

TERMS AND CONDITIONS FOR GSAS CERTIFICATION

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Friday, Saturday or public holiday)

Charges: all costs, charges and expenses applicable to or incurred in connection with the payment of the Fees, including but not limited to bank charges, credit card fees and taxes.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Conformance to Design Audit: a service involving inspection of the Premises to ensure that the provisional star rating awarded to a design in a Letter of Conformance is maintained into the construction phase, as set out in clause 6.

Contract: the contract between GORD and the Client for the supply of Services in accordance with these Conditions.

Client: the person or firm who purchases Services from GORD.

Design Certification: a service for the assessment of the design of the Premises against the GSAS Criteria, as set out in clause 5.

Fees: the fees payable by the Client for the supply of the Services in accordance with clause 8.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Final Design Certificate: a certificate that awards a final star rating to the detailed design of the Premises based on the GSAS Criteria, site audit and verification.

GORD: Gulf Organisation for Research and Development, Qatar Science & Technology Park, Suite 203, Level 2, Tech 1, Doha, Qatar.

GSAS CGP: a GSAS-Certified Green Professional as defined in the latest version of the Technical Guide.

GSAS Criteria: the environmental stress mitigation criteria used by GORD to assess premises and award star ratings, published on the Website and in the Technical Guide.

GSASgate: the online project management system operated by GORD, through which all Orders must be placed.

Letter of Conformance: a provisional certificate issued by GORD that awards a provisional star rating to the detailed design of the Premises based on the GSAS Criteria.

Order: the Client's order for Services as set out in the Client's completed on-line application form submitted via GSASgate.

Pre-Certification Review: an advisory service offered by GORD to clients in relation to the various design stages of a project, as set out in clause 4.

Premises: the building or project identified in the Order in respect of which the Services are to be provided.

Services: the GSASgate, Pre-Certification Review, Design Certification or Conformance to Design Audit services supplied by GORD to the Client.

Specification: the description or specification of the Services provided in writing by GORD to the Client.

Technical Guide: the latest version of the GSAS Technical Guide published by GORD and available on the Website.

Website: <http://www.gord.qa>

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its [personal representatives,] successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes [and e-mails].

2. **BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when GORD issues written acceptance of the Order (**Acceptance**) at which point and on which date, subject to clause 2.3 below, the Contract shall come into existence (**Commencement Date**).

- 2.3 An Acceptance is only valid if it includes the Specification and confirms the Fees paid by the Client and received by GORD.
- 2.4 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of GORD which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by GORD, and any descriptions or illustrations contained in GORD's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by GORD shall not constitute an offer.

3. SUPPLY OF SERVICES

- 3.1 GORD shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2 GORD shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 GORD shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and GORD shall notify the Client in any such event.
- 3.4 GORD warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.5 Where there is more than one current published version of the GSAS Criteria, GORD shall have the option in its absolute discretion to decide which version to use in providing the Services.
- 3.6 In any event, GORD reserves the right in its absolute discretion to vary, amend or replace the GSAS Criteria and to assess the environmental standard of the Premises for the purposes of issuing any Letter of Conformance or Final Design Certificate in any manner and on whatever basis it sees fit.

- 3.7 The Services do not include a detailed evaluation of the design of the Premises or a detailed inspection of the construction of the Premises.
- 3.8 Subject to clauses 3.5 and 3.6 above, any assessment of the Premises against the GSAS Criteria leading to a Letter of Conformance or Final Design Certificate is based solely on information provided by the Client and any visits carried out in accordance with clause 6.4 below.
- 3.9 GORD shall be under no obligation to provide a detailed breakdown of assessment scores or any other information in connection with a Letter of Conformance or Final Design Certificate.
- 3.10 Any Letter of Conformance or Final Design Certificate issued by GORD to the Client is a representation solely to the Client and, to the fullest extent permitted by law, GORD does not accept or assume responsibility to anyone other than the Client for the contents of the Letter of Conformance or Final Design Certificate.
- 3.11 GORD accepts no responsibility for any statement or representation made by any of its employees, agents, consultants or subcontractors in connection with the provision of the Services.
- 3.12 GORD does not warrant or guarantee that the environmental performance of the Premises will continue to be as stated in any Letter of Conformance or Final Design Certificate beyond the date on which the relevant Letter of Conformance or Final Design Certificate is issued.

4. PRE-CERTIFICATION REVIEW

- 4.1 The terms of this clause 4 apply to the Contract if the Order and Specification include a Pre-Certification Review.
- 4.2 The Client shall provide GORD with a project description, preliminary and work-in progress design information (drawings, specifications, schedules and bills of quantity);
- 4.3 Subject to the contents of the Specification GORD will:
- (a) attend the project kick-off meeting and interim review meetings;
 - (b) review the preliminary and work-in-progress design information, reporting to the Client

5. DESIGN CERTIFICATION

- 5.1 The terms of this clause 5 apply to the Contract if the Order and Specification include Design Certification.
- 5.2 The Client shall provide GORD with detailed design drawings.

