

GOVERNMENT OF YOBE STATE

GENERAL CONDITIONS OF CONTRACT

FOR THE PROCUREMENT OF

CONSULTANCY SERVICES

2019

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General Conditions of Contract for the procurement of Consultancy Services

Note to users

These General Conditions of Contract for the Procurement of Consultancy Services govern all contractual provisions for this category of procurement and should be read by all bidders before submitting their bids.

1. GENERAL PROVISIONS

1.1 Definitions

1. The headings and titles of these General Conditions of Contract shall not limit, alter or affect the meaning of the Contract.
2. References to the Law are to the Public Procurement Law, and references to the Guidelines are to the subsisting Public Procurement Guidelines. The definitions used in these Law and Guidelines shall apply to these General Conditions of Contract. In addition, the following words and expressions shall have the meanings hereby assigned to them:
 - (a) “*Completion Schedule*” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract;
 - (b) “*Consultancy Service*” means any service of an intellectual or advisory nature, provided by a practitioner who is skilled and qualified in a particular field or profession.
 - (c) “*Contract Agreement*” means the Agreement entered into between the Procuring Entity and the Consultant, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;
 - (c) “*Contract Documents*” means the documents listed in the Contract Agreement, including any amendments thereto;
 - (d) “*Contract Price*” means the price payable to the Consultant as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract;
 - (e) “*Day*” means calendar day;
 - (f) “*Delivery*” means the transfer of ownership of the intellectual property and related Goods from the Consultant to the Procuring Entity in accordance with the terms and conditions set forth in the Contract;
 - (g) “*GCC*” mean the General Conditions of Contract;
 - (h) “*Goods*” means all of the commodities, raw materials, machineries and equipment, products and/or other materials in solid, liquid or gaseous form that the Consultant is required to supply, as part of or incidental to the provision of the consultancy services, to the Procuring Entity under the Contract, as specified in the SCC;
 - (i) “*Government*” means the Government of Yobe State, Nigeria;
 - (j) “*Procuring Entity*” means the entity purchasing the Goods and Related Services, as specified in the SCC (Ministry, Department, Agency, Parastatal or Unit from any arm of the Yobe State Government);
 - (k) “*Related Services*” means the services incidental to the provision of the consultancy service or to the supply of the goods incidental to the provision of the consultancy service, such as insurance, installation, commissioning, training and initial maintenance and other similar obligations of the Consultant under the Contract;
 - (l) “*SCC*” means the Special Conditions of Contract;
 - (m) “*Sub-consultant*” means any natural person, private or government entity, or a combination of the

above, including its legal successors or permitted assigns, who has a contract with the Consultant to carry out a part or aspect of the consultancy service(s) awarded to the Consultant to perform;

(n) "Consultant" means the natural person, private or government entity, or a combination of the above, whose Bid to perform the Contract has been accepted by the Procuring Entity and is named as such in the SCC and the Contract Agreement, and includes the legal successors or permitted assigns of the Consultant;

(o) "Writing" means any hand-written, type-written, or printed communication including electronic communication.

1.2 Relationship Between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Procuring Entity and the Consultant. The Consultant, subject to this Contract, has complete charge of Personnel and Sub-Consultants, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the laws of Yobe State and the applicable federal laws of Nigeria.

1.4 Notices

1.4.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

1.4.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SCC.

1.5 Location

The Services shall be performed at such locations as are specified in the SCC hereto and, where the location of a particular task is not so specified, at such locations, whether in Yobe State or elsewhere, as the Procuring Entity may approve.

1.6 Authority of Member in Charge

In case the Consultant consists of a joint venture/consortium/ association of more than one entity, the Members hereby authorize the entity specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

1.7 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

1.8 Taxes and Duties

The Consultant, Sub-Consultants and Personnel shall pay such indirect taxes, duties, fees and other impositions levied under the laws of Yobe State and applicable federal laws of Nigeria as specified in the SCC.

