

METRO EXPRESS LTD

INVITATION FOR BIDS WITHIN A FRAMEWORK AGREEMENT

FOR

RAIL/ROAD MINOR WORKS

Procurement Ref: MEL/ONB/RRMN/25/20

OPEN NATIONAL BIDDING

PART 3

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Issue Date: 24th December 2020

PART 3 – CONDITIONS OF CONTRACT AND FRAMEWORK AGREEMENT

Section V. Framework Agreement

DATED

METRO EXPRESS LIMITED

AND

[CONTRACTOR]

Model Works Framework Agreement

FRAMEWORK AGREEMENT

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BETWEEN:-

(1)	The Me]; and						
(2)	[] (Company Number: [] ¹ (the "Contractor").	1)	whose	registered	address	is	at

BACKGROUND

- (A) MEL invited proposals through Open National Bidding for participation in a Framework Agreement through the newspapers on (dates)² in respect of Rail/Road Minor Works for a period of 1 year as from 2021.
- (B) The Contractor submitted its proposal on [**DATE**]³ in response to the Invitation for Framework Agreement (IFF).
- (C) On the basis of the Contractor's proposal, MEL selected the Contractor to enter into a framework agreement to provide works to MEL and other contracting public bodies eventually listed in Schedule (Schedule 1) on a call-off basis in accordance with the terms of this Framework Agreement.
- (D) This Framework Agreement sets out the award and ordering procedure for works which may be required by MEL, the main terms and conditions for any Call-Off Contract which MEL may conclude, and the obligations of the Contractor during and after the term of this Framework Agreement.
- (E) It is the Parties' intention that there will be no obligation for MEL to award any works order under this Framework Agreement during its Term.

IT IS AGREED as follows:-

1. **INTERPRETATION**

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Approval" means the prior written approval of MEL

"Audit" means an audit carried out pursuant to Clause 17

"Auditor" means the Audit entity authorised by MEL

³ To be inserted.

¹ Insert name, company number and registered address of the Contractor

² To be inserted

"Award Criteria"

means the Standard Works Award Criteria

"Call-Off Contract"

means the legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Works between MEL and the Contractor comprising a Works Order Form (Works Order) and the Call-Off Terms and Conditions (as may be amended pursuant to Clause 7.2.4)

"Call-Off Terms and

means the terms and conditions in Schedule 5

Conditions"

"Commencement Date"

means [insert date]⁴

"Complaint"

means any formal complaint raised by any Contracting Public Body in relation to the performance of the Framework Agreement or any Call-Off Contract in accordance with Clause 32

"Confidential Information"

means:-

- (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights; and
- (b) the Commercially Sensitive Information

"Contracting Public Body"

means any contracting public body or Authority as may be defined by MEL other than MEL

"Framework Agreement"

means this agreement and all Schedules to this agreement

"Framework Agreement Variation Procedure"

means the procedure set out in Schedule 8

"Fraud"

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Framework Agreement or defrauding or attempting to defraud or conspiring to defraud any contracting body

2

⁴ To be inserted

"Good Industry I	Practice"	means standards.	practices.	methods and	procedures conforming	ŗ
Good Hidusti y 1	lucucc	micum sumau as,	practices,	montous und	procedures comorning	١.

to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar

circumstances

"Law" means Mauritian Laws and associated Regulations.

"Material Default" means any breach of [Clause 7 (Award Procedures), Clause 11

(Safeguard Against Fraud), Clause 14 (Statutory Requirements), Clause 15 (Non-Discrimination), Clause 17 (Records and Audit

Access), and Clause 25 (Transfer and Sub-contracting)]⁵

"Month" means a calendar month

"Order" means a Works Order served by MEL on the contractor in

accordance with the Ordering Procedures

"Order Form" means a document setting out details of an Order in the form set

out in Schedule 4

"**Ordering Procedures**" means the ordering and award procedures specified in Clause 7

"Party" means MEL and/or the Contractor

"Proposal" means the Proposal submitted by the Contractor to MEL on

"Schedule of Rates" means the Schedule of Rates set out in Schedule 3

"Works" means the rail/road minor works detailed in Schedule 1

"Works Framework means the Contractors appointed as Works Framework

Contractors" Contractors under the Framework Agreement

"Staff" means all persons employed by the Contractor together with the

Contractor's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Framework

Agreement or Call-Off Contracts

⁶ To be inserted.

3

⁵ Lead Organisation to consider definition of material default in relation to their particular procurement.

"Standard Works" means the standard works referred to in Schedule 1

"Standard Works Award means the award criteria to be applied for the award of Call-Off

Criteria" Contracts for Standard Works as set out in Schedule 2

"Competed Works" means the works awarded with re-opening competition

"**Term**" means the period commencing on the Commencement Date and

ending on [insert date] or on earlier termination of this

Framework Agreement

"Working Days" means any day other than a Saturday, Sunday or public holiday

in the Republic of Mauritius

"Year" means a calendar year

1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:-

- 1.2.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 Words importing the masculine include the feminine and the neuter;
- 1.2.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 Headings are included in this framework agreement for ease of reference only and shall not affect the interpretation or construction of this framework agreement;
- 1.2.7 References in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
- 1.2.8 References in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered;
- 1.2.9 Reference to a Clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.10 In the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

2. STATEMENT OF INTENT⁷

- 2.1 In delivering the Works, the Contractor shall operate at all times in accordance with any and all of MEL's published objectives and in accordance with the following objectives and statement of intent:-
 - 2.1.1 the Contractor has been appointed and MEL has entered into this Framework Agreement on the basis of the Contractor's response to the Invitation For Framework Agreement (IFB) and in particular, the representations made by the Contractor to MEL in relation to its competence, professionalism and ability to provide the Works in an efficient and cost effective manner.
- 2.2 Clause 2 is an introduction to this Framework Agreement and does not expand the scope of the Parties' obligations or alter the plain meaning of the terms and conditions of this Framework Agreement, except and to the extent that those terms and conditions do not address a particular circumstance, or are otherwise ambiguous, in which case those terms and conditions are to be interpreted and construed so as to give full effect to Clause 2.

PART ONE: FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

3. TERM OF FRAMEWORK AGREEMENT⁸

The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

4. SCOPE OF FRAMEWORK AGREEMENT

- 4.1 This Framework Agreement governs the relationship between MEL and the Contractor in respect of the provision of the Works by the Contractor to MEL and to other contracting public bodies.
- 4.2 MEL and (subject to the following provisions of this Clause 4.2) other contracting public bodies may at their absolute discretion and from time to time order Works from the Contractor in accordance with the Ordering Procedure during the Term. The Parties acknowledge and agree that the other contracting public bodies have the right to order Works pursuant to this Framework Agreement provided that they comply at all times with the Ordering Procedure as agreed between the contractor and the contracting public bodies.
- 4.3 The Contractor acknowledges that there is no obligation for MEL and for any other contracting public body to procure any Works from the Contractor during the Term.

⁷ Lead Organisation to insert main objectives and intent in relation to this Agreement.

⁸ The term of the Framework Agreement should not exceed three years.

4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by MEL in respect of the total quantities or values of the Works to be ordered by them pursuant to this Framework Agreement and the Contractor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

5. CONTRACTOR'S APPOINTMENT

MEL appoints the Contractor as a potential Contractor of the Works and the Contractor shall be eligible to be considered for the award of Orders for such Works by MEL during the Term.

6. **NON-EXCLUSIVITY**

The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by MEL and/or other contracting public bodies for Works from the Contractor and that MEL are at all times entitled to enter into other contracts and arrangements with other Contractors for the provision of any or all works which are the same as or similar to the Works.

7. AWARD PROCEDURES

Awards under the Framework Agreement

- 7.1 If MEL decides to source Works through the Framework Agreement then it may:-
 - 7.1.1 award its Standard Works in accordance with the terms laid down in this Framework Agreement without reopening competition.

Standard Works (Awards without re-opening Competition)

- 7.2 MEL ordering Standard Works under the Framework Agreement without re-opening competition shall:-
 - 7.2.1 Apply the Standard Works Award Criteria to the information set out in Schedule 1 (Works) and Schedule 3 (Schedule of Rates) in relation to each Works Framework Contractor appointed under the relevant Works Framework;
 - 7.2.2 Award its Standard Works requirement to the Works Framework Contractor whose rates result into the lowest price for the works using the Standard Works Award Criteria;
 - 7.2.3 Place an Order with the successful Works Framework Contractor which:-
 - 1. States the Standard Works requirements;
 - 2. States the price payable for the Standard Works requirements in accordance with the Schedule of Rates applicable; and
 - 3. Incorporates the Call-Off Terms and Conditions.

Responsibility for Awards

- 7.3 The Contractor acknowledges that MEL is independently responsible for the conduct of its award of Call-Off Contracts under the Framework Agreement and that MEL is not responsible or accountable for and shall have no liability whatsoever in relation to:-
 - 7.3.1 The conduct of MEL in relation to the Framework Agreement; or
 - 7.3.2 The performance or non-performance of any Call-Off Contracts between the Contractor and MEL entered into pursuant to the Framework Agreement.

Form of Order

7.4 Subject to Clauses 7.1 to 7.3 above, MEL may place an Order with the Contractor by serving an order in writing in substantially the form set out in Schedule 4 or such similar or analogous form agreed with the Contractor including systems of ordering involving facsimile, electronic mail or other on-line solutions. The Parties agree that any document or communication (including any document or communication in the apparent form of an Order) which is not in the form prescribed by this Clause 7.4 shall not constitute an Order under this Framework Agreement.

Accepting and Declining Orders

- 7.5 Following receipt of an Order, the Contractor shall promptly and in any event within three (3) Working Days acknowledge receipt of the Order and notify MEL that it accepts the Order by signing and returning the Order Form or as otherwise agreed by the Contractor and MEL.
- 7.6 The Selected Contractor in agreeing to accept such an Order pursuant to Clause 8.5 above shall enter into a Call-Off Contract with MEL for the provision of Works referred to in that Order. A Call-Off Contract shall be formed on the Contracting Body's receipt of the signed Order Form provided by the Contractor (or such similar or analogous form agreed with the Contractor) pursuant to Clause 8.5.

