



**CONTRACT FOR THE PROVISION OF LUMP SUM  
CONSULTING SERVICES BY FIRMS  
GENERAL CONTRACT CONDITIONS**



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## **I. GENERAL PROVISIONS**

### **1. Preliminary provisions**

- 1.1 The present General Contract Conditions (GCC) shall be considered as part of the Contract. Any interpretation of the GCC shall be made in line with the general meaning of the Specific Contract Conditions. (SCC)
- 1.2 In case of inconsistency of any provision of the Contract, including its GCC and SCC, in terms of meaning of any trade term, rights and obligations of the Parties the meaning, rights and obligations as prescribed by the *Public Procurement Act 2019*, the *Public Procurement Regulations 2020* and any other laws applicable in Kiribati shall prevail.
- 1.3 The Contract constitutes the entire agreement between the Procuring Entity and the Consultant and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.
- 1.4 Any rights and obligations under this Contract shall not be transferred to any third Party, without the prior written approval of the other Party.

### **2. Definitions**

- 2.1 The terms provided in the GCC shall have the following meaning:
  - (a) “Amendment” means an agreed numbered change, in writing, of a Contract or its parts after the signature of both Parties.
  - (b) “Applicable Laws” means the laws of the Republic of Kiribati.
  - (c) “Completion” means the fulfilment of the Consulting Services by the Consultant in accordance with the terms and conditions set forth in the Contract.
  - (d) “Consultant” means any consulting firm that provides the Consulting Services under the Contract.
  - (e) “Consulting Services” means Services that are typically of an intellectual and advisory nature.
  - (f) “Contract” means the agreement of economic interest concluded in writing between the Consultant and the Procuring Entity that has as its object the obligation to provide Consulting Services.
  - (g) “Contract Documents” means the documents listed in the Contract, including the GCC, the SCC and its annexes and any amendments to the SCC as agreed upon between the Parties.
  - (h) “Contract Price” means the price payable to the Supplier as specified in the Contract, subject to additions and adjustments or deductions, as may be made pursuant to the Contract.
  - (i) “Day” means calendar day.
  - (j) “Delivery” means the transfer of the Consulting Services from the Consultant to the Procuring Entity in accordance with the terms and conditions set forth in the Contract.
  - (k) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture (JV) member(s) assigned by the Consultant to perform the Consulting Services or any part thereof under the Contract.
  - (l) “Force Majeure” means an event which is beyond the reasonable control of a Party, 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. Force Majeure shall not include 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 any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of the Contract and avoid or overcome in the carrying out of its obligations hereunder. Force Majeure shall not include insufficiency of funds or failure to make any payment required.
  - (m) “GCC” means the General Contract Conditions.



- (n) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Consulting Services under the Contract and whose Curricula Vitae (CV) was taken into account in the technical evaluation of the Consultant’s proposal.
- (o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant to perform the Consulting Services or any part thereof under the Contract.
- (p) “Party” means the Procuring Entity or the Consultant, as the case may be; and “Parties” means both of them.
- (q) “Procuring Entity” means any governmental department, agency, organ or their unit, or any subdivision or multiplicity thereof, as designated by the Public Procurement Regulations, that engages in public procurement.
- (r) “SCC” means the Specific Contract Conditions.
- (s) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Consulting Services while remaining solely liable for the execution of the Contract.

### **3. Amendment and Severance**

- 3.1 No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of the Consultant and the Procuring Entity.
- 3.2 If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

### **4. Language**

- 4.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Consultant and the Procuring Entity, shall be written in 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.
- 4.2 The Consultant shall bear all possible costs of translation to the official Contract language and all risks of the accuracy of such translation.

- 5. **Joint Venture, Consortium or Association** If the Consultant is a joint venture, a consortium, or an association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

- 6. **Notice** Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means any expression consisting of words and or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

- 6.2 A notice shall be effective when delivered to the other party or on the notice’s effective date.

- 7. **Governing legislation** The Contract shall be governed by and interpreted in accordance with the laws of Kiribati, unless otherwise specified in the SCC.

### **8. Taxes and Duties**

- 8.1 Unless otherwise specified in the SCC, the Consultant, including any Sub-consultants and their personnel, shall pay taxes, duties, fees and other impositions as may be levied under Applicable Laws.

