

|                           |                                |
|---------------------------|--------------------------------|
| <b>Name of STD :</b>      | e-PW3                          |
| <b>Procurement Type :</b> | Works                          |
| <b>Section :</b>          | General Conditions of Contract |

### A. General

|                |  |
|----------------|--|
| 1. Definitions | <p>1.1 In the Conditions of Contract, which include Particular Conditions and these General Conditions, the following words and expressions shall have the meaning hereby assigned to them. Boldface type is used to identify the defined terms:</p> <p>(a) Act means The Public Procurement Act, 2006 (Act 24 of 2006).</p> <p>(b) Adjudicator is the expert appointed jointly by the PE and the Contractor to resolve disputes in the first instance, as provided for in GCC Sub Clause 94.2.</p> <p>(c) Bill of Quantities (BOQ) means the priced and completed Bill of Quantities forming part of the Contract defined in GCC Clause 60.</p> <p>(d) Compensation Events are those defined in GCC Clause 69.</p> <p>(e) Competent Authority means the authority that gives decision on specific issues as per delegation of administrative and/or financial powers.</p> <p>(f) <b>Completion Certificate means the Certificate issued by the Project Manager as evidence that the Contractor has executed the Works and Physical services in all respects as per design, drawing, specifications and Conditions of Contract.</b></p> <p>(g) <b>Completion Date is the actual date of completion of the Works and Physical services certified by the Project Manager, in accordance with GCC Clause 80.</b></p> <p>(h) Contract Agreement means the Agreement entered into between the PE and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein to execute, complete, and maintain the Works.</p> <p>(i) Contract Documents means the documents listed in GCC Clause 6, including any amendments thereto.</p> |
|                | <p>(j) Contractor means the Person under contract with the PE for the execution of Works under the Rules and the Act as stated in the PCC.</p>   |
|                | <p>(k) Contract Price means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, for the execution, completion and maintenance of the Works in accordance with the provisions of the Contract.</p> <p>(l) Contractor's Tender is the completed e- including the priced Bill of Quantities and the Schedules submitted by the Contractor to the PE.</p> <p>(m) Cost means all expenditures reasonably incurred or to be incurred by</p>   |

the Contractor, whether on or off the Site, including overhead ,profit, taxes, duties, fees, and such other similar levies

(n) Day means calendar day unless otherwise specified as working days.

(o) Dayworks means work carried out following the instructions of the PE or the authorised Project Manager and is paid for on the basis of time spent by the Contractor's workers and equipment at the rates specified in the Schedules, in addition to payments for associated Materials and Plant.

(p) Defect is any part of the Works not completed in accordance with the Contract.

(q) Defects Correction Certificate is the certificate issued by the Project Manager upon correction of defects by the Contractor.

(r) Drawings include calculations and other information provided in Section 9 or as approved by the Project Manager for the execution and completion of the Contract.

(s) Goods mean the Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

(t) Equipment is the Contractor's apparatus, machinery, vehicles and other things required for the execution and completion of the Works and remedying any defects excluding Temporary Works and the PE's Equipment (if any ), Plant, Materials and any other things to form or forming part of the Permanent Works.

(u) Force Majeure means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origins not due to negligence or lack of care on the part of the Contractor; such events may include, but not be limited to, acts of the Government in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes or more as included in GCC Clause 85.;

(v) GCC means the General Conditions of Contract.

(w) Government means the Government of the People's Republic of Bangladesh.

(x) "Head of the PE" means the Secretary of a Ministry or a Division, the Head of a Government Department or Directorate; or the Chief Executive, by whatever designation called, of a local Government agency, an autonomous or semi-autonomous body or a corporation, or a corporate body established under the Companies Act;

(y) Intended Completion Date is the date calculated from the Commencement Date as specified in the PCC, on which it is intended that the Contractor shall complete the Works and Physical services as specified in the Contract and may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

(z) Materials means things of all kinds other than Plant intended to form or forming part of the Permanent Works, including the supply-only materials, if any, to be supplied by the Contractor under the Contract.

|  |  |
|--|--|
|  | (aa) Month means calendar month.   |
|  | (bb) Original Contract Price is the Contract Price stated in the PE's Notification of Award (Form e-PW3-7) and further clearly determined in the PCC.  |
|  | <p>(cc) Permanent works means the permanent works to be executed by the Contractor under the Contract.</p> <p>(dd) PCC means the Particular Conditions of Contract.</p> <p>(ee) Plant means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the PE and relating to the construction of the Works and Physical services.</p>   |
|  | <p>(ff) PE means a PE having administrative and financial powers to undertake procurement of Works and Physical services using public funds and is as named in the PCC who employs the Contractor to carry out the Works.</p> <p>(fff) Development Partner means the financier (partial or full) of this contract, as named in the PCC.</p>  |
|  | (gg) Project Manager is the person named in the PCC or any other competent person appointed by the PE and notified to the Contractor who is responsible for supervising the execution and completion of the Works and Physical services and administering the Contract.  |
|  | <p>(hh) Provisional Sums means amounts of money specified by the PE in the Bill of Quantities which shall be used, at its discretion, for payments to Nominated Subcontractor(s) and for meeting other essential expenditures under the Contract pursuant to GCC Sub Clause 77.</p> <p>(ii) Retention Money means the accumulated retention moneys which the PE retains under GCC Clause 72.</p> <p>(jj) Schedules means the document(s) entitled schedules, completed by the Contractor and submitted with the Tender Submission Letter, as included in the Contract. Such document may include the data, lists and schedules of rates and/or prices.</p> |
|  | (kk) Site means the places where the Permanent Works are to be executed including storage and working areas and to which Plant and Materials are to be delivered, and any other places as may be specified in the PCC as forming part of the Site.   |
|  | <p>(ll) Site Investigation Reports are those that were included in the e-TD and are factual and interpretative reports about the surface and subsurface conditions at the Site.</p> <p>(mm) Specification means the Specification of the Works included in the Contract and any modifications or additions to the specifications made or approved by the Project Manager in accordance with the Contract.</p>  |
|  | (nn) Start Date is the date defined in the PCC and it is the last date when the Contractor shall commence execution of the Works under the Contract.   |
|  | (oo) Subcontractor means a person or corporate body, who has a contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.  |

