

- (b) If the Tenderer becomes insolvent or bankrupt.
- (c) If the Tenderer, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the Tenderer are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (f) If the Tenderer fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 8 hereof.

*2.6.2 By the
Tenderer*

The Tenderers may terminate this Contract, by not less than fourteen (14) days' written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause GCC 2.6.2:

- (a) If the Client fails to pay any money due to the Tenderer pursuant to this Contract and not subject to dispute pursuant to Clause GCC 7 hereof within forty-five (45) days after receiving written notice from the Tenderer that such payment is overdue.
- (b) If, as the result of Force Majeure, the Tenderer is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 8 hereof.

*2.6.3 Payment
upon
Termination*

Upon termination of this Contract pursuant to Clauses GCC 2.6.1 or GCC 2.6.2, the Client shall make the following payments to the Tenderer:

- (a) Payment pursuant to Clause GCC 6 for Services satisfactorily performed prior to the effective date of termination;
- (b) Except in the case of termination pursuant to paragraphs (a) through (c), and (f) of Clause GCC 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 and their eligible dependents

**2.7 Delays in
Supplier
Performance**

2.7.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity.

2.7.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of the Contract.

2.7.3 Except as provided under Clause 2.5, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to Clause 2.7.2, unless an extension of time is agreed upon pursuant to Clause 2.7.2 without the application of liquidated damages.

2.8 Termination for Default

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

- i. if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to Clause 2.7.1; or
- ii. if the Supplier fails to perform any other obligation(s) under the Contract.

2.8.2 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to Clause 2.8.1, the Procuring Entity may procure, upon such terms and in such manner as It deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated

2.9 Liquidated Damages

2.9.1 Subject to GCC Clause 2.8, if the Supplier fails to deliver any or all of the Goods or fails to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages , a sum equivalent to the percentage specified in the Special Conditions of Contract of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of the delay until the actual delivery or performance, up to a maximum deduction of the percentage specified in the Special Conditions of Contract. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 2.7.

3. OBLIGATIONS OF THE TENDERER

3.1 Standard of Performance

The Tenderer shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Tenderer shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with Sub-Tenderers or third Parties.

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- 3.2 Conflict of Interests** The Tenderer shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 3.2.1 Tenderers Not to Benefit from Commissions, Discounts, etc.* The payment of the Tenderer pursuant to Clause GCC 6 shall constitute the Tenderer's only payment in connection with this Contract or the Services, and the Tenderer shall not accept for their own benefit any trade 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 Tenderer shall use their best efforts to ensure that the Personnel, any Sub-Tenderers, and agents of either of them similarly shall not receive any such additional payment.
- 3.2.2 Tenderer and Affiliates Not to be Otherwise Interested in Project* The Tenderer agrees that, during the term of this Contract and after its termination, the Tenderer and any entity affiliated with the Tenderer, as well as any Sub-Tenderers and any entity affiliated with such Sub-Tenderers, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Tenderer's Services for the preparation or implementation of the project.
- 3.2.3 Prohibition of Conflicting Activities* The Tenderer shall not engage, and shall cause their Personnel as well as their Sub-Tenderers and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Client, the Tenderer and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Tenderer and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services.
- 3.4 Insurance to be Taken Out by the Tenderer** The Tenderer (a) shall take out and maintain, and shall cause any Sub-Tenderers to take out and maintain, at their (or the Sub-Tenderers', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage, as shall be specified in the SCC; and (b) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums have been paid.
- 3.5 Tenderer's Actions Requiring Client's Prior Approval** The Tenderer shall obtain the Client'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) Change of Ownership while contract is in effect
 - (c) Any other action that may be specified in the SCC.
- 3.6 Reporting Obligations** (a) The Tenderer shall submit to the Client the reports and documents specified in the specification document such as warranty, manuals, service plan, Licence and registration hereto, in the form, in the numbers and within the time periods set forth in the said expected output.

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3.7 Documents Prepared by the Tenderer to be the Property of the Client

- (b) Tenderer to submit hard copies as specified.
- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Tenderer under this Contract shall become and remain the property of the Client, and the Tenderer shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof.
- (b) The Tenderer 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.

4. TENDERER'S PERSONNEL

4.1 Description of Personnel

- (a) The Tenderer shall employ and provide such qualified and experienced Personnel and Sub-Tenderers as are required to carry out the Services.

4.2 Removal and/or Replacement of Personnel

- (a) Except as the Client may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Tenderer, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Tenderer shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the Client 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 Tenderer shall, at the Client's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Client.
- (c) The Tenderer shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance

The Client shall use its best efforts to provide the Tenderer such assistance as specified in the SCC.

