



MINISTRY OF FINANCE

Procurement Policy Unit

(Established under section 6 of the Public Procurement Act, 2015)

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GENERAL CONDITIONS OF CONTRACT FOR REQUEST FOR QUOTATION

[Issued in terms of section 7(1)(i) of the Public Procurement Act, 2015]

NON-CONSULTANCY SERVICES (LUMP-SUM)

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Section VI. General Conditions of Contract

1. This sample contract for the Provision of Services has been prepared for use when hiring firms to provide Services paid on the basis of lump-sum remuneration.

2. Lump-sum contracts are used when definition of the tasks to be performed is clear and unambiguous, when the commercial risk taken by the Service Provider is minimal, and when therefore such Service Provider/s are prepared to perform the assignment for an agreed predetermined lump-sum price. Such price is arrived at on the basis of inputs—including rates—provided by the Service Provider. The Employer agrees to pay the Service Provider according to a schedule of payments linked to the delivery of certain outputs. A major advantage of the lump-sum contract is the simplicity of its administration, the Employer having only to be satisfied with the outputs without monitoring the staff inputs.

3. The Contract includes four parts: the Form of Contract, the General Conditions of Contract, the Special Conditions of Contract, and the Appendices. The Employer using this sample contract should not alter the General Conditions. Any adjustment to meet project features should be made only in the Special Conditions.

These notes are intended only as information for the Employer or the person drafting the bidding documents. They should not be included in the final documents.

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Section VI. General Conditions of Contract

A. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) The Adjudicator is the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- (b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Bid;
- (c) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Employer
- (d) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (e) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6.2;
- (f) “Dayworks” means varied work inputs subject to payment on a time basis for the Service Provider’s employees and equipment, in addition to payments for associated materials and administration.
- (g) “Employer” means the party who employs the Service Provider
- (h) “Foreign Currency” means any currency other than the currency of the country of the Employer;
- (i) “GCC” means these General Conditions of Contract;
- (j) “Government” means the Government of the Republic of Namibia;
- (k) “Local Currency” means Namibian Dollars;
- (l) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity **specified in the SCC** to act on their behalf in exercising all the Service Provider’ rights and obligations towards the Employer under this Contract;

- (m) “Party” means the Employer or the Service Provider, as the case may be, and “Parties” means both of them;
- (n) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- (o) “Service Provider” is a person or corporate body whose Bid to provide the Services has been accepted by the Employer;
- (p) “Service Provider’s Bid” means the completed bidding document submitted by the Service Provider to the Employer
- (q) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- (r) “Specifications” means the specifications of the service included in the bidding document submitted by the Service Provider to the Employer
- (s) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in the Scope of Work; and in the Specifications and Schedule of Activities included in the Service Provider’s Bid.
- (t) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4.

- 1.2 Applicable Law** The Contract shall be interpreted in accordance with the laws of Namibia.
- 1.3 Language** This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
- 1.4 Notices** Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, or facsimile to such Party at the address **specified in the SCC**.
- 1.5 Location** The Services shall be performed at such locations as are specified in the scope of service and, where the location of a particular task is not so specified, at such locations, whether in Republic of Namibia or elsewhere, as the Employer may approve.
- 1.6 Authorized Representatives** Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Service Provider may be taken or executed by the

officials **specified in the SCC.**

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| 1.7 Inspection and Audit by the Public Body | The Service Provider shall permit the Employer to inspect its accounts and records relating to the performance of the Services and to have them audited by auditors appointed by the Employer, if so required by the Latter. |
| 1.8 Taxes and Duties | The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price. |

2. Commencement, Completion, Modification, and Termination of Contract

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|--------------------------------------|--|
| 2.1 Effectiveness of Contract | This Contract shall come into effect on the date the Contract is signed by both parties and such other later date as may be specified in SCC. |
| 2.2 Commencement of Services | |
| 2.2.1 Program | Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general methods, arrangements, order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated. |
| 2.2.2 Starting Date | The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be specified in the SCC. |
| 2.3 Intended Completion Date | Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is specified in the SCC. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.10. In this case, the Completion Date will be the date of completion of all activities. |
| 2.4 Modification | Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties. |
| 2.5 Force Majeure | |
| 2.5.1 Definition | For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes |

a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

**2.5.2 No Breach
of Contract**

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

**2.5.3 Extension
of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.6 Termination

**2.6.1 By the
Employer**

The Employer may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Employer may have subsequently approved in writing;
- (b) if the Service Provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Service Provider, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purposes of this Sub-Clause:

- (i) “corrupt practice”¹ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice”² is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”³ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁴ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an 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.