PART TWO: CONTRACTOR'S GENERAL FRAMEWORK OBLIGATIONS

8. WARRANTIES AND REPRESENTATIONS

- 8.1 The Contractor warrants and represents to MEL that:-
 - 8.1.1 It has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
 - 8.1.2 This Framework Agreement is executed by a duly authorised representative of the Contractor;

⁹ The Order Form set out at Schedule 4 is fundamental to the operation of the Framework Agreement. Lead Organisation should take into account all relevant circumstances before amending the form set out in Schedule 4 and should always take its own legal advice before making any amendments.

- 8.1.3 In entering into this Framework Agreement or any Call-Off Contract it has not committed any Fraud;
- 8.1.4 As at the Commencement Date, all information, statements and representations contained in the Proposal and the response to the selection process for the Works are true, accurate and not misleading save as may have been specifically disclosed in writing to MEL prior to the execution of this Framework Agreement and it will promptly advise MEL of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 8.1.5 It has not entered into any agreement with any other person with the aim of preventing proposals being made or as to the fixing or adjusting of rates and prices of any proposal or the conditions on which any proposal is made in respect of the Framework Agreement;
- 8.1.6 It has not caused or induced any person to enter such agreement referred to in Clause 8.1.5 above;
- 8.1.7 It has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other proposal for Works under the Framework Agreement;
- 8.1.8 It has not committed any offence under the Prevention of Corruption Act 2002;
- 8.1.9 No claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with MEL;
- 8.1.10 It is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Call-Off Contract which may be entered into with MEL;
- 8.1.11 No proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and

- 8.1.12 In the three (3) years prior to the date of this Framework Agreement:-
 - 1. It has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it;
 - 2. It has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - 3. It has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as an on-going business concern or its ability to fulfil its obligations under this Framework Agreement.
- 8.2 The Contractor warrants and represents to each of the other contracting public bodies the statement in Clause 8.1 above.

9. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 9.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of MEL or person employed by or on behalf of MEL any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Framework Agreement, any Call-Off Contract or any other contract with MEL or person employed by or on behalf of MEL (including its award to the Contractor, execution or any rights and obligations contained in it), or for showing or refraining from showing favour or disfavour to any person in relation to any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Act 2002.
- 9.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to MEL or any person employed by or on behalf of MEL in connection with this Framework Agreement, any Call-Off Contract or any other contract with MEL or person employed by or on behalf of MEL.
- 9.3 If the Contractor, its Staff or any person acting on the Contractor's behalf, engages in conduct prohibited by Clauses 9.1 or 9.2 above or commits any offence under the Prevention of Corruption Act 2002, MEL may:-
 - 9.3.1 Terminate the Framework Agreement with immediate effect by giving notice in writing to the Contractor and recover from the Contractor the amount of any loss suffered by MEL resulting from the termination; or
 - 9.3.2 Recover in full from the Contractor and the Contractor shall indemnify MEL in full from and against any other loss sustained by MEL in consequence of any breach of this Clause, whether or not the Framework Agreement has been terminated.

10. **CONFLICTS OF INTEREST**

- 10.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where (in the reasonable opinion of MEL) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to MEL under the provisions of this Framework Agreement or any Call-Off Contract.
- 10.2 The Contractor shall promptly notify and provide full particulars to MEL if such conflict referred to in Clause 10.1 above arises or is reasonably foreseeable to arise.
- 10.3 MEL reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of MEL, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to MEL under the provisions of this Framework Agreement or any Call-Off Contract. The action of MEL pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to MEL.
- 10.4 This Clause shall apply during the Term and for a period of [one (1) years]¹⁰ after its termination or expiry.

11. SAFEGUARD AGAINST FRAUD

The Contractor shall safeguard MEL funding of the Framework Agreement and any Call-Off Contract against Fraud generally and, in particular, Fraud on the part of the Contractor or its Staff. The Contractor shall notify MEL immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

12. CALL-OFF CONTRACT PERFORMANCE

- 12.1 The Contractor shall perform all Call-Off Contracts entered into with MEL in accordance with:-
 - 12.1.1 The requirements of this Framework Agreement; and
 - 12.1.2 The terms and conditions of the respective Call-Off Contracts.
- 12.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement and the terms and conditions of a Call-Off Contract, the terms and conditions of this Framework Agreement shall prevail.

13. PRICES FOR WORKS

13.1 The prices offered by the Contractor for Call-Off Contracts to MEL for Standard Works shall be the prices listed in the Bill of Quantities.

¹⁰ Lead Organisation to consider the appropriate period of time given the subject matter of the Framework Agreement

14. **STATUTORY REQUIREMENTS**

The Contractor shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Call-Off Contract.

15. **NON-DISCRIMINATION**

- 15.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 15.2 The Contractor shall take all reasonable steps to secure the observance of Clause 15.1 by all servants employees or agents of the Contractor and all suppliers and subcontractors employed in the execution of the Framework Agreement.

PART THREE: CONTRACTOR'S INFORMATION OBLIGATIONS

16. **PROVISION OF MANAGEMENT INFORMATION**

- 16.1 The Contractor shall submit Management Information to MEL in the form set out in Schedule 6 throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with MEL.
- 16.2 MEL may share the Management Information supplied by the Contractor with any contracting body.
- 16.3 MEL may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) month's written notice of any changes.

17. RECORDS AND AUDIT ACCESS

- 17.1 The Contractor shall keep and maintain until [one (1) years]¹¹ after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Works provided under it, the Call-Off Contracts entered into with MEL and the amounts paid by MEL.
- 17.2 The Contractor shall keep the records and accounts referred to in Clause 17.1 above in accordance with good accountancy practice.
- 17.3 The Contractor shall afford MEL and/or the Auditor such access to such records and accounts as may be required from time to time.

¹¹ Lead Organisation to consider length of retention periods taking into account liability limitation periods and potential length of call-off contracts under the Framework Agreement.

- 17.4 The Contractor shall provide such records and accounts (together with copies of the Contractor's published accounts) during the Term and for a period of [six (6)]¹² years after expiry of the Term to MEL and the Auditor.
- 17.5 MEL shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Contractor or delay the provision of the Works pursuant to the Call-Off Contracts, save insofar as the Contractor accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of MEL.
- 17.6 Subject to MEL's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, within the scope of the Audit;
- 17.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the Audit reveals a Material Default by the Contractor in which case the Contractor shall reimburse MEL for MEL reasonable costs incurred in relation to the Audit.

18. **CONFIDENTIALITY**¹³

- 18.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Framework Agreement, each Party shall:
- (a) treat the other party's confidential information as confidential [and safeguard it accordingly]; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

19. **PUBLICITY**

- 19.1 Unless otherwise directed by MEL, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without MEL's prior written consent.
- 19.2 MEL shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon MEL, including any examination of this Framework Agreement by the Auditor or otherwise.
- 19.3 The Contractor shall not do anything which may damage the reputation of MEL or bring MEL into disrepute.

¹² Comments as at footnote 24.

¹³ Lead Organisation to consider whether a full confidentiality clause is appropriate or whether the subject matter of the Framework Agreement requires a short form confidentiality clause.

PART FOUR: FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

20. TERMINATION

Termination on Default

- 20.1 MEL may terminate the Framework Agreement by serving written notice on the Contractor with effect from the date specified in such notice:-
 - 20.1.1 Where the Contractor commits a Material Default and:-
 - 1. The Contractor has not remedied the Material Default to the satisfaction of MEL within [twenty (20)] Working Days, or such other period as may be specified by MEL, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
 - 2. The Material Default is not, in the reasonable opinion of MEL, capable of remedy; or
 - 20.1.2 Where the Contractor repeatedly and consecutively without a valid excuse declines to accept an order
 - 20.1.3 Where any contracting body terminates a Call-Off Contract awarded to the Contractor under this Framework Agreement as a consequence of default by the Contractor.

Termination on Financial Standing

20.2 MEL may terminate the Framework Agreement by serving notice on the Contractor in writing with effect from the date specified in such notice where (in the reasonable opinion of MEL), there is a material detrimental change in the financial standing and/or the credit rating of the Contractor which adversely impacts on the Contractor's ability to supply Works under this Framework Agreement.

Termination for Insolvency and Change of Control

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

Termination for convenience by MEL

20.4 MEL shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving one month written notice to the Contractor.

21. SUSPENSION OF CONTRACTOR'S APPOINTMENT

21.1 Without prejudice to the MEL's rights to terminate the Framework Agreement in Clause 20 above, if a right to terminate this Framework Agreement arises in accordance with Clause 20, MEL may suspend the Contractor's appointment to supply Works by giving notice in writing to the Contractor. If MEL provides notice to the Contractor in accordance with this Clause 21, the Contractor's appointment shall be suspended for the period set out in the notice or such other period notified to the Contractor by MEL in writing from time to time.

22. CONSEQUENCES OF TERMINATION AND EXPIRY

- 22.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Contractor shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 22.
- 22.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 22.3 Within [twenty eight (28)]¹⁴ Working Days of the date of termination or expiry of the Framework Agreement, the Contractor shall return to MEL any data and Confidential Information belonging to MEL in the Contractor's possession, power or control, either in its then current format or in a format nominated by MEL (in which event MEL will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by MEL, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.
- 22.4 MEL shall be entitled to require access to data or information arising from the provision of the Works from the Contractor until the latest of:-
 - 22.4.1 The expiry of a period of [twelve (12) Months] following termination or expiry of the Framework Agreement; or
 - 22.4.2 The expiry of a period of [six (6 Months] following the date on which the Contractor ceases to provide Works under any Call-Off Contract.¹⁵
- 22.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

1.

¹⁴ Lead Organisation to consider appropriate time limits

¹⁵ Lead Organisation to consider retention periods in relation to the subject matter of the Framework Agreement.

