

**APPENDIX 4 - SINGLE TENDER SPECIFICATIONS - MICRO PURCHASES, INVITATION TO TENDER, CONTRACT FOR THE PROCUREMENT OF GOODS AND PROVISION OF SERVICES AND WORKS OF THE PANAMA CANAL AUTHORITY**

**4.28.1. <sup>1</sup>MINIMUM WAGE.** For contracts for services and construction works entered into by the Authority and performed at the Authority's facilities in the Canal area, contracting parties shall pay their employees the applicable minimum hourly wage. The applicable minimum hourly wage is the wage corresponding to the highest between the minimum wage established for the applicable sector or class by an Executive Decree setting minimum wage rates throughout the national territory and the minimum hourly wage established in B/.2.90 pursuant to Executive Decree No. 3 dated March 4, 1980.

**4.28.2. <sup>2</sup>DUTIES, TAXES, RIGHTS, FEES, CHARGES OR CONTRIBUTIONS FROM THE COUNTRY OF ORIGIN**  
By submitting a proposal, the bidder or Contractor certifies that the price proposed includes all applicable national, state or municipal duties, taxes, rights, fees, charges or contributions of the country of origin and of the Republic of Panama. No complaint is admissible on the basis of this certification.

**4.28.3. <sup>3</sup>TAX WITHHOLDING FOR CONTRACTORS DOMICILED OUTSIDE THE REPUBLIC OF PANAMA.**

1. Panama Canal Authority (ACP) contractors domiciled outside the Republic of Panama, bound by service contracts and who fully or partially execute these contracts in Panama are required to pay income tax to the National Treasury of Panama. When the Contractor is a natural entity domiciled outside the national territory, said person must pay the insurance for education.
2. Taxes shall be paid through remittance withholdings conducted by the Panama Canal Authority as provided for in the Tax Code.
3. In supply and service contracts fully or partially executed in Panama, income tax shall be withheld from the total amount of the portion of the contract corresponding to services executed in Panama.
4. Legal entities executing all or part of the contract in Panama shall be subject to an income tax rate of 12.5% of the remittance of the contract corresponding to the part executed by the Contractor within the territory of the Republic of Panama.
5. Natural entities executing all or part of the contract in Panama shall be subject to an income tax fee calculated over 50% of the remittance of the contract corresponding to the part executed by the Contractor within the territory of the Republic of Panama, who shall be subject to the following fee. In addition to that portion of the remittance, 2.75% of the amount of the contract shall be withheld to cover the insurance for education.

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<sup>1</sup> Amended by Art. 2 of Resolution No. ACP-AD-RM18-02 dated February 16, 2018, in force as of February 20, 2018. Amended by Art. 76 of Resolution No. ACP-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>2</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM13-41 dated August 29, 2013, in force as of September 10, 2013. Amended by Art. 77 of Resolution No. ACP-RM18-44 dated October 11, 2018, in force as of October 11, 2018

<sup>3</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM05-28 dated July 01, 2005, in force as of July 01, 2005.  
Amended by Art. 1 of Resolution No. ACP-AD-RM10-99 dated May 18, 2010, in force as of June 01, 2010. Amended by Art. 1 of Resolution ACP-AD-RM11-57 dated December 9, 2011 in force (as of the day after its publication date; published on December 16, 2011) as of December 17, 2011. Amended by Art. 2 of Resolution No. ACP-AD-RM13-41 dated August 29, 2013, in force as of September 10, 2013. Amended by Art. 1 of Resolution No. ACP-AD-RM-20-12 dated March 03, 2020

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If the taxable income is:	The tax shall be:
Up to B/11,000.....	0
Over B/.11,000 up to B/.50,000.....	15% for the excess of B/11,000 up to B/.50,000
Over B/.50,000	B/.5,850.00 for the first B/.50,000 and 25% over the excess of B/.50,000

6. To calculate the tax to be withheld on each contract, the total amount of contracts paid to the Contractor by the Authority within the fiscal period between January 1 and December 31 must be considered.
7. Contractors who are natural entities domiciled abroad and who are paid by remittance sent abroad shall only have income tax withheld when, within the same fiscal year, they receive payments for contracts totally or partially executed within the national territory whose total amount corresponding to the part executed in Panama exceeds B/.22,000.00.
8. The income tax rate to be applied as a withholding to natural entities domiciled abroad executing the contract within the national territory and being paid within the Republic of Panama corresponds to 15% of the amount of the contract. Additionally, they shall be subject to a 2.75% withholding of the amount of the contract for the insurance for education.
9. Income tax withholding shall not be applied if the natural or legal entity domiciled outside the Republic of Panama who fully or partially executed the service contract in the national territory has registered as an Income Taxpayer with the National Revenue Service the Republic of Panama. In these cases, the Contractor must submit the original and copy of the national certificate of good standing and the certificate from the Security Fund in force at the moment of submitting the invoice for the corresponding payment. Original documents shall be returned upon having used them to validate the copies. The presentation thereof is a requirement to begin the payment process pursuant to Article 170 of the Procurements Code of the Panama Canal Authority.
10. Pursuant to the provisions of the Tax Code of the Republic of Panama, foreign natural entities remaining in the national territory for over 183 running or alternate days within the same fiscal year between January 1 and December 31, and who receive or accrue income subject to income tax in the Republic of Panama are required to file an income tax return before the National Revenue Service for all income received from Panamanian sources within that year and to pay all necessary taxes.
11. Foreign contractors whose contracts contemplate the total or partial execution of services in the territory of the Republic of Panama must include a breakdown of charges corresponding to the number of services rendered within the territory of

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the Republic of Panama subject to tax withholdings in their invoices.

**4.28.4. <sup>4</sup>DOUBLE TAXATION AGREEMENTS**

Contractors domiciled outside the Republic of Panama who wish to avail themselves of the benefits established in any international treaty or agreement of which the Republic of Panama is a signatory to avoid double taxation must conduct the necessary proceedings before the National Revenue Services of the Republic of Panama (DGI) and comply with the requirements established by the aforementioned agency based on the provisions of article 762-Ñ of the Tax Code. For the Panama Canal Authority to withhold income tax in accordance with one of these treaties or agreements, the Contractor must prove to the Panama Canal Authority that it has complied with the requirements set forth by the DGI.

Regarding the proceedings to be conducted before the DGI to have the aforementioned treaties or agreements applied to avoid double taxation, the Panama Canal Authority shall only issue the certifications or documentation expressly required by said agency for each procedure by virtue of the regulations provided on the subject, holding the right to ask the Contractor to submit any documentation that, at its sole discretion, proves it is entitled to such benefits.

**4.28.5. <sup>5</sup>REQUIREMENT FOR CERTIFICATES OF NATIONAL TAX AND SOCIAL SECURITY CLEARANCES FOR CONTRACTORS DOMICILED IN THE REPUBLIC OF PANAMA.**

Contractors, whether natural or legal entities, domiciled in the Republic of Panama must submit an original and a copy of valid national tax clearance and the Social Security clearance certificates at the time the invoice is submitted for the corresponding payment. The presentation thereof is a requirement to begin the payment process, pursuant to Article 170 of the Panama Canal Authority Acquisition Regulation. Payments for contracts and purchase orders below B/.500.00 are exempt from this requirement.

**4.28.6 <sup>6</sup>IMPORT TAXES AND GOODS AND SERVICES TAXES (ITBMS) EXEMPTION.**

1. Pursuant to Article 43 of the Organic Law of the ACP, all goods covered by the contract, entrusted to the ACP, and identified in the contract as such and all services are exempt from the payment of national or municipal duties, taxes, rights, fees, charges or contributions.

2. The Contractor shall be responsible for the proceedings and submission of a simplified declaration as part of the delivery of the goods object of the contract entrusted to the Authority.

3. The Authority shall make the necessary customs clearance.

4. When the goods are rejected, the Contractor shall be responsible for withdrawing them and for the corresponding customs clearance. Accordingly, if within a maximum

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<sup>4</sup> Revoked by Art. 3 of Resolution ACP-AD-RM05-17 dated April 12, 2005, in force as of April 15, 2005. Modified by Art. 3 of Resolution No. ACP-AD-RM13-41 dated August 29, 2013, dated September 10, 2013. Amended by Art. 78 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>5</sup> Amended by Art. 6 of Resolution No. ACP-AD-RM03-26 dated June 25, 2003 in force as of July 07, 2003.

<sup>6</sup> Amended by Art. 5 of Resolution No. ACP-AD-RM15-23 dated August 20, 2015, in force as of September 07, 2015. Amended by Art. 2 of Resolution No. ACP-AD-RM-20-12 dated March 03, 2020

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of 60 calendar days as of the date of notification that the goods were rejected, the Contractor were not to remove the goods from the facilities of the Authority, for which he must have complied with the customs' proceedings, the Authority may dispose of the goods as it sees fit, including using, selling, donating or destroying them without the Contractor having any right to complaint.

