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DRUK HOLDING & INVESTMENTS LTD.

GENERAL CONDITION OF CONTRACT

GOODS

Drukair
Royal Bhutan Airlines

Supply and Delivery of Groceries, Masala, Bakery, Bonded, Vegetables & Fruits, Wet/Dry and Meat items, Catering- PIA



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SECTIONIV: GENERAL CONDITIONSOFCONTRACT

1. Definitions

1.1. The following words and expressions shall have the meanings hereby assigned to them:

(i) **Affiliate** means business concerns, organizations, or individuals that control each other or that are controlled by a common third party. Control may include shared management or ownership; common use of facilities, equipment and resources; or family interests.

(ii) **Award of Contract** means the decision of the Purchaser to enter into a contract with a supplier for delivery of specified goods which has been conveyed to the contractor through a purchase order and/or signing of a contract.

(iii) **Bid** an offer to execute works in accordance with the terms and conditions set out in the bid documents inviting such offers. The term "tender" is synonymous with the term "bid";

(iv) **BDS** means Bid Data Sheet

(v) **Bidder** means an eligible individual or legal entity that participates in a competitive procurement process defined by this Manual.

(vi) **Bidding Documents** means the set of documents issued by the Purchaser to potential Bidders in which the specifications, terms and conditions of the proposed procurement are prescribed. The terms "bidding documents", "tender documents" and "bid documents" are synonymous.

(vii) **Contract Documents** means the documents listed in the Contract Agreement, including any amendments thereto.

(viii) **ContractPrice**meansthepricepayabletotheSupplierasspecifiedintheContract Agreement, subject to such additions and adjustments thereto or deductions there from as may be made pursuant to the Contract till the completion of the Contract, the price so adjusted shall be termed as Executed Price.

(ix) **Purchaser** means the purchaser including its successors and permitted assigns. The term "Purchaser" and "Purchaser" are synonymous.

(x) **Day** means calendar day.

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(xi) **Delivery** means the transfer of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract Documents.

(xii) **GCC** means the General Conditions of Contract.

(xiii) **Goods** means any object in solid, liquid or gaseous form, tangible and intangible that has an economic utility or value, which can be exchanged or traded along with related service.

(xiv) **ITB** means Instructions to Bidders

(xv) **Notification of Award** means the letter issued by The Purchaser conveying the acceptance of the Bid of the successful Bidder subject to such terms and conditions as may have been stated therein.

(xvi) **Party** means the Purchaser or the Supplier, as the context requires, and "parties" means both of them.

(xvii) **Price schedule:** summary of the quantities, measurement unit and unit prices of the items to be procured under the contract. The term "Bill of Quantities" is synonymous.

(xviii) **Final Destination** means the place named in the SCC.

(xix) **Purchaser** means The Purchaser (specified in SCC.)

(xx) **Related Services** means Includes services such as installations, supervision, training, initial maintenance, insurance, testing and commissioning related to the Goods.

(xxi) **SCC** means the Special Conditions of Contract.

(xxii) **Subcontract or** means any natural person, private or government entity, or a combination thereof, including its legal successors and permitted assigns, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

(xxiii) **Supplier** a legal entity entering into a contract with the Purchaser for the supply of Goods.

(xxiv) **Technical Specifications** means specifications of the Goods incorporated in the bidding documents and forming part of the contract and includes any modification or

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amendment thereto or any addition thereto or any deduction there from, as may be made with the mutual agreement of the Purchaser and Supplier.

2. Contract Documents

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

3. Interpretation

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

3.2. A "law" shall be construed as a reference to such law including its amendments or re-enactments from time to time.

3.3. A "person" shall be construed as a reference to any person, firm, Purchaser, corporation, society, trust, government, or agency of a government or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests.

3.4. The words "hereof" or "herein" if and when used in the Contract Documents shall mean a reference to the Contract Documents of this Contract.

3.5. Incoterms

a) Unlessinconsistentwithanyprovisionof theContractorotherwisespecifiedinthe SCC, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms.

b) The terms EXW, CIF, CIP, DDP and other similar terms as specified in SCC, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the SCC and published by the International Chamber of Commerce in Paris, France

3.6. Amendment

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

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3.7. Non-waiver

a) Subject to GCC0(a)below, no relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

b) Any waiver of a party's rights, powers or remedies under the Contract must be in writing, dated and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.8. Severability

If any provision or condition of the Contract is prohibited or rendered in valid or unenforceable, such prohibition, in validity or unenforced ability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

3.9. Entire Agreement

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

4. **Fraud and Corruption**

4.1. If the Purchaser determines that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the Contract then The Purchaser may, after giving fourteen (14) days' notice to the Supplier, terminate the Supplier's employment under the Contract and cancel the Contract, and the provisions of GCC37 shall apply as if such termination has been made under GCC37.1.