## **II. IMPLEMENTATION OF THE CONTRACT**



- 9. Effectiveness of the Contract** The Contract shall be considered valid following the signatures of the Parties and shall come into effect on the date of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Consulting Services (the "Effective Date").
- 10. Acceptance** The Procuring Entity may reject the Consulting Services when they are evaluated to be inadequate or not conforming to the Terms of Reference provided in Annex B. The Procuring Entity shall ask the Consultant to promptly either rectify or modify/improve the Consulting Services, as necessary, and at no cost to the Procuring Entity, to meet the required Terms of Reference. The Consultant must notify the Procuring Entity in writing when it considers practical completion has been reached.
- 10.2 In case the Consulting Services do not satisfy the Terms of Reference in spite of the Consultant's continual remedying, the Procuring Entity shall, after mutual discussion, be entitled to terminate the Contract as per Clause 15 of the GCC. In this case, the Consultant shall refund the full amount prepaid for any rejected Consulting Services and shall indemnify the Procuring Entity against all losses, damages and any additional expenses that the Procuring Entity incurred to finalise the non-compliant Consulting Services.
- 10.3 Unless otherwise agreed, the ownership of the Consulting Services shall pass to the Procuring Entity upon the Final Acceptance.
- 10.4 Upon transfer of the ownership, in accordance with 10.3, the Procuring Entity shall have the right to a two-year warranty period, during which the Consultant shall, at its own cost, remedy if and to the extent that the Consulting Services, or a major part of the Consulting Services (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Consultant. This obligation continues until the defect is rectified or the incomplete Consulting Services are finalised and does not come to an end when the warranty period is over.
- 11. Liquidated damages** If the Consultant fails to provide the Consulting Services on the Delivery Date or Dates, the Procuring Entity may deduct from the Contract Amount, liquidated damages equivalent to 1% of the Contract Amount for every week of delay or part thereof until actual delivery or performance. The maximum allowable deduction for such liquidated damages shall be 10% of the Contract Amount.
- 11.2 Liquidated damages shall be imposed without prejudice to other remedies under the Contract and under applicable laws. Once the maximum allowable deduction for liquidated damages provided above is reached, the Procuring Entity may consider terminating the Contract based on the grounds provided in Clause 13 of the GCC.
- 12. Expiration of the Contract** The Contract shall terminate at the end after such time period from the Effective Date as specified in the SCC.
- 13. Force majeure** The failure of a Party to fulfil any of Contract obligations shall not be considered to be a breach of the 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 the Contract.
- 13.2 A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfil its obligations with a minimum of delay. A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than ten (10) days following the occurrence of such event, providing evidence of the nature and cause of the event, and shall similarly give notice of the restoration of normal conditions as soon as possible. The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- 13.3 Any period within which a Party shall, pursuant to the 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.
- 13.4 Not later than twenty (20) days after the Consultant, as the result of an event of Force Majeure, have become unable to perform a material portion of the Consulting Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.



**14. Suspension**The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant if the Consultant fails to perform any of its obligations under the Contract, including the carrying out of the Consulting Services, provided that such notice of suspension shall;

- (a) specify the nature of the failure, and
- (b) request the Consultant to remedy such failure within a period not exceeding twenty (20) days after receipt by the Consultant of such notice of suspension.

**15. Termination by the Procuring Entity**The Procuring Entity may terminate the Contract by providing the Consultant with written notice, which shall not be less than twenty (20) days, in the following cases.

- (a) if the Consultant fails to remedy a failure in the performance of its obligations, as specified in a notice of suspension pursuant to Clause 14 above, within twenty (20) days from the notification of such notice or within such further period as the Procuring Entity may have subsequently approved in-writing;
- (b) if the Consultant becomes (or, if the Consultant includes Sub-consultants, if any of its members becomes) insolvent or bankrupt or enter into any agreements with its 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 amicable settlement proceedings pursuant to Clause 38 of the GCC;
- (d) if the Consultant submits to the Procuring Entity a statement which has a material effect on the rights, obligations or interests of the Procuring Entity and which the Consultant knows to be false;
- (e) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Consulting Services for a period of not less than sixty (60) days; or
- (f) if the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate the Contract.