1.9 Fraud and Corruption

If the Procuring Entity determines that the Consultant and/or their Sub-Consultants has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving 14 days' notice to the Consultant, terminate the Consultant's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.9.1(d).

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Should any personnel of the Consultant and/or their Sub-Consultants be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that personnel shall be removed in accordance with Sub-Clause 4.5.

Submission of a bid will be deemed to be an undertaking on behalf of the Consultant to accept these responsibilities.

For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:

- (i) “corrupt practice” means offering, giving, or promising to give, directly or indirectly, to any officer or employee of a Procuring Entity or other governmental/private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method followed by, a Procuring Entity in connection with the procurement proceeding;
- (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement proceeding or the execution of a Contract to the detriment of the Procuring Entity;
- (iii) “collusive practice” means a scheme or arrangement among two or more Bidders with or without the knowledge of the Procuring Entity (prior to or after Bid submission) designed to establish Bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free, open and genuine competition; and
- (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence the procurement proceedings or affect the execution of a contract.
- (v) “obstructive practice” is:
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Government 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
 - (bb) acts intended to materially impede the exercise of the Government’s inspection and audit rights provided for under Clause 3.6.

1.10 Eligibility

The Consultant and its Sub-consultants shall have the nationality of an eligible country. All countries shall be eligible, except countries subject to the following provisions.

A country shall not be eligible if

- (a) as a matter of law or official regulation, the Government of Nigeria prohibits commercial relations with that country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Government of Nigeria prohibits any payments to persons or entities in that country.

The Consultant and its sub-consultants shall provide Personnel who shall be citizens of eligible countries. Countries that are ineligible under the provisions of this clause shall be specified in the SCC.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract

This Contract shall come into effect on the date that the Contract is duly signed by the parties; or the date that is indicated in the Contract as the commencement date of the Contract or the Consultancy assignment. Where it is thus stated in the Contract Agreement, this Contract shall come into effect on the date (the “Effective Date”) of the Procuring Entity’s notice to the Consultant instructing the Consultant to begin carrying out the Services.

This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

2.2 Termination of Contract for Failure to Become Effective

If this Contract has not become effective within twenty-one (21) days after the date of signing of Contract by the Parties, either Party may, by not less than fourteen (14) days written notice to the other Party, declare this Contract to be null and void; and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

2.3 Commencement of Services

The Consultant shall begin carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

2.4 Expiration of Contract

Unless terminated earlier pursuant to Clause GCC 2.9, this Contract shall expire at the end of such time after the Effective Date as specified in the SCC.

2.5 Entire Agreement

This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modifications or Variations

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clause GCC 7.2, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical; seek all reasonable alternative means for the performance not prevented by the Force Majeure event; and shall take all reasonable measures to minimize the

consequences of any event of Force Majeure.

- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:
 - (i) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
 - (ii) continue with the Services to the extent possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause GCC 8.

2.8 Suspension

The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension:

- (i) shall specify the nature of the failure, and
- (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) days after receipt by the Consultant of such notice of suspension.

2.9 Termination

2.9.1 By the Procuring Entity

The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause GCC 2.9.1. In such an occurrence, the Procuring Entity shall give not less than thirty (30) days' written notice of termination to the Consultants, except in case of the event referred to in (d) when the Procuring Entity may terminate the Contract with immediate effect.

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 2.8, within thirty (30) days of receipt of such notice of suspension or within such further period as the Procuring Entity may have subsequently approved in writing.
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8.
- (d) If the Consultant, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- (e) If the Consultant submits to the Procuring Entity a false statement which has a material effect on the

rights, obligations or interests of the Procuring Entity.

- (f) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (g) If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.2 By the Consultant

The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GCC 2.9.2.

