiration of the first-named period of \_\_\_\_\_ days, as the case may be, require that the matter or matters in dispute be referred to arbitration as hereinafter provided.

### **c. Arbitration**

Dispute under Clause 2.10 above are carried out under the Eswatini Laws of Arbitration.



## SPECIAL CONDITIONS OF CONTRACT

### SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions of Contract. The corresponding clause number of the GCC is indicated in first colon. Whenever there is a conflict, the provisions in the Special Conditions of Contract shall prevail over those in the General Conditions of Contract.

GCC Clause no	GCC subject	Special Condition(s)
1.1 (a)	<b>Name and address of the Procuring Entity and the Contractor</b>	<p><i>[To be completed after award]</i></p> <p><b><u>Procuring Entity:</u></b></p> <p>Attention: Mr. Buhle Vincent Dlamini (Chief Roads Engineer)</p> <p>Ministry of Public Works and Transport Headquarters Second Floor, Office No. 84 P.O. Box 58 Mbabane H 100 ESWATINI</p> <p>Phone: +268 2409 9000 Cell: +268 7802 1181/+268 7606 3833</p> <p>Facsimile number: +268 2404 2170 Electronic mail address: <a href="mailto:DlaminiVin@gmail.com">DlaminiVin@gmail.com</a></p> <p><b><u>Contractor:</u></b></p> <p>Address:</p> <p>Phone :</p> <p>Contact Person:</p>
6	<b>Performance Security:</b>	
6.1	The amount of the Performance Security	<p>A Performance Security is required to the value of <b>5%</b>. The Performance Security shall be provided in the form stated in Special Conditions of the Contract and shall be valid for the period of the Contract including any warranty obligations.</p> <p>Once delivery has been completed the</p>



## SPECIAL CONDITIONS OF CONTRACT

GCC Clause no	GCC subject	Special Condition(s)
		Contractor may apply to have the Performance Security reduced to 1% to cover the period of warranty obligations.
6.3	The format of the Performance Security	<p>The Performance Security shall be provided in the form:</p> <ul style="list-style-type: none"> <li>• a bank guarantee issued by a reputable bank located in the Tenderer's country or abroad, acceptable to the Procuring Entity, in the form provided in the Invitation to Tender documents or another form acceptable to the Procuring Entity; or</li> <li>• an Insurance Company Bond from a reputable Insurance company acceptable to the Procuring Entity.</li> </ul> <p>The Performance Security shall be valid for the period of the Contract including any warranty obligations.</p>
<b>7. Payment:</b>		
7.1	The method and conditions of payment:	Payments shall be made promptly by the Procuring Entity, but in no case later than forty five (45) days after submission of an invoice or claim by the Contractor accompanied by a letter of satisfactory inspection from an Official at the Road Reserve Maintenance Section.
<b>30. Notices:</b>		
30.1	Procuring Entity's address for notice purposes:	
30.1	Contractor's address for notice purposes:	



PERFORMANCE SECURITY

To: Government of Eswatini  
Mbabane  
Eswatini.

**WHEREAS**..... (hereinafter called the “Contractor”) has undertaken, in pursuance of Contract No. 76A-76E of 2019/2020 date.....2019.....to supply **Road Reserve Maintenance Services** (hereinafter called the “Contract”) **AND WHEREAS** it has been stipulated by you in the said Contract that the Contractor shall furnish you with a performance security by a reputable Financial Institution for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract. **AND WHEREAS** we have agreed to give the Contractor a performance security. **THEREFORE, WE** hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor up to a total of..... and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without cavil or argument, any sum or sums within the limit of ..... as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Performance Security is valid until the .....day of.....2019.....

Signature and seal of the Guarantors

.....  
(Name of the bank or financial institution)

.....  
(Address of the bank or financial institution)

.....  
(Date)