|                   |   |
|-------------------|---|
|                   | <p>(pp) Temporary Works means all temporary works of every kind other than Contractor's Equipment required on the Site for the execution and completion of the Permanent Works and remedying of any defects.</p> <p>(qq) Variation means any change to the Works directly procured from the original Contractor to cover increases or decreases in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of the contract.</p>  |
|                   | <p>(rr) Works means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance or renovation of railways, roads, highways, or a building, an infrastructure or structure or an installation or any construction work relating to excavation, installation of equipment and materials, decoration, as well as physical services ancillary to works as detailed in the PCC, if the value of those services does not exceed that of the Works themselves.</p>   |
|                   | <p>(ss) Writing means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail.</p>  |
| 2. Interpretation | <p>2.1 In interpreting the GCC, singular also means plural, male also means female or neuter, and the other way around. Headings in the GCC shall not be deemed part thereof or be taken into consideration in the interpretation or construal of the Contract. Words have their normal meaning under the language of the Contract unless specifically defined.</p> <p>2.2 Entire Agreement<br/>The Contract constitutes the entire agreement between the PE and the Contractor and supersedes all communications, negotiations and agreements (whether written or verbal) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 6.1(j).</p> <p>2.3 Non waiver</p> <p>(a) Subject to GCC Sub Clause 2.3(b), 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.</p> <p>(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.</p> <p>2.4 Severability<br/>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.</p> |
|                   | <p>2.5 Sectional completion<br/>If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply</p>  |

|   |  |
|---|--|
|   | to any section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).  |
| 3. Communications and Notices                               | 3.1 Communications between Parties such as notice, request or consent required or permitted to be given or made by one party to the other pursuant to the Contract shall be in writing to the addresses specified in the PCC.  |
|   | 3.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.<br><br>3.3 A Party may change its address for notice hereunder by giving the other Party notice of such change to the address.   |
| 4. Governing Law  | 4.1 The Contract shall be governed by and interpreted in accordance with the laws of the People's Republic of Bangladesh.  |
| 5. Governing Language                                       | 5.1 The Contract shall be written in English. All correspondences and documents relating to the Contract may be written in English or Bangla. 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 English, in which case, for purposes of interpretation of the Contract, such translation shall govern.<br><br>5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation. |
| 6. Documents Forming the Contract and Priority of Documents | The following documents forming the Contract shall be interpreted in the following order of priority:<br><br>(a) signed Contract Agreement ;<br><br>(b) e-Notification of Award ;<br><br>(c) completed e-Tender ;<br><br>(d) the Particular Conditions of Contract;<br><br>(e) the General Conditions of Contract;<br><br>(f) the Technical Specifications;<br><br>(g) the General Specifications;<br><br>(h) the Drawings;<br><br>(i) the priced Bill of Quantities and the Schedules; and  |
|   | j. any other document listed in the PCC forming part of the Contract.  |
| 7. Scope of Works   | 7.1 The Works to be executed, completed and maintained shall be as specified in the Bill of Quantities, the General and Particular Specifications and Drawings.<br><br>7.2 Unless otherwise stipulated in the Contract, the Works shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for completion of the Works as if such items were expressly mentioned in the Contract.   |

|                              |  |
|------------------------------|--|
| 8. Assignment                | 8.1 Neither the Contractor nor the PE shall assign, in whole or in part, its obligations under the Contract  |
| 9. Eligibility               | 9.1 The Contractor and its Subcontractor(s) shall have the nationality of a country other than that specified in the PCC.  |
|                              | 9.2 All materials, equipment, plant, and supplies used by the Contractor in both permanent and temporary works and services supplied under the Contract shall have their origin in the countries except any specified in the PCC.  |
| 10. Gratuities / Agency fees | 10.1 No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the tender or in the Contract, have been given or received in connection with the procurement process or in the Contract execution.   |
| 11. Confidential Details     | <p>11.1 The Contractor's and the PE's personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Contractor's compliance with the Contract and allow its proper implementation.</p> <p>11.2 Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.</p> |
| 12. JVCA                     | <p>12.1 If the Contractor is a JVCA ,</p> <p>(a) each partner of the JVCA shall be jointly and severally liable for all liabilities and ethical or legal obligations to the PE for the fulfilment of the promises of the Contract;</p> <p>(b) the JVCA partners shall nominate a representative who shall have the authority to conduct all business including the receipt of payments for and on behalf of all partners of the JVCA;</p> <p>(c) the JVCA shall notify the PE of its composition and legal status which shall not be altered without the prior approval of the PE.</p> <p>(d) alteration of partners shall only be allowed if any of the partners is found to be incompetent or has any serious difficulties which may impact the overall implementation of the works.</p>   |
| 13. Possession of the Site   | 13.1 The PE shall give possession of the Site or part(s) of the Site, to the Contractor on the date(s) stated in the PCC. If possession of a part of the Site is not given by the date stated in the PCC, the PE will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event as stated under GCC Sub Clause 69.1(a).  |
| 14. Access to the Site       | 14.1 The Contractor shall allow the Project Manager and any person authorised by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.   |
| 15. PE's Responsibilities    | <p>15.1 The PE shall pay the Contractor, in consideration of the satisfactory progress of execution and completion of the Works and Physical services, and the remedying of defects therein, the Contract price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract Agreement.</p> <p>15.2 The PE shall make its best effort to guide and assist the Contractor in obtaining, if required, any permit, licence, and approvals from local public authorities for the purpose of execution of the Works and Physical services under the Contract.</p>   |
| 16. Approval of the          | 16.1 The Contractor shall submit Specifications and Drawings showing the   |