- (a) If the Procuring Entity fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 8 within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8.
- (d) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

2.9.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clauses GCC 2.2 or GCC 2.9, or upon expiration of this Contract pursuant to Clause GCC 2.4, all rights and obligations of the Parties hereunder shall cease, except:

- (i) such rights and obligations as may have accrued on the date of termination or expiration,
- (ii) the obligation of confidentiality set forth in Clause GCC 3.3,
- (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 3.6, and
- (iv) any right which a Party may have under the laws of Yobe State and the applicable federal laws of Nigeria.

2.9.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC 3.9 or GCC 3.10.

2.9.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GCC 2.9.1 or GCC 2.9.2, the Procuring Entity shall make the following payments to the Consultant:

- (a) remuneration pursuant to Clause GCC 6 for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GCC 6 for expenditures actually incurred prior to the effective date of termination; and
- (b) except in the case of termination pursuant to paragraphs (a) through (e) of Clause GCC 2.9.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract

including the cost of the return travel of the Personnel and their eligible dependents.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in paragraphs (a) through (f) of Clause GCC 2.9.1 or in Clause GCC 2.9.2 has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to Clause GCC 8, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance

The Consultant shall perform the Services described in the Terms of Reference at Section A of the Statement of Requirements at Part 2 of the Request for Proposals for the Performance of Consultancy Services according to the Methodology and Work Plan in Appendix A of the Contract. The Consultant shall carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Sub-Consultants or Third Parties.

3.1.2 Law Governing Services

The Consultant shall perform the Services in accordance with the laws of Yobe State and the applicable federal laws of Nigeria and shall take all practicable steps to ensure that any Sub-Consultant, as well as the Personnel of the Consultant and any Sub-Consultants, comply with all these laws. The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.

3.2 Conflict of Interests

The Consultant shall hold the Procuring Entity's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Consultant Not to Benefit from Commissions Discounts etc.

- (a) The payment of the Consultant pursuant to Clause GCC 6 shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 3.2.2, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultants, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Procuring Entity on the procurement of goods, works or services, the Consultant shall comply with the Government's applicable procurement regulations or guidelines, and shall at all times exercise such responsibility in the best interest of the Procuring Entity. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Procuring Entity.

3.2.2 Consultant and Affiliates Not to Engage in Certain Activities

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the Procuring Entity, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.

3.4 Liability of the Consultant

The Consultants' liability under this Contract shall be provided by the laws of Yobe State and the applicable federal laws of Nigeria.

3.5 Insurance to be Taken out by the Consultant

The Consultant shall:

- (i) take out and maintain, and shall cause any Sub-Consultants to take out and maintain, at their own cost respectively, but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverages specified in the SCC, and
- (ii) at the Procuring Entity's request, provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.

3.6 Accounting, Inspection and Auditing

The Consultant shall permit the Government and/or persons appointed by the Government to inspect its accounts and records as well as those of its Sub-Consultants relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the Government if required by the Government. The Consultant's attention is drawn to Clause 1.11 which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under Clause 3.6 constitute a prohibited practice liable to contract termination (as well as to a determination of ineligibility under the relevant Government Regulations or Guidelines).

3.7 Consultant's Actions Requiring Procuring Entity's Prior Approval

The Consultant shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- (a) Any change or addition to the Personnel listed in Appendix B of the Contract or to their working hours or period of engagement.
- (b) Subcontracts: The Consultant may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the Procuring Entity. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services. In the event that any Sub-Consultants are found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity may request the Consultant to provide a replacement, with qualifications and experience acceptable to the Procuring Entity, or to resume the performance of the Services itself.
- (c) Any other action that may be specified in the SCC.

3.8 Reporting Obligations

The Consultant shall submit to the Procuring Entity the reports and documents specified in Section A of the Statement of Requirements in Part 2 of Request for Proposals for the Selection of Consultancy Services, in the form, in the numbers and within the time periods set forth in the said Section. Final reports shall be delivered in electronic format, in addition to the hard copies specified in the said Section.