5. Failure to comply with the requirements herein set forth may delay the delivery of the goods and the payments disbursed to the Contractor for causes not attributable to the Panama Canal Authority.

6. Depending on the delivery terms, the Contractor shall be responsible for:

a) DAP Panama delivery term (goods entrusted to the ACP coming from abroad or free trade zones):

1. Goods. Pack and mark the goods, and include a copy of the shipping documents, packing list, certified copy of the invoice of origin and copy of the contract.
2. Delivery of documents. Deliver the original invoice of origin, a copy of the order or contract, and the original shipping documents to the Panama Canal Tax Exonerations Office.
3. Simplified declaration. Obtain the Simplified Declaration from the Panama Canal Exonerations Office to withdraw the goods from the customs premises.
4. Withdrawal and delivery of goods. Submit the original Simplified Declaration and its copy together with the original shipping documents and the original invoice of origin at the corresponding customs premises, and transport and deliver the goods as detailed in the purchase order or contract.
5. Submit the full invoice. See paragraph 7 of this clause.

b) Other delivery terms (goods entrusted to the ACP coming from abroad or free trade zones):

1. Goods. Pack and mark the goods, and include a copy of the purchase order or contract and the original invoice of origin.
2. Submit the full invoice. See paragraph 7 of this clause.

c) Goods from the local market with DAP Panama delivery terms:

1. Goods. Pack and mark the goods, and include a copy of the purchase order or contract.
2. Submit the full invoice. See paragraph 7 of this clause.

7. Submit the full invoice. For the payment process to be initiated after the delivery of goods or service provision, the interested party must submit the necessary documents needed, as follows:

a) DAP Panama delivery terms

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1. If the interested party is domiciled in the Republic of Panama: submit to the Contracting Officer or his designee, the original sales invoice together with the original national good standing and social security certificates and a copy thereof at the address mentioned in the purchase order. The original certificates shall be returned upon having used them to validate the copies. For the ACP to process the customs clearance, the documents mentioned in paragraph 8 of this clause must also be submitted to the Panama Canal Exonerations Office.

2. If the interested party is not domiciled in the Republic of Panama: submit the original sales invoice, the procurement documents and a copy of the Simplified Customs Declaration at the address mentioned in the original purchase order. For the ACP to process the customs clearance, the documents mentioned in paragraph 8 of this clause must also be submitted to the Panama Canal Exonerations Office.

b) Other delivery terms.

1. If the interested party is domiciled in the Republic of Panama: Submit to the Contracting Officer or his designee, the original sales invoice together with the original national good standing and social security certificates and a copy thereof. Original documents shall be returned upon having used them to validate the copies.

2. If the interested party is not domiciled in the Republic of Panama: submit to the Contracting Officer or his designee a certified copy of the sales invoice.

8. To pay for a DAP delivery procurement invoice, the Contractor is responsible for returning the following documents to the PAC Tax Exonerations Office:

- Original Simplified Declaration from the PAC (sealed, dated and signed by the customs official).
- Original bill of lading (B/L), air waybill, delivery order, consignment note or trade movement declaration (DMC); with marked freight.
- Original commercial invoice of origin (NO quote, NO Proforma).
- Copy of the ACP purchase order (full).
- Printout of proof of registration of the SIGA bill of lading (NO manifesto).

If the bill of lading and/or the invoices are not directly consigned to the ACP, the Contractor shall make an endorsement in favor of the ACP using the name of the contracting company, the name and signature of the person authorized by that company and his or her ID number.

In a consolidated shipping (part from the ACP and part from the Contractor), the Contractor is responsible for delivering the necessary customs clearance and tax payment receipt for the goods not destined for the ACP, along with the aforementioned documents to the ACP Tax Exonerations Office.

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**4.28.7. <sup>7</sup>OFFICIAL LANGUAGE.** All proposals, correspondence and documents required by the purchase order or contract must be delivered in Spanish or in the language indicated in the specifications. Notwithstanding the foregoing, when the language of the specifications is Spanish, the commercial descriptive material requested as part of a proposal or contract may be delivered in English or in any other authorized language. Once the contract has been awarded, all correspondence and communications between the Contracting Officer and the Contractor must be conducted in Spanish unless the specifications expressly indicate they are to be conducted in another language.

Resolutions passed by the Contracting Officer by virtue of the conflict resolution administrative process established in clause 4.28.13 must always be issued in Spanish, regardless of the language of the specifications and/or of the language the specifications detail as the language for communications between the Contracting Officer and the Contractor.

**4.28.8. OFFICE HOURS.** The office hours for the contracting system shall be made up of the business days observed by the Panama Canal Authority from Monday to Fridays from 8 a.m. to 3:30 p.m.

**4.28.9. <sup>8</sup>ACCEPTANCE OF CONTRACT TERMS AND CONDITIONS.** By presenting a proposal, all bidders declare they accept, without reservation or conditions, the tender specifications, including the terms and conditions contained in this APPENDIX 4 - SINGLE BIDDING SPECIFICATIONS - MICRO-PURCHASE, BID, CONTRACT FOR THE SUPPLY OF GOODS AND PROVISION OF SERVICES AND WORKS FROM THE PANAMA CANAL AUTHORITY.

If during the Contractor selection process changes were to be made to the regulations of the Authority, including to these terms and conditions, the contract shall be ruled by the regulation and terms in force at the time the contract is awarded.

**4.28.10. <sup>9</sup>DECLARATIONS FROM THE BIDDER.** All bidders must truthfully complete each and every one of the previous declarations as required by the Authority with the presentation of their proposals, either using the Tender Online System (SLI) or Form 1530 in case of works contracts.

If any of the abovementioned declarations are proven false, the submitted proposal shall be outright rejected. This rejection cannot be contested.

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<sup>7</sup> Amended by Art. 5 of Resolution No. ACP-AD-RM15-23 dated August 20, 2015, in force as of September 07, 2015.

<sup>8</sup> Amended by Art. 33 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 81 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 3 of Resolution No. ACP-AD-RM20-12 dated March 03, 2020. Amended by Art. 9 of Resolution No. ACP-AD-RM-20-33 dated May 21, 2020, in force as of June 09, 2020.

<sup>9</sup> Amended by Art. 34 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 82 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 4 of Resolution No. ACP-AD-RM20-12 dated March 03, 2020. Amended by Art. 10 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

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In these cases, and pursuant to article 181 et. seq. of the Regulation, the Authority may initiate a bidder ineligibility process.

**4.28.11. CONTRACT INTERPRETATION** Contracts entered into by the Authority shall be subject to the provisions of the Authority's Procurements Code, as well as to the terms and conditions established in this contract. The interpretation of the provisions of the Procurements Code and of the contract shall always take into account the legal powers granted to the authority and the equity principle for the relationship with the Contractor.

**4.28.12. <sup>10</sup>CONTRACTING OFFICER'S REPRESENTATIVES (COR).** The Contracting Officer may appoint Contracting Officer's Representatives (COR) for the technical, financial or general administration of the contract.

**4.28.13. <sup>11</sup>ADMINISTRATIVE PROCEDURES FOR CLAIMS.**

1. For the purposes of this contract, a claim is a request made in writing by the Contractor for the payment of a specific sum, for the adjustment or for the interpretation of any of its terms, or of any kind of compensation resulting from executing the contract. The request must include the true amount claimed which may be updated if expenses are still being incurred during the execution of the contract, the contract clauses that form the basis for the claim, and all proof necessary to support it.

2. All claims must be submitted before the Contracting Officer in writing as soon as the Contractor hears of its cause, but, in all cases, within ninety (90) calendar days as of the date in which the Contractor learns about the reasons for the claim. Any claim submitted after this term shall be deemed extemporaneous and, hence, outright rejected.

3. All claims submitted must contain, at least: a contract number; all details and reasons for the claim, including the basis for how the claim is attributable to the Panama Canal Authority; the true and final amount of the claim, which may change if the expenses claimed continue increasing during the execution of the contract; contract clauses and regulations that form the basis for the claim; all evidence to support it; the Contractor's email, to which all notices on the claim must be made; and a declaration that must state the claim is made in good faith, that the supporting information is exact and complete, and that the amount of the claim exactly reflects an adjustment to the contract for which the Authority is deemed responsible. The Contracting Officer shall return claims submitted without at least the aforementioned elements to the Contractor without said return interrupting the term established in the previous paragraph 2. For all claims, the Contracting Officer shall issue a resolution stating grounds within sixty (60) calendar days as of the date the claim is received. The resolution must include the amount of the claim accepted as valid, the reason for rejecting the non-accepted amounts, and responses to the requests for clarification or interpretation or other compensations.