|                                   |  |
|-----------------------------------|--|
| Contractor's Temporary Works      | <p>proposed Temporary Works to the Project Manager, who is to approve them, if they comply with the Specifications and Drawings.</p> <p>16.2 The Contractor shall be responsible for design of Temporary Works.</p> <p>16.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.</p> <p>16.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.</p>  |
| 17. Contractor's Responsibilities | 17.1 The Contractor shall execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract Agreement.   |
| 18. Taxes and Duties              | 18.1 The Contractor shall be entirely responsible for all taxes, duties, fees, and other such levies imposed inside and outside Bangladesh.  |
| 19. Contractor's Personnel        | <p>19.1 The Contractor shall employ the key personnel named in the Schedule of Key Personnel, as referred to in the PCC, to carry out the functions stated in the Schedule or other personnel approved by the Project Manager.</p> <p>19.2 The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are equal to or higher than those of the personnel named in the Schedule.</p> <p>19.3 If the Project Manager asks the Contractor to remove a particular person who is a member of the Contractor's staff or work force from the Site, he or she shall state the reasons, and the Contractor shall ensure that the person leaves the Site within three (3) days and has no further connection with the work in the Contract.</p>  |
| 20. Subcontracting                | <p>20.1 Subcontracting the whole of the Works by the Contractor shall not be permissible. The Contractor shall be responsible for the acts or defaults of any Subcontractor, his or her agents or employees, as if they were the acts or defaults of the Contractor.</p> <p>20.2 The prior consent, in writing, of the Project Manager shall however be obtained for other proposed Subcontractor(s).</p> <p>20.3 Subcontractors shall comply with the provisions of GCC Clause 39.</p>  |
| 21. Nominated Subcontractor       | <p>21.1 Nominated Subcontractor named in the Contract shall be entitled to execute the specific components of the Works stated in the PCC.</p> <p>21.2 The Contractor shall not be under obligations to employ a Nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Project manager as soon as practicable, with supporting particulars while there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength, or does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor.</p> <p>21.3 Subcontracting shall in no event relieve the Contractor from any of its obligations, duties, responsibilities, or liability under the Contract and all Subcontractors shall comply with the provisions of GCC Clause 39.</p> |
| 22. Other Contractors             | 22.1 The Contractor shall cooperate and share the Site with other Contractors, public authorities, utilities, the Project Manager and the PE between the dates given in the Schedule of other Contractors. The Contractor shall also provide facilities and services for them as described in the Schedule. The PE may modify the Schedule of other Contractors, and shall notify the Contractor of any such modification.   |
| 23. Project Manager's Decisions   | 23.1 Except where otherwise specifically stated in the PCC, the Project Manager will decide Contractual matters between the PE and the Contractor in its role as representative of the PE.   |
| 24. Delegation                    | 24.1 The Project Manager may delegate any of his duties and responsibilities to his representative except to the Adjudicator, after notifying the Contractor, and may cancel any delegation, without   |

|  |  |
|--|--|
|  | <p>retroactivity, after notifying the Contractor.</p> <p>24.2 Any communications to the Contractor in accordance with such delegation shall have the same effect as if it was given by the Project Manager.</p>  |
| 25. Instructions,                                      | 25.1 The Contractor shall carry out all instructions of the Project Manager that comply with the applicable law.   |
| 26. Queries about the Contract conditions              | 26.1 The Project Manager, on behalf of the PE, will clarify queries on the Conditions of Contract.   |
| 27. Safety, Security and Protection of the Environment | <p>27.1 The Contractor shall throughout the execution and completion of the Works and the remedying of any defects therein:</p> <p>(a) take all reasonable steps to safeguard the health and safety of all workers working on the Site and other persons entitled to be on it, and to keep the Site in an orderly state;</p> <p>(b) provide and maintain at the Contractor's own cost all lights, guards, fencing, warning signs and watching for the protection of the Works or for the safety on-site; and</p> <p>(c) take all reasonable steps to protect the environment on and off the Site and to avoid damage or nuisance to persons or to property of the public or others resulting from pollution, noise or other causes arising as a consequence of the Contractors methods of operation.</p>                                   |
| 28. Working Hours                                      | 28.1 The Contractor shall not perform any work on the Site on the weekly holidays, or during the night or outside the normal working hours, or on any religious or public holiday, without the prior written approval of the Project Manager.  |
| 29. Welfare of Labourers                               | <p>29.1 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's personnel relating to their employment, health, safety, welfare, immigration and shall allow them all their legal rights.</p> <p>29.2 The Contractor, in particular, shall provide proper accommodation to his or her labourers and arrange proper water supply, conservancy and sanitation arrangements at the site for all necessary hygienic requirements and for the prevention of epidemics in accordance with relevant regulations, rules and orders of the government.</p> <p>29.3 The Contractor, further in particular, shall pay reasonable wages to his or her labourers, and pay them in time. In the event of delay in payment the PE may effect payments to the labourers and recover the cost from the Contractor.</p> |
| 30. Child Labour                                       | 30.1 The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development in compliance with the applicable labor laws and other relevant treaties ratified by the government.   |
| 31. Discoveries  | 31.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the PE. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.   |
| 32. PE's and Contractor's Risks                        | 32.1 The PE carries the risks that the Contract states are PE's risks and the Contractor carries the risks that the Contract states are Contractor's risks.  |
| 33. PE's Risks   | <p>33.1 From the Start Date until the Defects Correction Certificate has been issued, the following are PE's risks:</p> <p>(a) the risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to i. use or occupation of the Site by the Works or for the purpose of the</p>   |



|                             |   |
|-----------------------------|---|
|                             | <p>Works, which is the unavoidable result of the Works or</p> <p>ii. negligence, breach of statutory duty, or interference with any legal right by the PE or by any person employed by or Contracted to him except the Contractor.</p> <p>(b) the risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the PE or in the PE's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.</p> <p>33.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is PE's risk, except loss or damage due to:</p> <p>(a) a Defect which existed on the Completion Date;</p> <p>(b) an event occurring before the Completion Date, which was not itself PE's risk; or</p> <p>(c) the activities of the Contractor on the Site after the Completion Date.</p> |
| 34. Contractor's Risks      | <p>34.1 From the Start Date until the Defects Correction Certificate has been issued the risks of personal injury, death, and loss of or damage to property including without limitation, the Works, Plant, Materials, and Equipment, which are not PE's risks are Contractor's risks.</p>  |
| 35. Copyright               | <p>35.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the PE by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the PE directly or through the Contractor by any third party, including Suppliers of materials, the copyright in such materials shall remain vested in such third party.</p> <p>35.2 The Contractor shall not, except for the purposes of performing the obligations under the Contract, without the written permission of the PE disclose or make use of any specification, plan, design and drawing, pattern, sample or information furnished by or on behalf of the PE.</p>   |
| 36. Limitation of Liability | <p>36.1 Except in cases of criminal negligence or wilful misconduct:</p> <p>(a) the Contractor shall not be liable to the PE, 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 Contractor to pay liquidated damages to the PE; and</p> <p>(b) the aggregate liability of the Contractor to the PE, 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 Works, or to any obligation of the Contractor to indemnify the PE with respect to patent infringement.</p>   |
| 37. Insurance               | <p>37.1 The Contractor shall provide, in the joint names of the PE and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles specified in the PCC for the following events which are due to the Contractor's risks:</p> <p>(a) loss of or damage to the Works, Plant, and Materials;</p> <p>(b) loss of or damage to Equipment;</p> <p>(c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and</p> <p>(d) personal injury or death.</p>   |
|                             | <p>37.2 The Contractor shall deliver policies and certificates of insurance to the Project Manager, for the Project Manager's approval, before the Start Date. All such insurances shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.</p> <p>37.3 If the Contractor does not provide any of the policies and certificates required, the PE may effect the insurance which the Contractor</p>  |