22.6 The provisions of Clauses 8, 9, 10, 11, 17, 18, 23 and 33 shall survive the termination or expiry of the Framework Agreement, together with any other provision, which is either expressed to or by implication is intended to survive termination.

PART FIVE: INSURANCE

23. **INSURANCE**

- 23.1 The Contractor shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Contractor under this Framework Agreement including death or personal injury, or loss of or damage to property.
- 23.2 The Contractor shall effect and maintain the following insurances for the duration of the Framework Agreement in relation to the performance of the Framework Agreement:-
 - 23.2.1 Public liability insurance adequate to cover all risks in the performance of this Framework Agreement from time to time;
 - 23.2.2 Employers' liability insurance; and
 - 23.2.3 Works, plants and equipment
 - 23.2.4 Loss or damage of equipment.
- 23.3 Any excess or deductibles under such insurance (referred to in Clause 23.1 and Clause 23.2) shall be the sole and exclusive responsibility of the Contractor.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Contractor of any other liabilities arising under the Framework Agreement.
- 23.5 The Contractor shall produce to MEL, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.6 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Framework Agreement then MEL may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

PART SIX: OTHER PROVISIONS

24. TRANSFER AND SUBCONTRACTING

24.1 The Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of MEL. The Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.

24.2 MEL shall be entitled to:-

24.2.1 Assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other contracting body provided that such assignment, novation or disposals shall not increase the burden of the Contractor's obligations under the Framework Agreement.

25. VARIATIONS TO THE FRAMEWORK AGREEMENT

25.1 Any variations to the Framework Agreement must be made only in accordance with the Framework Agreement Variation Procedure set out in Schedule 8.

26. **SEVERABILITY**

26.1 If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Framework Agreement had been executed with the invalid provision eliminated.

27. **CUMULATIVE REMEDIES**

27.1 Except as otherwise expressly provided by the Framework Agreement, all remedies available to either Party for breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

28. WAIVER

- 28.1 The failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Framework Agreement.
- 28.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 30.
- 28.3 A waiver of any right or remedy arising from a breach of the Framework Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Framework Agreement.

29. ENTIRE AGREEMENT

- 29.1 This Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 29.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to

- either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.
- 29.3 Nothing in this Clause 29 shall operate to exclude Fraud or fraudulent misrepresentation.

30. **NOTICES**

- 30.1 Except as otherwise expressly provided within this Framework Agreement, no notice or other communication from one Party to the other shall have any validity under the Framework Agreement unless made in writing by or on behalf of the Party sending the communication.
- 30.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 31.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 30.3 For the purposes of Clause 30.2, the address of each Party shall be:¹⁶
 - 30.3.1 For MEL:-

The Chief Executive Officer

Address: 3rd Floor, Sicom Tower

Wall Street.

Ebène,

Mauritius

Tel: (230) 460 0460 Fax: (230) 489 2466

Email: <u>procurement@metroexpressltd.org/regisrty</u>@metroexpressltd.org

30.3.2 For the Contractor:
[] 17

Address:

For the attention of:

Tel:

Fax:

Email:

¹⁷ To be inserted

¹⁶ To be inserted.

30.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

31. COMPLAINTS HANDLING AND RESOLUTION

- 31.1 The Contractor shall notify MEL of any Complaint made by other contracting public bodies within [two (2)] Working Days of becoming aware of that Complaint and such notice shall contain full details of the Contractor's plans to resolve such Complaint.
- 31.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Contractor to take remedial action under the provisions of the Framework Agreement or a Call-Off Contract, the Contractor shall use its best endeavours to resolve the Complaint within [ten (10)] Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.
- 31.3 Within [two (2)] Working Days of a request by MEL, the Contractor shall provide full details of a Complaint to MEL, including details of steps taken to its resolution.

32. **DISPUTE RESOLUTION**

The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Framework Agreement within [twenty (20)] Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to [those persons identified in Clause 30 above.]

33. LAW AND JURISDICTION

33.1 Subject to the provisions of Clause 31 and Clause 32, MEL and the Contractor accept the exclusive jurisdiction of Mauritian courts and agree that the Framework Agreement is to be governed by and construed according to the Laws of the Republic of Mauritius.

SIGNED by)
for and on behalf of MEL)))
Place of Signature:	Place of Signature:
Name:	Name:
Designation:	Designation:
SIGNED by)
for and on behalf of the Contractor	,)

(Director/Company Secretary)

SIGNED by or on behalf of the Parties on the date which first appears in the Framework Agreement.

SCHEDULE 1 SERVICES PART A THE SERVICES¹⁸

Rail/Road Minor Works for a period of one year as from Year 2021

The works to be executed consist of rail/road works which include, but not limited to the construction of new roads, upgrading and resurfacing of existing roads and associated works such as construction of footpaths, concrete works, provision of handrails, raising of manholes, provision of bus laybys, line marking, fixing of traffic signs, implementation of road safety measures of all types, among others, for the period of the contract. These works generally are on main roads and motorways but may also be undertaken on urban roads, rural roads, track roads and within yards and premises of public properties.

To allow works to be carried out simultaneously, the framework agreement shall allow for not awarding new works contract to the same Contractor if:

- (a) The aggregate value of contracts under execution by that contractor at any one time through the framework has reached 60 % or more of its average annual construction turnover or
- (b) The work of the contractor on two previous call offs are repeatedly unsatisfactory giving rise to many or frequent remedial works or are delayed for reasons attributable to the Contractor.

PART C

The contracting body to procure works under the contract is: Metro Express Ltd.

SCHEDULE 2 AWARD CRITERIA

Standard Services Award Criteria

- 1. Standard services shall be allocated to the contractor with the lowest price after comparing the prices of the selected contractors, based on their quoted rates.
- 2. Margin of Preference shall NOT apply.
- 3. The work shall be allocated to the contractor with the lowest computed price, subject to the contractor not having works being executed under the framework agreement, at that point in time, of a total contract amount of 60% or more of its average annual construction turnover over the past three years.
- 4. Works to be allocated per works order as per above shall not exceed MUR 30 million.

-

¹⁸ Lead organisation to complete.

SCHEDULE 3 SCHEDULES OF RATES [INSERT RATES QUOTED BY THE CONTRACTOR]

-		-

SCHEDULE 4 Works Order Form

[To be used by each contracting public body with their respective letterhead]

FRAMEWORK AGREEMENT FOR Rail/Road Minor Works for a period of 1 year as from the Year 2021

(MEL/ONB/25/20)

WORKS ORDER

To:

You are hereby invite Manager as well as w		_	_	s, drawings and	instructions of the Project
Order No:]	District:			
Project Manager:		1			
Description :					
Site of Works	Length:	From:		То:	
Site Possession		Start Date:		Intended	
Date:				Completion Date:	
Estimated Cost (VAT Incl):		Rs	Rs		
		l.			

Scope of works to be carried out:

Item	Description	Unit	Qty	Rate	Amount
	Total				

- The estimates and the above list of works are of an indicative nature only. The payment(s) will be based on the actual quantities of works measured jointly on site.
- Any discrepancy noted by the Contractor should be immediately reported to the Project Manager.
- Liquidated damages shall be applied in accordance to Clause 46 of the Conditions of Contract.
- The Contractor must consistently measure the quantity of works carried out to ensure compliance with PCC 35.1
- A programme of works shall be submitted as per Clause 25 of the Conditions of Contract.
- Prior to the start of works, all necessary survey, drawings and photographs of existing features must be submitted by the Contractor to the Project Manager.
- No payment shall be effected unless all the relevant test results and joint measurements are attached with the claim.

ISSUED BY:

Signature:	
Name of Employer's Representative:	
Designation:	
Date:	

DECLARATION:

Pursuant to Section 7.5.2 of the Framework Agreement I hereby accept the Order.

Signature:	
Name of Contractor's Representative:	
Designation:	
Date:	

SCHEDULE 5 CALL-OFF TERMS AND CONDITIONS

All contracting public bodies including the Lead Organization shall procure works through their respective works order in accordance with the terms and conditions of the Framework Agreement. The works Order shall constitute a contract between the contracting public body and the contractor as per the terms and conditions contained in section IV – Works requirements, Section VI – General Conditions of Contract and Section VII – Special Conditions of contract which may be amended in respect of each work order.

SCHEDULE 6 MANAGEMENT INFORMATION REQUIREMENTS¹⁹

FRAMEWORK AGREEMENT Ref			•	Contractor:								
Month:			Year:	Da	te of Submission of Ir	formation:					Office Remarks	Use
Call Off Contract Ref		MEL		Contract Amount		Start Date	Contractual Completion Date	Status (% Progress)	Actual Completion Date			
Total No of Ongoi Contracts=	ing				Total Amount							
Office Use	ı				% of Turnover							

¹⁹ Lead organisation to consider format and content required.

SCHEDULE 7 COMMERCIALLY SENSITIVE INFORMATION²⁰

MEL undertakes to neither disclose nor publish information submitted on the Contractor's proposal forms or rates quoted to:

- a) Third parties, including other contractors in the framework agreement except to the extent of fulfilling its reporting and legal obligations; and
- b) To the extent required, to contracting public bodies, party to the framework agreement, who are entitled to issue Works Orders under Call-Off Contracts.

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²⁰ Lead organization to complete

SCHEDULE 8 FRAMEWORK AGREEMENT VARIATION PROCEDURE

1. Introduction

- 1.1 Schedule 8 details the scope of the variations permitted and the process to be followed where MEL proposes a variation to the Framework Agreement.
- 1.2 The Lead Organisation may propose a variation to the Framework Agreement under Schedule 8 only where the variation does not amount to a material change in the Framework Agreement or the Services.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 5 applies, MEL may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, MEL shall serve each Works Framework Contractors with written notice of the proposal to vary the Framework Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall:-
 - 2.3.1 Contain details of the proposed variation providing sufficient information to allow each Works Framework Contractor to assess the variation and consider whether any changes to the prices set out in its Schedule of Rates are necessary; and
 - 2.3.2 Require each Works Framework Contractor to notify MEL within 14 days of any proposed changes to the prices set out in its Schedule of Rates.
- 2.4 Upon receipt of the Notice of Variation, each Works Framework Contractor has 14 days to respond in writing with any objections to the variation.
- 2.5 Where MEL does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, MEL may then serve each Works Framework Contractor with a written agreement detailing the variation to be signed and returned by each Works Framework Contractor within 14 days of receipt.
- 2.6 Upon receipt of a signed agreement from each Works Framework Contractor, the Lead organisation shall notify all Works Framework Contractors in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that MEL receives one or more written objections to a variation, MEL may:-
 - 3.1.1 Withdraw the proposed variation; or
 - 3.1.2 Propose an amendment to the variation.