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<sup>10</sup> Amended by Art. 35 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 55 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 83 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>11</sup> Amended by Art. 35 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 55 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 84 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 11 of Resolution No. ACP-AD-RM-20-33 dated December 03, 2018, in force as of December 05, 2018. Amended by Art. 3 of Resolution No. ACP-AD-RM21-43 dated April 27, 2021. In force as of May 4, 2021.

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4. The Contractor shall be notified about the resolution from the Contracting Officer through an email sent to the email address included in the claim. This resolution shall only be subject to appeals in a second instance before the Head of the Procurements Office. The appeal shall be submitted in writing before the Head of the Procurements Office within five (5) business days as of the date the Contractor is notified of the resolution issued by the Contracting Officer who solved the claimed.

For the second instance, the appeal must include additional documents that the appellant deems as proof. For the request for appeal to be accepted, it must be presented within the term established.

Appeals must be submitted via email to [ACP-Apelaciones@pancanal.com](mailto:ACP-Apelaciones@pancanal.com).

5. The Head of the Procurements Office shall notify the appellant in writing of the admission or rejection of the appeal by sending the answer to the email indicated by the appellant in the appeal submitted. The resolution on the appeal shall be issued by the Head of the Procurements Office within no more than forty-five (45) calendar days as of the date a notification is received about the admission of the appeal. The appellant shall be notified about the resolution from the Head of the Procurements Office through an email sent to the email address included in the claim.

6. Claims from the Authority against the Contractor shall be issued by a resolution with grounds made by the Contracting Officer, sending the Contractor a copy of the resolution to the email provided in the contract.

This resolution shall only be subject to appeals in a second instance before the Head of the Procurements Office.

The appeal shall be supported and submitted in writing before the Head of the Procurements Office together with documents deemed appropriate as evidence within five (5) business days as of the date the Contractor has been notified of the Authority's claim.

7. For claims from the Contractor or from the authority, the resolution to the appeal from the Head of Procurements Office ends the administrative proceedings.

8. As an exception and when it is on the Panama Canal Authority's best interest, the Contracting Officer may expressly include an arbitration clause in the contract bid specifications as a way to solve disputes or claims arising from the interpretation, execution or termination of this contract once the administrative proceedings have run their course.

In such cases, the arbitration shall be exclusively focused on the matters for which the claim was made through administrative proceedings.

**4.28.14. <sup>12</sup>DELAY IN THE COMMENCEMENT OF CONTRACT EXECUTION.**

1. When the Contractor cannot commence execution for causes concomitantly attributable to the Authority and the Contractor, the Contractor shall only be entitled to have the Authority extend the term for the execution of the contract for a period no shorter than that of the delays.
2. When the Contractor cannot commence contract execution for causes attributable to the Authority:

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<sup>12</sup> Amended by Art. 9 of Resolution No. ACP-AD-RM03-26 dated June 25, 2003 in force as of July 07, 2003. Amended by Art. 85 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.



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- a. The Contractor shall be entitled to reimbursement as compensation for direct costs necessarily and reasonably incurred during the proven delay.
- b. The Contractor may also be compensated for administrative expenses for up to ten percent (10%) of direct costs recognized by the Authority related to the delay, but the Authority shall not make payments for additional administrative expenses or for any other circumstance nor use another method to calculate that expense.
- c. The Authority shall not pay profits for expenses related to the delay.
- d. The Contractor shall be entitled to have the term for contract execution extended for a period no shorter than that of the delay.
- e. Compensations and/or payments and extensions arising by virtue of the provisions of this clause shall be documented as contract amendments.

**4.28.15. <sup>13</sup> SUSPENSION OR INTERRUPTION OF CONTRACT EXECUTION**

1. The Contracting Officer may order the full or partial suspension or interruption of the contract execution for a term deemed appropriate and convenient for the interests of the Authority.
2. When the Contracting Officer suspends the contract execution for causes attributable to the Authority, the Contractor shall be entitled to a reimbursement, as compensation, for direct costs necessarily and reasonably incurred during the period from the moment when the contract execution stopped until resumption.
3. The Contractor may also be compensated for administrative expenses for up to ten percent (10%) of direct costs recognized by the Authority related to the delay, but the Authority shall not make payments for additional administrative expenses or for any other circumstance nor use another method to calculate that expense.
4. The Authority shall not pay for additional administrative expenses for any other circumstance or use other methods to calculate those expenses.
5. Additionally, profits from expenses related to that suspension period shall not be paid.
6. The Contractor shall be entitled to have the term for contract execution extended for a period no shorter than that of the delay.
7. Compensations and/or payments and extensions arising by virtue of the provisions of this clause shall be documented as contract amendments.
8. The Authority will not recognize any compensation or contract time if the suspension or interruption is due to causes attributable to the Contractor or if it is demonstrated that the suspension or interruption has had no impact on the performance of the contract or construction work.
9. When the Contractor cannot commence execution for causes concomitantly attributable to the Authority and the Contractor, the Contractor shall only be entitled to have the Authority extend the term for the execution of the contract for a period no shorter than that of the delays.

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<sup>13</sup> Amended by Art. 10 of Resolution No. ACP-AD-RM03-26 dated June 25, 2003 in force as of July 07, 2003. Amended by Art. 86 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 40 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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### **4.28.16. <sup>14</sup>RENEWAL.** (For contracts with renewals.)

1. Renewal is the unilateral right of the Authority whereby the Authority, at its discretion, may acquire additional goods and services within the established term, or renew the term of the contract for the periods therein established.

2. When renewal or additional procurement options are included and identified in the contract, the Authority may exercise its right to renew the contract term or to procure the additional elements within the term and at the prices set forth in the contract, upon notice to the Contractor and prior to the expiration of: (a) the term set forth in the contract for ordering additional goods and services subject to renewal or (b) of the contract. The Contracting Officer shall modify the contract to include the exercise of this right.

3. Before using the option to renew the contract term, for each additional period established in the corresponding specifications, the Contracting Officer shall verify that during the contract execution period prior to the renewal, the Contractor has not incurred in any grounds for illegibility to enter into contracts with the Authority as provided in article 43 of the Regulation. Prior to renewal, the Contractor must complete and submit Form 1585 as to verify the foregoing.

4. If the Contractor is not subject to impediments, a market analysis shall be conducted to verify if the renewal is the best alternative for the benefit of the Authority. For this purpose, prior to the renewal, the administrative cost of the Contractor selection process incurred by the Authority must be considered in the market analysis:

- a. B/.4,500.00 for Contracting Officer between B/,1,000.01 and B/100,000.00;
- b. B/.9,500.00 for Contracting Officer over B/. 100,000.00;
- c. B/.10,000.00 for corporate contracts and agreements based on a price list (ALP).

### **4.28.17. <sup>15</sup>DISCOUNT FOR PROMPT PAYMENT OF AN INVOICE SUBMITTED.**

Upon delivery and acceptance of the good or service included in the contract and of the full invoice, the Contractor may offer a discount for prompt payments and include a request to have invoice paid within 30 calendar days either in the invoice or in a note addressed to the Accounts Payable Section of the Accounting Division. The Authority may accept the request when the discount offered is deemed advantageous to the Authority.

### **4.28.18. <sup>16</sup>PAYMENT METHOD**

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<sup>14</sup> Amended by Art. 36 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 56 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 87 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 11 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

<sup>15</sup> Amended by Art. 36 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 56 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 88 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>16</sup> Amended by Art. 57 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM09-19 dated July 22, 2009 in force as of August 22, 2009. Amended by Art. 1 of Resolution No. ACP-AD-RM10-108 dated July 15, 2010, in force as of October 01, 2010. Amended by Art. 1 of Resolution No. ACP-AD-RM11-54 dated November

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The ACP shall pay Contractors entering into new contracts or renewals with the Authority for the amount of the contract based on the instructions received from the Contractor as follows:

1. Local electronic payment (ACH);
2. Electronic payment to bank in the United States (EFT);
3. Bank transfer (SWIFT);
4. Another method established in the contract.

Based on the method selected, the Contractor must notify the following information to the Contracting Officer of the ACP:

1. Local electronic payment (ACH):
  - a. Name of banking institution
  - b. Account name
  - c. Account number
  - d. Account type
  - e. Routing and transit number
2. Electronic payment to bank in the United States (EFT):
  - a. Name of banking institution
  - b. Account name
  - c. Account number
  - d. Account type
  - e. ABA/IBAN number
3. Bank transfer (SWIFT):
  - a. Name of banking institution
  - b. Account name
  - c. Account number
  - d. Account type
  - e. SWIFT code

For all payment methods, the Contractor/supplier shall bear the cost of the local or international fund transfer, as well as the cost of correspondence, fees, charges or the cost for proceedings or financial or bank intermediation for the wiring of dollars or of any other currency in which the payment of services has been established to the United States.

The Contractor accepts and shall consider that, due to the foregoing, intermediary banks or his or her own bank may deduct a fee from the amount or from charges paid by the ACP as a charge for these services or fees.