(e) In case the liquidated damage reaches the maximum as per sub-clause 3.10.1.

(f) Notwithstanding the above the Employer may terminate the contract for its convenience after giving a prior notice of 30 days.

2.6.2 By the

The Service Provider may terminate this Contract, by not less than

¹ For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Public Entity staff and employees of other organizations taking or reviewing procurement decisions.

² For the purpose of this Contract, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ For the purpose of this Contract, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

⁴ For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution.

Service Provider thirty (30) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- (a) if the Employer fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.6.3 Payment upon Termination Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Employer shall make the following payments to the Service Provider:

- (a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, 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.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade

from Commissions and Discounts.	commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.
3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project	The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
3.2.3 Prohibition of Conflicting Activities	<p>Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:</p> <ul style="list-style-type: none"> (a) during the term of this Contract, any business or professional activities in the Republic of Namibia which would conflict with the activities assigned to them under this Contract; (b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract; (c) after the termination of this Contract, such other activities as may be specified in the SCC.
3.3 Confidentiality	The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Employer's business or operations without the prior written consent of the Employer.
3.4 Assignment	The Service Provider shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the Employer.
3.5 Indemnification	The Service Provider shall indemnify, hold and save harmless, and defend, at its own expense, the Employer, its officials, agents, servants and employees from and against all suits, claims, demands,

and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Service Provider, or the Service Provider's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of Employer's liability and Workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this clause do not lapse upon termination of this Contract.

3.6 Insurance to be Taken Out by the Service Provider

- (a) The Service Provider shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- (b) The Service Provider shall provide and thereafter maintain all appropriate Employer's Liability and Workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- (c) The Service Provider shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, or other equipment owned or leased by the Service Provider or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- (d) Except for the Employer's Liability and Workmen's compensation insurance, the insurance policies under this clause shall:
 - (i) Name the Employer as additional insured;
 - (ii) Include a waiver of subrogation of the Service Provider's rights to the insurance carrier against the Employer;
 - (iii) Provide that the Employer shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

3.7 Service

The Service Provider shall obtain the Employer's prior approval in

Provider's Actions Requiring Employer's Prior Approval	<p>writing before taking any of the following actions:</p> <ul style="list-style-type: none"> (a) entering into a subcontract for the performance of any part of the Services, (b) changing the Program of activities; and (c) any other action that may be specified in the SCC.
3.8 Reporting Obligations	The Service Provider shall submit to the Employer the reports and documents specified in the scope of work in the form, in the numbers, and within the periods set forth.
3.9 Documents Prepared by the Service Provider to Be the Property of the Employer	All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.8 shall become and remain the property of the Employer, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Employer, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SCC .
3.10 Liquidated Damages	
3.10.1 Payments of Liquidated Damages	The Service Provider shall pay liquidated damages to the Employer 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 Employer may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.
3.10.2 Correction for Over-payment	If the Intended Completion Date is extended after liquidated damages have been paid, the Employer shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.
3.10.3 Lack of performance penalty	If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and

specified in the SCC.

3.11 Performance Security

If **specified in the SCC** The Service Provider shall provide the Performance Security to the Employer no later than the date specified in the Letter of acceptance. The Performance Security shall be issued in an amount and form and by a bank acceptable to the Employer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 30 days from the Completion Date of the Contract.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix A. The Key Personnel and Subcontractors listed by title as well as by name in Appendix A are hereby approved by the Employer.

