





































































































































































Services. However, the Tenderer shall continue performance of the Contract to the extent not terminated.

### 31.2 Termination for Insolvency.

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

### 31.3 Termination for Convenience.

- (a) The Procuring Entity, by notice sent to the Tenderer, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Tenderer under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Tenderer's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
  - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (ii) to cancel the remainder and pay to the Tenderer an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Tenderer.

## 32 Assignment

- 32.1 Neither the Procuring Entity nor the Tenderer shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC 1.1(i)</b>	The Procuring Entity is: <b>Eswatini Water Services Corporation</b>
<b>GCC 1.1 (n)</b>	The Project Site(s)/Final Destination(s) is/are: <b>MOTI AND LUHLANGOTSINI</b>
<b>GCC 7.1</b>	For <u>notices</u> , the Procuring Entity's address shall be:  Attention: <b>Procurement Manager</b>  Street Address: <b>CNR MR103 and Cultural Village Drive</b>  City: <b>Ezulwini</b>  <b>Eswatini</b>  Electronic mail address: <a href="mailto:procurement@ewsc.co.sz">procurement@ewsc.co.sz</a>
<b>GCC 11.1</b>	Details of Shipping and other Documents to be furnished by the Tenderer are <b>N/A</b> .  The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Tenderer will be responsible for any consequent expenses. <b>N/A</b>
<b>GCC 14.1</b>	<b><i>Sample provision</i></b> GCC 14.1—The method and conditions of payment to be made to the Tenderer under this Contract shall be as follows:  Payment for Goods and Services shall be made as follows: specified in GCC Clause 12. (iii) <b>On Acceptance:</b> One hundred (100) percent of the Contract Price shall be paid to the Tenderer within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Procuring Entity.

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GCC 14.5	The payment-delay period after which the Procuring Entity shall pay interest to the Tenderer shall be <b>56</b> days.  The interest rate that shall be applied is <b>0 %</b>
GCC 16.1	A Performance Security of <b>10% of the Accepted Contract Amount</b> shall be required
GCC 16.3	If required, the Performance Security shall be in the form of: <b>“a Bank Guarantee” or “a Performance Bond”</b>
GCC 21.2	The packing, marking and documentation within and outside the packages shall be: <b>respiratory kits</b>
GCC 23.1	The inspections and tests shall be: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i>
GCC 23.2	The Inspections and tests shall be conducted at: <b>MOTI AND LUHLANGOTSINI</b>
GCC 25.1	The liquidated damage shall be: <b>0.2% per day</b>
GCC 24.1	The maximum amount of liquidated damages shall be: <b>15%</b>
GCC 25.3	The period of validity of the Warranty shall be: <b>365</b> days  For purposes of the Warranty, the place(s) of final destination(s) shall be: <b>MOTI AND LUHLANGOTSINI</b>
GCC 25.5	The period for repair or replacement shall be: <b>7</b> days.

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# Section IX. Contract Forms

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# 1. Contract Agreement

*[The successful Tenderer shall fill in this form in accordance with the instructions indicated]*

THIS CONTRACT AGREEMENT is made

the *[insert: number]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *[insert complete name of Procuring Entity]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of .... of the Government of {insert name of Country of Procuring Entity}, or corporation incorporated under the laws of {insert name of Country of Procuring Entity}]* and having its principal place of business at *[insert address of Procuring Entity]* (hereinafter called "the Procuring Entity"), and
- (2) *[insert name of Tenderer]*, a corporation incorporated under the laws of *[insert country of Tenderer]* and having its principal place of business at *[insert address of Tenderer]* (hereinafter called "the Tenderer").

WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Tender by the Tenderer for the supply of those Goods and Services in the sum of *[insert Contract Price in words and figures]* (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Procuring Entity and the Tenderer, and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement
  - (b) Special Conditions of Contract
  - (c) General Conditions of Contract
  - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
  - (e) The Tenderer's Tender and original Price Schedules
  - (f) The Procuring Entity's Notification of Award
  - (g) *[Add here any other document(s)]*
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

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4. In consideration of the payments to be made by the Procuring Entity to the Tenderer as

hereinafter mentioned, the Tenderer hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

5. The Procuring Entity hereby covenants to pay the Tenderer in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of *Eswatini* on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: *[insert signature]*

in the capacity of *[insert title or other appropriate designation]*

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

For and on behalf of the Tenderer

Signed: *[insert signature of authorized representative(s) of the Tenderer]*

in the capacity of *[insert title or other appropriate designation]*

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

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## 2. Performance Security

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

Date: *[insert date (as day, month, and year) of Tender Submission]*  
 ONT No. and title: *[insert no. and title of Tendering process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Procuring Entity]*

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

We have been informed that *[insert complete name of Tenderer]* (hereinafter called "the Tenderer") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Tenderer, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)<sup>1</sup> in figures and words]* upon receipt by us of your first demand in writing declaring the Tenderer to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,<sup>2</sup> and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

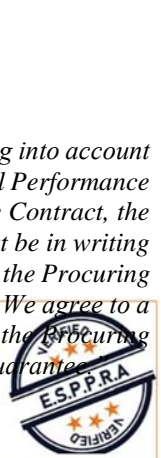
*[signatures of authorized representatives of the bank and the Tenderer]*

<sup>1</sup> The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>2</sup> Dates established in accordance with Clause 17.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 15.2 of the GCC intended to be secured by a partial Performance Guarantee. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

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### 3. Bank Guarantee for Advance Payment

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

Date: *[insert date (as day, month, and year) of Tender Submission]*

ONT No. and title: *[insert number and title of Tendering process]*

*[bank's letterhead]*

**Beneficiary:** *[insert legal name and address of Procuring Entity]*

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

We, *[insert legal name and address of bank]*, have been informed that *[insert complete name and address of Tenderer]* (hereinafter called "the Tenderer") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]* with you, for the supply of *[insert types of Goods to be delivered]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Tenderer, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)<sup>3</sup> in figures and words]* upon receipt by us of your first demand in writing declaring that the Tenderer is in breach of its obligation under the Contract because the Tenderer used the advance payment for purposes other than toward delivery of the Goods.

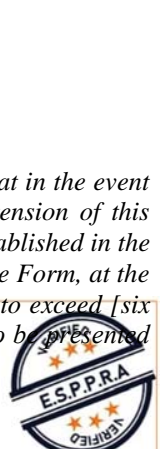
It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Tenderer on its account *[insert number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Tenderer under the Contract until *[insert date<sup>4</sup>]*.

<sup>3</sup> The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>4</sup> Insert the Delivery date stipulated in the Contract Delivery Schedule. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed *[six months/one year]* in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

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This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
*[signature(s) of authorized representative(s) of the bank]*

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