4. Changes to the Pricing Schedules

- 4.1 Where a Works Framework Contractor can demonstrate that a variation would result in a change to the prices set out in its Schedule of Rates, MEL may require further evidence from the Works Framework Contractor that any additional costs to the Works Framework Contractor will be kept to a minimum.
- 4.2 MEL may require the Works Framework Contractors to meet and discuss any proposed changes to the Schedule of Rates that would result from a variation.
- 4.3 Where a change to a Works Framework Contractors' Schedule of Rates is agreed by MEL, the latter shall notify its acceptance of the change to the Works Framework Contractor in writing.
- 4.4 In the event that MEL and the Works Framework Contractor cannot agree to the changes to the Schedule of Rates, the Authority may:-
 - 4.4.1 Withdraw the variation; or
 - 4.4.2 Propose an amendment to the variation

5. Variations which are not permitted

- 5.1 In addition to the provisions contained in paragraph 1.2, MEL may not propose any variation which:-
 - 5.1.1 May prevent one or more of the Works Framework Contractors from performing its obligations under the Framework Agreement; or
 - 5.1.2 Exceeds the call off by 25%.

Section VI General Conditions of Contract (GCC)

These **General Conditions of Contract (GCC)**, read in conjunction with the **Particular Conditions of Contract (PCC)** and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These **General Conditions of Contract** have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both ad-measurement contracts and lump sum contracts.

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General Conditions of Contract

A. General

- **1. Definitions** 1.1 Boldface type is used to identify defined terms.
 - (a) The "Accepted Contract Amount" means the amount accepted in the Works Order for the execution and completion of the Works and the remedying of any defects.
 - (b) The "Activity Schedule" is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity.
 - (c) The "Adjudicator" is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in GCC 23.
 - (d) "Bill of Quantities" means the priced and completed Bill of Quantities in a Works Order.
 - (e) "Compensation Events" are those defined in GCC Clause 41 hereunder.
 - (f) The "Completion Date" is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.
 - (g) The "Call-Off Contract" is the Contract between the Employer and the Contractor to execute, complete, and maintain the Works described in the Works Order. It consists of the documents listed in GCC Sub-Clause 2.3 below and is referred to hereinafter as the Contract.
 - (h) The "Contractor" is the party who has accepted the Works Order.
 - (i) The "Contract Price" is the Accepted Contract Amount stated in the Works Order and thereafter as adjusted in accordance with the Contract.
 - (j) "Days" are calendar days; months are calendar months.

- (k) "Dayworks" are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- (1) A "**Defect**" is any part of the Works not completed in accordance with the Contract.
- (m) The "Defects Liability Certificate" is the certificate issued by Project Manager at the end of the Defects Liability Period and after correction of defects by the Contractor.
- (n) The "Defects Liability Period" is the period named in the PCC pursuant to Sub-Clause 33.1 and calculated from the Completion Date.
- (o) "Adjudicator" means the single person appointed under Clause 23.
- (p) "Drawings" means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- (q) The "Employer" is the party who employs the Contractor to carry out the Works, as specified in the PCC.
- (r) **"Equipment"** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- (s) "In writing" or "written" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (t) The "Initial Contract Price" is the Contract Price stated on the Works Order Form.
- (u) The "Initial Contract Price" is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

- (v) "Materials" are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (w) "Plant" is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (x) The "Project Manager" is the person named in the PCC (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- (y) "PCC" means Particular Conditions of Contract
- (z) The "Site" is the area defined as such in the PCC.
- (aa) "Site Investigation Reports" are those that were included with the Works Order Form and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- (bb) "Specification" means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- (cc) The "Start Date" is given in the PCC. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- (dd) A "Sub-Contractor" is 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.
- (ee) "Temporary Works" are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.
- (ff) A "Variation" is an instruction given by the Project Manager which varies the Works.
- (gg) The "Works" are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the PCC.

2. Interpretation

- 2.1 In interpreting these **GCC**, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these **GCC**.
- 2.2 If sectional completion is **specified in the PCC**, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).
- 2.3 The documents forming the Contract shall be interpreted in the following order of priority:
 - (a) Works Order,
 - (b) Letter of Acceptance,
 - (c) Contractor's Bid,
 - (d) Particular Conditions of Contract,
 - (e) General Conditions of Contract,
 - (f) Works Requirements,
 - (g) Drawings,
 - (h) Bill of Quantities,²¹ and
 - (i) any other document **listed in the PCC** as forming part of the Contract.

3. Language and Law

3.1 The language of the Contract and the law governing the Contract are stated in the PCC.

4. Project Manager's Decisions

3.2 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Employer and the Contractor in the role representing the Employer.

5. Delegation

3.3 Otherwise specified in the **PCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

6. Communications

6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

7. Subcontracting 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

8. Other **Contractors**

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer between the dates given in the Schedule of Other Contractors, as referred to in the PCC. The Contractor shall also provide facilities and services for them as described in the Schedule. The Employer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

9. Personnel and **Equipment**

- 9.1 The Contractor shall employ the key personnel and use the equipment identified in the Framework Agreement, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Framework Agreement.
- 9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

10. Employer's and Contractor's **Risks**

10.1The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Employer's Risks

- 11.1From the Start Date until the Defects Liability Certificate has been issued, the following are Employer's risks:
 - The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
 - use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
 - negligence, breach of statutory duty, or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
 - The risk of damage to the Works, Plant, Materials, and Equipment (b) to the extent that it is due to a fault of the Employer or in the

Employer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

- 11.2From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is an Employer's risk except loss or damage due to
 - (a) a Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself an Employer's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.

12. Contractor's Risks

12.1From the Starting Date until the Defects Liability 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 Employer's risks are Contractor's risks.

13. Insurance

- 13.1The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
 - (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to Equipment;
 - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
 - (d) personal injury or death.
- 13.2Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval within 21 days after issue of letter of Acceptance. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer 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.
- 13.4Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.
- 13.5Both parties shall comply with any conditions of the insurance policies.

- 13.6The policies which are in the joint names of the Contractor and the Employer shall contain a clause to include a waiver of subrogation of the Contractor's rights to the insurance carrier against the Employer.
- 14 Site Data
- 14.1The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.
- 15 Contractor to Construct the Works
- 15.1The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.
- 16 The Works to Be Completed by the Intended Completion Date
- 16.1The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.
- 17 Approval by the Project Manager
- 17.1The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.
- 17.2The Contractor shall be responsible for design of Temporary Works.
- 17.3The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.
- 17.4The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.
- 17.5All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.
- 18 Safety
- 18.1The Contractor shall be responsible for the safety of all activities on the Site.
- 19 Discoveries
- 19.1Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.
- **20 Possession** of 20.1The Employer shall, after receiving the Performance security, the the Site insurance covers and the Program for the Works all as per requirements,

give possession of all parts of the Site to the Contractor within seven days for execution of works in accordance to the Program for the Works. If possession of a part is not given by the date stated in the PCC or as thereafter reviewed and agreed by the parties, the Employer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

Site

21 Access to the 21.1The Contractor shall allow the Project Manager and any person authorized 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.

22 Instructions

- 22.1The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.
- 22.2The Contractor shall permit persons appointed by the Employer to inspect the Site and/or the accounts and records of the Contractor and its subcontractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Employer if required by the Employer. The Contractor's attention is drawn to Sub-Clause 57.1 which provides, inter alia, that acts intended to materially impede the exercise of the inspection and audit rights provided for under Sub-Clause 22.2constitute a prohibited practice subject to contract termination.

23 Appointment of the Adjudicator

- 23.1The Adjudicator shall be appointed jointly by the Employer and the Contractor, at the time of the Employer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Employer does not agree on the appointment of the Adjudicator, the Employer will request the Appointing Authority **designated in the PCC**, to appoint the Adjudicator within 14 days of receipt of such request.
- 23.2Should the Adjudicator resign or die, or should the Employer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Employer and the Contractor. In case of disagreement between the Employer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the PCC at the request of either party, within 14 days of receipt of such request.

Disputes

24 Procedure for 24.1 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 14 days of the notification of the Project Manager's decision.
- 24.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 24.3 The Adjudicator shall be paid by the hour at the **rate specified in the PCC**, together with reimbursable expenses of the types **specified in the PCC**, and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 24.4The arbitration shall be conducted in accordance with the arbitration procedures published by the institution named and in the place specified in the PCC.

B. TIME CONTROL

25 Program

- 25.1Within the time **stated in the PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- 25.2An update of the Program shall be a program 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.
- 25.3The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period **stated in the PCC.** If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount **stated in the PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within **14 days** of being instructed to by the Project Manager.
- 25.4The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and

submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

26 Extension of the Intended Completion Date

- 26.1The Project Manager shall extend the Intended Completion Date if a Compensation Event(as defined in GCC 41) occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- 26.2The Project Manager shall decide whether and by how much to extend the Intended Completion Date within **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 new Intended Completion Date.

27 Acceleration

- 27.1 When the Employer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Employer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Employer and the Contractor.
- 27.2 If the Contractor's priced proposals for an acceleration are accepted by the Employer, they are incorporated in the Contract Price and treated as a Variation.

28 Delays Ordered by the Project Manager

28.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

29 Management Meetings

- 29.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 29.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken

shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

30 Early Warning

- 30.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- 30.2 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 by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

C. QUALITY CONTROL

31 Identifying Defects

- 31.1The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.
- 32 Tests
- 32.1If 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.

