

“insert name of procurement or project”
CONSTRUCTION CONTRACT

Dated: _____

CONTRACT

AND

CONDITIONS

OF

__insert name of procurement or project__

BETWEEN

PROCURING ENTITY

AND

CONTRACTOR

THIS CONTRACT completed on the _____ day of _____, 2020, is made between the Government of Kiribati through the _____ *insert name of procuring entity e.g. if it is the Ministry (Insert Ministry concerned())* whose office is at the address stated in Article O of the Annexure to the GCC, (called “**the Procuring Entity**”) of the one part, and “*insert name of Contractor* whose office is at the address stated in Article O of the Annexure to the GCC (called “**the Contractor**”) of the other part.

Together called the “Parties”

WHEREAS:

The Procuring Entity is desirous that certain Work(s) should be undertaken, *viz:* the construction of the *insert name of procurement or project*” and has accepted a Tender by the Contractor for the undertaking, completion and maintenance of such Work.

NOW IT IS HEREBY AGREED:

1. In this Contract words and expressions shall unless the context otherwise require have the same meanings as are respectively assigned to them in the General Conditions of Contract (GCC) hereinafter referred to.
2. The following documents (called the “Contract Documents”) shall be deemed to form and to be read and construed as part of this Contract, *viz:*
 - a. The said Tender;
 - b. The Specification;
 - c. The Drawings;
 - d. The Bill of Quantities;
 - e. The Material List;
 - f. The Work Program;
 - g. The Insurance Policy or Assets of the Contractor (where appropriate).
 - h. The Site Plan Sketch for Access, Loading and Unloading Bays, Site Office, Material Storages if on Site;
 - i. The General Conditions of Contract (Article A to N);
 - j. Annexure to the General Conditions of Contract;
 - k. Any other documents to be mutually agreed between the parties.
3. In consideration of the Agreements on the part of the Procuring Entity in this Contract set forth the Contractor will construct, complete, and maintain the Works in conformity in all respects with the provisions of the Contract and will perform, fulfill, and comply with, submit to and observe all and singular the provisions, conditions, stipulations and requirements and all matters and things expressed or shown in or reasonably to be inferred from the Contract and which are to be performed, fulfilled, complied with and submitted to or observed by or on the part of the Contractor.

4. In consideration of the Agreements on the part of the Contractor in this Contract set forth the Procuring Entity will make payments to the Contractor in accordance with the provisions of the Contract and will perform, fulfill, and comply with, submit to and observe all and singular the provisions, conditions, stipulations and requirements and all matters and things expressed or shown in or reasonably to be inferred from the Contract and which are to be performed, fulfilled, complied with and submitted to or observed by or on the part of the Procuring Entity.

5. If any party to this Contract consists of one or more persons and one or more Corporations or two or more persons or two or more corporations, this Contract shall bind such person or persons and such Corporation or Corporations or such Administrators, Successors and permitted Assigns (in the case of the Contractor) and Assigns (in the case of the Procuring Entity) jointly and severally and the person or persons and or Corporations or Corporations included in the term 'Contractor' or the term 'Procuring Entity' in this Contract shall jointly be entitled to the benefit of the Contract and the Contract shall be read and construed accordingly.

6. This Contract shall take effect according to its tenor notwithstanding any prior Agreement or Contract in conflict or at variance with it or any correspondence or documents relating to the subject matter of the Agreement which may have passed between the parties to the Contract prior to its execution.

7. This Contract supersedes and replaces any prior agreement or representation (written or oral) between the parties.

IN WITNESS whereof the parties hereto have hereunto set their respective hands the day and year first above written.

Signed by the Procuring Entity:

Name/Rank

For Procuring Entity

In the presence of: _____

Signature: _____

Address: _____

Signed by the Contractor

Name/Rank

Contractor

In the presence of: _____

Signature: _____

Address: _____

GENERAL CONDITIONS OF CONTRACT

Article A - Interpretation

In the Contract the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires -:

"Bill of Quantities" means a statement issued to tenderers for a lump sum contract or for the lump sum part of a partly lump sum, partly schedule of rates contract, by the Procuring Entity stating estimated quantities of work to be done under the Contract.

"Constructional Plant" means all appliances and things on the Site (including scaffolding, form work and the like) required for the execution of the work under the Contract, but not for incorporation in the Works.