The ACP shall be responsible for paying the amount for the duly accepted invoice, so any charge imposed or discounted from that amount by intermediary or beneficiary

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banks shall be covered by the Contractor/supplier. The ACP does not and shall not bear any charge or cost resulting from the use of the payment method selected by the Contractor/supplier.

The ACP is not and shall not be responsible for any charge, cost or personal damage suffered by the Contractor/supplier resulting from the use of the payment method selected by the Contractor/supplier, or from the penalties, precautionary actions or actions of any nature whatsoever (including withholdings, compensation, freezing of funds or other measures), freezing of funds or other measures) executed by the bank(s) involved in the payment process in compliance with orders from local or foreign authorities, as a consequence of situations attributable or related to the Contractor or its related parties, once the ACP has issued a payment order.

The Contractor shall be responsible for costs incurred from having supplied wrong information in the payment instructions. The cost incurred shall be deducted from the amount owed to the Contractor.

The contractor is responsible for notifying the Contracting Officer of any changes in the payment instructions.

Contracts in which a different payment method has been established are exempt from this clause pursuant to special provisions from the Panama Canal Authority.

**4.28.19. <sup>17</sup>PAYMENT ASSIGNMENT**

1. The Authority reserves the unilateral right to either authorize or not authorize Contractor requests for the assignment of payments due in connection to the contract execution. Consequently, the Contractor has no right to payment assignments and cannot demand them of or make a claim for them to the Authority.
2. The Authority shall only consider payment assignment requests made by the Contractor in favor of a financial institution or the State; consequently, no request for payment assignment may be made in favor of an entity or person other than those herein mentioned.
3. If a payment assignment in favor of a financial institution or the State is authorized, said assignment shall only be made for all future payments pending to which the Contractor is entitled by virtue of the relevant contract, regardless of the amount cited in the assignment contract and pursuant to the terms and conditions established in the contract.
4. If a request for payment assignment is authorized, the Authority shall make the assigned payments to a single financial or State institution.
5. As a party interested in the payment, the financial institution shall submit valid National Good Standing and Social Security Fund certificates for the assignment.
6. If a request for payment assignment is authorized, the Contractor or interested party shall include the following text in the invoices: "Invoice for payment assignment contract."

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<sup>17</sup> Amended by Art. 37 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 2 of Resolution No. ACP-AD-RM-17-42 dated December 15, 2017. Amended by Art. 13 of Resolution No. ACP-AD-RM20-33 dated May 22, 2020, in force as of June 09, 2020.

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7. In the case of a contract renewal, payments from a renewed contract may be assigned either to a financial institution or to the State provided that: (i) no injunctions have been issued against the Contractor at the time the assignment is requested, and (ii) if the payments for the previous contract have been assigned, the previous assignee certifies that it holds no claim with respect to such assignment and that it received all due payments assigned.
8. For the Authority to accept or reject a contract payment assignment request in favor of a financial institution, the Contractor must submit the following documents:
  - a) Payment assignment contract by and between the Contractor (assignor) and the financial institution (assignee.) The payment assignment contract must include the following information:
    - i. The number of contracts for which payments are being assigned.
    - ii. A statement indicating that the assignment covers all payments to be made pursuant to the contract and the carryover if payments have been made for the contract.
    - iii. That the parties to the assignment agreement (assignor and assignee) release the Panama Canal Authority from all liability arising out of the execution of the assignment.
  - b) Authorization from the assignor's Board of Directors or Shareholders Meeting to make the assignment.
  - c) Letter addressed to the Contracting Officer requesting the payment assignment. The letter must be signed by the authorized representative of the assignor.
  - d) Certificates from the Public Registry (or equivalent certificate for foreign companies) from the assignor and the assignee.
  - e) Authorization from the insurance company or contract guarantor.
  - f) Copy of the identification cards of the legal representative or person authorized to sign for the assignor and the assignee. If those individuals are not residents, copy of another personal identification document accepted by the parties.
  - g) The valid National Good Standing and Social Security Fund Certificates for the financial institution and the assignor.
  - h) For the foregoing section 7, an original letter issued by the assignor of the previous contract in letterhead paper and addressed to the Panama Canal Authority identifying the year and number of the contract whose payments were assigned, indicating it holds no claim whatsoever and that it received the amount for said contract. For letters issued by financial institutions, the signature of the issuer must be authenticated by a Notary Public.
9. For the Authority to accept or reject a contract payment assignment request in favor of the State, the Contractor must submit the following documents:
  - a) A letter signed by the legal representative of the company requesting payments be made to the corresponding State institution indicating the State institution accepts the payment.
  - b) Authorization from the assignor's Board of Directors or Shareholders Meeting to make the assignment.

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- c) Public Registry Certificate from the assignor.
- d) Authorization from the insurance company or contract guarantor.
- e) Copy of the identity card of the assignor's representative.

It is understood that an assignment of payments has been authorized by the Authority when the Contracting Officer so notifies the Contractor in writing by means of a formal note.

The Contractor, as an assignor, must cover and be liable for the administrative cost the Authority must face when processing said assignment. The cost amounts to B/.630.00 (six hundred and thirty Balboas) shall be automatically discounted from the assigned amount by the Authority from the first payment due to the assignee.

Payment assignments for State institutions are not charged for the processing of the aforementioned assignment.

**4.28.20.<sup>18</sup> ADMINISTRATIVE CONTRACT TERMINATION BY UNILATERAL DECISION OF THE AUTHORITY.**

1. The Authority holds the unilateral right to terminate the contract execution fully or partially. The Contracting Officer shall notify the Contractor in writing of the contract termination, including the causes, date and termination limits.
2. Once notified of the contract termination, the Contractor must:
  - a. Immediately stop the contract execution being performed by him or his subcontractors.
  - b. Continue executing the part of the contract that has not been completed;
  - c. Insure and protect the goods of the Authority.
  - d. Remove from the construction site, if any, temporary installations and equipment owned by him and not included in the work, as long as the Contracting Officer has authorized it and the removal does not cause, at the discretion of the Authority, damage to any of the Authority's properties, the work and/or facilities included;
  - e. Transfer any deed to and present the Authority with any manufactured article, supply, material, plans, drawings and any other information which, had the contract been completed, would be owned by the Authority;
  - f. Attempt to dispose of any manufactured article, supply, material or product of the contract not required by the Authority, provided the Contracting Officer has authorized it.
3. In the event of a contract termination unilaterally decided by the Authority, the Contractor shall be entitled to a reimbursement for direct costs connected to work conducted and preparations made for the non-executed portion, provided they were necessary and reasonably incurred and objective proof of these costs has been submitted.

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<sup>18</sup> Amended by Art. 12 of Resolution No. ACP-AD-RM03-26 dated June 25, 2003 in force as of July 07, 2003. Amended by Art. 89 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 42 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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4. The Contractor may also be compensated for indirect costs up to a maximum of ten percent (10%) of the direct costs of the work performed.
5. The Authority shall not pay for additional administrative expenses for any other circumstance or use other methods to calculate those expenses.
6. A five percent (5%) for profits over direct and indirect costs incurred for work executed shall be recognized.
7. No profits shall be recognized if it is deemed the Contractor has incurred in losses in the event the contract was completed.
8. The amount owed to the Contractor by the Authority due to contract termination cannot surpass the total amount of the contract.
9. If discrepancies were to arise pertaining to the contract termination, they may be solved through a claims administrative procedure established in the contract.
10. The Contractor shall be notified about the resolution from the Contracting Officer through an email sent to the email address included in the contract. This resolution shall only be subject to appeals in a second instance before the Head of the Procurements Office.

The appeal shall be submitted in writing within five (5) business days as of the date the Contractor is notified of the resolution herein contained.

11. The appeal must include additional documents the Contractor deems as proof.
12. The resolution deciding on the appeal ends the administrative proceedings.

**4.28.21. <sup>19</sup>PENALTY FOR CONTRACT DEFAULT.**

1. The Contractor whose contract has been terminated for causes fully or partially attributable to the Contractor may not receive any award as a penalty for defaulting on a contract for a period of:
  - a) Twelve months, when the contract sum is above B/.100,000.00.
  - b) Six months, when the contract sum is above B/.100,000.00.
  - c) When the contract has been terminated for any of the grounds contained in sections c), d) and e) from clause 4.28.63, the penalty term shall be equivalent to the term pending performance by the Contractor based on the grounds for impediment incurred.

