

Government of Yobe State

GENERAL CONDITIONS OF CONTRACT

FOR THE

PROCUREMENT OF WORKS.

2019

General Conditions of Contract for the Procurement of Works

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General Conditions of Contract for the Procurement of Works

Note to users

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

A. General

1. Definitions

1.1 The definitions in the Public Procurement Law (“the Law”) and the subsisting Public Procurement Guidelines (“the Guidelines”) shall apply to these General Conditions of Contract. In addition, the following words and expressions shall have the meaning hereby assigned to them.

- (a) “Accepted Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- (b) “Activity Schedule” is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract.
- (c) “Adjudicator” is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes in the first instance, as provided for in GCC 18.
- (d) “Admeasurement Contract” is a contract where the Contract Price is adjusted to take account of the difference between the estimated quantity of work to be performed and the actual quantity.
- (e) “Bill of Quantities” means the priced and completed Bill of Quantities forming part of the Bid.
- (f) “Compensation Events” are those defined in GCC Clause 33 hereunder.
- (g) “Contract” is the Contract between the Procuring Entity and the Contractor to execute, and complete the Works including remedying of any defects.
- (h) “Contractor” is the party **named in the SCC** whose Bid to carry out the Works has been accepted by the Procuring Entity.
- (i) “Contractor’s Bid” is the completed Bid submitted by the Contractor to the Procuring Entity.
- (j) “Contract Price” is the Accepted Contract Amount stated in the Letter of Acceptance.
- (k) “Day” is a calendar day.
- (l) “Day works” 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.
- (m) A “Defect” is any part of the Works not completed in accordance with the Contract.
- (n) “Defects Liability Certificate” is the certificate issued by the Project Manager upon correction of defects by the Contractor at the conclusion of the Defects Liability Period.
- (o) “Defects Liability Period” is the period **stated in the SCC** pursuant to Sub-Clause 26.1 and calculated from the Completion Date.
- (p) “Drawings” means the drawings of the Works, as included in the Contract, and any additional and

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modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract, including calculations and other information provided or approved by the Project Manager for the execution of the Contract.

- (q) “Employee” is the personnel of the Contractor engaged to carry out the Works under the Contract.
- (r) “Equipment” is the Contractor’s machinery and vehicles brought temporarily to the Site to construct the Works.
- (s) “Force Majeure” refers to any event or condition, not existing as of the date of signing the Contract, that is not reasonably foreseeable as of such date and not reasonably within the control of either Party, which prevents, in whole or in significant part, the performance by one of the Parties of its contractual obligations, or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable.
- (t) “Intended Completion Date” is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the SCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- (u) “Materials” are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- (v) “Plant” is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- (w) “Project Manager” is the person **named in the SCC** (or any other competent person appointed by the Procuring Entity 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.
- (x) “Procuring Entity” is the party who employs the Contractor to carry out the Works, **as specified in the SCC**; and includes-
 - (a) a Ministry, department or other division of the Government of Yobe State; or
 - (b) any company or corporate body in which the State has a controlling interest, whether by virtue of holding or controlling its shares or by virtue of a right of appointment of members to its controlling body or otherwise; or
 - (c) a local authority of the State.
- (y) SCC means Special Conditions of Contract.
- (z) “Site” is the area defined as such in the **SCC**.
- (aa) “Site Investigation Reports” are those that were included in the Bidding documents 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 **stated in the SCC**. 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) “Subcontractor” 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 written instruction issued by (or on behalf of) the Procuring Entity which varies the

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Works.

(gg) “Writing” includes electronic forms of communication;

(hh) “Works” are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, as **defined in the SCC**.

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 In case of an Ad-measurement Contract, the Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities shall be used to calculate the payment due to Contractor based on the actual quantities accomplished. The Contractor shall be paid for the quantity of the works accomplished at the rate in the Bill of Quantities for each item as certified by the Project Manager.

Or

2.3 This Contract shall be a Lump-sum Contract based on the Priced Activity Schedules. Works shall not be measured for payment but be based on estimated percentage of works accomplished against the Contract Price.

2.4 It shall be **specified in the SCC** whether the Contract is Ad-measurement or Lump-sum.

2.5 The documents that form part of the Contract shall be **specified in the SCC**.

3. Language and Law

3.1 The language of the Contract shall be English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English, in which case, for purposes of interpretation of the Contract, this translation shall govern. The Contractor shall bear all costs of translation to English and all risks of the accuracy of such translation,

3.2 The Contract shall be governed by and interpreted in accordance with the laws of Yobe State and the applicable federal laws of Nigeria.

4. Project Manager’s Decisions

4.1 Contract management responsibility rests on the Procuring Entity. Except where otherwise specifically **stated in the SCC**, the Project Manager shall decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.