"Contract Price" means the sum which in the case of a Lump Sum Contract, is stated in the Contract to be payable to the Contractor for the execution of the Works and the performance of the Contractor's obligations under the Contract, but excluding any additions or deductions which may be required to be made pursuant to the Contract.

"Date of Acceptance of Tender" means the date of acceptance in writing by one party of an offer by the other (including a counter-offer) for the execution of the Works and the performance of the Contract.

"Day-work" shall mean work valued on the basis of time spent by the workmen, materials used, plant employed and other relevant costs.

"Drawings" means the drawings referred to in the Contract and any modification of such drawings notified to the Contractor by the Contract Supervisor and includes such other drawings as may from time to time be supplied to the Contractor by the Contract Supervisor or the use of which has been permitted by the Contract Supervisor, for the purposes of the 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 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 Subcontractors 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 hereunder.

“General Conditions” mean these General Conditions of Contract (GCC), as modified by the Annexure to these conditions.

“Materials” means any of raw, manufactured or fabricated materials for the construction which has been procured by the Procuring Entity, goods, machine, equipment, plant (other than Construction) or thing required for use in the Work under the Contract or for incorporations in the Works which has been permitted by the Contractor to bring on site.

“Practical Completion” is the stage in the execution of the work under the Contract when:

- (a) The Works are complete except for minor omissions and minor defects;
 - i. which do not prevent the Works from being reasonably capable of being used for their intended purpose; and
 - ii. in relation to which the Contract Supervisor determines that the Contractor has reasonable grounds for not promptly correcting them, and
 - iii. rectification of which will not prejudice the convenient use of the Works.
- (b) Those tests which are required by the Contract to be carried out and passed before the Works are handed over to the Procuring Entity and Contract Supervisor and have been carried out and passed in accordance to Article J1 of this GCC.

“Procuring Entity” means any governmental ministry, department, agency, organ or their unit, or subdivision or multiplicity thereof, as designated by the Procurement Regulations 2020 that engages in public procurement.

“Site” means the land and other places made and to be made available to the Contractor by the Procuring Entity for the purpose of the Contract. In this Contract the site location is *_insert name of site_*.

“Specification” means the Specification for the Work under the Contract as existing at the Date of Acceptance of Tender and any modification of such Specification thereafter directed or the use of which has been permitted by the Contract Supervisor pursuant to his powers in that behalf contained in the Contract.

“Contractor” means any natural or legal person which offers the execution of Works and is also considered as Supplier.

“Subcontractor” means any person engaged by the Contractor to execute a part of the work under the Contract on behalf of the Contractor and to comply with Article B7 of the GCC.

“Contract Supervisor” means the architect or engineer or other person named in the Annexure hereto as the Contract Supervisor, or other person from time to time appointed in writing by the Procuring Entity to be the Contract Supervisor for the purposes of the Contract and notified as such in writing to the Contractor by the Procuring Entity.

“Works” means the whole of the work to be executed in accordance with the Contract including all variations provided for by the Contract, which by the Contract are to be handed over to the Procuring Entity. Where there is a reference in the Contract to “work under the Contract” it means all work (variations, remedial work, etc) which under the Contract the Contractor is or may be required to execute.

Headings and sub-headings in these GCC are not deemed to be part thereof or of the Contract.

Words in the singular shall include the plural and words in the plural shall include the singular, according to the requirements of the context.

Words importing the masculine gender shall include the feminine gender or the neuter gender, as the case may be.

“Person” includes a firm or body corporate or unincorporated as well as an individual.

A month is a calendar month.

A week is seven consecutive days.

A day is twenty-four consecutive hours.

Article B - Overview

B1 - Contractor’s Obligations

- to direct the manner of performance;
- to set out the Works;
- to supervise the necessary Works competently;
- to maintain satisfactory health and safety on the Site;
- to carry out the Works in a proper and workmanlike manner;
- to comply with the Contract Documents;
- to comply with statutory requirements;
- to procure/order all the required materials for the Works;
- to deliver or ship the materials ordered to the Site;
- to ensure that the materials ordered arrived on the Site before the expiry of three (3) months from the date of the Contract;
- to secure storage of the materials and goods until after 5 working days from the date in which the Certificate of Practical Completion of the Works is issued;
- to return the materials remaining after the Practical Completion of the Works to the Employer.