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<sup>19</sup> Amended by Art. 38 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 58 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 90 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 14 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020. Amended by Art. 43 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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2. The Contractor shall be notified of the penalty resolution by the Contracting Officer through an email sent to the email address included in the contract. The penalty term shall initiate as from the moment the suspension is notified through the Internet, except for literal c) from section 1 of this clause, which shall initiate as of the moment a notification of the resolution terminating the contract is issued.
3. If upon being penalized the Contractor is being subject to a previous penalty period, the new period shall be in force when the previous one finalizes.
4. This resolution shall only be subject to appeals in a second instance before the Head of the Procurements Office. The appeal shall be submitted in writing within five business days as of the date the Contractor is notified of the resolution herein contained.
5. For the appeal to be accepted, the appellant must be legally authorized to appeal, the resolution must be susceptible to the appeal and filed within the established term.
6. The Head of the Procurements Office shall notify the appellant in writing that the appeal has been accepted, and the latter shall have five business days as of the date of the notice to support his claim and submit evidence.
7. The appeal resolution must be issued by the Head of the Procurements Office within no more than fifteen business days as of the date the file is formalized through the submittal of claims and evidence by the appellant.
8. The resolution from the Head of the Procurements Office deciding on the appeal ends the administrative proceedings.
9. Exceptionally, for orders derived from estimated quantity contracts and agreements based on a price list (ALP), the Contracting Officer may exempt them from the penalty described in sections a and b, paragraph one of this clause. Nevertheless, the breach by the Contractor shall be recorded on file for a final assessment.

**4.28.22.<sup>20</sup> ESTIMATED QUANTITY CONTRACTS.**

Estimated quantity contracts are contracts in which the Authority intends to acquire goods, services or works from a specific Contractor at a fixed, predetermined unit price in variable, full or partial amounts, depending on the needs of the Authority.

In estimated quantity contracts, the following rules shall apply:

1. The specifications shall include, apart from terms, conditions and clauses applicable to the contract, all amount estimates for goods, services or works for which the contract has been drafted, a fixed unit price for each of those goods, services or works and the contract term.

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<sup>20</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 91 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.



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2. The total amounts indicated in the specifications are estimations and do not bind the Authority to order them unless otherwise expressed or unless a minimum amount has been identified which the Authority would be obliged to acquire.
3. The obligation to deliver a specific number of goods, provide a service or carry out a work shall be fulfilled once the Authority issues a purchase/delivery order every time the Authority needs the relevant good, service or work. Each purchase/delivery order shall set the specific delivery term for goods, services and works included in the order.
4. The purchase/delivery order shall also include the place where the goods are to be delivered or the services or works are to be provided, and the employee for the Authority responsible for inspecting and accepting them.
5. The purchase/delivery orders thus issued shall be subject to the specification terms, conditions and clauses. In the event of discrepancies between the specific purchase order and the provisions of the specifications, the specifications shall prevail.
6. If the Authority requires an urgent delivery or execution of goods, services or works within terms that are shorter or different from those set in the purchase order, and if the Contractor were unable to accept the order pursuant to the terms, conditions and terms to deliver it, the Authority may acquire such goods, services or works through other means.
7. Fixed unit prices established at the time the contract is awarded may not be increased while the contract is in force unless otherwise stated in the contract. The Contractor undertakes to deliver the goods ordered at the agreed price and within the term stated in the relevant purchase order.
8. Upon a satisfactory delivery to the Authority of the goods or service or upon work execution included in each purchase/delivery order, the Contractor shall be entitled to the payment due for the amounts executed at the set, fixed unit price. For this, the Contractor must comply with the provisions of clauses 4.28.5, 4.28.59, 4.28.60 and 4.28.77, as applicable.
9. Purchase/delivery orders issued while the contract is in force that were not executed during that time, shall be fulfilled based on the term included in the purchase/delivery order. In these cases, the rights and obligations of parties arising from the contract shall extend for the delivery term stipulated in the purchase/delivery order.

**4.28.23. <sup>21</sup>AGREEMENTS BASED ON PRICE LISTS.**

The Panama Canal Authority (AUTHORITY) and the SUBSCRIBER o SUBSCRIBERS are

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<sup>21</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 92 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 44 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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parties to the agreement based on a price list.

1. When the AUTHORITY requires goods and services from the agreement's price list to be supplied, the authority undertakes to acquire them from the SUBSCRIBER or SUBSCRIBERS during the term of the agreement.
2. The amounts stated in the price list are estimates and do not bind the AUTHORITY to order them from the SUBSCRIBER or SUBSCRIBERS.
3. The agreement based on a price list is not a contract. The contractual relationship is established when the AUTHORITY issues a purchase order and the SUBSCRIBER accepts it. The subscriber shall have three (3) business days as of the day the purchase order is received to communicate an acceptance or rejection of the order.
4. If there is more than a SUBSCRIBER for the good or service required, the AUTHORITY shall verify the list of subscribers in *infored* and issue the order for the SUBSCRIBER with the least amount ordered.
5. When none of the SUBSCRIBERS is capable of accepting the purchase order pursuant to the order's delivery terms and conditions, the AUTHORITY may acquire those goods and services through other means.
6. Unit prices established may not be increased while the contract is in force unless otherwise stated in the contract. The SUBSCRIBER undertakes to deliver the goods ordered at the agreed price and term.
7. Goods and services included in the agreement shall be acquired through purchase orders issued by the administrative unit responsible for the purchase. The purchase orders thus issued shall be subject to the agreement's terms, conditions and clauses. In the event of discrepancies between the purchase order and the provisions of the agreement, the agreement shall prevail.
8. Purchase orders issued while the contract is in effect and not fulfilled during that time shall be fulfilled based on the delivery date listed in the order. Rights and obligations of parties established in the agreement shall extend until the fulfillment date listed in the order.
9. The purchase order shall include the place where the goods are to be delivered or the services are to be provided, and the employee for the Authority responsible for inspecting and accepting them.
10. When the goods are delivered or the services are provided, the Contractor shall submit a copy of the corresponding invoice to the employee identified in the previous section to verify that the delivery and quality thereof meet the terms agreed upon in the contract and to issue an approval for payment to be processed.

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11. Once the requirement specified in the previous section has been fulfilled, the Contractor must submit the invoice to the AUTHORITY'S Central Invoice Receipt Office.

**4.28.24. <sup>22</sup>COPYRIGHTS AND PROPRIETARY INDUSTRIAL RIGHTS.** (Their applicability must be expressly stated in the purchase order or contract.)

The Contractor exclusively assigns to the Panama Canal Authority all copyrights and proprietary industrial rights over designs, models, plans, manuals, reports and other documents specified in the specifications that were drafted by the Contractor while executing this contract. The Authority shall have exclusive rights to conduct or authorize changes, adjustments and transformations on these documents, to publicly share them, reproduce them, register them as its property, trade them and use them.

**4.28.25. CONTRACT WITH A FOREIGN PUBLIC ENTITY.**

A technical services provision contract entered into with a foreign public entity with which an agreement has been signed for these purposes includes the terms and conditions of said agreement.

**4.28.26. <sup>23</sup>FIXED PRICE CONTRACTS.**

Prices established in the contract are fixed and shall not be subject to adjustments unless provided for in this standard clause or these specifications. The Contractor is responsible for including in the prices all costs, expenses and utilities directly or indirectly required for the execution of the work and/or services of the contract.

**4.28.27. <sup>24</sup>CONTRACT PRICE BREAKDOWN.** (*For construction work contracts.*)

Within the first ten (10) calendar days after the contract has been signed and/or as required by the Contracting Officer, the Contractor must submit a detailed price breakdown for the proposal for approval. The Contracting Officer may ask the Contractor to provide additional full or partial price breakdowns. The price breakdown submitted by the Contractor must include necessary and sufficient cost details allowing for the identification of their composition in activities and tasks. The Authority reserves the right to request adjustments to the proposed breakdown when it or the cost amounts do not match the activities or tasks.

Payments to the Contractor shall be based on the price breakdowns approved by the Contracting Officer.

**4.28.28. <sup>25</sup>PHYSICAL CONDITIONS DIFFERENT TO THOSE CONTRACTED.** (*For construction work contracts*)

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<sup>22</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 93 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>23</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 94 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>24</sup> Amended by Art. 2 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016

<sup>25</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 95 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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1. The Contractor must immediately notify the Contracting Officer in writing when any of the following conditions are found on the work site and before they are perturbed:
  - a. Underground conditions considerably different from those stated in this contract; or
  - b. Unknown and unusual conditions on the work site considerably different from those generally found in work of the nature of the work hired.
2. The Contracting Officer must immediately investigate the reported condition upon receiving notice from the Contractor. If the Contracting Officer were to decide to move forward with the construction work, and if the conditions significantly differ from those hired causing an increase or decrease in execution expenses or in the time established to complete any part of the work whatsoever, its execution shall be negotiated with the Contractor.  
Compensations and/or payments and extensions arising by virtue of the provisions of this clause shall be documented as contract amendments.
3. The contract shall not be amended if the Contractor does not issue the necessary notice in writing.
4. The contract shall not be modified due to physical conditions different from those hired after the contract has been paid in full.