33 Correction of Defects

- 33.1The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is **defined in the PCC.** The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 33.2Every 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.

34 Uncorrected Defects

34.1If 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, and the Contractor shall pay this amount.

D. COST CONTROL

35 Contract Price

- 35.1In the case of an admeasurement contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.
- 35.2In the case of a lump sum contract, the Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to prepare interim valuation of the works on which basis the Contractor will be paid.

Any errors or inconsistencies including front loading detected in the Activity Schedule at any time during the execution of the project shall be resolved as directed by the Project Manager.

36 Changes in the Contract Price

- in 36.1 In the case of an admeasurement contract:
 - (a) If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change.
 - (b) The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Employer.
 - (c) 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.
 - 36.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

37 Variations

- 37.1All Variations shall be included in updated Programs, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.
- 37.2The 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.
- 37.3 If the Contractor's quotation is 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.
- 37.4 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.
- 37.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 37.6 In the case of an admeasurement contract, if the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in **Sub-Clause 38.1** 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.

38 Cash Flow Forecasts

38.1 When the Program, or, in the case of a lump sum contract, the Activity Schedule, is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

39 Payment Certificates

- 39.1The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- 39.2The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 39.3The value of work executed shall be determined by the Project Manager.
- 39.4The value of work executed shall comprise:
 - (a) In the case of an admeasurement contract, the value of the quantities of work in the Bill of Quantities that have been completed; or

- (b) In the case of a lump sum contract, the value of work executed shall comprise the value of completed activities in the Activity Schedule.
- 39.5The value of work executed shall include the valuation of Variations and Compensation Events.
- 39.6The 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.
- 39.7 Unless otherwise specified in the **PCC**, Interim Payment may be made for Plant and Material delivered on site ready for incorporation within reasonable period of time in the permanent works, subject to the Contractor transferring ownership to the Employer and providing, where applicable, the right of the transfer of ownership vested upon the Contractor by its Suppliers.

Notwithstanding the transfer of ownership the responsibility for care and custody thereof together with the risk of loss or damage thereto shall remain with the Contractor until taking over of the works or part thereof in which such Plant and Materials are incorporated and shall make good at its own cost any loss or damage that may occur to the works or part thereof from any cause whatsoever during such period prior to the taking over.

40 Payments

- 40.1Payments shall be adjusted for deductions for advance payments and retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within **45 days** of the date of each certificate and on submission of an invoice. If the Employer 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 at the legal rate for each of the currencies in which payments are made.
- 40.2If an amount certified is increased in a later certificate or 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.
- 40.3Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

40.4Items of the Works for which no rate or price has been entered in shall not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

41 Compensati on Events

- 41.1The following shall be Compensation Events:
 - (a) The Employer does not give access to a part of the Site by the Site Possession Date pursuant to **GCC Sub-Clause 20.1**.
 - (b) The Employer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
 - (c) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
 - (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.
 - (e) The Project Manager unreasonably does not approve a subcontract to be let.
 - (f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
 - (g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.
 - (h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.
 - (i) The advance payment is delayed.
 - (j) The effects on the Contractor of any of the Employer's Risks.
 - (k) The Project Manager unreasonably delays issuing a Certificate of Completion.

- (l) In situations of Force Majeure which makes the contractor's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances. Such events shall be limited to:
 - (a) reason of any exceptionally adverse weather conditions **as** specified in **BDS** and
 - (b) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works.
- 41.2If 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.
- 41.3As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, 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 shall assume that the Contractor shall react competently and promptly to the event.
- 41.4The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.
- 42 Tax
- 42.1The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date **28 days** before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of **GCC Clause 44**.
- 43 Currencies
- 43.1Where payments are made in currencies other than the currency of the Employer's country **specified in the PCC**, the exchange rates used for calculating the amounts to be paid shall be the exchange rates stated in the Contractor's Bid.

44 Price Adjustment

44.1Prices shall be adjusted for fluctuations in the cost of inputs only if **provided** for in the PCC.

If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

45 Retention

- 45.1The Employer shall retain from each payment due to the Contractor the proportion **stated in the PCC** until Completion of the whole of the Works.
- 45.2Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 52.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank guarantee. The contractor should rectify the defects within 14 days after identification by the project manager and submit the application for payment within 56 days from the issue of the defects liability certificate. If the contractor fails to rectify or fails to submit the application for payment within the prescribed date then the contractor may lose all his rights to claim for the 5% retention money in addition to any other action that the project Manager may take.

46 Liquidated Damages

- 46.1The Contractor shall pay liquidated damages to the Employer 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 Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- 46.2If 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. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in GCC Sub-Clause 40.1.

47 Bonus

47.1The Contractor shall be paid a Bonus calculated at the rate per calendar day stated in the PCC for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

48 Advance Payment

- 48.1The Employer shall make advance payment to the Contractor of the amounts stated in the PCC by the date stated in the PCC, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Employer in amounts and currencies 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 shall not be charged on the advance payment.
- 48.2The Contractor is to 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 in this way by supplying copies of invoices or other documents to the Project Manager.
- 48.3The advance payment shall be repaid by deducting proportionate amounts 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.

49 Securities

- 49.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date **28 days** from the date of issue of the Certificate of Completion in the case of a Bank Guarantee.
- 49.2 (a) Where the contractor has benefitted from the application of the Margin of Preference for employment of local manpower, it shall:
 - (i) In the execution of the contract, fulfill its obligation of maintaining local manpower force for 80% or more of the mandays deployed in the execution of the Works with which it satisfied the criteria of eligibility for being awarded the contract in application of the Margin of Preference; and
 - (ii) Concurrently with the above performance security, provide a preference security to guarantee it will fulfill its obligation in that respect.

- (b) For contracts above **Rs 100M**, the preference security shall be in the form of an "on demand" bank guarantee for an amount in a convertible currency equivalent to the difference between its bid price and the bid price of the lowest bid if the Margin of Preference was not applicable. It shall be issued by a commercial bank located in the Republic of Mauritius.
- (c) For contracts up to **Rs 100m**, an amount equal to the value of the preference security shall be retained from progressive payments to the contractor, to constitute the guarantee for the preference security.
- (d) The preference security shall be valid until the Contractor has completed the Works and a Completion Certificate has been issued by the Employer's Representative as per GCC 53.
- (e) The cost of providing the security shall be borne by the Contractor.

49.3Where a Preference Security is applicable:

- (i) the Employer's Representative shall monitor the employment of local manpower throughout the execution of the contract and shall from time to time request a report from the contractor on the percentage of total men-days deployed using local manpower.
- (ii) the Contractor shall submit the local manpower employment reports as often as it is reasonably requested by the Employer's Representative.
- (iii) the Employer's and Contractor's representatives shall consult each other to ensure that the Contractor's obligation towards local manpower employment is met during the Works execution.
- (iv) At the time of works completion, the Contractor shall submit a certified audited report to the Employer to substantiate the actual percentage of local manpower employed throughout the execution of the works.

The preference security shall be forfeited by the employer in case of failure on the part of the contractor to employ at least 80% of the local.

50 Dayworks

50.1If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

- 50.2All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- 50.3The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

51 Cost Repairs

of 51.1Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

52 Labour Clause

- 1.1 (a) a) The rates of remuneration and other conditions of work of the employees of the Contractor shall not be less favourable than those established for work of the same character in the trade concerned-
 - (i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned;
 - (ii) by arbitration awards; or
 - (iii) by Remuneration Regulations made under the **Employment** Relation Act 2008.
 - (b) Where remuneration and conditions of work are not regulated in a manner referred to at (a) above, the rates of the remuneration and other conditions of work which are not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.
- 1.2 No Contractor shall be entitled to any payment in respect of work performed in the execution of the contract unless he has, together with his claim for payment, filed a certificate:
 - (a) stating the rates of remuneration and hours of work of the various categories of employees employed in the execution of the contracts;
 - (b) stating whether any remuneration payable in respect of work done is due;
 - (c) containing such other information as the Chief Executive Officer of the Public Body administering the contract may require to satisfy himself that the provisions under this clause have been complied with.
- 1.3 Where the Chief Executive Officer of the Public Body administering, the contract is satisfied that remuneration is still due to an employee employed under this contract at the time the claim for payment is filed under **subsection 4.3**, he may, unless the remuneration is sooner paid by the

Contractor, arrange for the payment of the remuneration out of the money payable under this contract.

1.4 Every Contractor shall display a copy of this clause of the contract at the place at which the work required by the contract is performed.

E. FINISHING THE CONTRACT

53 Completion

53.1The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

54 Taking Over

54.1The Employer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

55 Final Account

55.1The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within **56 days** of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within **56 days** a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

56 Operating and Maintenance Manuals

56.1If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates **stated in the PCC.**

56.2If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the PCC** pursuant to **GCC Sub-Clause 55.1**, or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

57 Termination

- 57.1The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 57.2Fundamental breaches of Contract shall include, but shall not be limited to, the following:

- (a) the Contractor stops work for **28 days** when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
- (b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within **28 days**;
- (c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within **84 days** of the date of the Project Manager's certificate;
- (e) 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;
- (f) the Contractor does not maintain a Security, which is required;
- (g) 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 **defined in the PCC**; or
- (h) if the Contractor, in the judgment of the Employer, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract, pursuant to GCC Clause 57.1.
- 57.3When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under **GCC Sub-Clause 57.2** above, the Project Manager shall decide whether the breach is fundamental or not.
- 57.4Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 57.5If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

58 Fraud and Corruption

and 58.1If the Employer determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of Clause 57 shall apply as if such expulsion had been made under Sub-Clause 57.5 [Termination by Employer].

58.2Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Works, then that employee shall be removed in accordance with Clause 9.

58.3 For the purposes of this Sub-Clause:

- "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- "fraudulent practice" is any act or omission, including a (ii) misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "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;
- (iv) "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;
- "obstructive practice" is
 - (a) 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; or
 - acts intended to materially impede the exercise of an inspection and audit rights provided for under Sub-Clause 22.2.
- 58.4 The Contractor shall take steps to ensure that no person acting for it or on its behalf will engage in any type of fraud and corruption during the contract execution.