|   |  |
|---|--|
|   | <p>should have provided and recover the premiums the PE has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.</p> <p>37.4 Alterations to the terms of insurance shall not be made without the approval of the Project Manager.</p> <p>37.5 Both parties shall comply with conditions of the insurance policies.</p>  |
| 38. Management and Progress Meetings                                  | <p>38.1 Either the Project Manager or the Contractor may require the other to attend a management and progress meeting. The business of such meeting shall be to review the progress and plans for remaining work and to deal with matters raised in accordance with the early warning procedure.</p> <p>38.2 The Project Manager shall record the business of the meetings and provide copies of the record to those attending the meeting and to the PE. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management and progress meeting or after the meeting, and stated in writing to all concerned.</p>   |
| 39. Corrupt, Fraudulent, Collusive, Coercive or Obstructive Practices | <p>39.1 The Government and the Development Partner require that PE, as well as the Contractor (including their suppliers, sub-contractors, agents, personnel, consultants, and service providers) shall observe the highest standard of ethics during the implementation of procurement proceedings and the execution of the Contract under public fund.</p> <p>39.2 For the purposes of GCC Sub Clause 39.4, the terms set forth below as follows:</p> <p>(a) “corrupt practice” means offering, giving or promising to give, receiving, or soliciting either directly or indirectly, to any officer or employee of a PE or other public or private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a PE in connection with a Procurement proceeding or Contract execution;</p> <p>(b) “fraudulent practice” means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;</p> <p>(c) “collusive practice” means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the PE, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, non-competitive levels, thereby denying a PE the benefits of competitive price arising from genuine and open competition; or</p> <p>(d) “coercive practice” means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in the Procurement proceeding or the execution of the Contract, and this will include creating obstructions in the normal submission process used for Tenders.</p> <p>(e) “obstructive practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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; and also means acts intended to materially impede the exercise of the inspection and audit rights provided for under GCC Sub-Clause 39.6.</p> <p>39.3 Should any corrupt, fraudulent, collusive, coercive practice or obstructive practice of any kind, in competing for or in executing the Contract, is determined by the Procuring Entity, then the Procuring Entity may, upon giving 28 days’ notice to the Contractor, terminate the</p> |

Contractor's employment under the Contract and expel the contractor from the site, and the provisions of Clause 89 shall apply as if such expulsion had been made under sub-clause 89.1 (Termination for Default).

39.4 If corrupt, fraudulent, collusive, coercive or obstructive practices of any kind determined by the PE or the Development Partner against the Contractor (including its suppliers, sub-contractors, agents personnel, consultants, and service providers) alleged to have carried out such practices, the PE and/or the Development Partner shall :

(a) exclude the Contractor from further participation in the particular Procurement proceeding; or

(b) declare, at its discretion, the Contractor to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time.

(c) PE can debar the tenderer for a period of 1 (one) to 2 (Two) years for the procurement of all procuring entities due to fundamental breach of contract.

39.5 The Contractor shall be aware of the provisions on corruption, fraudulence, collusion, coercion and obstruction of the Public Procurement Act, 2006, the Public Procurement Rules, 2008 and in case of Development Partner financed contract, the Procurement Guidelines of the Development Partner.

39.6 The Contractor (including its suppliers, sub-contractors, agents, personnel, consultants, and service providers) shall permit the Government and/or the development Partner to inspect the Contractor's accounts and records and other documents relating to the submission of tender and contract performance, and to have them audited by auditors appointed by the Government and/or the development Partner, if so required.

## **B. Time Control**

### **40. Commencement of Works**

40.1 Except otherwise specified in the PCC , the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Project Manager's instruction recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Contractor:

(a) signing of the Contract Agreement by both parties upon approval of the by relevant authorities;

(b) possession of the Site given to the Contractor as required for the commencement of the Works; and

(c) receipt by the Contractor of the Advance Payment under GCC Clause 75 provided that the corresponding Bank Guarantee has been delivered by the Contractor, if any.

40.2 The Contractor shall commence the execution of the Works as soon as is reasonably practicable by the Start Date as specified in the GCC Sub Clause 1.1(nn) after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

### **41. Completion of Works**

41.1 The Contractor shall carry out the Works in accordance with the Programme of Works submitted by the Contractor and as updated with the approval of the Project Manager as stated under GCC Clause 42 to complete them in all respects by the Intended Completion Date.

### **42. Programme of Works**

42.1 Within the time stated in the PCC, the Contractor shall submit to the Project Manager for approval a Programme of Works showing the general methods, arrangements, order, and timing for all the activities in the Works. The programme may be in the form of an Implementation Schedule

|   |  |
|---|--|
|   | prepared in any software or other form acceptable to the Project Manager.  |
|   | 42.2 The Contractor shall submit to the Project Manager for approval of an updated Programme at intervals no longer than the period stated in the PCC. An update of the Programme shall be a Programme showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.   |
|   | 42.3 If the Contractor does not submit an updated Programme of Works at the intervals as stated under GCC Sub Clause 42.2 , the Project Manager may withhold an amount as stated in the PCC from the next payment certificate and continue to withhold this amount until the next due payment after the date on which the overdue Programme of Works has been submitted.   |
|   | 42.4 The Project Manager's approval of the Programme of Works shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time for approval. A revised Programme shall show the effect of Variations and Compensation Events.  |
| 43. Pro Rata Progress                     | 43.1 The Contractor shall maintain Pro Rata progress of the Works. Progress to be achieved shall be pursuant to GCC Clause 42 and shall be determined in terms of the value of the works done.   |
| 44. Early Warning                         | 44.1 If at any time during performance of the Contract, the Contractor or its Subcontractors should encounter events, circumstances, conditions that may adversely affect the quality of the work, increase the original Contract Price or delay the execution of the Works, the Contractor shall promptly notify the Project Manager in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Project Manager shall evaluate the situation, and the Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced. |
|   | 44.2 The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the original Contract price and Completion Date. The Contractor shall provide the estimate and the Project Manager shall further proceed as soon as reasonably possible.  |
| 45. Extension of Intended Completion Date | 45.1 The Contractor shall be entitled to an extension of the Intended Completion Date, if and to the extent that completion of the Works or any part thereof is or will be delayed by Compensation Events or a Variation or Extra Work Order.  |
|   | 45.2 The Project Manager shall decide whether and by how much to extend the Intended Completion Date within twenty-one (21) days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the extension of Intended Completion Date.  |
|   | 45.3 Except in case of Force Majeure, as provided under GCC Clause 85, a delay by the Contractor in the performance of its Completion obligations shall render the Contractor liable to the imposition of Liquidated Damages pursuant to GCC Clause 73, unless an extension of Intended Completion Date is agreed upon, pursuant to GCC Clause 45.   |
| 46. Delays Caused by Authorities          | 46.1 If the following conditions apply, namely:<br><br>(a) the Contractor has diligently followed the procedures laid down by the  |