- 5.3 Subject to the contents of the Specification GORD will:
- (a) Review the detailed design drawings against the GSAS Criteria;
 - (b) Issue a Letter of Conformance.
- 5.4 On payment in advance of the relevant Fee as stipulated by GORD, GORD will carry out any appeal requested by the Client in respect of the provisional star rating awarded in the Letter of Conformance and will notify the Client of the outcome within a reasonable period of time.
- 5.5 If the appeal is successful, the Fee for the appeal will be refunded to the Client.
- 5.6 The outcome of an appeal is final and is not subject to any further review or appeal.
- 6. CONFORMANCE TO DESIGN**
- 6.1 The terms of this clause 6 apply to the Contract if the Order and Specification include Conformance to Design.
- 6.2 The Client shall appoint a representative (**Client Representative**) who must be a GSAS CGP and shall work for the owner of the Premises and not the project contractor.
- 6.3 The Client shall procure that the Client Representative:
- (a) facilitates all audit visits to the Premises and the collection of data to validate the claimed scores for the design certification;
 - (b) ensures that all information is supplied to GORD
 - (c) sufficiently demonstrates that the evidence (such as site audit reports, photographs, bills of materials and other construction documents) supports the achievement of the GSAS Criteria before submitting it to GORD for final review.
- 6.4 GORD shall conduct random and routine visits at various stages of the construction of the Premises.
- 6.5 Within a reasonable period of time of concluding its assessment, GORD will issue a Final Design Certificate in respect of the Premises to the Client.
- 6.6 On payment in advance of the relevant Fee as stipulated by GORD, GORD will carry out any appeal requested by the Client in respect of the star rating awarded in the Final Design Certificate and will notify the Client of the outcome within a reasonable period of time.
- 6.7 If the appeal is successful, the Fee for the appeal will be refunded to the Client.
- 6.8 The outcome of an appeal is final and is not subject to any further review or appeal.

7. CLIENT'S OBLIGATIONS

7.1 The Client shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with GORD in all matters relating to the Services;
- (c) procure the cooperation of its employees, agents, consultants and subcontractors in complying with all requirements, procedures, directions and requests of GORD in relation to the Services;
- (d) provide GORD, its employees, agents, consultants and subcontractors, with access to the Premises as reasonably required by GORD;
- (e) provide GORD with such information and materials as GORD may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (f) ensure that the Premises comply with all relevant laws, regulations and codes;
- (g) not in any way interfere, hinder or seek to influence GORD in the provision of the Services;
- (h) upon GORD's request make a presentation to GORD in respect of the Premises addressing such issues as GORD may specify;
- (i) not make any misleading or unauthorised statement to a third party in respect of any Letter of Conformance or Final Design Certificate;
- (j) not use or seek to use a Letter of Conformance or Final Design Certificate in such a manner that would bring GORD, the GSAS Star Rating System or the Services into disrepute.

7.2 If GORD's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) GORD shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays GORD's performance of any of its obligations;
- (b) GORD shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from GORD's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Client shall reimburse GORD on written demand for any costs or losses sustained or incurred by GORD arising directly or indirectly from the Client Default.

8. INDEMNITY

- 8.1 The Client shall indemnify GORD against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by GORD arising out of or in connection with:
- (a) any claim made against GORD, its employees, agents, consultants or subcontractors by a third party arising out of or in connection with the provision of the Services;
 - (b) any claim made against the Client, its employees, agents, consultants or subcontractors by a third party arising out of or in connection with the provision of the Services;
 - (c) any claim made against the Client Representative by a third party arising out of or in connection with the provision of the Services;
 - (d) any claim made against the owner of the Premises by a third party arising out of or in connection with the provision of the Services.

9. FEES AND PAYMENT

- 9.1 The Fees for the Services shall be set out by GORD in a written quotation that will be provided to the Client and confirmed by invoice issued prior to acceptance of the Order.
- 9.2 The Client is responsible for payment of all Charges and the Client shall indemnify GORD in respect of all Charges and any liability to pay Charges.
- 9.3 The Order will not be accepted until the Fees have been received by GORD as cleared funds.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by GORD.
- 10.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on GORD obtaining a written licence from the relevant licensor on such terms as will entitle GORD to license such rights to the Client.
- 10.3 All Supplier Materials are the exclusive property of GORD.

11. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

11.1 Nothing in these Conditions shall limit or exclude GORD's liability for fraud or gross mistake.

11.2 Subject to clause 11.1, GORD shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) damage to the Premises or to any other building or buildings in the vicinity of the Premises;
- (b) damage to any property belonging to the Client;
- (c) death or personal injury;
- (d) loss of profits;
- (e) loss of sales or business;
- (f) loss of agreements or contracts;
- (g) loss of anticipated savings;
- (h) loss of or damage to goodwill;
- (i) loss of use or corruption of software, data or information;
- (j) any indirect or consequential loss.

11.3 GORD's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Fees.

11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

12.1 Without limiting its other rights or remedies, GORD may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so;
- (b) the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, GORD may suspend provision of the Services under the Contract or any other contract between the Client and GORD if

the Client becomes subject to any of the events listed in clause 12.1 or GORD reasonably believes that the Client is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall remain liable to pay all Fees and Charges and the Client shall have no claim whatsoever against GORD in respect of any Fees or Charges already paid;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication survive termination shall continue in full force and effect.

14. FORCE MAJEURE

- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of GORD including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of GORD or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2 GORD shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents GORD from providing any of the Services for more than 4 weeks, GORD shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

15. GENERAL

15.1 Assignment and other dealings.

- (a) GORD may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of GORD, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

15.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- 15.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 15.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by GORD.
- 15.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Qatar.
- 15.9 **Jurisdiction.** Each party irrevocably agrees that the courts of Qatar shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).