B2 Procuring Entity’s Obligations

- pay the Contractor the contract price;

- to provide assistance with regards to materials procurement if materials on Site are not enough to accommodate the constructions.

B3 Contract Supervisor's Obligations

- issue any further information necessary for the proper carrying out of the Work;
- issue all certificates;
- confirm instructions;
- obtain and give to the Contractor any statutory approvals required to begin the Work;
- obtain from any neighboring owners any easements or permissions that are required before the Work can begin;
- ensure the quality of materials and standards of workmanship meet the Contract Supervisor's reasonable satisfaction.

B4 Contractor's Program

The Contractor must give the Contract Supervisor a program within 10 days of commencing on the Site. The program must include dates of commencement and completion of the major stages of the Work, the date for practical completion, the start and completion dates of all trades and a critical path. An updated program must be given when the dates for practical completion have been adjusted by 5 working days or more or such other period as agreed.

B5 Contract Price

The Contract price is a lump sum and the Contractor represents that the contract price allows for:

- everything reasonably required to complete the Works;
- all provisional sums and prime costs;
- installation of any items required to be installed by the Contractor;
- rise and fall;
- costs associated with transportation of ordered materials (inclusive shipping and transportation to the Site on Tarawa);

B6 Taxes and Duties

Unless otherwise specified in this Contract, the Contractor, including any Subcontractor and their personnel, shall pay such taxes, duties, fees and other impositions as may be levied under relevant legislation.

(Notes: Calculation, payments and/or exemption of tax has to be confirmed and cleared from tax before contract is signed.)

B7 Assignment

Neither the Procuring Entity nor the Contractor, without the written consent of the other, assign the contract or any rights thereunder.

B8 Person in charge

The Contractor shall ensure that at all reasonable times he has on the site a competent person in charge and any instructions given to that person by the Contract Supervisor shall be deemed to have been issued to the Contractor.

B9 Sub contract

The Contractor shall ensure that at all reasonable times he has on the site a competent person in charge and any instructions given to that person by the Contract Supervisor shall be deemed to have been issued to the Contractor.

B10 Contract Supervisor's instructions

The Contract Supervisor may issue written instructions which the Contractor will comply with. If instructions are given orally they will within two (2) days be confirmed in writing by the Contract Supervisor.

Article C Liability

C1 Risk before practical completion

Until the Contract Supervisor issues the Certificate of Final Completion the Contractor bears the risks of injury, illness, disease or death of any person occurring as a result of the Work, risk of damage to property, and risk of damage to tools and equipment.

C2 Liability of Contractor - personal injury or death

The Contractor shall be liable for, and shall indemnify the Procuring Entity against, any expense, liability, loss, claim or proceedings in respect of personal injury or death of any person arising out of or in the course of or caused by the carrying out of the Work.

C3 Liability of Contractor - injury or damage to property

The Contractor shall be liable for, and shall indemnify the Procuring Entity against any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage to any property in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Work and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Work or any part of it.

Article D Insurance

D1 Contractor's insurance of his liability

The Contractor shall insure the Work and the Site material against loss and damage for the full value. After any inspection required by the insurers in respect of a claim under

the insurance has been completed the Contractor shall with due diligence restore the damaged work, replace or repair any lost or damaged site materials, remove or dispose of any debris and proceed with the carrying out and completion of the Work.

D2 Evidence of Insurance

The Contractor shall produce and shall cause any sub-contractor to produce such evidence as the Procuring Entity may reasonably require that the insurances have been taken out and are in force at all times.

Article E The Site

E1 Condition of the Site

The Contractor must examine the Site and its surroundings and must notify the Contract Supervisor in writing and seek instructions if the Contractor discovers a condition affecting the Site which the Contractor considers may result in it incurring loss, expense or damage or may affect its ability to bring the Work to Practical Completion by the due date. The Contractor must take all necessary steps to avoid removal, loss or damage.

E2 Exclusion from the Site

The Contract Supervisor may but shall not unreasonably issue instructions requiring the exclusion from the Site of any person thereon.

Article F Building the Work

F1 Health and Safety

The Contractor is responsible for and must ensure the general health and safety of all employees, sub-contractors and visitors to Site.