4.2. For the purposes of this Sub-Clause:

a) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value" to influence improperly the actions of another party;

b) "fraudulent practice" is any intentional act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

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c) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

d) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a Party;

e) "obstructive practice" is:

i. Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order materially to impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

ii. Acts in tended materially to impede the exercise of the in section and audit rights of the Purchaser and/or any other relevant RGoB agency provided for under GCC21.

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

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

5. Language

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

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

6. Joint Venture, Consortium

6.1. If the Supplier is a Joint Venture, Consortium (JV/C), all of the parties shall be jointly and severally liable to the Purchaser for the fulfilment of the provisions of the Contract and shall designate one party to act as a lead with authority to bind the (JV/C). The composition or the constitution of the joint venture, consortium shall not be altered without the prior consent of the Purchaser.

7. Notices

7.1. Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term "in writing" means communicated in written form, including electronic communication.

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

8. Governing Law

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

9. Settlement of Disputes

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

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

9.3. Notwithstanding any reference to arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Purchaser shall pay the Supplier any monies due the Supplier.

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10. Eligibility

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

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

11. Supplier's Responsibilities

11.1. The Supplier shall supply all the Goods and Related Services included in the Scope of Supplies in accordance with GCC23, and the delivery and completion requirements as per GCC20.

12. Purchaser's Responsibilities

12.1. Whenever, the supply of Goods and Related Services requires that the Supplier obtain permits, approvals and/or import and other licenses or similar permissions from Bhutanese public authorities, the Purchaser shall, if so, required by the Supplier, use its best efforts to assist the Supplier in complying with such requirements in a timely and expeditious manner, but without incurring any costs.

13. Contract Price

13.1. The Contract Price shall be the price payable to the Supplier as specified in the Contract Agreement subject to any additions and adjustments thereto or deductions there from as may be made pursuant to the Contract.

13.2. Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Bid, with the exception of any price adjustments authorized in the SCC.

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14. Terms of Payment

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

14.2. The Supplier shall submit to the Purchaser, the invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC20 and upon fulfilment of all the obligations stipulated in the Contract.

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

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

15. Taxes and Duties

15.1. For Goods manufactured outside Bhutan the Supplier shall bear and pay all applicable taxes, stamp duties, license fees and other similar levies imposed outside and inside Bhutan as applicable in line with the Incoterms.

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

15.3. At the time of release of payment, tax shall be deducted at source (TDS) from Bhutanese Bidders and International Bidders as specified in the SCC from the gross amount of bills. The Purchaser shall furnish necessary TDS Certificate to the Bidders, issued by the Department of Revenue & Customs, RGoB.

15.4. If any tax exemptions, reductions, allowances or privileges are available to the Supplier in the Kingdom of Bhutan, if applicable, the Purchaser shall use its best endeavours to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

16. Performance Security

16.1. The Supplier shall, provide a Performance Security for the due performance of the Contract in the amount and currency specified in the SCC.

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

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

16.4. The Performance Security shall be discharged by the Purchaser and returned to the Supplier on completion of the Supplier's performance obligations under the Contract, including any warranty obligations.

17. Copyright

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

18. Confidential Information

18.1. The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other Party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other Party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Sub-contractors such documents, data and other information as it receives from the Purchaser to the extent required for the Sub-contractor to perform its obligations under the Contract, in which event the Supplier shall be under obligation to have a clause in the contracts with their sub-contractors regarding confidentiality similar to that provided herein.

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

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18.3. The obligation of a Party under GCC18.1.and18.1 above, however, shall not apply to information that:

a) the Purchaser or the Supplier needs to share with the RGoB;
b) is already in public domain now, or enters the public domain during the execution of the contract through no fault of that Party;
c) can be proven to have been possessed by that Party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other Party; or
d) otherwise lawfully becomes available to that Party from a third party that has no obligation of confidentiality.

18.4. The above provisions of GCC18 shall not in any way modify any undertaking of confidentiality given by either of the Parties hereto prior to the date of the Contract in respect of the performance of the Contract or any part thereof.

18.5. The provisions of GCC18 shall survive completion or termination, for whatever reason, of the Contract.

19. Patent Indemnity

19.1. The Supplier shall, subject to the Purchaser's compliance with GCC19.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

a) the installation of the Goods by the Supplier or the use of the Goods in Bhutan; and

b) the sale in any country of the products produced by the Goods.