5. Delegation

5.1 Unless otherwise **specified in the SCC**, 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.

7. Eligibility, Subcontracting and Other Contractors

7.1 The Contractor and its Sub-contractors shall have the nationality of an eligible country. All countries shall be

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eligible, except countries subject to the following provisions.

- 7.2 A country shall not be eligible if
- 7.2.1 (a) as a matter of law or official regulation, the Government of Nigeria prohibits commercial relations with that country; or
- 7.2.2 (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.
- 7.3 The Contractor and its Sub-contractors 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**.
- 7.4 Unless otherwise **indicated in the SCC**, the Contractor is not allowed to subcontract any part of the Works.
- 7.5 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as **referred to in the SCC**.

8. Personnel and Equipment

- 8.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid 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 Bid.
- 8.2 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 immediately and has no further connection with the work in the Contract.
- 8.3 All costs associated with the removal and replacement of Contractor's personnel or equipment from the Site shall be borne by the Contractor.

9. Procuring Entity's and Contractor's Risks

- 9.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.
- 9.2 From the Start Date until the Defects Liability Certificate has been issued, the following are Procuring Entity's risks:
- (a) The risk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which are due to
- (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
- (ii) negligence, breach of statutory duty, or interference with any legal right by the Procuring Entity or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 9.3 From 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 a Procuring Entity's risk except loss or damage due to

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- (a) a Defect which existed on the Completion Date,
 - (b) an event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or
 - (c) the activities of the Contractor on the Site after the Completion Date.
- 9.4 From the Start 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 Procuring Entity's risks are Contractor's risks.

10. Insurance

- 10.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, and shall cause any Subcontractors to take out and maintain, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles and terms and conditions **stated in the SCC** 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.
- 10.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. 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.
- 10.3 If the Contractor does not provide any of the policies and certificates required, the Procuring Entity may bring into effect the insurance which the Contractor should have provided and recover the premiums the Procuring Entity 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.
- 10.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager in writing.
- 10.5 Additional insurances shall be required to cover for any necessary works to correct the defects during the Defects Liability Period.
- 10.6 Both parties shall comply with any conditions of the insurance policies.

11. Inspection of Site

- 11.1 The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting his Bid and signing the Contract as to all matters relative to the nature of the land and subsoil, the form and nature of the Site, details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services, the quantities and nature of the work and materials necessary for the completion of the Works, the means of access to the Site, and the accommodation he may require, and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his Bid, and no claims will be entertained in connection with these matters against the Procuring Entity.
- 11.2 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information available to the Contractor.

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12. Contractor to Construct the Works

12.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

13. The Works to Be Completed by the Intended Completion Date

13.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Programme submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

14. Safety and Security

14.1 The Contractor shall be responsible for the safety of all personnel and activities on the Site.

14.2 The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and surveillance systems when and where necessary or required by the Project Manager or by any duly constituted authority for the protection of the Works and the materials and equipment utilised therefore or for the safety and convenience of the public or others.

15. Discoveries

15.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Procuring Entity. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

16. Possession of the Site

16.1 The Procuring Entity shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the SCC**, the Procuring Entity shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

17. Access to the Site

17.1 The 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 for any purpose related to the oversight and management of the Contract, including audit and inspection

18. Settlement of Disputes

18.1 The Procuring Entity and the Contractor shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

18.2 If the dispute, claim or controversy cannot be settled through negotiation within twenty-one (21) days of arising, such dispute shall be referred to and be finally determined by arbitration in accordance with provisions of the Arbitration and Conciliation Act Cap A18 Laws of The Federation of Nigeria 2004 or any similar law in force.

18.3 The Arbitral Tribunal shall consist of three arbitrators, one each appointed by the Procuring Entity and Contractor and a third appointed by the first two, and failing agreement on a third arbitrator, he or she shall be appointed by the Chairman for the time being of the Nigerian Chapter of the Chartered Institute of Arbitrators, or, the Chief Judge of Yobe State or the most senior presiding Judge of the High Court sitting at Damaturu, Yobe State, in which case an application shall be made on Notice for the appointment of an arbitrator by the Court's choice, and the court barring any exigencies shall appoint the third Arbitrator within two weeks or such other time as is convenient.

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18.4 Notwithstanding any reference to arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Procuring Entity shall pay the Contractor any monies due the Contractor.

B. Time Control

19. Programme

- 19.1 Within the time **stated in the SCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Programme 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 Programme shall be consistent with those in the Activity Schedule.
- 19.2 An update of the Programme shall show 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.
- 19.3 The Contractor shall submit to the Project Manager for approval an updated Programme at intervals no longer than the period **stated in the SCC**. If the Contractor does not submit an updated Programme within this period, the Project Manager may withhold the amount **stated in the SCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Programme 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.
- 19.4 The Project Manager's approval of the Programme shall not alter the Contractor's obligations. The Contractor may revise the Programme and submit it to the Project Manager again at any time. Any such revised Programme shall show the effect of Variations and Compensation Events.