F2 Legislative Compliance

The Contractor must comply with the provisions of all relevant legislation including, but not limited to, the Workmen's Compensation Ordinance, Foreshore and Land Reclamation Ordinance, Environment Act, Procurement Act, Insurance Act, Building Act, Income Tax Act and Value Added Tax Act.

F3 Contractor to allow for delays

The Contractor warrants that the number of working days it has been allowed to complete the Work includes a reasonable allowance for delay due to weather conditions or the effect of weather conditions and other delays which it is reasonable to allow for.

Article G Variation to the Work

G1 Variation

The Contract Supervisor may issue instructions requiring an addition to, omission from or other change in the Work in the order or period in which they are to be carried out. An instruction for a variation may include an instruction to provide one or more of the following:

- an estimate of the whole or any part of the cost of the variations;
- an estimate of the effect of the variation on the date for Practical Completion.

A variation may be a change to the materials, the order of precedence, the detail or the scope of the Work or other aspect. If the instruction will result in an adjustment to the contract price or require an adjustment to the date for practical completion or both the Contractor must within 20 working days notify the Contract Supervisor in writing. The Contract Supervisor will within 5 working days instruct the Contractor whether or not to proceed and indicate whether the quotation is accepted or rejected. If the instruction to proceed includes acceptance of the quotation, the contract price will be adjusted in accordance with the quotation. If the instruction will not adjust the contract price or require an adjustment to the date for Practical Completion the Contractor must carry out the instruction promptly. The Contractor must maintain detailed records of any cost of carrying out the variation and notify the Contract Supervisor when the variation work has been completed.

G2 Correction of inconsistencies

Any inconsistency in or between the Contract Drawings and the Contract Specification and the Work Schedules shall be corrected and treated as a Variation.

Article H Adjustment of provisional and prime cost sums

Contract Supervisor's instructions

The Contract Supervisor shall issue instructions in regard to the expenditure of any provisional and prime cost sums included in the Contract Documents. The Contract Price is to be adjusted by the Contract Supervisor deducting or adding the net difference between the provisional sum allowed and the actual fee or charge.

Article I Adjustment of Time

I1 Time for making claim to adjust the Contract

The Contractor is entitled to make a claim to adjust the Contract in relation to time only if the Contractor promptly notifies the Contract Supervisor of its intention to make a claim

after receiving an instruction or, if no instruction is issued, promptly notifies the Contract Supervisor after becoming aware of an event that will result in a claim.

If the Contractor has not made a claim to adjust the Contract in relation to any change which results from complying with any instructions given for a variation to the Work the Contract Supervisor may adjust the Contract at any time up to the issue of the final Certificate.

I2 Delay

The Contractor may make a claim for an adjustment to the date for Practical Completion but not for costs caused by disruptive weather conditions. The Contractor must take all reasonable steps to minimize the impact of the delay on the progress of the Work. If the Work is being delayed the Contractor must inform the Contract Supervisor of the delay within 2 working days of becoming aware of the start or end of a delay.

I3 Extension of time

If the Works is not completed by the date of Completion or by any later date for Completion fixed under an agreed extension of time for reasons beyond the control of the Contractor including compliance with any instruction of the Contract Supervisor under this Contract whose issue is not due to a default of the Contractor, then the Contractor shall notify the Contract Supervisor in writing who shall make in writing an extension of time for Completion as may be reasonable. Reasons within the control of the Contractor include any default of the Contractor or of others employed or engaged by or under him for or in connection with the Work and of any supplier of goods or materials for the Work.

Article J Completion of Works

J1 Practical Completion

The Contract Supervisor shall certify the date when in his opinion the Work has reached practical completion. The Contract supervisor must issue to the Contractor a certificate within 5 working days after completing the inspection. If the Contract Supervisor decides the Work is not a practical completion the Contract supervisor must give to the Contractor a written statement to that effect listing what has to be done for practical completion to be reached. The statement must be given within 5 working days after the inspection.

Once the Contractor receives this statement it must promptly do whatever is necessary for practical completion to be reached. The Contractor must notify the Contract Supervisor in writing when it considers practical completion has been reached. If the Contract Supervisor fails to issue a notice of practical completion within 5 working days of completing the inspection the Contractor can request one.

