**Conditions of Contract**

## 1. Commencement, Completion, Modification, and Termination of Contract

|  |  |
| --- | --- |
| 1.1 Effectiveness of Contract | This Contract shall come into effect on the date the Contract is signed by both parties or on such other date as may be stated in the letter of Acceptance. |
| 1.2 Commencement of Services | 1.2.1 Before commencement of the Services, the Service Provider shall submit to the Employer for approval a Program showing the general arrangements, order, timing for change of shifts and routine site checks. The Services shall be carried out in accordance with the approved Program as updated. 1.2.2 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 Letter of Acceptance. |
| 1.3 Intended Completion Date | 13.1 Unless terminated earlier pursuant to Sub-Clause 1.7, the Service Provider shall complete the activities **by the expiry of the contract period** or for an additional period of **four (4) months** thereafter, if the contract is renewed at the Employer’s discretion. |
| 1.4 Modification | 14.1 Modification of the terms and conditions of this Contract, including any modification of the scope of the service or of the Contract Price, may only be made by written agreement between the Parties. |
| 1.5 Force Majeure | 1.5.1 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. 1.5.2 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.Failure to provide security guards on sites during cyclone warning class III and IV shall not be considered as Force Majeure. |
| 1.6 Notices | 1.6.1 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.  |
| 1.7 Termination | 1.7.1 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 (e) of this Sub-Clause  (a) if the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within a prescribed time or after being notified or within any further period as the Employer may have subsequently approved in writing; (b) if the Service Provider becomes 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 seven (7) 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]](#footnote-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]](#footnote-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]](#footnote-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]](#footnote-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 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; and (e) **If the maximum occurrence limit of any penalty per month per site as per the Annex A has been exceeded.** 1.7.2 **Notwithstanding the above, the Employer may terminate the Contract for convenience after giving thirty (30) days’ written notice.**1.7.3 The Service Provider may terminate this Contract, by not less than 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: (a) if the Employer fails to pay any money due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 6 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 seven (7) days.1.7.4 Upon termination of this Contract pursuant to Sub-Clauses 1.7.1,1.7.2 or 17.3 the Employer shall make the following payments to the Service Provider: (a) remuneration pursuant to Clause 4 for Services satisfactorily performed prior to the effective date of termination; (b) except in the case of termination pursuant to paragraphs (a), (b), and (d) of Sub-Clause 1.7.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract. |

|  |  |
| --- | --- |
| 1.8 Integrity Clause | The Service Provider shall take steps to ensure that no person acting for it or on its behalf will engage in any type of fraud and corruption during the contract execution:Transgression of the above is a serious offence and appropriate actions will be taken against such Service Provider. |

## 2. Obligations of the Service Provider

|  |  |
| --- | --- |
| 2.1 General | The Service Provider shall perform the Services in accordance with the Scope of Service and Performance Specification, the Activity Schedule, 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 human resources and logistics indicated in Appendix A to the Contract Form. 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 dealing with subcontractors or third parties. |
| 2.2 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.  |
| 2.3 Service Provider’s Actions Requiring Employer’s Prior Approval | The Service Provider shall obtain the Employer’s prior approval in writing before taking any of the following actions: (a) entering into a subcontract for the performance of any part of the Services,(b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”), (c) changing the Program of activities; and(d) any other action that may be specified in the handing over of site. |
| 2.4 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.  |
| 2.5 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.  |

|  |  |
| --- | --- |
| 2.6 Insurance and Liabilities to Third Parties | * 1. 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.
	2. 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.
	3. The Service Provider shall provide and thereafter maintain a Professional Indemnity Insurance Cover extended to cover loss and damages of guarded assets (excluding all monies and securities) for at least **Rs 15 Million**, for the whole contract value or apportioned as per the value of contract awarded, to indemnify the Employer against all losses resulting from failure in the services provided
	4. The Service Provider shall also provide and thereafter maintain liability insurance in an adequate amount of **Rs 15 Million** 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.
	5. For the Third Party Insurance Liability cover, the insurance policy shall:
1. name the Employer as additional insured;
2. include a waiver of subrogation of the Service Provider's rights to the insurance carrier against the Employer; and
3. provide that the Employer shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
 |
| 2.7 Reporting Obligations | The Service Provider shall submit to the Employer, the reports and documents specified in Section III- Scope of Service and Performance Specifications and any other matter in the form and time specified therein or as otherwise agreed upon addressed to**Senior Chief Executive****Ministry of Agro-Industry and Food Security****8th Floor, Renganaden Seeneevassen Building****Cnr Jules Koenig & Maillard Streets****Port Louis***.* |
| 2.8 Tax 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. |
| 2.9 Damages for non- Performance | The Service Provider shall pay damages for non-performance to the Employer for each day that the services have not been provided on the site. The amount of the damages to be paid are as follows: 1. Rs 20.00 for 1 – 15 minutes of lateness of the security guards during the month for each site/compound;
2. Rs 50.00 for 16- 30 minutes of lateness of the security guards during the month for each site/compound;
3. Rs 100.00 for 31 – 45 minutes of lateness of the security guards during the month for each site/compound;
4. Rs 160.00 for 46 – 60 minutes of lateness of the security guards during the month for each site/compound.