3.9 Documents Prepared by the Consultant to be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under this Contract shall become and remain the property of the Procuring Entity, and the Consultant shall, not later than the termination or expiration of this Contract, deliver all such documents to

the Procuring Entity, together with a detailed inventory thereof. The Consultant may retain a copy of such documents and software, and put such software for their own use with the prior written approval of the Procuring Entity. If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of any such computer programs, the Consultant shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

3.10 Equipment, Vehicles and Materials Furnished by the Procuring Entity

Equipment, vehicles and materials made available to the Consultant by the Procuring Entity, or purchased by the Consultant wholly or partly with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the Procuring Entity's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Procuring Entity in writing, shall insure them at the expense of the Procuring Entity in an amount equal to their full replacement value.

3.11 Equipment and Materials Provided by the Consultants

Equipment or materials brought into Yobe State by the Consultant and the Personnel and used either for the Project or personal use shall remain the property of the Consultant or the Personnel concerned, as applicable.

4. CONSULTANTS' PERSONNEL AND SUB-CONSULTANTS

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel and Sub-Consultants as are required to carry out the Services

4.2 Description of Personnel

- (a) The title, agreed job description, minimum qualification and estimated period of engagement in the carrying out of the Services of each of the Consultant's Key Personnel are described in Appendix B of the Contract.
- (b) If required to comply with the provisions of Clause GCC 3.1.1, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix B of the Contract may be made by the Consultant by a written notice to the Procuring Entity, provided that:
 - (i) such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and
 - (ii) the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GCC 6.1 of this Contract. Any other such adjustments shall only be made with the Procuring Entity's written approval.
- (c) If additional work is required beyond the scope of the Services specified in Appendix A of the Contract, the estimated periods of engagement of Key Personnel set forth in Appendix B may be increased by agreement in writing between the Procuring Entity and the Consultant. Where payments under this Contract exceed the ceilings set forth in Clause GCC 6.1 of this Contract, it will be explicitly mentioned in the agreement.

4.3 Approval of Personnel

The Key Personnel and Sub-Consultants listed by title as well as by name in Appendix B of the Contract and their period of engagement are hereby approved by the Procuring Entity. In respect of other Personnel which the Consultant proposes to use in the carrying out of the Services, the Consultant shall submit to the Procuring Entity for review and approval a copy of their Curricula Vitae (CVs). If the Procuring Entity does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the Procuring Entity.

4.4 Working Hours, Overtime, Leave, etc.

- (a) Working hours and holidays for Key Personnel shall be as described in Appendix B of the Contract.

- (b) The Key Personnel shall not be entitled to be paid for overtime. Any provision for paid sick leave or additional vacation leave shall be dependent on the contractual terms agreed between the Consultant and the Personnel concerned and shall be a cost to the Consultant not to the Procuring Entity. The Consultant's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix B of the Contract Agreement. Any taking of leave by Personnel shall be subject to the prior approval by the Consultant who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.5 Removal and/or Replacement of Personnel

- (a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.
- (b) If the Procuring Entity (i) finds that any of the Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the Procuring Entity's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- (c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditures (including expenditures due to the number of eligible dependents) the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Procuring Entity. Except as the Procuring Entity may otherwise agree, (i) the Consultant shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid by the Procuring Entity for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.6 Resident Project Manager

If required by the SCC, the Consultant shall ensure that at all times during the Consultant's performance of the Services in Yobe State a resident project manager, acceptable to the Procuring Entity, shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE PROCURING ENTITY

5.1 Assistance and Exemptions

Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to ensure that the Government shall:

- (a) Assist the Consultant, Sub-Consultants and Personnel to obtain work permits and such other documents as shall be necessary to enable the Consultant, Sub-Consultants or Personnel to perform the Services.
- (b) Assist the Consultant, Sub-Consultants and Personnel to obtain prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.
- (c) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (d) Assist the Consultant and the Personnel and any Sub-Consultants employed by the Consultant for the Services to obtain exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the laws of Nigeria.
- (e) Provide to the Consultant, Sub-Consultants and Personnel any such other assistance as may be specified in the SCC.