4.2 Removal and/or Replacement of Personnel

(a) Except as the Employer may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

(b) If the Employer finds that any of the Personnel have:

(i) committed serious misconduct or have been charged with having committed a criminal action, or

(ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel,

then the Service Provider shall, at the Employer's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Employer.

(c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Employer

5.1 Assistance and Exemptions

The Employer shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as

specified in the SCC.

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Employer shall make available to the Service Provider the Services and Facilities listed under Appendix B.

6. Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in the scope of work. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.2 Contract Price

(a) The price payable in local currency is **set forth in the SCC.**

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Schedule 3.

6.4 Terms and Conditions of Payment

6.4 Payments will be made to the Service Provider according to the payment schedule **stated in the SCC. Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee from a bank operating in Namibia for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Employer specifying the amount due.

6.5 Interest on Delayed Payments

6.5 If the Employer has delayed payments beyond fifteen (15) days after the due date stated in the SCC, interest shall be paid to the Service Provider for each day of delay at the rate stated in the

SCC.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \frac{L_{mc}}{L_{oc}} + C_c \frac{I_{mc}}{I_{oc}}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency “c”.

A_c , B_c and C_c are coefficients **specified in the SCC**, representing: A_c the nonadjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency “c”; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and L_{oc} is the index prevailing 28 days before Bid opening for labor; both in the specific currency “c”.

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Bid opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o is the number of units of currency of the country of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

6.7 Dayworks

6.7.1 If applicable, the Daywork rates in the Service Provider's Bid shall be used for small additional amounts of Services only when the Employer has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Employer. Each completed form shall be verified and signed by the Employer representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Day works subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

6.8 Labor Clause

6.8.1(a) The remuneration and other conditions of work of the employees of the Service Provider shall not be less favorable than those established for work of the same character in the trade concerned-

- (i) by collective agreement applying to a substantial proportion of the employees and employers in the trade concerned;
- (ii) by arbitration awards; or
- (iii) by Remuneration Orders.

(b) Where remuneration and conditions of work are not regulated in a manner referred to at (a) above, the rates of the remuneration and other conditions of work shall be not less favorable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.

6.8.2 No Service Provider shall be entitled to any payment in respect of work performed in the execution of the contract unless he has, together with his claim for payment filed a certificate:

- (a) showing the rates of remuneration and hours of work of the various categories of employees employed in the execution of the contracts;
- (b) stating whether any remuneration payable in respect of work done is due;
- (c) containing such other information as the Chief Executive Officer of the Public Body administering the contract may require to satisfy himself that the provisions under this clause have been complied with.

6.8.3 Where the Chief Executive Officer of the Public Body

administering the contract is satisfied that remuneration is still due to an employee employed under this contract at the time the claim for payment is filed under subsection 1, he may, unless the remuneration is sooner paid by the Service Provider, arrange for the payment of the remuneration out of the money payable under this contract.

- 6.8.4 Every Service Provider shall display a copy of this clause of the contract at the place at which the work required by the contract is performed.

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Employer shall be as **indicated in the SCC**. The Employer shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Employer may instruct the Service Provider to search for a Defect and to uncover and test any service that the Employer considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and lack of Performance Penalty

- (a) The Employer shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- (b) Every time notice of a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Employer's notice.
- (c) If the Service Provider has not corrected a Defect within the time specified in the Employer's notice, the Employer will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.10.3

8. Settlement of Disputes

8.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

8.2 Dispute Settlement

- 8.2.1 If any dispute arises between the Employer and the Service Provider in connection with, or arising out of, the Contract or the provision of the Services, whether during carrying out the Services or after their completion, the matter shall be referred to

the Adjudicator within 14 days of the notification of disagreement of one party to the other.

8.2.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

8.2.3 The Adjudicator shall be paid by the hour at the rate **specified in the BDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Employer and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

8.2.4 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place **shown in the SCC**.

8.2.5 Should the Adjudicator resign or die, or should the Employer and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Employer and the Service Provider. In case of disagreement between the Employer and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.