J2 Default by contractor

If before practical completion of the Work the Contractor without reasonable cause wholly or substantially suspends the carrying out of the works or fails to proceed regularly and diligently with the Work the Contract Supervisor may give to the Contractor a notice specifying the default or defaults. If there is no improvement after 7 days from receipt of the notice the Procuring Entity may, on or within 10 days from the expiry of that 7-day period by a further notice to the Contractor, terminate the Contractor's employment under this Contract.

J3 Default by Procuring Entity

If the procuring entity does not pay by the final date for payment the amount properly due to the Contractor in respect of any certificate or interferes with or obstructs the issue of any certificate due under this Contract, the Contractor may give to the procuring entity a notice specifying the default or defaults.

J4 Damages for non-completion

If the Work is not completed by the date for Completion in the Contract or by a later date fixed by agreement as an extension of time, the Contractor shall pay or allow to the procuring entity liquidated damages at the rate indicated above between the date for completion and the date of practical completion. The procuring entity may either deduct the liquidated damages from the Contractor as a debt. If the procuring entity intends to deduct the damages from the sum stated as due in the final certificate he shall inform the Contractor in writing of that intention not later than the date of issue of the final certificate.

J5 Defects Liability period

The defects liability period commences on the date of practical completion of the Work. If any defects shrinkages or other faults in the Works appear within the defects liability period due to materials or workmanship not in accordance with this Contract, the Contract Supervisor shall notify the Contractor who shall make good such defects, shrinkages or other faults entirely at his own cost unless the Contract Supervisor with the consent of the Procuring Entity shall otherwise instruct. This obligation continues until the defect is rectified or the incomplete work is finalized and does not come to an end when the defects liability period is over. The Contract Supervisor shall certify the date when in his opinion the contractor's obligations have been discharged.

J6 Contractor to correct Defects and finalize work

The Contractor must correct any defects and finalize any incomplete Work whether before or after the date of practical completion within the agreed time as stated in the instruction and if no time is stated within 10 working days after receiving a written instruction from the Contract Supervisor to do so.

If the Contractor fails to correct a defect or finalize incomplete Work within the time nominated or fails to show a reasonable cause for the failure together with a timetable

that is acceptable to the Contract Supervisor, the Contract Supervisor may use another person to correct the problem at the cost of the Contractor.

J7 Final Certificate

The Contract Supervisor will promptly assess the final claim and authorize payment of the final amount. The Final Certificate must state the Contract Supervisor's assessment of all outstanding entitlements under this contract. The Final Certificate is evidence of the parties' entitlements under this Contract and that the Contractor has performed its obligations under this Contract.

Article K Payment for the Works

K1 Progress payments

The Contract Supervisor shall at intervals of 4 weeks calculated from the date of commencement of the Work, certify progress payments of the Work properly executed and materials and goods reasonably and properly brought upon the Site for the purpose of the Work and which are adequately protected against the weather and other casualties. The Contract Supervisor must take into account any adjustments to the contract price since the previous assessment, any entitlement to liquidated damages and an allowance for retention.

1.1 Schedule of Payment

Payments	Project progress	work	Project progress	Overall	Sum (\$\$) payable

K2 Advance Payments

2.1 If advance payments are exceptionally agreed by the Parties, the Contractor shall request the advance payment by submitting an original invoice for the agreed amount upon signature of the Contract. The agreed advance payments shall be at a par value of 20% of the Contract Price. The Procuring Entity may increase the par where it confirms that there are exceptional circumstances to justify the increase.

2.2 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.

K2 Retention

The Contract Supervisor may withhold up to 5% of each progress payment by way of retention for security of the Contractor's performance. The money is held on trust for the

Contractor. When the Contract Supervisor issues a notice of Practical Completion the Contractor is entitled to the release of 50% of the value of the security then held. When the Contract Supervisor issues a final certificate the Contract Supervisor must release any remaining security.

K3 Final claim

The Contractor is entitled to submit to the Contract Supervisor a claim for final payment when all defects liability periods have ended and the Contractor has rectified all defects and finalized all incomplete Work it became aware of by instruction from the Contract Supervisor or from its own observations during the defects liability period and the Work has been completed. The Contractor must submit a final claim within 20 working days after receiving a written request to do so from the Contract supervisor. If the contractor fails to do so the Contract Supervisor may determine the final claim. After the final claim has been made the Contractor is not entitled to make any further claims under this contract.