**For all additional minutes of lateness of the security guards after the 60 minutes at (iv), claim of lateness will be charged according to the paragraph (i) to (iv) above.**For any non-compliance with regards to other shortcomings, penalties will be deducted as detailed in Annex A.Any penalty to which the Contractor shall have rendered himself liable under any of the Conditions of the Contract and any expenditure incurred by the Ministry as a result of a breach of any such condition shall at the option of the Ministry be deducted from any amount due or that may become due to the Contractor under this Contract. |
| 2.10 Performance  Security | **The Service Provider shall provide the required Performance Security to the Employer not later than the date specified in the Letter of Acceptance. The Performance Security shall be issued in an amount and form indicated in the letter and by a bank operating in Mauritius. The Performance Security shall be valid until a date 28 days after the Completion Date of the Contract.** |

## 3. Service Provider’s Personnel

|  |  |
| --- | --- |
| 3.1 Description of Personnel | The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement of the Service Provider’s Key Personnel and security guards for carrying out the Services are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Employer. |
| 3.2 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 has (i) committed serious misconduct or has been charged with having committed a criminal action, or (ii) has 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 any personnel. |

## 4. Payments to the Service Provider

|  |  |
| --- | --- |
| 4.1 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 Appendix A. Except as provided in Sub-Clause 4.5, the Contract Price may only be increased above the amounts stated in Sub-Clause 4.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 1.4 and 4.3. |
| 4.2 Contract Price | The amount payable is **the monthly approved amount for each compound less amount deductible for absences of security guards and amount for penalty for lack of performance.**Prices shall be fixed and inclusive of all taxes, end-of –the year bonus and gratuities as well as any increase that may be awarded by government during the contract period. |
| 4.3 Terms and Conditions of Payment | Payments will be made to the Service Provider on a monthly basis by the **30th** of the following month subject to the Employer obtaining the invoice and accompanying documents as required by the Employer not later than the 20th of the current month. Any adjustment in respect of absences and damages for the current month shall be communicated to the Service Provider to enable the latter to make the necessary adjustment in the subsequent invoices. |
| 4.4 Interest on Delayed Payments | If the Employer has delayed payments beyond fifteen (15) days after the due date stated, interest shall be paid to the Service Provider for each day of delay at the legal rate. |
| 4.5 Price Adjustment | Prices **shall not**be adjusted for fluctuations in the cost of inputs.  |
| 4.6 Labour clause | 4.6.1 The rates of remuneration and other conditions of work of the employees of the Contractor shall not be less favourable than those established for work of the same character in the trade concerned- (i) by collective agreement applying to a substantial proportion of the workers and employers in the trade concerned; (ii) by arbitration awards; or(iii) by Remuneration Regulations made under the Employment Relation Act 2008. (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 which are not less favourable than the general level observed in the trade in which the contractor is engaged by employers whose general circumstances are similar.4.6.2 No Contractor 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) stating 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.4.6.3 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 4.3, he may, unless the remuneration is sooner paid by the Contractor, arrange for the payment of the remuneration out of the money payable under this contract.4.6.4 Every Contractor shall display a copy of this clause of the contract at the place at which the work required by the contract is performed. 4.6.5 Every Contractor shall ensure that the number of hours of work of employees employed under this contract are in line with provisions under Section 14 of the Employment Rights Act 2008. |

## 5. Quality Control

|  |  |
| --- | --- |
| 5.1 Identifying shortcomings | The principle and modalities of the monitoring of services by the Employer shall be explained at the handing over of sites**.** It shall be in line with the procedures defined in Section III- Scope of Service and Performance Specifications. The Service Provider shall be informed of all shortcomings. Such monitoring shall not in any way substitute or alleviate the Service Provider’s contractual obligations towards providing a satisfactory service.  |
| 5.2 Attending to shortcomings | (a) The Employer shall give notice to the Service Provider of any shortcoming;(b) Every time notice of a shortcoming is given, the Service Provider shall correct the notified shortcoming within the length of time specified by the Employer’s notice; and(c) If the Service Provider has not corrected a shortcoming within the time specified in the Employer’s notice, the Employer will consider such act as a lack of performance which could lead to the termination of part or the whole contract as a breach in the good performance of the contract. |

## 6. Settlement of Disputes

|  |  |
| --- | --- |
| 6.1 Dispute Settlement | If a dispute between the parties arises in connection with performance of obligations under this Contract, either party shall serve a written notice of dispute providing adequate details of the nature of the dispute. Notwithstanding the existence of the dispute, all parties shall continue to perform their obligations under the Contract.After receipt of the notice of dispute, the parties should use their best endeavours to resolve the dispute or to agree methods of doing so. If after 30 days of the service of the notice of dispute there is no resolution of the dispute, it shall be referred to court for settlement under the laws of Mauritius. |
| 6.2 Applicable Law | The Contract shall be implemented, interpreted, executed and enforced in accordance with the laws of Mauritius. |

**ANNEX A**

**PENALTIES**

Any penalty to which the Contractor shall have rendered himself liable under any of the Conditions of the Contract and any expenditure incurred by the Ministry as a result of a breach of any such condition shall at the option of the Ministry be deducted from any amount due or that may become due to the Contractor under this Contract.