5.2 Access to Land

The Procuring Entity warrants that the Consultant shall have, free of charge, unimpeded access to all land in

Yobe State in respect of which access is required for the performance of the Services. The Procuring Entity will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Consultant and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Consultant or any Sub-Consultants or the Personnel of either of them.

5.3 Change in the Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the law of Nigeria with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the ceiling amounts specified in Clause GCC 6.1.

5.4 Services, Facilities and Property of the Procuring Entity

- (a) The Procuring Entity shall make available to the Consultant and the Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in the SCC at the times and in the manner specified therein.
- (b) In case that such services, facilities and property shall not be made available to the Consultant as and when specified in the SCC, the Parties shall agree on:
 - (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services,
 - (ii) the manner in which the Consultant shall procure any such services, facilities and property from other sources, and
 - (iii) the additional payments, if any, to be made to the Consultant as a result thereof pursuant to Clause GCC 6.7(b) hereinafter.

5.5 Payment

In consideration of the Services performed by the Consultant under this Contract, the Procuring Entity shall make to the Consultant such payments and in such manner as is provided by Clause GCC 6 of this Contract.

5.6 Counterpart Personnel

- (a) The Procuring Entity shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in the SCC.
- (b) If counterpart personnel are not provided by the Procuring Entity to the Consultant as and when specified in the SCC, the Procuring Entity and the Consultant shall agree on:
 - (i) how the affected part of the Services shall be carried out, and
 - (ii) the additional payments, if any, to be made by the Procuring Entity to the Consultant as a result thereof pursuant to Clause GCC 6.7(b).
- (c) Professional and support counterpart personnel, excluding Procuring Entity's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Procuring Entity shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE CONSULTANT

6.1 Contract Price and Currency

The Contract price shall be expressed as a specific amount or amounts in the Agreement representing:

- (a) the total amount payable for a Lump Sum contract; or
- (b) the maximum amount for a Time-Based contract.

Payments shall be made in the currency or currencies of the contract price, unless otherwise specified in the

SCC.

6.2 Type of Contract

- (a) In consideration of the Services performed by the Consultant under the Contract, the Procuring Entity shall make to the Consultant such payments in such manner as is provided for by the Contract.
- (b) The type of Contract shall be as specified in the **SCC** and payments shall be in accordance with the provisions of:
 - (i) GCC Clause 6.3, Option 1 in the case of Lump Sum contracts; or
 - (ii) GCC Clause 6.4, Option 2 in respect of Time Based contracts.

6.3 Option 1 – Payments in respect of Lump Sum Contracts

- (a) The Contract Price shall be a fixed total lump-sum including all Personnel costs, Sub-consultants' costs, printing, communications, travel, accommodation, and all other costs required to carry out the Services described in the Contract.
- (b) The Contract Price may only be increased through amendment of the Contract in accordance with GCC Clause 2.6.
- (c) The price for any additional services, as may be agreed in accordance with GCC Clause 2.6, shall be determined using the Breakdown of Contract Price in the Contract.