**4.28.29. MATERIALS AND LABOR** (*For construction work contracts.*)

1. Unless otherwise specified, the equipment, materials and articles included in the work object of the contract must be new, of the best quality and fit for the use proposed. Any reference to equipment, materials, articles or processes patented by trademark, manufacturer or catalog number specified are meant to establish a quality level and shall not be interpreted as restrictive of the broadest competence. The Contractor may use any equipment, material, article or process which, in the Contracting Officer's opinion, is equal or equivalent to that specified.
2. The Contractor must get approval from the Contracting Officer for machinery, mechanical equipment or for any other kind of equipment included in the work. At the time of requesting an approval, the Contractor must provide the Contracting Officer with the manufacturer's name, the model number and, additionally, information on the relevant equipment's performance, capacity, nature and category. When this contract or the Contracting Officer so require, the Contractor must also gain approval from the Contracting Officer for the materials or articles the Contractor considers including in the work. At the time of requesting for approval, the Contractor must supply full information concerning the material or article in question. When thus prompted, the Contractor must supply samples for approval. The Contractor shall cover all expenses related to the supply of said samples. All machinery, equipment, materials and articles not duly approved and installed or used by the Contractor must be installed and used under risk of being rejected and under the obligation of removing them after.
3. All work conducted under this contract must be executed in the best way possible,

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with high quality levels and using qualified personnel for the different work stages. The Contracting Officer may request, in writing, that the Contractor fire any employee which the Contracting Officer deems incompetent, careless or objectionable in any way whatsoever.

**4.28.30. CONSTRUCTION WORK MANAGEMENT.** *(For construction work contracts.)*

1. During contract execution and until the contract is terminated and accepted, the Contractor must assign to the work site a competent superintendent approved by the Contracting Officer and holding power to act on behalf of the Contractor.
2. At the minimum, the superintendent assigned must be a professional holder of a certificate of competence issued by the Technical Board of Engineering and Architecture, and have prior experience, preferably in the type of work specified in this contract. This professional must be present in the work site area during all work hours.
3. The superintendent must have the right number of helpers or foremen for the different stages conducted at the same time in the work site. The work superintendent, as well as his or her helpers or foremen, are obliged to follow orders from the Inspector related to the compliance of contract specifications and plans. The Contracting Officer may demand, and the Contractor may accept, a change or removal of any foreman or supervisor in a case of proven incompetence or negligence.
4. The Contractor may not fire the superintendent or foremen authorized by the Contracting Officer from the work site without previous notification issued in writing about the measure and without a substitute having been approved.

**4.28.31. OTHER CONTRACTS.** *(For construction work contracts.)*

The Authority may conduct, on its own or through third parties, work near or close to the work site indicated in this contract. The Contractor shall cooperate with other Contractors or Authority employees and comply with all contractual obligations, adjusting the schedule to accommodate for the execution of work under the orders issued by the Contracting Officer for those purposes. The Contractor may not accept or allow any action interfering with the execution of work by other Contractors or Authority employees.

**4.28.32. <sup>26</sup>PROTECTION OF VEGETATION, STRUCTURES, EQUIPMENT AND EXISTING UTILITIES.**

1. The Contractor shall protect and preserve all structures, equipment and vegetation (such as trees, bushes and grass) in the work area and its surroundings which have not been removed and which do not interfere with the work required by this contract. The Contractor shall be limited to removing trees when asked to do so, and shall avoid damaging the adjacent vegetation. If any tree branch or trunk is damaged during the execution of the work by a negligent operation of equipment or by the workers, the Contractor shall precisely cut said branch or trunk and paint over the cut using a special compound for tree pruning based on the orders of the Contracting Officer.

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<sup>26</sup> Amended by Art. 59 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 96 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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2. The Contractor shall protect any existing improvement or utilities in the work area and its surroundings, and any adjacent third-party properties in the work area from any damage of which the Contractor is notified or of whose existence he should have known. The Contractor shall fix any damages caused to structures or facilities, including cases in which third party properties are damaged by negligence or breach of contract requirements or by not taking due precautions when conducting work.
3. In the event of damage to the Authority's property, plant and equipment attributable to the Contractor, investigations shall be made and charges imposed, when applicable.

**4.28.33. <sup>27</sup>WORK SITE, SHOPS, STORAGE AREAS, AND FIELD OFFICES.** *(For construction work contracts.)*

1. The term "work site" includes all areas in which the Contract must conduct operations to execute the contract without leaving aside Authority's work areas, workrooms, offices, highways, streets and other facilities.
2. The Contractor must limit its operations (including those for material storage) to the area designated in the specifications or to areas approved by the Contracting Officer.
3. The Contractor is responsible for the work conducted while executing the construction work and releases the Authority (including its officials and agents) from any civil liability whatsoever resulting from its actions.
4. Before commencing work, the Contractor must submit before the Contracting Officer a plan for approval showing the location and size of the temporary facilities it intends to build, such as: offices, workrooms, storage areas, sanitary services and other facilities deemed necessary to execute the contract.
5. These temporary structures shall be built by a workforce and with materials supplied by the Contractor at no cost for the Authority. When the construction work is finalized and before disbursing the final payment, the Contractor shall own these temporary structures and remove them, restoring the work area to its original conditions at no cost for the Authority.
6. Only the equipment and materials necessary under this contract may be stored in the area approved for those purposes for the Contractor.
7. If upon executing the contract the Contractor is not using areas designated for their use or if proven that they are not essential for the future development of the work as determined by the Contracting Officer, the Contractor must immediately, when instructed by the Contracting Officer, vacate and clean the areas at no additional cost for the Authority.

**4.28.34. CLEANING OF THE AREA.** *(For construction work contracts.)*

The Contractor shall keep the work area, including all storage and deposit areas, clean and free of accumulated waste materials at all times. Before finishing the day's work, the Contractor shall remove all debris, tools, scaffolding, equipment and materials not owned by the Authority from the worksite and its surroundings. Once the work is finalized, the Contractor must leave the site organized and clean at the satisfaction of

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<sup>27</sup> Amended by Art. 59 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008 in force as of May 18, 2008. Amended by Art. 97 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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the Contracting Officer.

**4.28.35. <sup>28</sup>CONTRACT SPECIFICATIONS AND PLANS** (*For construction work contracts.*)

1. The Contractor must keep a copy of the contract specifications and plans in the worksite and allow the Contracting Officer or his or her representative to use them at any time whatsoever. All information, data or detail shown in the contract plans but not mentioned in the specifications or vice versa must be deemed specifically shown and mentioned in both. When discrepancies arise between the information shown in the plans and the specifications, the information from the specifications shall prevail. When discrepancies arise regarding measurements in plans or specifications, said discrepancies must be submitted in writing to the Contracting Officer, who shall deliver a final interpretation to the Contractor in writing. For discrepancies in measurements and scales shown in plans, the measurements shall prevail. Any wrong interpretation by the Contractor, as well as expenses arising thereof, shall be solely borne by the Contractor.
2. Workroom plans are drawings presented to the Authority by the Contractor or Subcontractor to show in detail methods proposed for manufacturing, structural component assembly and details for system, materials and equipment installation. These workroom plans must include drawings, diagrams, outlines, lists and descriptive literature for equipment, illustrations, test results and all information necessary for the Contractor to explain in detail how the different aspects of the work are to be executed pursuant to the requirements of the contract.
3. The Authority reserves the right to duplicate, use and have at its disposal all workroom plans and additional information supplied for approval under this contract, as necessary, based on its interests.
4. If the contract requires the submittal of workroom plans, the Contractor is responsible for drafting them, verifying they contain correct information and guaranteeing they comply with the contract requirements.
5. The workroom plans must be signed or stamped by the Contractor. If not signed, they shall be returned to the Contractor.
6. The Contracting Officer shall approve or reject the workroom plans. If the workroom plans are rejected, the Contractor shall receive notice of the reasons. Any work conducted related to the workroom plans and without approval from the Contracting Officer shall be done at the cost and risk of the Contractor. Approval by the Contracting Officer does not release the Contractor from liability for mistakes or omissions in the workroom plans or from the responsibility of complying with the requirements of this contract, except for variations expressly approved by the Contracting Officer.
7. If workrooms plans show variations to contract requirements, the Contractor is responsible for mentioning them in writing in a note to the Contracting Officer and when submitting the workroom plans for approval. If the variation is approved by the Contracting Officer, it shall be registered as a contract amendment.

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<sup>28</sup> Amended by Art. 59 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 98 of Resolution No. ACP-AD-RM18 dated October 11, 2018, in force as of October 11, 2018.

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8. The Contractor must submit to the Contracting Officer the workroom plans for approval (unless otherwise provided somewhere else in the specifications) as required by the specifications. The submission must be done in digital format.