**16. Termination by the Consultant**The Consultant may terminate the Contract by providing the Procuring Entity with written notice, which shall not be less than twenty (20) days, in the following cases.

- (a) if the Procuring Entity fails to pay any money due to the Consultant pursuant to the Contract and not subject to dispute pursuant to Clause 38 of the GCC within twenty (20) days after receiving written notice from the Consultant that such payment is overdue;
- (b) if the Procuring Entity is in material breach of its obligations pursuant to the Contract and has not remedied the same within twenty (20) 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;
- (c) if, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Consulting Services for a period of not less than sixty (60) days; or
- (d) if the Procuring Entity fails to comply with any final decision reached as a result of an amicable settlement resolution pursuant to Clause 38 of the GCC.

**16.2** Upon termination of the Contract pursuant to Clauses 15 or 16 of the GCC, or upon expiration of the Contract pursuant to Clause 12 of the GCC, all rights and obligations of the Parties shall cease, except

- (a) such rights and obligations as may have accrued on the date of termination or expiration,
- (b) the obligation of confidentiality set forth in Clause 20 of the GCC,
- (c) the Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 24 of the GCC, and



- (d) any right which a Party may have under Applicable Laws.
- 16.3 Upon termination of the Contract by notice of either Party to the other pursuant to Clauses 15 or 16 of the GCC, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Consulting Services to an end in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.
- 16.4 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 Clause 25 of the GCC and Clause 26 of the GCC.
- 16.5 Upon termination of the Contract pursuant to Clauses 15 or 16 of the GCC, the Procuring Entity shall make the following payments to the Consultant:
- (a) remuneration pursuant to Clause 33 of the GCC for Consulting Services satisfactorily performed prior to the effective date of termination;
  - (b) reimbursable expenditures pursuant to Clause 33 of the GCC for expenditures actually incurred prior to the effective date of termination; and
  - (c) except in the case of termination pursuant to paragraphs (a) through (d) of Clause 15.1 of the GCC, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of the return travel of the Personnel and their eligible dependents.
- 16.6 If either Party disputes whether an event specified in Clause 15.1 of the GCC or in Clause 16.1 of the GCC has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to amicable dispute resolution pursuant to Clause 38 of the GCC, and the Contract shall not be terminated on account of such event except in accordance with the terms of any resulting amicable settlement.

### III. OBLIGATIONS OF THE CONSULTANT

- 17. Standard of performance** The Consultant shall perform the Consulting Services and carry out its obligations with all due diligence and efficiency, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods.
- 17.2 The Consultant shall always act, in respect of any matter relating to the Contract or to the Consulting Services, as faithful advisers 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.
- 18. Law governing the Consulting Services** The Consultant shall perform the Consulting Services in accordance with Applicable Laws and shall take all practicable steps to ensure that any Sub-consultants, as well as the Personnel of the Consultant and any Sub-consultants, complies with Applicable Laws.
- 18.2 The Procuring Entity shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.
- 19. Conflict of interest or conflicting activities** The Consultant shall avoid situations that put its impartiality at risk. In case of Sub-consultants, the Consultant shall ensure that no Sub-consultants is in a situation of conflict of interest.
- 20. Confidentiality** The Consultant and any Sub-consultants shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any of its provision, specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity to any person other than a person employed by the Consultant in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 20.2 The Consultant shall not, without the Procuring Entity prior written consent, make use of any document or information enumerated in Clause 20.1 of the GCC except for purposes of performing the Contract.
- 20.3 Any document, other than the Contract itself, enumerated in Clause 20.1 of the GCC shall remain the property of the Procuring Entity and shall be returned to the Procuring Entity upon finalisation of the Contract if so required by the Procuring Entity.





20.4 The obligation of confidentiality shall be extended up to two (2) years after the expiration of the Contract.

**21. Insurance obligation** The Consultant shall purchase at its own cost but on terms and conditions approved by the Procuring Entity, an insurance against the risks and damages caused during the performance of the Contract and shall provide evidence to the Procuring Entity of the insurance contract conditions and payment.

**22. Replacement of Experts** Except as the Procuring Entity may otherwise agree in writing, no changes shall be made in the Key Experts.