6.4 Option 2 – Payments in respect of Time Based Contracts

- (a) The Contract Price shall be a maximum amount, based on the Breakdown of Cost Estimates in the Contract.
- (b) Payment shall be made for the time actually spent and for reimbursable expenses actually incurred by the Consultant in the performance of the Services.
- (c) Fees for the Personnel shall be determined on the basis of time actually spent by the Personnel in the performance of the Services after the date determined in accordance with the Commencement Date of the Services, or such other date as the Parties may agree in writing, and at the rates specified in the Contract. Personnel time spent in the performance of the Services shall include time for necessary travel via the most direct route, at the rates detailed in the Contract, unless otherwise specified in the **SCC**.
- (d) Reimbursable expenditures shall include costs actually and reasonably incurred by the Consultant in the performance of the Services, as specified in the Contract.
- (e) The Consultant's total remuneration shall not exceed the Contract price. The Consultant shall notify the Procuring Entity as soon as cumulative charges incurred for the Services have reached 80% of the Contract price.
- (f) Separate invoices shall be submitted for fees and for reimbursable expenditure.
- (g) A final payment shall be made against submission by the Consultant of a final statement, identified as such and approved by the Procuring Entity. The final statement shall be deemed approved by the Procuring Entity twenty-one (21) calendar days after receipt by the Procuring Entity unless the Procuring Entity, within this period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the deliverables or the final statement.
- (h) Any amount which the Procuring Entity has paid or caused to be paid which is in excess of the amounts actually payable in accordance with the provisions of the Contract, shall be reimbursed by the Consultant to the Procuring Entity within twenty-one (21) days after receipt by the Consultant of a notice thereof. Any such claim by the Procuring Entity for reimbursement must be made within twelve months after receipt by the Procuring Entity of a final statement approved by the Procuring Entity.

6.5 Payment Schedule and Advance Payments

- (a) All payments under the Contract shall be made in accordance with the payment schedule specified in the **SCC**.
- (b) All payments under this Contract shall be made to the accounts of the Consultant specified in the **SCC**.
- (c) Unless otherwise stated in the **SCC**, where any payment is made in advance of any deliverables as an advance payment, the payment shall be made against the provision by the Consultant of a bank

guarantee for the same amount, and shall be valid for the period stated in the **SCC**.

- (d) Should the advance payment guarantee cease to be valid and the Consultant fails to re-validate it, a deduction equal to the amount of the advance payment may be made by the Procuring Entity from future payments due to the Consultant under the contract.
- (e) If a Contract is terminated for any reason, the guarantee securing the advance may be invoked in order to recover the balance of the advance still owed by the Consultant.

6.6 Payment Terms

- (a) Unless otherwise specified in the **SCC**, payments shall be made by the Procuring Entity, no later than sixty (60) days after submission of a request for payment by the Consultant.
- (b) The Consultant's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices and supporting documents. The supporting documentation required shall be as specified in the **SCC**.
- (c) The Procuring Entity shall notify the Consultant of the inadmissibility of a request for payment due to an error, discrepancy, omission or any other reason so that the Parties may resolve such error, discrepancy, omission or other fault and agree a solution to enable payment of the corrected request for payment. The Procuring Entity shall not unreasonably withhold payment of any undisputed portion of a request for payment. Should any discrepancy be found to exist between actual payment made and costs authorised to be incurred by the Consultant, the Procuring Entity may add or subtract the difference from any subsequent payments.
- (d) If the Procuring Entity does not make such payment within ten (10) days or receiving a notice that payment is overdue, the Consultant may raise a complaint with the Yobe State Bureau on Public Procurement, which may order the Procuring Entity to settle the outstanding invoice immediately or to pay to the Consultant interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitral award.

6.7 Price Adjustments and Increases

- (a) Prices charged by the Consultant for the Services performed under the Contract shall not vary from the prices quoted in the Contract, with the exception of any price adjustments authorised in the **SCC**.
- (b) Notwithstanding Clauses GCC 6.3 and 6.4, if pursuant to any of the Clauses GC 5.3, 5.4 or 5.6, the Parties shall agree that additional payments shall be made to the Consultant in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1 above, the Contract Price set forth in Clause GC 6.1 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GCC 8.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

The Procuring Entity and the Consultant shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract or interpretation thereof.

8.2 Dispute Resolution

- (a) If, after twenty-eight (28) days, the Parties have failed to resolve their dispute or difference by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration under the terms of the Arbitration and Conciliation Act (Cap A18 LFN 2004), as amended.
- (b) Notwithstanding any reference to arbitration herein,
 - (i) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (ii) the Procuring Entity shall pay the Consultant any monies due to the Consultant.