|   |   |
|---|---|
|   | <p>relevant legally constituted public authorities,</p> <p>(b) these public authorities delay or disrupt the Contractor's work, and</p> <p>(c) the delay or disruption was unforeseeable;</p> <p>then this delay or disruption will be considered as a cause of delay under GCC Sub Clause 45.1.</p>  |
|   | 46.2 The Project Manager shall notify the Contractor accordingly keeping the PE posted.   |
| 47. Acceleration                            | 47.1 When the PE wants the Contractor to finish the Works before the Intended Completion Date, the Project Manager will obtain priced proposals for achieving the necessary acceleration from the Contractor. If the PE accepts these proposals, the Intended Completion Date will be advanced accordingly and confirmed by both the PE and the Contractor.   |
|   | 47.2 If the PE accepts the Contractor's priced proposals for acceleration, they will be incorporated in the Contract Price and treated as a Variation under GCC Clause 62.  |
| 48. Delays Ordered by the Project Manager   | 48.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.   |
| 49. Suspension of Work                      | 49.1 The Project Manager may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.  |
| 50. Consequences of Suspension              | <p>50.1 If the Contractor suffers delay and/or incurs Cost from complying with the Project Manager's instructions under GCC Clause 49 and/or from resuming the work, the Contractor shall give notice to the Project Manager and shall be entitled subject to GCC Clause 93 to:</p> <p>(a) an extension of time for any such delay, if Completion is or will be delayed and</p> <p>(b) payment of any such cost, which shall be included in the Contract Price.</p> |
|   | 50.2 After receiving this notice, the Project Manager shall proceed to agree or determine these matters.  |
|   | 50.3 The Contractor shall not be entitled to any extension of time for, or to any payment of the cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with GCC Clause 49.   |
| <b>C. Quality Control</b>                   |   |
| 51. Execution of Works                      | 51.1 The Contractor shall construct, install and carry out the Works and Physical services in accordance with the Specifications and Drawings as scheduled in GCC Clause 6.   |
| 52. Examination of Works before covering up | 52.1 All works under the Contract shall at all times be open to examination, inspection, measurements, testing and supervision of the Project Manager, and the Contractor shall ensure presence of its representatives at such actions provided proper advance notice is given by the Project Manager.  |
|   | 52.2 No part of the Works shall be covered up or put out of sight without the approval of the Project Manager. The Contractor shall give notice in writing to the Project Manager whenever any such part of the Works is ready for examination and the Project Manager shall attend to such examination without unreasonable delay.   |



|                           |   |
|---------------------------|---|
| 53. Identifying Defects   | 53.1 The Project Manager shall check the works executed by the Contractor and notify the Contractor of any Defects found. Such checking shall not relieve the Contractor from his or her obligations. The Project Manager may also instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.  |
| 54. Testing               | 54.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.   |
| 55. Rejection of Works    | 55.1 If, as a result of an examination, inspection, measurement or testing, of Works it is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Works by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected Works subsequently complies with the Contract.   |
| 55. Rejection of Works    | 55.1 If, as a result of an examination, inspection, measurement or testing, of Works it is found to be defective or otherwise not in accordance with the Contract, the Project Manager may reject the Works by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected Works subsequently complies with the Contract.   |
| 56. Remedial Work         | <p>56.1 Notwithstanding any test or certification, the Project Manager may instruct the Contractor to:</p> <p>(a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,</p> <p>(b) remove and re-execute any other work which is not in accordance with the Contract, and</p> <p>(c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.</p> |
|                           | 56.2 The Contractor shall comply with the instruction issued under GCC Sub Clause 56.1 within a reasonable time, which shall be specified in the instruction, or immediately if urgency is specified under GCC Sub Clause 56.1(c).  |
|                           | 56.3 If the Contractor fails to comply with the instruction issued under GCC Sub Clause 56.2, the PE shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall be liable to pay all such costs arising from this failure.  |
| 57. Correction of Defects | 57.1 The Project Manager shall give notice to the Contractor, with a copy to the PE and others concerned, of any Defects before the end of the Defects Liability Period, which begins at Completion Date, and is defined in the PCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.  |
|                           | 57.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.  |
| 58. Uncorrected Defects   | 58.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected by it, and the Contractor shall remain liable to pay the expenditures incurred on account of correction of such Defect.   |
| <b>D. Cost Control</b>    |   |



|  |   |
|--|---|
| 59. Contract Price                                   | 59.1 The Contract Price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto, or deductions therefrom, as may be made pursuant to Contract  |
| 60. Bill of Quantities                               | 60.1 The Bill of Quantities shall contain priced items for the construction, installation, testing, and commissioning work to be done by the Contractor.  |
|  | 60.2 The Bill of Quantities is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate in the Bill of Quantities for each item.  |
| 61. Changes in the Quantities and Unit Rate or Price | 61.1 If the final quantity of the work done for any particular item increases from the quantity in the Bill of Quantities by more than twenty-five percent (25%), provided the change in case exceeds one percent (1%) of the original Contract Price, the Project Manager shall adjust the rate to allow for the change.   |
|  | 61.2 If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.  |
| 62. Variations                                       | 62.1 All Variations and Extra Work Orders under the Contract shall be included in the updated Programme of Works produced by the Contractor.  |
| 63. Costing of Variations or Extra Orders            | 63.1 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.  |
|  | 63.2 If the work in the Variation corresponds with an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work not above the limit stated in GCC Sub-Clause 61.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work. |
|  | 63.3 If the Contractor's quotation is found to be unreasonable, the Project Manager may order the Variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.  |
|  | 63.4 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event under GCC Sub Clause 69.  |
|  | 63.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning under GCC Sub Clause 44.1.   |
| 64. Cash Flow Forecasts                              | 64.1 When the Programme of Works is updated under GCC Sub Clause 42.2, the Contractor shall provide the Project Manager with an updated cash flow forecast.   |
| 65. Payment Certificates                             | 65.1 The basis for payment certificates shall be Bill of Quantities used to determine the Contract price.   |
|  | 65.2 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the works executed less the cumulative amount certified previously.  |
|  | 65.3 The Project Manager shall check the Contractor's monthly statement   |