22.2 Notwithstanding the above, the substitution of Key Experts during the Contract execution may be considered only based on the Consultant's written request and due to circumstances outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

**23. Removal of Experts** If the Procuring Entity finds that any of the Experts or Sub-consultants has committed serious misconduct or has been charged with having committed a criminal act, or if the Procuring Entity determine that a Consultant's Expert or Sub-consultants has engaged in corrupt, fraudulent, collusive, coercive practice while performing the Consulting Services, the Consultant shall, at the Procuring Entity's written request, provide a replacement.

23.2 In the event that any of Key Experts, Non-Key Experts or Sub-consultants is found by the Procuring Entity to be incompetent or incapable in discharging assigned duties, the Procuring Entity, specifying the grounds therefore, may request the Consultant to provide a replacement or vary the contract to remove costs associated with removed experts or Sub-consultants.

23.3 Any replacement of the removed Experts or Sub-consultants shall possess better qualifications and experience and shall be acceptable to the Procuring Entity.

23.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

**24. Accounting, inspection and auditing** The Consultant shall keep accurate and systematic accounts and records in respect of the Consulting Services, in accordance with the Kiribati legislation, and shall permit the Procuring Entity or its designated representative periodically, and up to one (1) year from the expiration or termination of the Contract, to inspect the accounts and records and to make copies of the relevant documentation as well as to have them audited by the Kiribati Audit Office.

**25. Documents prepared by the Consultants 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 the execution of the Contract shall become and remain property of the Procuring Entity, and the Consultant shall, not later than upon termination or expiration of the Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory. The Consultant may retain a copy of such documents and software.

**26. Equipment and Materials furnished by the Procuring Entity** Equipment and materials made available to the Consultant by the Procuring Entity, or purchased by the Consultant with funds provided by the Procuring Entity, shall be the property of the Procuring Entity and shall be marked accordingly.

26.2 Upon termination or expiration of the Contract, the Consultant shall make available to the Procuring Entity an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Procuring Entity's instructions.

26.3 While in possession of such equipment 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.

#### **IV. CONSULTANT PERSONNEL AND SUB-CONSULTANTS**

**27. General** The Consultant shall employ and provide such qualified and experienced personnel and Sub-consultants as are required to carry out the Consulting Services.



- 28. Approval of Personnel** The Consultant shall submit to the Procuring Entity for review a list of personnel that it intends to employ for the execution of the Contract. If the Procuring Entity does not object in writing (stating the reasons for the objection) within twenty (20) days from the date of receipt of the list, the personnel shall be deemed to have been approved by the Procuring Entity.
- 29. Removal and/or replacement of personnel** 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, it becomes necessary to replace any of the personnel, the Consultant shall forthwith provide as a replacement a person of equivalent or better qualifications.
- 29.2 If the Procuring Entity finds that any of the personnel has committed serious misconduct or has been charged with having committed a criminal action, or has reasonable cause to be dissatisfied with their performance, the Consultant shall, at the Procuring Entity's written request specifying the reasons, provide as a replacement a person with acceptable qualifications and professional experience.
- 29.3 In case of replacement of any of the personnel of the Consultant, as per Clauses 29.1 and 29.2, the rate of remuneration applicable to such person as well as any reimbursable expenditures the Consultants may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Procuring Entity. The remuneration to be paid for the new appointed personnel shall in no case be higher than the remuneration which would have been paid to the replaced personnel.
- 30. Project manager** If required by the SCC, the Consultant shall appoint a project manager responsible to ensure during the Consulting Service performance and the validity of the Contract the correct performance of the Consulting Services, an efficient communication with the Procuring Entity and a continuous monitoring of the fulfilment of GCC and SCC of the Contract.

