

GENERAL CONDITIONS OF CONTRACT

damages pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of liquidated damages.

22. LIQUIDATED DAMAGES

22.1 Subject to GCC Clause 24, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the Special Conditions of Contract of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the Special Conditions of Contract. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 23.

23. TERMINATION FOR DEFAULT

23.1 The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:

- (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to
- (b) if the Supplier fails to perform any other obligation(s) under the Contract.

23.2 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 23.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

24. FORCE MAJEURE

24.1 Notwithstanding the provisions of GCC Clauses 21, 22, and 23, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

24.2 For purposes of this clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

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

25. TERMINATION FOR INSOLVENCY

25.1 The Procuring Entity may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will

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not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.

26. TERMINATION FOR CONVENIENCE

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

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

- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.

27. RESOLUTION OF DISPUTES

27.1 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement, dispute, or claim arising out of or in connection with the Contract or the breach, termination, or validity thereof.

27.2 If, after thirty (30) days from the commencement of such informal negotiations, the Procuring Entity and the Supplier have failed to negotiate such an amicable settlement, any dispute, controversy, or claim arising out of or in connection with this Contract, or the breach, termination, or validity thereof, either party may require that the dispute be referred for resolution by final and binding arbitration in accordance with the UNCITRAL Arbitration Rules presently in force.

27.6 The arbitrators shall determine the matters in dispute in accordance with the laws in effect in Eswatini.

27.7 All notices to be given in connection with the arbitration shall be in writing and shall be effective upon receipt.

28. GOVERNING LANGUAGE

28.1 The Contract shall be written in the English. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

29. APPLICABLE LAW

29.1 The Contract shall be interpreted in accordance with the laws and regulations in effect in The Kingdom of Eswatini.



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30. NOTICES

30.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing by personal delivery, mail, or e-mail or facsimile and, if by e-mail or facsimile, confirmed in writing to the other party's address specified in the Special Conditions of Contract. Each party may change such address by notice to the other party.

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

31. TAXES AND DUTIES

31.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies incurred or imposed until delivery of the contracted Goods to the Procuring Entity.



SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses.

GCC clause ref:	Additional clause to GCC
1. Definitions	
GCC 1.1 (f)—The Procuring Entity is:	National Emergency Response Council on HIV/AIDS (NERCHA)
GCC 1.1 (h)—The Project Site is:	Physical delivery address: DDP NERCHA Head Office Farm 2 portion 738 Emajika Road Mbabane Postal address: PO Box 1937 Mbabane H100 Eswatini
6. Performance Security	
GCC 6.1	The amount of performance security, as a percentage of the Contract Price, shall be: 5% of the contract price.
7. Inspections and Tests	
GCC 7.1—Inspection	Inspection will take place at NERCHA Head Office Farm 2 portion 738 Emajika Road Mbabane upon delivery of consignments. Rejected items shall be replaced within 21 days at the Supplier's cost.
GCC 7.2	Inspections and tests may also be carried out at a properly accredited testing laboratory.
8. Packing	Packing shall be in accordance with the Specifications.
9. Delivery and Documents	
Delivery shall be completed:	The first instalment will be for delivery to DDP NERCHA Head Office Farm 2 portion 738 Emajika Road Mbabane
The Supplier will provide the following documents for payment for each delivery: -	For Goods supplied from abroad: Upon shipment, the Supplier shall notify the Procuring Entity and the insurance company in writing the full details of the shipment. In the event of Goods sent by airfreight, the Supplier shall notify



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	<p>the Procuring Entity a minimum of forty-eight (48) hours ahead of dispatch, the name of the carrier, the flight number, the expected time of arrival, and the waybill number. The Supplier shall email and then send by courier the following documents to the Procuring Entity, with a copy to the insurance company:</p> <ul style="list-style-type: none"> (i) Original Supplier's invoice, showing Procuring Entity as National Emergency Response Council on HIV/AIDS (NERCHA); the Contract number, Goods description, quantity, unit price, and total amount. Invoices must be signed in original, stamped, or sealed with the company stamp/seal; (ii) one original and two copies of the negotiable, clean, on-board through bill of lading marked "freight prepaid" and showing Procuring Entity as NERCHA and Notify Party as stated in the Contract, with delivery through to final destination as per the Schedule of Requirements and two copies of non-negotiable bill of lading, or air waybill, or multimodal transport document or equivalent, marked "freight prepaid" and showing delivery through to final destination as per the Schedule of Requirements; (iii) copy of the packing list identifying contents of each package; (iv) copy of the Insurance Certificate, showing the Procuring Entity as the beneficiary; (v) one original of the manufacturer's or Supplier's Warranty Certificate covering all items supplied; (vi) Manufacturer's or Supplier's Quality Certification (vii) any other procurement-specific documents required for delivery/payment purposes. <p><i>For Goods from within the Procuring Entity's country:</i></p> <p>Upon or before delivery of the Goods, the Supplier</p>