19.2. Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or reasonably to be inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant or materials not supplied by the Supplier, pursuant to the Contract.

19.3. If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC0, the Purchaser shall promptly give the Supplier notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such

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proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

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

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

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

20. Delivery and Documents

20.1. Subject to GCC34.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the delivery and completion requirements specified in the Schedule of Supply. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

21. Inspection and Audits

21.1. The Supplier shall permit the Purchaser and/or persons appointed by the Purchaser to inspect the Supplier's offices and/or the accounts and records of the Supplier and its Sub contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Purchaser if so, required by the Purchaser. The Supplier's attention is drawn to GCC4, which provides, interalia, that acts intended materially to impede the exercise of the in section and audit rights provided for under this GCC21.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility under ITB Sub-Clause 2.1(c) of the Instructions to Bidders that preceded the placement of the Contract of which these GCC form a part).

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22. Subcontracting

22.1. The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Supplier of any of its obligations, duties, responsibilities or liabilities under the Contract.

22.2. Subcontracts shall comply with the provisions of GCC4and 10. Refer to SCC if Subcontracting is allowed.

23. Scope of Supplies

23.1. The Goods and Related Services to be supplied shall be as specified in the Schedule of Supply.

23.2. Unless otherwise stipulated in the Contract, the Supply shall include all such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining delivery of the Goods and completion of the Related Services as if such items were expressly mentioned in the Contract.

24. Specification and Standards

24.1. Technical Specifications and Drawings:

a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards stipulated in Schedule of Supply and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.

b) the Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification nor other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.

c) Wherever, references are made in the Contract to codes and standards in accordance with which it shall be executed, the editions or the revised versions of such codes and standards shall be those specified in the Schedule of Supply. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC34.

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25. Tests and Inspections

25.1. At its own expense and at no cost to the Purchaser, the Supplier shall carry out all such tests and/or inspections of the Goods and Related Services as are specified in the SCC. The purchaser or its representative shall have the right to inspect and / or to test the Goods to confirm their conformity to the specifications.

25.2. The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Bhutan as specified in the SCC. Subject to GCC25.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

25.3. The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC25.1, provided that the Purchaser bears all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

25.4. Whenever the Supplier is ready to carry out any such test and inspection, it shall give reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

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

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

25.7. The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to The Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC25.4.

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25.8. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC25.6, shall release the Supplier from any warranties or other obligations under the Contract.

26. Packing and Documents

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

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

27. Transportation

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

28. Warranty

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

28.2. Subject to GCC24.1b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials and workmanship, under normal use in the conditions prevailing in Bhutan.

28.3. Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months or 18 months from the day of supply or from the date of putting the item into use as the case may be.

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

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

29. Liquidated Damage

29.1. Except as provided for under GCC33, if the Supplier fails to deliver any or all of the Goods by the date(s) of delivery or fails to perform the Related Services within the period specified in the Contract, the Purchaser may, without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each day or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC37.

30. Limitation of Liability

30.1. Except in cases of gross negligence or wilful misconduct:

a) neither party shall be liable to the other party, whether in contract, tort or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and

b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.

31. Insurance

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

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32. Change in Laws and Regulations

32.1. If, after thirty (30) days prior to the date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated or changed in Bhutan (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery/Completion Schedule and/or the Contract Price, then such Delivery/Completion Schedule and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC13.2.

33. Force Majeure

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

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

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

34. Change Orders and Contract Amendments

34.1. The Purchaser may at any time order the Supplier through notice in accordance with GCC 7 to make changes within the general scope of the Contract in any one or more of the following:

a) drawings, designs or specifications, where Goods to be furnished under the Contract is to be specifically manufactured for the Purchaser;

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b) the method of shipment or packing; the place of delivery; and the Related Services to be provided by the Supplier.

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

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

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

35. Extension of Time

35.1. If at any time during performance of the Contract the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC20, the Supplier shall promptly notify the Purchaser in writing of the delay, the likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

35.2. Except in case of Force Majeure, as provided under GCC33, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to 29, unless an extension of time is agreed upon, pursuant to GCC35.1.

36. Export Restriction

36.1. Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to Bhutan, or to the use of the products/Goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that

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the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/Goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to GCC37.3.

37. Terminations

37.1. Termination for Default:

a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or impart:

i. If the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC35.1; or

ii. if the Supplier fails to perform any other obligation under the Contract; or

iii. if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC4, in competing for or in executing the Contract.

b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC37.1a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. Wherever the Contract is terminated in part, the Supplier shall continue performance of the Contract to the extent not terminated.