Transgression of the above is a serious offence and appropriate actions will be taken against such contractor.

Termination

59 Payment upon 59.1If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as **indicated** **in the PCC.** Additional Liquidated Damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Employer.

59.2If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on 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.

60 Property

60.1All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Employer if the Contract is terminated because of the Contractor's default.

61 Release from Performance

from 61.1If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, 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 work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

Section VII. Particular Conditions (PCC)

	A. General
GCC 1.1(c)	There shall be no adjudicator in this contract. Disputes will be resolved as per PCC
Definitions	Clause 23 and 24.
GCC 1.1(f)	There may be different completion dates for sections of the works as defined in each
Definitions	Works Order
GCC 1.1 (n)	The Defects Liability Period shall be <u>365 days</u> calculated from the Completion
Definitions	Date and shall apply to each Works Order separately and independently.
GCC 1.1 (q)	The Employer is the Metro Express Ltd
Definitions	Lead Organisation shall also mean "the Employer".
GCC 1.1 (u)	Amend the definition of Intended Completion Date as follows:
Definitions	'The Intended Completion Date for each Works Order is the date on which it is
	intended that the Contractor shall complete the Works specified in a Works Order.
	Each Intended Completion Date will be specified in the corresponding Works Order
	and will be revised only by the Project Manager by issuing an extension of time or an
	acceleration order'.
	The Intended Completion Date for the whole of the Works shall be 1 year from the
	issue of the first Works Order. Contract duration shall be specific for each Works
	Order.
GCC 1.1 (x)	The Project Manager also known as the Engineer shall be an officer designated by
Definitions	the Employer.
GCC 1.1 (z)	The Sites for each section shall be defined by the Project Manager and communicated
Definitions	to the Contractor prior to the issue of a Works Order.
GCC 1.1 (cc)	The Start Dates of each section shall be specified by the Project Manager in each
Definitions	Works Order.
GCC 1.1 (ff)	This clause is amended as follows:
Definitions	A variation is a written instruction which results into either additional time or costs
	which cannot be paid by using approved rates. The variation is issued only by the
	Project Manager
GCC1.1(gg)	The Works shall consist of construction and upgrading of roads including associated
Definitions	works such as construction of footpaths, provision of handrailing, raising of manholes,
	line marking, among others.
GCC 2.2	Sectional Completion shall be allowed subject to Employer's approval.
Interpretation	
GCC 2.3(vi)	"Works Requirements" to be amended to read "Specifications".
Interpretation	
GCC 2.3	Delete Sub-Clause 2.3 and replace by the following:

Priority of	"The documents forming the Contract are to be taken as mutually explanatory of one
Documents	another. For the purposes of interpretation, the priority of the documents shall be in
Documents	
	accordance with the following sequence:
	(i) Works Order (including Scope of Works) and Acceptance by the Contractor,
	(ii) The Framework Agreement,
	(iii) Letter of Acceptance of selection of Contractor,
	(iv) Part of the Contractor's Bid namely the Letter of Proposal and Appendix
	thereto and any Addenda issued by the Employer prior to closing of bids,
	(v) The Particular Conditions of Contract,
	(vi) The General Conditions of Contract,
	(vii) The Specification,
	(viii) The Drawings,
	(ix) The List of Prices and priced Bill of Quantities,
	(x) Any other documents forming part of the Contract.
	If an ambiguity or discrepancy is found in the documents, the Project Manager shall
	issue any necessary clarification or instruction.
GCC 3	The language of the contract is English .
Language and	The laws and regulations that apply to the Contract are those of the Republic of
Law	Mauritius.
GCC 4	Notwithstanding the provision of this Clause, the Employer may write to the
Project	Contractor on such matters as it considers fit and may request the Project Manager to
Manager's	pursue the matters with the Contractor. The Project Manager shall obtain the specific
Decision	approval of the Employer on the following prior to any related works being
	undertaken by the Contractor:
	(i) new rates for items not found in the Bill of Quantities;
	(ii) change in scope of works which shall result in the value of a Works Order to
	exceed <u>25%;</u>
	(iii) issuing an Acceleration Order.
GCC 5	Replace the contents of this Clause by the following:
Delegation	"The Project Manager may delegate any of his duties and responsibilities to other
	people, after notifying the Contractor, and may cancel any delegation after notifying
	the Contractor."
GCC 8	The schedule of other Contractors will be communicated by the Project Manager
Other	together with the Works Order if applicable.
Contractors	
GCC 9.1	The key personnel and equipment to be provided shall be in accordance with the
Personnel and	personnel and equipment accepted in the Framework Agreement. In case the
Equipment	Contractor persistently fails to meet this obligation after having been notified by the
	Project Manager, then the matter may be considered as a breach of contract.
GCC 10.1	The Employer's risks are:
Employer's	(a) In so far as they directly affect the execution of the Works in the Republic of
and	Mauritius:

Contractor's Risks

- (i) war and hostilities (whether war be declared or not), invasion, acts of foreign enemies;
- (ii) rebellion, revolution, insurrection, or military or usurped power, or civil war:
- (iii) ionizing radiations, or contamination by radioactivity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (iv) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- riot, commotion or disorder, unless solely restricted to the employees of the Contractor or of his sub-Contractors and arising from the conduct of the Works;
- (b) loss or damage due to the use or occupation by Employer of any Section or part of the Permanent Works, except as may be provided for in the Contract;
- (c) loss or damage to the extent that it is due to the design of the Works, other than any part of the design provided by the Contractor or for which the Contractor is responsible; and
- (d) any operation of the forces of nature (insofar as it occurs on the Site) which an experienced Contractor:
 - (i) could not have reasonably foreseen, or
 - (ii) could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures;
 - (1) prevent loss or damage to physical property from occurring by taking appropriate measures, or
 - (2) insure against such loss or damage.

Cyclones shall be considered as a "cause arising" and shall not be regarded as an "Employer's risk".

GCC 13.1 Insurance

The minimum insurance amounts and deductibles shall be:

- (a) for loss or damage to the Works, Plant and Materials:
 - a global cover in the amount of <u>MUR 10 million</u> representing an initial value for the total amount of Works Order to be issued under Framework Agreement Contract. The value for global cover shall be adjusted to reflect the total amount of Works Order issued at any time. This cover shall be in the joint name of the Contractor and Employer.
- (b) for loss or damage to Equipment:

for the full replacement cost of equipment deployed on site and for a minimum amount of <u>MUR 1 million</u>. The Contractor shall, as and when required by the Project Manager, submit full details on the type and number of equipment

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deployed on each project (Works Order) so as to ensure compliance with minimum amount of insurance cover. If necessary, the Contractor shall increase the amount of insurance cover in relation to the actual amount of equipment deployed and same shall be at no extra cost to the Employer. In case this cover is taken separately, it shall be in the name of the Contractor only.

(c) for loss or damage to property (except the for Works, Plant, Materials, and Equipment which are already insured under Sub-Clauses 13.1(a) and (b)), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Defects Liability Certificate:

For a minimum amount of <u>MUR 2.5 million</u> for any one occurrence with the number of occurrences unlimited.

In case this cover is taken separately, it shall be in the joint name of the Contractor and Employer.

- (d) for personal injury or death:
 - (i) of the Contractor's employees:

For a minimum amount of <u>MUR 5 million</u> for any one occurrence with the number of occurrences unlimited.

(ii) of other people (any third party or representatives of the Employer):

For a minimum amount of MUR 5 million for any one occurrence with the number of occurrences unlimited.

This cover shall be in the joint name of the Contractor and the Employer.

All deductibles in any insurance cover shall be at the risk and sole expense of the Contractor. The duration of the initial insurances shall be <u>37 months</u>.

The Contractor shall provide the above insurances within <u>14 days</u> from the Commencement Date of the Framework Agreement. The duration of all insurances shall be valid for a period of <u>28 days</u> after expiry of the Defects Liability Period for the last Works Order to be issued under the Framework Agreement.

The Employer shall not provide for any compensation in case no Works Order is issued to any Contractor or the total value of Works Order issued to any Contractor under the Framework Agreement is less than <u>MUR 5 million</u>.

The Insurance policy must specify that the Employer's Personnel as well as the employees of any other party on the Site are to be considered as third parties of the insurance policy. The insurance policies must include a clause forbidding their cancellation without the insurer giving prior notice to the Employer. The insurance company shall be a company registered in the Republic of Mauritius and approved by the Employer.

GCC 14	Not Applicable.	
Site Data		
GCC 20	The Possession of the Site Date shall be the Start Date specified in the Works Order.	
Possession of	•	
the Site		
GCC 23	There shall be no Adjudicator under this Contract.	
Appointment	If a dispute arises out of or relating to this contract, the Employer and the Contractor	
of the	must, as a precondition to issuing legal proceedings, attempt to resolve the dispute as	
Adjudicator	described under Clause 24 [Procedure for Dispute].	
GCC 24	Replace the contents of Clause 24 by the following:	
Procedure for	"There shall be no Adjudicator under this Contract. Disputes under any works order	
Disputes	shall be resolved as follows:	
	24.1 If a dispute occurs, either party must notify the other of the existence of the dispute and that it must be dealt with under this Clause.	
	Senior Representatives of each party with authority to settle the dispute, shall meet within 7 days of service of the notice under Sub-Clause 24.1 to attempt to resolve the dispute and reach an amicable settlement. The	
	Project Manager shall be in attendance during the meeting(s). Any settlement reached shall subsequently be recorded summarizing positions	
	of each party and the final decision agreed. Such agreement cannot be opened again by either party and the Project Manager shall have deemed to obtain an instruction from the Employer.	
	Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.	
	24.4 If the dispute cannot be resolved by the Parties pursuant to Sub-Clause 24.2, the Parties shall refer it to mediation unless: a) the Lead Organisation considers that the dispute is not suitable for resolution by mediation; or b) the Contractor does not agree to mediation.	
	24.5 Pursuant to Sub-Clause 24.4 , if the dispute cannot be resolved through mediation, either party shall refer the dispute to any competent Court in Mauritius.	
	24.6 The obligations of the Parties under the contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor and its employees, personnel and associates shall comply fully with the requirements of the contract at all times.	
	B. Time Control	
GCC 25	The Contractor shall submit for approval a Programme of Works within 7 days from	
Program	the date of the Works Order.	
- 1 081 1111	The minimum period between submission of updates is 7 days for Programme of	
	Works.	
	Works.	