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	<p>shall notify the Procuring Entity in writing and deliver the following documents to the Procuring Entity:</p> <ul style="list-style-type: none"> (i) Original Supplier's invoice, showing Procuring Entity, the Contract number, Goods' description, quantity, unit price, and total amount. Invoice must be signed in original and stamped or sealed with the company stamp/seal; (ii) original delivery note, railway consignment note, road consignment note, truck or air waybill, or multimodal transport document showing Procuring Entity as NERCHA and delivery through to final destination as stated in the Contract; (iii) copy of the Insurance Certificate, showing the Procuring Entity as the beneficiary; (iv) copy of the packing list identifying contents of each package; (v) one original of the manufacturer's or Supplier's Warranty certificate covering all items supplied; (vi) Manufacturer's or Supplier's Quality Certification (vii) other procurement-specific documents required for delivery/payment purposes.
10. Insurance	The insurance shall be in the amount to 110 percent of the CIP value of the goods from "warehouse to warehouse" on "All risks" basis including war risks and strikes.
11. Transportation	<p>The Supplier will be required to deliver the goods (NERCHA Head Office Farm 2 portion 738 Emajika Road Mbabane, Eswatini) <u>including all taxes, duties and levies and local transportation costs.</u></p> <p>Tenderers are required to ensure deliveries are made only on working days as from 8.00 am to 3.00 pm. No deliveries will be accepted after 3.00 pm (Monday to Friday) and on weekends.</p>
12. Incidental Services	Services shall be made per mileage intervals



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<p>14. Warranty</p>	<p>All goods must be of fresh manufacture and must bear the dates of manufacture and expiry.</p> <p>The Supplier further warrants that all Goods supplied under the Contract will have remaining a minimum shelf life upon delivery as specified in the Specification.</p> <p>The Procuring Entity shall have the right to make claims under the above warranty for three months after the Goods have been delivered to the final destination indicated in the Contract. Upon receipt of a written notice from the Procuring Entity, the Supplier shall, with all reasonable speed, replace the defective Goods without cost to the Procuring Entity. The Supplier will be entitled to remove, at his own risk and cost, the defective Goods once the replacement Goods have been delivered.</p> <p>In the event of a dispute by the Supplier, a counter-analysis will be carried out on the manufacturer's retained samples by an independent neutral laboratory agreed by both the Procuring Entity and the Supplier. If the counter-analysis confirms the defect, the cost of such analysis will be borne by the Supplier as well as the replacement and disposal of the defective goods. In the event of the independent analysis confirming the quality of the product, the Procuring Entity will meet all costs for such analysis.</p> <p><u>Recalls.</u> In the event any of the Goods are recalled, the Supplier shall notify the Procuring Entity within fourteen (14) days, providing full details of the reason for the recall and promptly replace, at its own cost, the items covered by the recall with Goods that fully meet the requirements of the Technical Specification and arrange for collection or destruction of any defective Goods.</p>
<p>15. Payment</p> <p>GCC 15.1—the method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p>	<p>Payment shall be made within 30 (thirty) days from presentation of the required documents by the Supplier. Payment shall be made for the full value of the invoice(s) less any disputed portions of the delivery.</p>
<p>30. Notices</p>	
<p>GCC 30.1—Procuring Entity's address for notice purposes is:</p>	<p>NATIONAL EMERGENCY RESPONSE COUNCIL FOR HIV & AIDS PLOT 738 OF FARM 2</p>



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GCC clause ref:	Additional clause to GCC
	EMJIKA ROAD MBABANE THE KINGDOM OF ESWATINI Telephone: (268) 2406 5000 FAX: (268) 2406 5004/5/6
—Supplier's address for notice purposes:	



PERFORMANCE SECURITY FORM

To: NATIONAL EMERGENCY RESPONSE COUNCIL FOR HIV & AIDS
PLOT 738 OF FARM 2
EMJIKA ROAD
MBABANE
THE KINGDOM OF ESWATINI
Telephone: (268) 2406 5000
FAX: (268) 2406 5004/5/6

WHEREAS..... (hereinafter
Called “the Supplier”) has undertaken, in pursuance of Contract No.....

[reference number of the contract] date.....20....to supply [>>>>>>]
Hereinafter called “The Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by a reputable Financial Institution for the sum specified therein as security for compliance with the Contractor’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Contractor a guarantee:

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Contractor, up to a total of.....

(amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the Contractor to be in default under the Contract and without

cavil or argument, any sum or sums within the limit of(amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until theday of.....20.....

Signature and seal of the Guarantors

.....

(name of the bank or financial institution)

.....

(address)

.....

(date)