|  |   |
|--|---|
|  | and certify the amount to be paid to the Contractor.  |
|  | 65.4 The value of work executed shall be determined by the Project Manager.   |
|  | 65.5 The value of work executed shall include the valuation of Variations or Extra Work Orders, Certified Dayworks and Compensation Events.   |
|  | 65.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.   |
| 66. Payments to the Contractor             | 66.1 Payments shall be adjusted for deductions for advance payments and retention. The PE shall pay the Contractor the amounts certified by the Project Manager within twenty eight (28) days of the date of each certificate after due adjustments for deductions for advance payments, retention and any other additions or deductions which may have become due under the Contract or otherwise, including those under GCC Clause 93.  |
|  | 66.2 Items of works quantified in the Bill of Quantities for which no rates or prices have been quoted shall be deemed covered by the amounts at rates and prices of other items in the Contract.   |
|  | 66.3 Payments due to the Contractor in each certificate shall be made into the Bank Account in any scheduled Bank of Bangladesh of the title of the Contract specified in the PCC, nominated by the Contractor in the currency specified in the Contract.   |
| 67. Delayed Payment                        | 67.1 If the PE makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.   |
|  | 67.2 If an amount certified is increased in a subsequent certificate as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.   |
| 68. Payments to Nominated Subcontractor(s) | 68.1 The Contractor shall pay to the Nominated Subcontractor(s) the amounts shown on the Nominated Subcontractor's invoices approved by the Contractor which the Project Manager certifies to be due in accordance with the subcontract included under the Contract.  |
| 69. Compensation Events                    | <p>69.1 The following shall be Compensation Events:</p> <ul style="list-style-type: none"> <li>(a) The PE does not give access to or possession of the Site or part of the Site by the Site Possession Date stated in the GCC Sub Clause 13.1;</li> <li>(b) The PE modifies the Schedule of other Contractors in a way that affects the works of the Contractor under the Contract;</li> <li>(c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time;</li> <li>(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects;</li> <li>(e) The Project Manager unreasonably does not approve a subcontract to be let, if applicable;</li> <li>(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Notification of Award from the information issued to Tenderers (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site;</li> <li>(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the PE, or additional work required for safety or other</li> </ul> |

|  |   |
|--|---|
|  | <p>reasons;</p> <p>(h) Other Contractors, public authorities, utilities, or the PE do not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor;</p> <p>(i) The advance payment is delayed;</p> <p>(j) The effects on the Contractor of any of the PE's Risks;</p> <p>(k) The Project Manager unreasonably delays issuing a Completion Certificate;</p> <p>(l) A situation of Force Majeure has occurred, as defined in GCC Clause 85; and</p>   |
|  | (m) Other Compensation Events described in the Contract or determined by the Project Manager in the PCC shall apply.  |
|  | 69.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract price shall be increased and whether and by how much the Intended Completion Date shall be extended, only on justifiably acceptable grounds duly recorded.   |
|  | 69.3 As soon as the Contractor has provided information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost, the Project Manager shall assess it, and the Contract price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.   |
|  | 69.4 The Contractor shall not be entitled to compensation to the extent that the PE's interests are adversely affected by the Contractor <b>not having given early warning or not having cooperated with the Project Manager.</b>   |
| 70. Adjustments for Changes in Legislation | 70.1 Unless otherwise specified in the Contract, if between the date twenty-eight (28) days before the submission of Tenders for the Contract and the date of the last Completion Certificate, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Bangladesh (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Completion Date and/or the Contract price, then such Completion Date and/or Contract price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. |
|  | 70.2 The Project Manager shall adjust the Contract Price on the basis of the change in the amount of taxes, duties, and other levies payable by the Contractor, provided such changes have not already been accounted for in the price adjustment as defined in GCC Clause 69 and/or reflected in the Contract price.   |
| 71. Price Adjustment                       | <p>71.1 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the PCC. If so provided, the amounts as certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amount. The formula indicated below applies:</p> $P = A B (I_m/I_o)$ <p>where:</p> <p>P is the adjustment factor</p>   |

|                        |  |
|------------------------|--|
|                        | <p>A and B are Coefficients specified in the PCC, representing the nonadjustable and adjustable portions, respectively, of the Contract; and Im is the Index during the month the work has been executed and Io is the Index prevailing twenty eight (28) days prior to the deadline for submission of Tender.</p> <p>The Indexes to be used is as published by the Bangladesh Bureau of Statistics (BBS) on a monthly basis. In case not available, then other countries or authorities of the sources mentioned in Appendix to the Tender may be used.</p> |
| 72. Retention Money    | 72.1 The PE may retain from each progressive payment due to the Contractor at the percentage specified in the PCC until completion of the whole of the Works under the Contract.   |
|                        | 72.2 On completion of the whole of the Works, the first half the total amount retained under GCC Sub Clause 72.1 shall be repaid to the Contractor and the remaining second half after the Defects Liability Period has passed and the Project Manager has certified in the form of Defects Corrections Certificate..  |
|                        | 72.3 On completion of the whole of the Works, the Contractor may substitute an unconditional Bank Guarantee in the format as specified (Form PW3-11) acceptable to the PE for the second half of the retention money as stated under GCC Sub Clause 72.2.  |
| 73. Liquidated Damages | 73.1 The Contractor shall pay liquidated damages to the PE at the rate per day stated in the PCC for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The PE may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.   |
|                        | 73.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.   |
|                        | <b>73.3 Liquidated damage shall not be applicable in case of the Intended Completion Date is extended with justifiable ground.</b>   |
| 74. Bonus              | 74.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day if stated in the PCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion of the whole of the Works is earlier than the Intended Completion Date. The Project Manager shall require certifying that the Works are complete, although they may not have fallen due to being complete as per approved updated Programme of Works.  |
| 75. Advance Payment    | 75.1 If so specified in the PCC, the PE shall make advance payment to the Contractor of the amounts and by the dates stated in the PCC against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the PE in an amount equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.           |
|                        | 75.2 The Contractor shall use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used for such specific purposes by supplying copies of invoices or other documents to the Project Manager.  |
|                        | 75.3 The advance payment shall be repaid by deducting at proportionate   |