**4.28.36. <sup>29</sup>RESOURCES FOR CONSTRUCTION WORK EXECUTION.** (*For construction work contracts.*)

1. The Contractor shall supply all labor, materials, equipment, tools, instruments, transport, fuel, energy, water (except for any material, equipment or service the Authority must supply as per the specifications), and necessary superintendency for the execution and completion of the work in strict compliance with the terms of the contract.
2. Using its staff, equipment and material, the Contractor must conduct work equivalent to at least fifty-five percent (55%) of the work hired. This percentage may be reduced during the performance of work if the Contractor, so requests and the Contracting Officer deems the reduction beneficial for the Authority.

**4.28.37. <sup>30</sup>ACCIDENT PREVENTION** (*For construction work contracts.*)

1. The Contractor shall provide and implement working conditions and procedures safeguarding the lives of the general public, its staff, the Authority's staff, properties, materials, supplies and equipment exposed to work conducted by the Contractor to avoid interrupting the Authority's operations and delays in the work completion dates. It shall also manage expenses when executing the work.
2. For these purposes, in construction work, demolition, removal or remodeling contracts, the Contractor shall:
  - a. Supply security barricades or fences, signs and lights, among other things;
  - b. Comply with relevant regulations, rules, manuals, and safety, health, occupational hygiene, and environmental protection resolutions from the Canal Authority, with standards from the Codes of Federal Regulations (29 CFR Part 1926 and 29 CFR Part 1910) and the National Fire Protection Association or NFPA from the United States.
  - c. Adopt any precautionary safety, health, occupational hygiene and environmental protection measure ordered by the Contracting Officer as necessary for the performance of work.
3. If the Contracting Officer becomes aware of any anomaly in connection to requirements or of any imminent risk or danger for the health and wellbeing of the Authority's staff, of its staff or of the general public, the Contractor shall receive a verbal notice and then a written notice requesting it take immediate action to remedy the situation. Upon having been delivered to the Contractor or to his

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<sup>29</sup> Amended by Art. 59 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 99 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>30</sup> Amended by Art. 59 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 100 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.



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representative in the worksite, this notice shall be deemed an official notice of contract breach requiring immediate remedy. If the Contractor refuses to take or does not take remedial actions within a reasonable time, and depending on the breach, the Contracting Officer may fully or partially suspend construction work until the Contractor has taken all due remedial actions. The Contractor may not submit a contract extension claim or a claim for additional expenses in light of this suspension.

4. The Contractor must notify the Contracting Officer or his representative of any dangerous conditions for which he is not responsible, but which may be remedied by a third party.
5. When electrical work or work near electrical equipment or circuits is being conducted, the Contractor shall:
  - a. Be responsible for requesting and verifying that the electrical power supply to the structure is cut, isolated and duly marked.

It shall notify the Authority, who shall cut the electrical power supply or isolate the cable, conductor, bar, circuit switch or line where the Contractor wishes to work. The Authority will reestablish electrical power to the cable, conductor, bar, circuit switch or line once the Contractor has completed the work there and stated that they are ready for operation.
  - b. When painting, working on ceilings or remodeling buildings close to power lines, the work shall be scheduled to have the supply cut from those lines while work is conducted in the area. The Contractor shall make all necessary arrangements with the Contracting Officer's representative for the Authority to cut power to a cable as needed.
  - c. For painting, working on ceilings or remodeling buildings, the Authority often requires working near electrical equipment and circuits within them. When the Contracting Officer sees fit to cut the power supply for those circuits, he or she shall schedule the disconnection.
  - d. When necessary, power supply cuts shall be scheduled to avoid a prolonged interruption of services.
6. The Contractor is also bound to:
  - a. Submit the safety and accident prevention plan for approval within thirty (30) calendar days after the contract is awarded unless otherwise indicated in the specifications. The safety plan must include training sessions, and frequent, appropriate safety inspections as a normal, holistic part of contractual activities.

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- b. Submit for approval a list of personal protection equipment to be used by staff, organized by type and manufactured, and especially focused on equipment for jobs that entail high risks.
  - c. Coordinate with representatives for the Contracting Officer to develop mutual understanding on the management of the safety and accident prevention plan (risk analysis and control; certifications and tests for maritime and land material management equipment, and competent staff; training for Contractor's staff and supervisors; coordination and authorizations in industrial areas, facilities and offices; and contingency plans.)
7. The Contractor must include this clause in all subcontracts, making all necessary changes pertaining to the parties thereof.
  8. The Contractor must overlook any part of this clause that does not specifically apply to the work required by this contract.

**4.28.38. CONSTRUCTION WORK SIGN.** *(For construction work contracts.)*

The Contractor must create and install a sign in the section of the construction site the Contracting Officer orders. The sign shall be 1.20 meters high and 1.80 meters in width, and meet the requirements of the drawing included by the end of this section of the specifications. The sign must be installed ten (10) calendar days after the Contractor is authorized to proceed at the latest. No separate payments shall be made for the installation and maintenance of the sign.

**4.28.39. PROTECTION OF MATERIALS AND WORK.** *(For construction work contracts.)*

1. The Contractor shall be responsible for the protection, conservation and maintenance of all materials, supplies or equipment (including any supply or property owned by the Authority), as well as for the protection of work conducted or ongoing from any deterioration, damage or loss between the time the work lasts and the moment the construction work is accepted.
2. All requests made by the Contracting Officer pertaining to the protection of materials and integrity of the work must be answered by the Contractor.
3. If the Contracting Officer considers the Contractor is not taking the measures necessary to protect the materials, supplies, equipment and work executed, these shall be protected by the Authority and the cost for these actions shall be borne by the Contractor or deducted from the payments owed to him.

**4.28.40. SANITARY FACILITIES.** *(For construction work contracts.)*

The Contractor must supply and keep sanitary services for the use of the staff in the worksite. The type, amount and location thereof shall be approved by the Contracting Officer. The Contractor must keep the sanitary services clean at all times. Once the work is concluded, the Contractor must remove the sanitary services at his own cost.

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**4.28.41. <sup>31</sup>DRINKING WATER.**

Unless otherwise stated, the Contractor must manage and/or provide water of sufficient quality for each of the uses required by the contract, including a supply of potable water for its employees' consumption.

**4.28.42. <sup>32</sup>DESCRIPTIVE DATA AND CORRESPONDENCE. (For construction work contracts.)**

1. All catalogs, operation instructions, descriptive literature, references, specifications, drawings and notes referred to the equipment and/or materials supplied pursuant to the specifications, as well as all correspondence, must be written in Spanish except for those documents only available in English referred to equipment and/or materials.
2. All plans and drawings must be prepared as per the requirements of the American National Standard Institute or ANSI, using the metric system. Nevertheless, the English measurement system may be used when conditions so require, subject to approval by the Contracting Officer.
3. When specifications or the Contracting Officer so require, the Contractor must submit the following documents for approval:
  - a. Materials List: Before purchasing any material, accessory or equipment to be included in the work, the Contractor must supply a full list of said materials, accessories or equipment, together with the names and addresses of manufacturers and their catalog and brand names. A full, separate list of materials, accessories and/or equipment required under each section of the specifications must be supplied.
  - b. Descriptive data: The Contractor must provide detailed information and descriptive data for the different materials, accessories and equipment to be included in the work to determine their quality and whether they comply with the requirements of the specifications. All materials, accessories or equipment the Contracting Officer deems non-compliant shall be rejected. Products from known manufacturers who usually produce them at a commercial level shall not be excluded based on minor differences provided that all requirements pertaining to materials, capacity and performance included in the specifications are met.
4. Information on materials, accessories or equipment must be provided using Form No. 3816: "Resource Presentation Sheet." Correspondence must be sent via letters addressed to the Contracting Officer, mentioning the contract number and title.
5. Materials, accessories and/or equipment must be presented via emails addressed to an email address authorized by the Authority or in physical format. If documents are sent electronically, only one (1) copy of the document is necessary. If documents are submitted in physical format, the Contractor must submit one (1) copy (unless otherwise provided) of each document presented.

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<sup>31</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM13-23 dated April 25, 2013, in force as of May 01, 2013. Amended by Art. 1 of Resolution No. ACP-AD-RM-16-28 dated September 01, 2016. Amended by Art. 101 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>32</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM13-23 dated April 25, 2013, in force as of May 01, 2013. Amended by Art. 1 of Resolution No. ACP-AD-RM-16-28 dated September 01, 2016. Amended by Art. 102 of Resolution No. ACP-AD-RM18-44 dated February 16, 2018, in force as of October 11, 2018. Amended by Art. 45 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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6. If the information is delivered in physical format, it shall be acknowledged that the Contractor has submitted the documents as of the moment Form No. 3816 has been received and stamped by the Authority. When the Contractor electronically submits information, it shall be deemed received as of the time the email containing Form No. 3816 is received in the email address authorized by the Authority. When the email is received outside the business hours of the ACP, it shall be deemed received the following business day.