	The Contractor shall not be allowed to proceed with any part of the works in case a	
	Programme of Works is not submitted or where the Programme of Works has not	
	been approved by the Project Manager.	
GCC 26.1	No work should be accelerated without a specific instruction from the Project	
Extension of	Manager.	
the Intended		
Completion		
Date		
GCC 26.2	Sub-Clause 26.2 to be amended as follows:	
Extension of	"The Project Manager shall decide whether and by how much to extend the Intended	
the Intended	Completion Date within 21 days of the Contractor asking the Project Manager for a	
Completion	decision upon the effect of a Compensation Event or Variation and submitting full	
Date	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 new Intended Completion Date. Any request for	
	extension of the Intended Completion Date shall be made by the Contractor not later	
	than 14 days from the date of occurrence of the event which may lead to a	
	Compensation Event.	
	The Contractor shall at latest, within a period of 7 days after completion of works,	
	request the Project Manager to extend the Intended Completion Date. "	
GCC 26.3	Add new Sub-Clause 26.3 as follows:	
Extension of	"Where the works are delayed and the Contractor fails to request for extension of	
the Intended	the Intended Completion Date within the specified duration, the Project Manager	
Completion	shall, within 14 days after the original Intended Completion Date, issue a provisional	
Date	extension of the Intended Completion Date. The Project Manager may seek any	
	required particulars from the Contractor for deciding upon the provisional extension.	
	Such determinations made by the Project Manager shall be final and binding upon	
	the Contractor."	
GCC 27	In exceptional circumstances when emergency situations arise, the Project Manager	
Acceleration	may issue an Acceleration Order after obtaining the Employer's approval to	
	complete any works in a given Works Order before the initial Intended Completion	
	Date. The Project Manager will determine any additional costs in consultation with	
	the Contractor after the latter has given his priced proposals. Work should continue	
	at accelerated pace pending the Project Manager's determination.	
	Clause 46 [Liquidated Damages] regarding application of Liquidated Damages	
	shall apply in case of delay in completion of works where an Acceleration Order has	
a a a a a	been issued.	
GCC 30	Add new Sub-Clause 30.3 as follows:	
Early	"Notwithstanding the above provisions, the Contractor shall not be entitled to any	
Warning	additional payment or extension of time arising out of events which would adversely	
	affect the Works in case early warnings of circumstances which would give rise to	

	such payment or extension of time are not notified to the Project Manager within
	7 days of the occurrence of such events."
	C. Quality Control
GCC 32	Renumber Sub-Clause 32.1 as Sub-Clause 32.2.
Tests	Add new Sub-Clause 32.1 as hereunder:
	"The Contractor shall submit to the Project Manager, as and when required, test results
	for any part of the woks executed/ completed so as to ascertain that same are in
	accordance with the Contract. The cost of any test, whether ordered/ carried out by
	the Contractor or independently by the Project Manager shall be deemed to be included in the rates for the relevant items.
	included in the lates for the relevant items.
	Where applicable, the Contractor shall not be allowed to proceed further with any
	works in case same are not demonstrated to be compliant. The methodology for
	sampling and testing for any part of the works shall be agreed upon with the Project
	Manager.
	Tests results for the purpose of approval of works shall be only those emanating from
	Accredited Laboratories/ Testing Agencies/ Authorities.
	The Contractor shall complete all tests specified in the Contract within a period of
	14 days , at latest, from the date on which the works were actually completed on site."
GCC 33.1	The Contractor shall rectify all Defects within a period of 28 days.
Correction of	The following paragraph to be added:
Defects	"The Project Manager shall, if deemed appropriate, deduct the cost of making good
	the Defect from any payment due or to become due to the Contractor."
	D. Cost Control
GCC 35.1	The Bill of Quantities is used to calculate the Initial Contract Price. The Contractor
Contract Price	is paid for the quantity of the work done at the rate in the Bill of Quantities for
000000	items specified in a given Works Order.
GCC 35.2	Not applicable.
Contract Price GCC 36.1	Delete the contents of Sub-Clause 36. 1 and replace as follows:
Changes in the	Sub-Clause 36.1(a) – "If the final quantities/ value of work executed under a
Contract Price	particular Works Order differ from the original quantities/ value, no adjustment will
	be made to the rates".
	Sub-Clause 36.1(b) – "The Project Manager shall not make adjustment to any
	rate(s) under any circumstances".
GCC 36.2	Not applicable.
Changes in the	
Contract Price	
GCC 37	Sub-Clauses 37.2 and 37.3 are amended as hereunder and re-numbered as Sub-
Variations	Clause 37.2.

	"If so required by the Project Manager, the Contractor shall provide a quotation for item(s) of works, not comprised in the agreed List of Prices, which may be necessary
	to complete the Works. For such new item(s) of works, the Contractor shall provide
	the Project Manager with a detailed cost breakdown and other necessary details to
	justify the quotation. On the basis of justifications provided by the Contractor and
	the agreed List of Prices, the Project Manager shall determine the rate(s) for the new
	item(s) of works. Such determination shall be final and binding upon the Contractor.
	item(s) of works. Such determination shall be final and binding upon the contractor.
	The Contractor shall execute any new item(s) of works if considered necessary by
	the Project Manager, either for completion of the Works or in Emergency situations,
	irrespective of whether his quotation for the rate(s) for such item(s) of works has
	been approved or not.
	Sub-Clause 37 to be re-numbered as Sub-Clause 37.3.
	Sub-Clause 37.5 to be re-numbered as Sub-Clause 37.4.
	Delete Sub-Clause 37.6.
GCC 38	The Contractor shall submit a cash flow forecast within 14 days from the date of the
Cash Flow	Works Order. The minimum period between submission of updates is 7 days.
Forecasts	
GCC 39	This Clause shall apply to each Works Order separately and independently.
Payment	Amend Sub-Clause 39.1 as follows:
Certificates	"By the third week of each month, the Contractor shall submit a statement for each
	Works Order under execution indicating the cumulative value of works carried out
	and the value of works previously certified. The statement shall be accompanied by
	relevant substantiations such as breakdown of quantities, tests results, drawings/
	sketches showing details of works executed, approval sheets jointly signed by the
	Project Manager's representative and the Contractor and any such justifications as applicable so as to fully substantiate the works executed.
	applicable so as to fully substantiate the works executed.
	All measurements shall be done jointly with the Project Manager or his
	representative and shall have prior approval of the Project Manager.
	Before covering of any works or demolition of any structure joint measurement
	should be made.
	Failure to comply with this sub-Clause will result into delay or the non-certification
	of payment to the Contractor. The Project Manager shall return any statement to the
	Contractor in the event that same is assessed to be incomplete.
	No payment for materials will be made unless these are fully incorporated in the
	Works and are compliant with the Specifications."
GCC 40.1	Replace Sub-Clause 40.1 as follows:
Payments	"The Project Manager shall certify the Contractor's statement within 28 days of date
	of its receipt provided it is complete in accordance with Clause 39 [Payment
	Certificates] and shall issue a Payment Certificate accordingly. The Project Manager

shall deduct therefrom any proportion for Advance Payment, Retention money, Liquidated Damages and other monies due to the Employer. Payments shall be made by the Employer within 28 days of the date of each Payment Certificate. In the event of failure of the Employer to make payment within the time stated, the Employer shall pay to the Contractor interest rate of one percentage point (1%) above the prevailing **Key Repo Rate** as published by the Central Bank of Mauritius upon all sums unpaid from the date by which the sums should have been paid. No interest shall be payable in case the Contractor fails to comply with the provisions of Clause 25 [Program], Clause 32 [Tests], Clause 38 [Cash Flow Forecasts] and Clause 39 [Payment Certificates]. The Employer shall not be liable for delayed payment under any Works Order where the Contractor fails to submit his statement after a period of more than **56 days** after completion of works or any part thereof for that Works Order. The provisions of this sub-Clause are without prejudice to the Contractor's entitlement under any other Clause." $GCC \overline{40.3}$ Replace **Sub-Clause 40.3** as follows: **Payments** "No payment will be made by the Employer in case the Performance Security and Insurance Cover are not in conformity with the Contract requirements, especially as regards project value covered and validity." GCC 41.1 This Clause shall apply to each Works Order separately and independently. Compensation **Events** To amend **item** (**l**) (**a**) under **Sub-Clause 41.1** as follows: "reason of any exceptionally adverse weather conditions are as follows: Wind - Cyclone Warning Class 3 or 4 prevailing in Mauritius; (i) (ii) Rainfall - An intensity equal to or exceeding 15 mm rainfall per 24 hours measured: (iii) Rainfall - Continuous rainfall on Site, causing an interruption of work exceeding 4 hours; or (iv) An official declaration of 'Torrential Rain', 'Horby the Meteorological **Department of Mauritius** Extensions of time without costs (if any) will be granted for consequential delays as a result of exceptionally adverse climatic conditions which give rise to situations whereby it would be impossible or impractical for the Contractor to carry out works on site.