20. Extension of the Intended Completion Date

- 20.1 The Procuring Entity with recommendation from the Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued or a Force Majeure event occurs 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.

21. Acceleration

- 21.1 When the Procuring Entity wishes 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 Procuring Entity accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.
- 21.2 If the Contractor's priced proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Price and treated as a Variation.

22. Delays Ordered by the Project Manager

- 22.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works. The consequences of such action on the Intended Completion Date shall be assessed in accordance with GCC 20.1.

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23. Management Meetings

- 23.1 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.
- 23.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. 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.

24. Early Warning

- 24.1 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.
- 24.2 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

25. Identifying and Testing of Defects

- 25.1 The 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.
- 25.2 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event

26. Correction of Defects

- 26.1 The 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 SCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- 26.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

27. Uncorrected Defects

- 27.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

D. Cost Control

28. Contract Price

- 28.1 In the case of an ad measurement 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

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be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

- 28.2 In 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 monitor and control the performance of activities on which basis the Contractor will be paid. If payment for Materials on Site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.

29. Changes in the Contract Price

29.1 In the case of an ad measurement 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 Procuring Entity.
- (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.

29.2 In the case of a lump sum contract, the Activity Schedule shall be amended by the Contractor to accommodate changes of Programme 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.

29.3 Any proposed changes in contract prices shall require the approval of the Yobe State Bureau on Public Procurement.

30. Variations

30.1 All Variations shall be included in updated Programmes, and, in the case of a lump sum contract, also in the Activity Schedule, produced by the Contractor.

30.2 The Contractor shall provide the Procuring Entity 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.

30.3 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.

30.4 If the Project Manager decides that the urgency of varying the work makes it imperative to proceed without a quotation being given and considered, no quotation shall be given and the Variation shall be treated as a Compensation Event.

30.5 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

30.6 In the case of an ad measurement 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, 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.

31. Payment Certificates

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- 31.1 The Contractor shall submit to the Project Manager a monthly progress report and statements of the estimated value of the work executed less the cumulative amount certified previously.
- 31.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- 31.3 The value of work executed shall be determined by the Project Manager.
- 31.4 The value of work executed shall comprise:
- (a) In the case of an ad measurement 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.
- 31.5 The value of work executed shall include the valuation of Variations and Compensation Events.
- 31.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

32. Payments

- 32.1 Payments shall be made promptly by the Procuring Entity after issue of a Payment Certificate, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Contractor, and after the Procuring Entity has accepted it.
- 32.2 Unless otherwise provided for in the SCC, in the event that the Procuring Entity fails to pay the Contractor any payment by its due date, the Contractor may deliver a written notice to the Procuring Entity that such payment is overdue. If the Procuring Entity does not make such payment within ten (10) days or receiving a notice that payment is overdue, the Contractor may raise a complaint with the Yobe State Bureau on Public Procurement, which may, subject to the approval of the State Executive Council, order the Procuring Entity to settle the outstanding invoice immediately or to pay to the Contractor 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 arbitration award.
- 32.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the currency of the Contract.
- 32.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

33. Compensation Events

- 33.1 The following shall be Compensation Events:
- (a) The Procuring Entity does not give access to a part of the Site by the Site Possession Date **stated in the SCC**.
 - (b) The Procuring Entity 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.

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- (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 Procuring Entity, or additional work required for safety or other reasons.
 - (h) Other contractors, public authorities, utilities, or the Procuring Entity 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 to the Contractor of any of the Procuring Entity's Risks.
 - (k) The Project Manager unreasonably delays issuing a Certificate of Completion.
- 33.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased, and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
- 33.3 As 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.
- 33.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

34. Taxes and Duties

- 34.1 The Contractor is liable for all taxes and duties in accordance with the laws of Yobe State and the applicable federal laws of Nigeria.
- 34.2 Unless otherwise **stated in the SCC**, the Project Manager shall not adjust the Contract Price if taxes, duties, and other levies are changed during the period from Start date to the date the Completion certificate.

35. Retention

- 35.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion **stated in the SCC** until Completion of the whole of the Works.
- 35.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 42.1, 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.

36. Liquidated Damages

- 36.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** 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 SCC**. The Procuring Entity may deduct liquidated

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damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

- 36.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate.

37. Bonus

- 37.1 If so provided in the bidding documents, the Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** 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.