37.2. Termination for Insolvency:

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

37.3. Termination for Convenience.

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a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

b) The Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:

(i) To have any portion completed and delivered at the Contract terms and prices. and/or

(ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

38. Assignment

38.1. Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with the prior written consent of the other party.

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SECTION VI CONTRACT FORMS

I. Contract Agreement

THIS AGREEMENT is made on ……,

BETWEEN

(1) ,a Purchaser registered under the …… *the laws of Bhutan* and having its principal place of business at Paro, Bhutan (herein after called "The Purchaser"),

and

(2) *[insert name of Supplier]*, incorporated under the laws of *[insert country of Supplier]*and having its principal place of business sat *[insert address of Supplier]*(herein after called "the Supplier").

WHERE AS The Purchaser invited Bids for certain Goods and related services, viz.,*[insert brief description of Goods and Services]*and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of*[insert Contract Price in words and figures, expressed in the Contract currency/ies]*(herein after called" the Contract Price").

NOWTHIS AGREEMENT WITNESSETHASFOLLOWS:

1. In this Agreement words and expressions shall have the same mean respectively assigned to them in the Conditions of Contract referred to.

2. The following documents shall constitute the Contract between Th Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract, viz.:

(a) This Contract Agreement;
(b) The Purchaser's Notification of Award of Contract;
(c) Integrity Pact;
(d) The Special Conditions of Contract;
(e) The General Conditions of Contract;
(f) Technical Requirements (including Schedule of Supply and Technical Specifications.)
(g) The Supplier's Bid and original Price Schedules;
(h) The form of Performance Security;
(i) The form of Bank Guarantee for Advance Payment;
(j) Minutes of Contact Negotiation Meeting (if any)
(k) *[Insert here any other document(s) forming part of the Contract]*

3. This Contract shall prevail overall other Contract documents. In the event of any discrepancy or in consistency within the Contract documents, then the documents

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shall prevail in the order listed above.

4. In consideration of the payments to be made by The Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with The Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such others um as may be come pay able under the provisions of the Contract at the times and in the manner prescribed by the Contract.

INWITNESS where of the parties here to have caused this Agreement to be executed in accordance with the laws of Bhutan on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: [*insert signature, affix legal stamp]*
In the capacity of *[insert title or other appropriate designation]*

In the presence of *[insert signature] [insert identification of official witness]*

For and on behalf of the Supplier

Signed: [*insert signature of authorized representative(s) of the Supplier, affix legal stamp]*
in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert signature] [insert identification of official witness]*

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II. Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: .....[*insert date (as day, month, and year) of Bid submission*]
Tender No. ..... [*insert tender number*]
Name of the Tender..... [*insert name of the tender*]
Bank's Branch or Office: .....[*insert complete name of Guarantor*]
Beneficiary: .....[*insert complete name of the Purchaser*]

PERFORMANCE GUARANTEE No.: .....[*insert Performance Guarantee number*]

At the request of the Supplier, whereby irrevocably undertake to pay you any sum(s)not exceeding [.....
*insert amount(s) in figures and in words]*upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or you needing to prove or to showgrounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the.....*[insert number]*day of*[insert month][insert year]*,and any demand for payment under it must be received by us at this office on or before that date. We agree to a one-time extension of this Guarantee for a period not to exceed.....*[six months][one year]*,in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee.

[signatures of authorized representatives of the bank and the Supplier]

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1 *The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contractor a freely convertible currency acceptable to the Purchaser.*

2 *Date established in accordance with Clause 16.4 of the General Conditions of Contract("GCC"). The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee.*

III. Bank Guarantee for Advance Payment

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

Date: ..... *[insert date (as day, month, and year) of Bid submission]*
Tender No..... *[insert tender number]*
Name of the Tender:..... *[insert name of the tender].*
Bank's Branch or Office..... *[insert complete name of Guarantor]*

Beneficiary: .....*[insert Name and address of the Purchaser]*

ADVANCE PAYMENT GUARANTEE No.:.....
[insert Advance Payment Guarantee no.]

At the request of the Supplier, whereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of .....*[insert amount(s) in figures and words]* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than toward delivery of the Goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Supplier in its account ..... *[insert account number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until ..... *[insert date]*. We agree to a one-time extension of this Guarantee for a period not to exceed ..... *[six months] [one year]*, in response to The Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee.

[signature(s) of authorized representative(s) of the bank]

1. *The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.*

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2 *Insert the Delivery date stipulated in the Contract Delivery Schedule. the Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee.*