|                                |  |
|--------------------------------|--|
|                                | rate from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.   |
| 76. Performance Security       | 76.1 The PE shall notify the Contractor of any claim made against the Bank issuing the Performance Security.   |
|                                | 76.2 The PE may claim against the security if any of the following events occurs for fourteen (14) days or more.<br><br>(a) The Contractor is in breach of the Contract and the PE has duly notified him or her ; and<br>(b) The Contractor has not paid an amount due to the PE and the PE has duly notified him or her.  |
|                                | 76.3 In the event the Contractor is liable to pay compensation under the Contract amounting to the full value of the Performance Security or more, the PE may call the full amount of the Performance Security.  |
|                                | 76.4 The Performance Security furnished at the time of signing of the Contract Agreement shall be substituted, after the issuance of certificate of Completion of works by the Project Manager, by a new Security covering fifty (50) percent amount of the Performance Security to cover the Defects Liability Period.  |
|                                | 76.5 If there is no reason to call the Performance Security, the Performance Security shall be discharged by the PE and returned to the Contractor after the Defects Liability period has passed and the Project Manager has certified in the form of Defects Corrections Certificates.  |
| 77. Provisional Sums           | 77.1 Provisional Sums shall only be used, in whole or in part, in accordance with the Project Manager's instructions and the Contract price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Project Manager shall have instructed.  |
|                                | 77.2 Plants, Materials or Services to be purchased by the Contractor under the provisions of GCC Sub Clause 77.1 from Nominated Subcontractor(s) or for meeting the other expenditures under the Contract, and for which there shall be included in the Contract price, the actual amounts paid or due to be paid by the Contractor, and a sum for VAT, profit and overhead charges, as applicable, calculated as a percentage of these actual amounts by applying the relevant percentage rate stated in the PCC. |
|                                | 77.3 The Contractor shall, when required by the Project Manager, produce quotations, invoices, vouchers and accounts or receipts in substantiation of purchases under GCC Sub Clause 77.2.   |
| 78. Dayworks                   | 78.1 If applicable, the Dayworks rates in the Contractor's Tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.   |
|                                | 78.2 All works to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be certified and signed by the Project Manager within seven (7) days of the works being done.  |
|                                | 78.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.   |
| 79. Cost of Repairs to Loss or | 79.1 Loss or damage to the Works or Materials to be incorporated in the  |



|                                      |  |
|--------------------------------------|--|
| Damages                              | Works between the Start Date and the end of the Defects Liability Period shall be remedied by the Contractor at the Contractor's own cost, if the loss or damage arises from the Contractor's acts or omissions.   |
| <b>E. Completion of the Contract</b> |  |
| 80. Completion                       | 80.1 The Contractor shall apply by notice to the Project Manager for issuing a Completion Certificate of the Works, and the Project Manager shall do so upon deciding that the work is completed.  |
| 81. Taking Over                      | 81.1 The PE shall take over the Site and the Works within seven (7) days of the Project Manager's issuing a certificate of Completion.   |
| 82. Amendment to Contract            | 82.1 The amendment to Contract shall generally include extension of time to the Intended Completion Date, increase or decrease in original Contract price and any other changes acceptable under the conditions of the Contract.   |
|                                      | 82.2 The PE, in accordance with the Delegation of Financial Power or sub-delegation thereof, shall amend the Contract incorporating the changes introduced to the original terms and conditions of the Contract in line with the Rules.  |
| 83. Final Account                    | 83.1 The Contractor shall submit with a detailed account of the total amount that the Contractor considers payable under the Contract to the Project Manager before the end of the Defects Liability Period.   |
|                                      | 83.2 The Project Manager shall certify the Final Payment within fifty six (56) days of receiving the Contractor's account if the payable amount claimed by the Contractor is correct and the corresponding works are completed.  |
|                                      | 83.3 If it is not, the Project Manager shall issue within fifty six (56) days a Defects Liability Schedule that states the scope of the corrections or additions that are necessary.   |
|                                      | 83.4 If the Final Account of Works submitted under GCC Sub Clause 83.1 is unsatisfactory even after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.   |
| 84. As-built Drawings and Manuals    | 84.1 If "As Built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PCC.  |
|                                      | 84.2 If the Contractor does not supply the Drawings and/or Manuals by the dates specified in GCC Sub Clause 84.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold a nominal amount specified in the PCC from payments due to the Contractor.   |
| 85. Force Majeure                    | <p>85.1 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind stated below;</p> <p>(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies ;</p> <p>(b) rebellion, terrorism, sabotage by persons other than the Contractor's personnel, revolution, insurrection, military or usurped power, or civil war ;</p> <p>(c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's personnel ;</p> <p>(d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity ;</p> <p>and</p> |



|  |   |
|--|---|
|  | (e) natural catastrophes such as fires, floods, epidemics, quarantine restrictions, freight embargoes, cyclone, hurricane, typhoon, tsunami, storm surge, earthquake, hill slides, landslides, and volcanic activities.   |
| 86. Notice of Force Majeure                      | 86.1 If a party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice, within fourteen (14) days after the party became aware, to the other party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented.  |
|  | 86.2 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either party to make payments to the other party under the Contract.   |
| 87. Consequences of Force Majeure                | <p>87.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GCC Sub Clause 86, and suffers delay and/or incurs cost by reason of such Force Majeure, the Contractor shall be entitled subject to GCC Sub Clause 93 to:</p> <p>(a) an extension of time for any such delay, if completion is or will be delayed, under GCC Clause 45, and</p> <p>(b) if the event or circumstance is of the kind described sub-paragraphs (a) to (e) of GCC Sub Clause 85.1 occurs in the Country, payment of any such cost, including the costs of rectifying or replacing the Works and Physical services damaged or destructed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in GCC Clause 37.</p>  |
|  | 87.2 After receiving notice under GCC Sub Clause 86.1, the Project Manager shall proceed to determine these matters under the provisions of the Contract.   |
| 88. Release from Performance                     | <p>88.1 Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the parties to be released from further performance of the Contract, then upon notice by either party to the other party of such event or circumstance:</p> <p>(a) the parties shall be discharged from further performance, without prejudice to the rights of either party in respect of any previous breach of the Contract, and</p> <p>(b) the sum payable by the PE to the Contractor shall be the same as would have been payable under GCC Sub Clause 90.3 if the Contract had been terminated under GCC Sub Clause 89.3.</p> |
| <b>F. Termination and Settlement of Disputes</b> |   |
| 89. Termination                                  | <p>89.1 Termination for Default</p> <p>(a) The PE or the Contractor, without prejudice to any other remedy for breach of Contract, by giving twenty eight (28) days written notice of default to the other party, may terminate the Contract in whole or in part if the other party causes a fundamental breach of Contract.</p> <p>(b) Fundamental breaches of the Contract shall include, but shall not be</p>  |

limited to, the following:

(i) the Contractor stops work for twenty-eight (28) days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Project Manager;

(ii) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within eighty four ( 84) days;

(iii) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

(iv) the Contractor does not maintain a Security, which is required;

(v) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of Liquidated Damages can be paid, as specified in GCC Sub Clause 73;

(vi) the Contractor has subcontracted the whole of the Works or has assigned the Contract without the required agreement and without the approval of the Project Manager;

(vii) the Contractor, in the judgment of the PE has engaged in corrupt or fraudulent practices, as defined in GCC Sub Clause 39, in competing for or in executing the Contract.

(viii) A payment certified by the Project Manager is not paid by the PE to the Contractor within eighty-four (84) days of the date of the Project Manager's certificate.

#### 89.3 Termination for Convenience

(a) The PE, by giving twenty eight (28) days written notice sent to the Contractor, 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 PE's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective.

(b) The PE shall not terminate the contract under GCC Sub Clause 89.3 (a) in order to execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor as stated under GCC Sub Clause 89.1(a).

#### 89.2 Termination for Insolvency

The PE and the Contractor may at any time terminate the Contract by giving twenty eight (28) days written notice to the other party if either of the party becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to any party, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the other party.

89.4 In the event the PE terminates the Contract in whole or in part, the PE shall accept the portion of the Works that are complete and ready for

|                              |   |
|------------------------------|---|
|                              | <p>handing over after the Contractor's receipt of notice of termination of the Contract. For the remaining portion of the Works, the PE may elect:</p> <p>(a) to have any portion completed by the Contractor at the Contract terms and prices; and /or</p> <p>(b) to cancel the remainder and pay to the Contractor an agreed amount for partially completed Works and for materials and parts previously procured by the Contractor, or</p> <p>(c) except in the case of termination for convenience as stated under GCC Sub Clause 89.3., engage another Contractor to complete the Works, and in that case the Contractor shall be liable to the PE for any cost that may be incurred in excess of the sum that would have been paid to the Contractor, if the work would have been executed and completed by him or her.</p>   |
| 90. Payment upon Termination | <p>90.1 If the Contract is terminated because of a fundamental breach of Contract under GCC Sub Clause 89.1 by the Contractor, the Project Manager shall issue a certificate for the value of the Works done and Plant and Materials ordered less advance payments received up to the date of the issue of the certificate and less the amount from percentage to apply to the contract value of the works not completed, as indicated in the PCC. If the total amount due to the PE exceeds any payment due to the Contractor, the difference shall be a debt payable to the PE.</p>   |
|                              | <p>90.2 If the Contract is terminated for the PE's convenience or because of a fundamental breach of Contract by the PE, the Project Manager shall issue a payment certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's foreign personnel employed solely on the Works and recruited specifically for the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.</p>   |
|                              | <p>90.3 If the Contract is terminated for reasons of Force Majeure, the Project Manager shall determine the value of the work done and issue a Payment Certificate which shall include:</p> <p>(a) the amounts payable for any work carried out for which unit rates or prices are stated in the Contract;</p> <p>(b) the cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the PE when paid for by the PE, and the Contractor shall place the same at the PE's disposal;</p> <p>(c) other costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;</p> <p>(d) the cost of removal of Temporary Works and Contractor's Equipment from the Site; and</p> <p>(e) the cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.</p> |
| 91. Property                 | <p>91.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the PE if the Contract is</p>   |

|  |   |
|--|---|
|  | terminated because of the Contractor's default stated under GCC Sub Clause 89.1.  |
| 92. Frustration                            | 92.1 If the Contract is frustrated by the occurrence of a situation of Force Majeure as defined in GCC Sub Clause 85, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all works carried out before receiving it and for any work carried out afterwards to which a commitment was made.  |
| <b>G. Claims, Disputes and Arbitration</b> |   |
| 93. Contractor's Claims                    | 93.1 If the Contractor considers himself to be entitled to any extension of the Completion Time and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the PE, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than twenty eight (28) days after the Contractor became aware, or should have become aware, of the event or circumstance.  |
|  | 93.2 If the Contractor fails to give notice of a claim within such period of twenty eight (28) days, the Intended Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the PE shall be discharged from all liability in connection with the claim.  |
|  | 93.3 Within forty two (42) days after the Contractor became aware or should have become aware of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed, for settlement.   |
| 94. Settlement of Disputes                 | 94.1 Amicable settlement<br><br>The PE and the Contractor shall use their best efforts to settle amicably all possible disputes arising out of or in connection with this Contract or its interpretation.   |
|  | 94.2 Adjudication<br><br>(a) If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within fourteen (14) days of notification of the Project Manager's decision in writing.<br><br>(b) The Adjudicator named in the PCC is jointly appointed by the parties. In case of disagreement between the parties, the Appointing Authority designated in the PCC shall appoint the Adjudicator within fourteen (14) days of receipt of a request from either party.<br><br>(c) The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it.<br><br>(d) The Contractor shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the PE shall reimburse half of these fees through the regular progress payments.<br><br>(e) Should the Adjudicator resign or die, or should the PE and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed |

|  |   |
|--|---|
|  | <p>by the PE and the Contractor. In case of disagreement between the PE and the Contractor the Adjudicator shall be designated by the Appointing Authority within fourteen (14) days of receipt of a request from either party as stated under GCC Sub Clause 94.2 (b)</p>  |
|  | <p>94.3 Arbitration</p> <p>(a) If the parties are unable to reach a settlement as per GCC Clauses 94.1 and 94.2 within twenty-eight (28) days of the first written correspondence on the matter of disagreement, then either party may give notice to the other party of its intention to commence arbitration in accordance with GCC Sub Clause 94.3(b).</p> <p>(b) The arbitration shall be conducted in accordance with the Arbitration Act (Act No 1 of 2001) of Bangladesh as at present in force and in the place shown in the PCC.</p> |