5.2 Change in the Applicable Law Related to Taxes and Duties

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 incurred by the Tenderer in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Tenderer 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 Clauses GCC 6.2 (a) or (b), as the case may be.

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6. PAYMENTS TO THE TENDERER

- 6.1 Tender Price** The Fund shall pay the Tenderer for Goods and Services supplied under this contract. Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its tender. The prices shall be fixed for a period of two (2) years.
- 6.2 Method of Payment** The method and conditions of payment to be made to the Supplier under this Contract shall be specified in the Contract document. Payments shall be made promptly by the Procuring Entity, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier unless otherwise stated in the Contract.
- 6.3 Terms and Conditions of Payment** The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and upon fulfilment of other obligations stipulated in the Contract.

7. GOOD FAITH

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

8. SETTLEMENT OF DISPUTES

- 8.1 Amicable Settlement** The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.
- 8.1.1 Communication of Dispute* If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 8.2 shall apply.
- 8.2 Dispute Resolution** Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in the SCC.

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9. TAXES AND DUTIES

- 9.1 Payment of Taxes and Duties** The Tenderer, Sub-Tenderers and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC.
- 9.1.1 Exception** As an exception to the above and as stated in the SCC, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Tenderer or are paid by the Client on behalf of the Tenderer.
- 9.2 Currency of Payment** Any payment under this Contract shall be made in the currency(ies) specified in the SCC.

10. APPLICATION OF TERMS AND CONDITIONS

- 10.1 Application** These Contract Terms and Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.
- 10.2 Standards** The Goods supplied under this Contract shall be new, unused and of the latest design and must conform to the highest standards and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.
- 10.3 Use of Contract Documents and Information**
- a) The Supplier shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so as may be necessary for purposes of such performance.
 - b) The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in Clause 10.3 (a) except for purposes of performing the Contract.
 - c) Any document, other than the Contract itself, enumerated in Clause 10.3 (a) shall remain the property of the Procuring Entity and shall be returned (in all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity.
- 10.4 Patent Rights** The Supplier shall indemnify and hold harmless the Procuring Entity against all third-party claims of infringement of patent, trademark, industrial design, or intellectual property rights arising from use of the Goods or any part thereof.
- 10.5 Packing**
- a) The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit,

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and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

- b) The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in any subsequent instructions given by the Procuring Entity.

10.6 Spare Parts

As specified in the Special Conditions of Contract, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to the spare parts manufactured or distributed by the Supplier:

- (a) such spare parts, as the Procuring Entity, may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) in the event of termination of the production of the spare parts:
 - (i) advance notification to the Procuring Entity of the pending termination is done in sufficient time to permit the Procuring Entity to produce needed requirements; and
 - (ii) following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.

10.7 Delivery and Documents

- (a) Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier shall be specified in the Contract.
- (b) For purposes of the Contract, the trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms published by the International Chamber of Commerce, Paris.

10.8 Insurance

The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Contract.

10.9 Transportation

- 10.9.1 Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Procuring Entity or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 10.9.2 Where the Supplier is required under the Contract to deliver the Goods CIP, transport of the Goods to the port of destination or such other named place of destination in Eswatini, as shall be specified in the

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Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

10.9.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within Eswatini, defined as the Project Site, transport to such place of destination in Eswatini, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and the related costs shall be included in the Contract Price.

10.10 Warranty

10.10.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models and that incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity's specifications) or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in Eswatini.

10.10.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in the Special Conditions of Contract.

10.10.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.

10.10.4 Upon receipt of such notice, the Supplier shall, within the period specified and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity.

10.10.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the Special Conditions of Contract, the Procuring Entity may proceed to take such remedial action as may be necessary at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

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SECTION 5:

SPECIAL CONDITIONS OF CONTRACT (SCC)

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of the Kingdom of Eswatini
1.3	The language is: English
1.5	<p>The addresses are:</p> <p>Client : Sincephetelo MVA Fund</p> <p>SMVAF Office Park, Mbhilibhi Street Mbabane</p> <p>E-mail: procurement@mva.org.sz cc nomcebo@mva.org.sz</p> <p>Tenderer : _____ Attention : _____ Facsimile : _____ E-mail (where permitted) : _____</p>
2.1	<p>The effectiveness conditions are the following:</p> <p>Signing of the Contract by Both Parties.</p>
2.2	<p>Commencement of Services:</p> <p>The Services shall commence immediately after contract signing</p>
2.3	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be 14 calendar days</p>
2.6	<p>Expiration of Contract:</p> <p>The time period shall be 120 calendar days <u>after commencement</u></p>
6.4	<p>The currency of payment(s):</p> <p>The payment(s) shall be made in local currency, Lilangeni (SZL)</p>

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