38. Advance Payment

- 38.1 If so provided in the bidding documents, the Procuring Entity shall make advance payment to the Contractor of the amounts **stated in the SCC** by the date **stated in the SCC**, against provision by the Contractor of an Unconditional Bank Guarantee according to the format in the SCC and by a bank acceptable to the Procuring Entity 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.
- 38.2 The Contractor is to use the advance payment only for the execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices and other relevant documents to the Project Manager.
- 38.3 The 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.

39. Performance
Security

- 39.1 If **specified in the SCC**, the Contractor shall, within twenty-one (21) days of the notification of contract award, or, in the event of Challenge procedures under section 55 of the Law, within twenty-one (21) days of the resolution of the Challenge, provide a performance security for the performance of the Contract according to the format and in the amount **specified in the SCC**.
- 39.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.
- 39.3 As specified in the SCC, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Procuring Entity; shall be in one of the formats stipulated by the Procuring Entity in the **SCC**, or in another format acceptable to the Procuring Entity; shall be provided by an institution acceptable to the Procuring Entity, where the security is issued by a financial institution; and shall be valid for the period prescribed in the SCC.
- 39.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Contractor immediately following the date of Completion of the Contractor's performance obligations under the Contract, including any warranty obligations.

40. Dayworks

- 40.1 If 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.
- 40.2 All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project

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Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.

40.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

41. Cost of Repairs

41.1 Loss 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.

E. Finishing the Contract

42. Completion

42.1 The 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.

43. Taking Over

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

44. Final Account

44.1 The 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 two months of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within sixty (60) 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.

45. Operating and Maintenance Manuals

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

45.2 If the Contractor does not supply the Drawings and/or manuals by the dates **stated in the SCC** or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the SCC** from payments due to the Contractor.

46. Termination

46.1 The Procuring Entity may, by not less than thirty (30) days written notice of termination to the Contractor (except in case of the event referred to in (e) when the Procuring Entity may terminate the Contract with immediate effect and in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified hereunder, terminate the Contract if:

- (a) the Contractor fails to remedy a defect or other failure in the performance of their obligations within thirty days of receipt of a notice or within such period otherwise agreed between the Parties in writing;
- (b) the Contractor becomes insolvent or bankrupt or enters 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, other than for a reconstruction or amalgamation;

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- (c) the Contractor fails to comply with any final decision reached as a result of arbitration proceedings;
 - (d) the Contractor is unable as the result of Force Majeure, to perform a material portion of the Works for a period of not less than sixty (60) days;
 - (e) the Contractor, in the judgement of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;
 - (f) the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract; or
 - (g) the Contractor has been made the subject of a debarment sanction under section 8 (1) (e) of the Law.
- 46.2 The Contractor may, by not less than thirty (30) days written notice to the Procuring Entity after the occurrence of any of the events specified hereunder, terminate the Contract if:
- (a) the Procuring Entity fails to pay any money due to the Contractor pursuant to the Contract and not subject to dispute pursuant to GCC Clause 18, subject to the Contractor having taken the measures specified in GCC 32.2 to obtain due payment;
 - (b) the Procuring Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within forty-five (45) days (or such longer period as the Contractor may have subsequently approved in writing) following the receipt by the Procuring Entity of the Contractor's notice specifying such breach;
 - (c) the Contractor is unable, as the result of Force Majeure, to perform a material portion of the Works for a period of not less than sixty (60) days; or
 - (d) the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to GCC Clause 18.
- 46.3 If either Party disputes whether an event specified in GCC Clauses 46.1 or 46.2 has occurred, such Party may, within twenty-one (21) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to GCC Clause 18 and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.
- 46.4 If the Contract is frustrated by a Force Majeure event, 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.

47. Fraud and Corruption

47.1 If the Procuring Entity determines that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, or otherwise acted contrary to the obligations stated in section 58 of the Law, then the Procuring Entity may terminate the Contractor's employment under the Contract and cancel the contract, and the provisions of Clause 46.1 of these GCC shall apply as if such expulsion had been made under Sub-Clause (e). The Procuring Entity may recommend to the Yobe State Bureau on Public Procurement to debar the Contractor under section 8 (1) (e) of the Law.

47.2 Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, or obstructive practice during the execution of the Works, then the employee shall be removed in accordance with GCC 8.

For the purposes of this Sub-Clause:

- (a) "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;

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(b) “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;

(c) “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;

(d) “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; and

(e) “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 Procuring Entity’s 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 Procuring Entity’s oversight and management rights provided for under Sub-Clause 17.1.

48. Payment upon Termination

48.1 If 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 SCC**. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

48.2 If the Contract is terminated for the Procuring Entity’s convenience or because of a fundamental breach of Contract by the Procuring Entity, 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.

49. Property

49.1 All property belonging to the Contractor shall be removed forthwith by and at the expense of the Contractor if the Contract is terminated because of the Contractor’s default.