The penalties shall be as follows –

|  |  |  |  |
| --- | --- | --- | --- |
| **S. No.** | **Default** | **No. of Maximum Occurrence Limit per month / per site**  | **Rate for Penalties to be applied** |
| 1 | Late Attendance | 3 | **As per Clause 2.9**  |
| 2 | Failure to sign attendance register either on arrival or departure | 3 | **Rs 500.00** per occurrence |
| 3 | Failure to sign attendance register on arrivals and departures  | 1 | **Rs 500.00** per occurrence |
| 4 | No proper handing over carried on any shift | 3 | **Rs 500.00** per occurrence |
| 5 | Any security guard absent from site without any replacement  | 3 | **Rs 500.00** per occurrence |
|  6 | Leaving site earlier without any replacement | 3 | **Rs 500.00** per occurrence |
| 7 | Leaving site unattended | 2 | **Rs 500.00** per occurrence |
| 8 | Tampering of attendance book | 1 | **Rs 500.00** per occurrence |
| 9 | Vandalism /tampering with existing facilities, services, equipment and assets on the premises | 2 | **Rs 500.00** per occurrence |
| 10 | Alcoholic drinks/Under the influence of alcohol / Smoking on site  | 1 | **Rs 500.00** per occurrence |
| 11 | Misconduct, Inconsiderate behavior, intimidation, abusive language | 1 | **Rs 500.00** per occurrence |
| 12 | Use / found in possession of /dealing / under the influence of any illicit drugs on any site | 1 | **Rs 500.00** per occurrence |
| 13 | Failing to wear uniform/ID Badge/ Protective equipment | 2 | **Rs 500.00** per occurrence |
| **S. No.** | **Default** | **No. of Maximum Occurrence Limit per month / per site**  | **Rate for Penalties to be applied** |
| 14 | No Attendance book available on site for checking purposes by respective Representatives of the Ministry | 2 | **Rs 500.00** per occurrence |
| 15 | Failure on the part of the Service Provider to deal with an emergency or any default | 1 | **Rs 500.00** per occurrence |
| 16 | Not respecting the working schedule | 1 | **Rs 500.00** per occurrence |
| 17 | No supervision by site supervisors | 2 | **Rs 500.00** per occurrence |
| 18 | Deployment of medically and physically unfit security personnel | 1 | **Rs 500.00** per occurrence |
| 19 | Non complying with the age requirements  | 2 | **Rs 500.00** per occurrence |

**Contractor’s Performance and liabilities**

1. Payment of penalties shall not affect the Service Provider’s other liabilities
2. Every review of the contractor’s performance during execution of a contract shall be duly recorded. A model of the Form which will be used to record the performance of the contractor is attached as per **Annex B**.
3. The Ministry may terminate the contract for a particular site by giving 30 days’ written notice of termination to the Service Provider in the event that the maximum occurrence limit of penalties has been reached.

Note: The contractor shall be notified of any deficiency in his performance of the contract with request to take remedial actions failing which the latter may be excluded from forthcoming bidding exercises of the public body.

Recurrence of above shortcomings to be reported to Procurement Policy Office (PPO) for necessary action

**ANNEX B**

**MONITORING TEMPLATE**

**Period: ………………………………………………………………….**

|  |  |  |  |
| --- | --- | --- | --- |
| **Sr. No.** | **Default** | **Observation** | **Remarks** |
| 1. | Late Attendance |  |  |
| 2. | Security Guard absent from site without anyreplacement for valid reason |  |  |
| 3. | Leaving site earlier without any replacement |  |  |
| 4. | Allowing unwarranted person(s) on the premises |  |  |
| 5. | Misconducting/tampering with existing facilities, services, equipment and assets on the premises |  |  |
| 6. | Failing to wear uniform. |  |  |
| 7. | No attendance log book available on site for checking purposes by respective Representatives of the Ministry |  |  |
| 8. | Theft/act of vandalism occurring on site |  |  |
| 9. | Failure on the part of the Contractor to deal with an emergency or any default |  |  |
| 10. | Any other Occurrence |  |  |

Signature of the representative of the Service Provider : ………………………………………

Signature of the representative of the Employer : ………………………………………….

Date: ………………………………

1. For the purpose of this Contract, “another party” refers to a public official acting in relation to the procurement process or contract execution. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)
4. For the purpose of this Contract, “party” refers to a participant in the procurement process or contract execution. [↑](#footnote-ref-4)