Article L Amendments and Severance

L1 Amendments

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 Contractor and Procuring Entity.

L2 Severance

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 of enforceability of any other provisions and conditions of the Contract.

Article M Termination

M1 Termination by Procuring Entity

If the Contractor fails to meet a substantial obligation under this Contract, the Procuring Entity may give the Contractor a written notice requiring the Contractor to remedy the default within 10 working days. If the default is not remedied or the Contractor fails to show reasonable cause why it cannot be remedied within 10 working days or such additional days as agreed with the Contract Supervisor the Procuring Entity may terminate the engagement of the Contractor by giving the Contractor a written notice of termination. A copy must be given to the Contract Supervisor.

If this termination occurs before practical completion the Employer may take possession of the Site and exclude the Contractor from it. The Employer may take possession of any documents, plants, tools, unused materials and equipment on the site belonging to the Contractor and may use them in completing the Work. The items will then be made available for collection by the Contractor but the Procuring Entity is not liable for fair wear and tear of anything of which the Employer has taken possession.

M2 Termination by either party

If before practical completion of the Work, the carrying out of the whole or substantially the whole of the uncompleted Work is suspended for a continuous period of one month or more by reason of force majeure, loss or damage to the Work or civil commotion then either party may on the expiry of the relevant period of suspension give notice in writing to the other that unless the suspension ceases within 7 days after the date of receipt of that notice he may terminate the Contractor's employment under this Contract. Failing such cessation within that 7-day period he may then by further notice terminate that employment.

M3 Removal of property

At any time after termination the Contract Supervisor may instruct the Contractor to remove some or all its property from the Site. The Contractor must comply within 10 working days, failing which the Procuring Entity may remove the property identified in the Contract Supervisor's instruction and dispose of it. The Procuring Entity must give notice in writing to the Contractor and the Contract Supervisor of the amount the property is disposed for. The Procuring Entity must pay the Contractor the amount the property is disposed for, less the costs of removal and disposal.

M4 Consequences of termination

If the Contractor's employment is terminated the Contractor shall as soon as practicable prepare an account for the total value of Work properly executed at the date of termination of the Contractor's employment, the cost of materials or goods properly ordered for the Work for which the Contractor has paid or is legally bound to pay.

M5 Insolvency of contractor

If the Contractor is insolvent the Procuring Entity may at any time by notice to the Contractor terminate the Contractor's employment under this Contract.

M6 Force majeure

6.1 The failure of a Party to fulfil any of its 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.

6.2 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 such 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.

6.3 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.

6.4 Not later than twenty (20) days after the Contractor, as the result of an event of Force Majeure, have become unable to perform a material portion of the Execution of Works, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

Article N Dispute Resolution

N1 Dispute Settlement

The parties agree to use best endeavors to resolve any dispute or difference arising under this Contract amicably before any decision is made to turn to lawyers or the courts for assistance. An arbitrator may be approached to give assistance, any costs of which will be shared between the parties. The **Kiribati Arbitration Act 1991** applies to such a situation.

N2 Governing Laws

The Laws of Kiribati apply to this Contract.

ANNEXURE to the General Conditions of Contract

- Article A The Date of Acceptance of Tender is _____
- Article B4 The Procuring Entity will pay the Contractor the Contract Price of AUD\$_____ at the times and in the manner specified under Article K of the General Conditions.
- Article J The Works shall commence on the day the Contractor takes possession of the Site (this date shall fall within after 10 working days of signing this Contract and before the expiry of the next 3 months - Clause 4 above). This date will be noted on the minutes of the first site meeting. (it is clear if we meet contractor and conclude the commencement date and record in the minutes).
- Article J1 The Date for Practical Completion is _____ working days from the date the construction started.
- Article J4 If the Works are late, liquidated damages at the rate of \$200.00 per day are payable to compensate the Procuring Entity for the Contractor's failure to finish the Works on time.
- Article J5 The Defects Liability Period is *six (6) insert as applicable* months.
- Article D The Contractor's Insurance cover is _____
_____.
- The addresses for the purpose of Service of Notices are:-**
- Article O The Procuring Entity - _____ *insert particulars* _____
- Article O Contract Supervisor - _____ *insert particulars* _____
- Article O Contractor - _____