## **V. OBLIGATIONS OF THE PROCURING ENTITY**

- 31. Assistance and exemptions** Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to ensure that the Government of Kiribati shall:
- (a) provide the Consultant, including any Sub-consultants and their personnel, with work permits and any other document necessary to enable the Consultant to perform the Consulting Services as well as with entry and exit visas, residence permits exchange permits and any other documents required for their staying in Kiribati;
  - (b) facilitate prompt clearance through customs of any property required for the Consulting Services and of the personal effects of the personnel;
  - (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 Consulting Services;
  - (d) exempt the Consultant, including any Sub-consultants and their personnel, 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 Applicable Laws; and
  - (e) grant to the Consultant, including any Sub-consultants and their personnel, the privilege, pursuant to Applicable Laws, of bringing into Kiribati reasonable amounts of foreign currency for the purposes of the Consulting Services and/or for personal use.
- 32. Payments** In consideration of the Consulting Services performed by the Consultant under the Contract, the Procuring Entity shall make to the Consultant such payments and in such manner as is provided by part VI of the GCC.
- 32.2 If advance payments are exceptionally agreed by the Parties, the Consultant shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract.
- 32.3 If an advance payment is exceptionally agreed by the Procuring Entity, the payment shall be conditional to the receipt and acceptance by the Procuring Entity of a performance guarantee, unless specifically waived by the Procuring Entity.

## **VI. PAYMENTS TO THE CONSULTANT**



**33. Remuneration and reimbursable expenditures**The remuneration of the Consultant shall constitute the sole remuneration in connection with the contract of the Consulting Service provided.

33.2 The total payment due to the Consultant shall not exceed the Contract Price which is an all-inclusive fixed lump-sum covering all costs required to carry out the Services described in the SCC. Except as provided in Clause 3 of the GCC, the Contract Price may only be increased above the amounts stated in the SCC if the Parties have agreed to additional payments in accordance with Clause 3.

**34. Currency of the Contract**Unless otherwise agreed, in line with Article 3 of the SCC, the payments to the Consultant for the execution of the Consulting Services shall be made in Australian Dollars (AUS or AU\$), which is the official currency of Kiribati.

### **35. Terms and conditions of payment**

35.1 Payments will be made to the account of the Consultant and according to the payment schedule stated in the SCC. Unless otherwise stated in the SCC and only if agreed in line with Clause 32 of the GCC, the first payment shall be made against the provision by the Consultant of an advance payment guarantee for the same amount and shall be valid for the period stated in the SCC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the Client shall have approved in writing. Any other payment shall be made after the conditions listed in the SC for such payment have been met, and the Consultant has submitted an invoice to the Client specifying the amount due.

35.2 The final payment under this Clause shall be made only after the final report and a final statement shall have been submitted by the Consultant and approved as satisfactory by the Procuring Entity. The Consulting Services shall be deemed completed and finally accepted by the Procuring Entity and the final report and final statement shall be deemed approved by the Procuring Entity as satisfactory ninety (90) days after receipt of the final report and final statement by the Procuring Entity unless the Procuring Entity, within such ninety (90)-day period, gives written notice to the Consultant specifying in detail the deficiencies in the Consulting Services, the final report or final statement. The Consultant shall promptly make any necessary corrections, and upon completion of such corrections, the process shall be repeated. Any amount which the Procuring Entity has paid or authorised to be paid in accordance with this Clause 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 thirty (30) days after receipt by the Consultant of notice. Any claim by the Procuring Entity for reimbursement must be made within twelve (12) months after receipt by the Procuring Entity of a final report and a final statement approved by the Procuring Entity in accordance with what above.

35.3 All payments under the Contract shall be made to the accounts of the Consultant specified in the SCC.

## **VII. FAIRNESS AND GOOD FAITH**

**36. Good Faith**The Parties undertake to act in good faith with respect to each other's rights under the Contract and to adopt all reasonable measures to ensure the realisation of the objectives of the Contract.

**37. Operation of the Contract**The Parties recognize that it is impractical in the 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 the Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of the Contract either Party believes that the 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 amicable settlement in accordance with part VIII of GCC.

## **VIII. SETTLEMENT OF DISPUTES**

**38. 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.



- 39. Dispute Settlement and competent Court** If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Consultant may give notice to the other party of its intention to commence a court proceeding.
- 39.2 Any dispute arising between the Parties concerning the interpretation and/or execution of the Contract that the Parties fail to solve amicably, in accordance with Clause 38 of the GCC, shall be exclusively submitted to the competent court of Kiribati.
- 39.3 Notwithstanding any reference to the initiation of a court settlement, the Parties shall continue to perform their respective non disputed obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Consultant any non-contested payment due the Consultant.