	The Control of the second of t
	The Contractor will be required to submit all relevant justifications to substantiate
	any disruption of works on site and shall provide rainfall records from the closest
	Meteorological recording station to the Site obtained from the Meteorological
	Services attesting the date(s) and amount(s) of rainfall for any such particular
	compensation event. Such justifications shall be provided not later than 28 days
	from the date of occurrence of the events."
GCC 41.2	Add the following paragraph to Sub-Clause 41.2 :
Compensation	"The Project Manager shall obtain prior approval from the Employer before making
Events	any adjustment to the value of works and Intended Completion date arising from
	compensation events".
GCC 41.4	Replace Sub-Clause 41.4 as follows:
Compensation	"The Contractor shall not be entitled to any compensation in case no early warning
Events	is provided to the Project Manager within 14 days of the occurrence of any event
	which may, in his opinion, give rise to a Compensation Event."
GCC 43	The currency of the Republic of Mauritius is the Mauritian Rupee .
Currencies	
GCC 44	Price Adjustment is not applicable.
Price	
Adjustment	
GCC 45.1	The proportion of payments retained is: 10% of the Value of the Works Order.
Retention	Half of the Retention Money to be released after the whole of the Works for each
	respective Works Order has been completed.
	The other half will be released after the Defects Liability Period for each Works
	Order
GCC 46.1	Liquidated damages shall be applied per Works Order.
Liquidated	The amount of Liquidated Damages shall be 0.1% of the Works Order value
Damages	(inclusive of V.A.T) or Rs 2,000 per calendar day , whichever is the higher.
	(construction of the cons
	The total amount of Liquidated Damages shall be adjusted based on the final value
	of works at completion (inclusive of VAT).
	F (
	The maximum amount of liquidated damages for any Works Order is 10% of the
	Value of the Works Order (including V.A.T).
GCC 46.3	Add the new Sub-Clause 46.3 :
Liquidated	"The Project Manager shall take into account any Contractor's delay in execution of
Damages	works by the Contractor and apply the corresponding Liquidated Damages in any
- umuşco	Payment Certificate issued to the Employer for payment."
GCC 47	This Clause does not apply.
Bonus	This Chase does not apply.
GCC 48.1	The Advance Payment Guarantee shall be in the form of a bank guarantee, issued
Advance	by a bank registered and licensed to do business in Mauritius and approved by the
Payment Payment	Employer.
1 ayıncılı	Employer.

	The Advance Payment shall be 10% of value of Works Order (excluding		
	Provisional Sums, Contingencies and Dayworks) and shall be applicable on any		
	individual Works Order of value exceeding MUR 1 M (including Provisional		
000493	Sums, Contingencies and Dayworks but excluding VAT).		
GCC 48.3 Advance	Sub-Clause 48.3 is amended as follows: "The Advance Dayment shall be recovered progressively from the Contractor in the		
Payment Payment	"The Advance Payment shall be recovered progressively from the Contractor in the ratio of construction time elapsed to Works Order duration commencing on the first		
1 ayment	Payment Certificate from the Project Manager after the Advance Payment.		
	Advance Payment shall be fully recovered when the total amount certified by the Project Manager exceeds 75% of the Works Order value or 75% of construction time elapsed, whichever earlier.		
	Application for Advance Payment shall be made not later than 14 days from the date of Works Order and no Advance Payment shall be made after 28 days from the date of actual start of works on site.		
	Release of Advance Payment shall be subject to prior approval of the Programme of Works by the Project Manager."		
GCC 49	The amount for Performance Security is 10% of Value of Works Order (including		
Securities	VAT).		
	A Performance Security of MUR 1 M shall be provided within 28 days from receipt date of letter of Acceptance for the Framework Agreement. The Performance Security shall be for an initial amount of MUR 1M which represent a nominal value to cover Works Orders to be issued under the Framework Agreement.		
	This amount shall be later topped-up if the works order exceeds 10 % of the total contract value awarded.		
	The Performance Security shall be in the form of a bank guarantee, issued by a bank registered and licensed to do business in Mauritius and approved by the Employer and shall be valid for a period of 24 months from the Commencement Date. Performance securities offered by insurance companies or other institutions will not be accepted. "		
	The amount of the Performance Security shall be increased to cover the total value of Works Orders to be issued under the Framework Agreement, based on 10% of the total Works Order value.		
	The duration of the Performance Security shall also be extended up to 28 days after the Defects Liability Period for the last Works Order to be issued under the Framework Agreement.		

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	The Employer shall not provide for any compensation in case no Works Order is issued to any Contractor or the total value of Works Order issued to any Contractor under the Framework Agreement is less than MUR 10M.
	Poor performance or non-performance by a Contractor will result in forfeiture of the
	Performance Security, cancellation of the Works Order and award of the works to
	the next lowest Contractor in the Framework Agreement.
GCC 50.3	The following paragraph is added at the end of Sub-Clause 50.3 :
Dayworks	"Failure to submit the signed Dayworks forms will entail non-payment of the
	Dayworks."
	E. Finishing the Contract
	es 53 to 57 shall apply to the Works as defined in a given Works Order
GCC 53.1	The contents of Sub-Clause 53.1 is deleted and replaced as follows:
Completion	"The Contractor shall request the Project Manager to issue a Certificate of
	Completion of Works, within 14 days from the date on which the works were actually
	completed on site, and the Project Manager shall do so upon deciding that the works
	have been completed and have passed all required tests. In case the Contractor fails to request for issue of the certificate, the Project Manager shall issue the certificate
	upon deciding that the works have been completed and have passed all required tests.
GCC 54.1	The contents of Sub-Clause 54.1 is deleted and replaced as follows:
Taking-Over	"The Employer shall take over the Site of Works within 28 days of the Project
0	Manager's issuing a Certificate of Completion, subject to the Employer being
	satisfied that all works have been executed and completed as per the contract
	requirements and have passed all required tests."
GCC 55.1	The following paragraph is added at the end of Sub-Clause 55.1 :
Final Account	"If the Contractor fails to submit the Final Account for a Works Order before the end
	of the Defects Liability Period then it shall be deemed that no other costs are payable
GCC 56.1 and	to the Contractor expect for the 5% retention money."
56.2	Not applicable.
Operating and	
Maintenance	
Manuals	
GCC 57.2	Sub-Clause 57.2(vii) is replaced as follows:
Termination	"The Contractor has delayed completion of the Works without reasonable
	justifications, for any Works Order, by the number of days for which the maximum
	amount of liquidated damages can be paid, as defined in the Conditions of Contract;
	or" To add section (i) as follows:
	To add section (i) as follows: "The Contractor no longer satisfies the criteria in terms of eligibility, financial
	situation, personnel, plant and equipment."
GCC 57.5	The Contractor shall leave the site within 7 days from date of termination.
	The second secon

Termination	
GCC 59.1	The percentage to apply to the value of the work not completed is 10 % .
Payment upon	
Termination	

Section VIII - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Contractor after contract award.

Table of Forms

Performance Security	69
Advance Payment Security	7 2

Performance Security

......Bank's Name and Address of Issuing Branch or Office.....

Beneficiary:
Date
PERFORMANCE GUARANTEE No.:
We have been informed that
Furthermore, we understand that, according to the conditions of the Contract, a performance security is required.
We
This guarantee shall expire not later than twenty-eight days from the date of issuance of the Certificate of Completion/Acceptance Certificate, calculated based on a copy of such Certificate which shall be provided to us, or on the
Seal of bank and
Signature(s)

Form of Preference Security (Bank Guarantee)

То:	_[name of Employer] _ [address of
Employer]	_ [uuuress oj
WHEREAS of the Contractor] (hereinafter called "the Contractor"), has undertacted the Contract No dated [name of Contract and the Contra	to execute
Works], (hereinafter called "the Contract");	erreg zeser.prien eg
AND WHEREAS it has been stipulated by you in the said Contra shall furnish you with a Bank Guarantee by a local commercial bank therein as security for compliance with his obligation stated in Sul Conditions of Contract;	for the sum specified
AND WHEREAS we have agreed to give the Contractor such a	Bank Guarantee;
NOW THEREFORE we hereby affirm that we are the Guarant you, on behalf of the Contractor, up to a total of	[amount of and without your
We hereby waive the necessity of demanding the said debt from presenting us with the demand.	the Contractor before
We further agree that no change or addition to or other modificate. Contract or of the Works to be performed thereunder or of any of the Contract be made between you and the Contractor shall in anyway release uthis guarantee, and we hereby waive notice of any such change, addition	ract documents which is from liability under
This guarantee is valid until the date of the Completion Certification	te.
Signature and Seal of the Guarantor	
Date	

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Amount to be inserted by the Guarantor in accordance with Sub-Clause 49.2 of the General Conditions of Contract

Advance Payment Security

[Bank's Name, and Address of Issuing Branch or Office]

Beneficiary:[Name and Address of Employer]
Date:
Advance Payment Guarantee No.:
We have been informed that [name of the Contractor] (hereinafter called "the Contractor") has entered into Contract No [reference number of the Contract] dated with you, for the execution of [name of contract and brief description of Works] (hereinafter called "the Contract").
Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [name of the currency and amount in figures] ¹ ([amount in words]) is to be made against an advance payment guarantee.
We [name of the Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [name of the currency and amount in figures]* [amount in words]) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.
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 Contractor on its account number[Contractor's account number] at[name and address of the Bank]
The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the day of
[Seal of Bank and Signature(s)]

Note -

All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

- 1 The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.
- 2 Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee,

the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

Form of Bid Security (Bank Guarantee)

Bank's Name and Address of issuing Branch or Office	
	Name and Address of Public Body
Date:	
BID GUARAN	VTEE No.:
submitted to	informed that
Furthermore, w	e understand that, according to your conditions, bids must be supported by a bid security.
to pay you figures]writing accomp	of the Bidder, we
conditions, bec	ause the Bidder:
(a) (b) (c)	has modified or withdrawn its Bid after the deadline for submission of its bid during the period of bid validity specified by the Bidder in the Form of Bid; or has refused to accept a correction of an error appearing on the face of the Bid; or having been notified of the acceptance of its Bid by the Public Body during the period of bid validity, (i) fails or refuses to sign the contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders.
signed by the E Bidder is not th	shall expire: (a) if the Bidder is the successful bidder, upon our receipt of copies of the contract Bidder and the performance security issued to you upon the instruction of the Bidder; or (b) if the successful bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder the successful bidder; or (ii) thirty days after the expiration of the Bidder's Bid.
	any demand for payment under this guarantee must be received by us at the office on or before[Public Body to insert date]
This guarantee overseas bidder	is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758. (Applicable to es only).
	[Bank's seal and authorized signature(s)]