7. Samples:

- a. The Contractor must provide all material samples required in the specifications within a reasonable period prior to their use to allow for their inspection and testing. Material samples that need laboratory tests shall often require at least twenty (20) calendar days to be tested once received by the Contracting Officer. Nevertheless, much more time may be required depending on the nature of the tests necessary or on the capacity of the laboratory to conduct them.
- b. All samples, in the sizes and amounts required by the Contracting Officer or by the specifications, must be supplied (unless otherwise required by the Contracting Officer) and identified with a contract number, relevant clause of the specifications, material name, brand, manufacturer name, place of origin, name and location of the work where the material shall be used and name of supplier Contractor.
- c. Samples shall be packed to guarantee they arrive at their destination in proper conditions, having the sender prepaid for all shipping and handling expenses.
- d. Once approved, material samples not subject to destruction tests shall be kept on file in the Contracting Officer offices until the work is finalized, except for the samples from accessories or other articles approved by the Contracting Officer which may be marked for their identification and installation in the construction work. If the Contractor wishes to keep an approved sample on file, he must provide sufficient additional samples to allow for their necessary distribution. Upon request by the Contractor, all approved or rejected samples shall be returned, and any costs associated to the return shall be borne by him.
- e. Selected samples shall be subject to tests pursuant to the requirements of applicable specifications. If a sample does not meet the requirements of the specifications, the Contractor shall cover the cost of the test. The Authority reserves the right to reject receipt of materials samples from any manufacturer whose previous samples have not passed the tests required in the specifications.

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8. Presentations of Materials, Accessories and/or Equipment:

Each presentation of materials, accessories and/or equipment must be supplied together with a respective full form (Form No. 3816 from the Panama Canal Authority) certified by the Contractor. As far as possible, a single form including all information corresponding to each section of the specifications must be submitted, but under no circumstances shall a single form be submitted with information for more than one section of the specifications. Each copy of the information supplied for approval must be duly identified with the number and name of the section of the specifications, the material or equipment it corresponds to and the relevant contract number. If differences were to exist between the equipment or material proposed and that specified, the Contractor is responsible for stating such variations to the Contracting Officer in writing and at the time of submitting the material or equipment for approval.

Neither the manufacturing or construction related to material or equipment nor their payment shall be allowed until their approval.

- a. Once the material, accessory and/or equipment presentation is approved, the documentation shall be identified through a stamp with the text “Approved”, “Approved with comments” or “Rejected”, and the answer sent to the Contractor via email or through electronic means. Presentations of Materials, Accessories and/or Equipment approved in this way need not be presented again. However, if the Authority rejects the presentation of materials, accessories and/or equipment, it must be presented again as soon as possible, including corrections and/or adjustments required by the Contracting Officer.
- b. Under no circumstance shall the approval of a presentation of materials, accessories and/or equipment by the Contracting Officer be construed as a full review. Generally, it indicates that the construction materials, equipment, system, arrangement, details and/or methods are satisfactory. This approval shall not relieve the Contractor any responsibility whatsoever over any existing mistake or omission. The Contractor shall be responsible for the sizes and design of adequate connections, details, and proper construction, installation and operation of all the work pursuant to the specifications. The approval shall be subject to a final inspection for the work’s acceptance.

**4.28.43. <sup>33</sup>AS-BUILT PLANS. (For construction work contracts.)**

1. During the execution of the work, the Contractor must keep a full set of contract plans where all changes and corrections to the information shown in the plans supplied when the contract was awarded must be included.
2. This updated set of plans must be available at all times in the worksite. If the Contracting Officer determines that the updated set of plans does not show the changes made up to that date, he or she may suspend the physical execution of the portions of work where changes or corrections have not been included in the set of

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<sup>33</sup> Amended by Art. 60 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 103 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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plans. Any cost or delay caused by this decision from the Contracting Officer shall be borne by the Contractor.

3. Upon work completion, the Contracting Officer shall give the Contractor a set of contract plans for the Contractor to record or mark on them all changes or corrections so they might reflect the work “as-built”. This copy of the set of plans marked “as-built” must be submitted to the Contracting Officer before the construction work approval. All revisions and changes made must be shown to stand out over the originally submitted information.

**4.28.44. <sup>34</sup>RESTRICTED ACCESS AREAS**

1. Contractor employees must have special authorizations to access restricted areas (such as airlocks, electric power plants, water purification plants, pumping stations and industrial areas). The Authority shall process these authorizations at no additional cost for the Contractor. The Contractor must provide the Contracting Officer a list of employees at least fifteen (15) calendar days prior to commencing work, and it shall include the full alphabetized names of employees, together with their ID numbers or identification card numbers.
2. Contractor employees must have IDs and identification cards at all times and show them to personnel authorized by the Authority when requested. The Contractor shall make sure all employees work within their work areas and not wander indiscriminately into other parts of the restricted areas.

**4.28.45. <sup>35</sup>SUBCONTRACTORS (For construction work contracts.)**

1. If the Contractor awards subcontracts for the performance of construction work or works within the scope of this contract, he must complete Form No. 7502 for “Notice of Subcontract” and send it to the Contracting Officer for approval within fifteen (15) calendar days as of the date the contract is awarded to the Contractor. The form must contain the Subcontractor’s name and address, a brief description of the work to be conducted under the subcontract and a summary of the Subcontractor's experience highlighting the experience relevant to the subcontracted work. When the Contracting Officer believes the experience proven is not fit for the work to be conducted, he shall notify the Contractor to cancel the subcontracts. Subcontractors who also subcontract construction work and works are also subject to this regulation and approval.
2. No contractual relationship whatsoever shall exist between the Subcontractors and the Authority. The Contractor shall be liable for all activities conducted by said Subcontractors and for the obligations derived from performing their work and subcontracts. The Contractor shall be liable before the Authority for work performed by its Subcontractors as if they had been performed by the Contractor.
3. The Authority shall not have a direct relationship with Subcontractors. The Authority shall send all orders and correspondence directly to the Contractor, who shall immediately deliver them to the Subcontractors avoiding any waste of time since the date taken into account for all purposes shall be that of Contractor

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<sup>34</sup> Amended by Art. 60 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008 in force as of May 18, 2008. Amended by Art. 104 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>35</sup> Amended by Art. 60 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 105 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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notification.

**4.28.46. SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK.** *(For construction work contracts.)*

1. The Contractor acknowledges having taken all reasonably necessary measures to learn about the nature and location of work, and having investigated at its full satisfaction the general and local conditions that might affect the work or cost of contract execution, including, but not limited to:
  - a. Conditions for material transport, disposal, handling and storage;
  - b. Availability of workforce, water, electric power and accessibility;
  - c. Uncertainties related to climate, water bodies or any similar physical condition in the worksite;
  - d. Land composition and conditions, and
  - e. Type of equipment and facilities needed before and after the construction work execution.
2. The Contractor also accepts the conditions for the type, quality and quantity of aboveground and underground material or obstacles to be found which have been verified in a site inspection, including all exploratory information supplied by the Authority and information supplied in the plans and specifications that make up this contract. No breach by the Contractor in the actions described and accepted in this clause releases the Contractor from any responsibility whatsoever to duly estimate the difficulty or cost necessary to complete the work satisfactorily or at no additional cost for the Authority.
3. The Authority is neither responsible for any conclusion arrived at or interpretation made by the Contractor based on the information supplied by the Authority, nor is it responsible for any comment, declaration or interpretation about the information which any of the Contractor's officials or agents might make prior to executing the work in connection to conditions that may affect work unless said comment, declaration or interpretation is expressly stated in this contract.

**4.28.47. <sup>36</sup>PROTECTION OF CULTURAL AND PALEONTOLOGICAL RESOURCES** *(Construction work contracts.)*

1. Definition:

**Cultural or paleontological resources** Remains of human skeletons or graves; artifacts; structures, food waste, bones, charcoal or other sinks; paving, walls or other types of constructions; any indication of agricultural or human activities.

2. When cultural or paleontological resources are discovered or found during contract execution, the Contractor shall immediately suspend work in the discovery site and notify the Contracting Officer of the fact. The Contractor shall take steps to record,

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<sup>36</sup> Amended by Art. 60 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. In force as of May 18, 2008. Amended by Art. 105 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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inform, preserve and protect the site and the cultural or paleontological resources found.

3. The Contracting Officer shall immediately notify the Protection and Surveillance Section and the Head of the Procurements Office of the finding. In turn, the Head shall notify the Finance Office, who will coordinate with the Administration as needed to put the cultural or paleontological resources at the disposal of relevant authorities pursuant to legal regulations.

4. If required, the Contracting Officer may amend the contract pursuant to clause 4.28.15, SUSPENSION OR INTERRUPTION IN THE CONTRACT EXECUTION.

**4.28.48. <sup>37</sup>LINES FOR ESTIMATED AMOUNTS.** *(For construction work or service contracts. Its applicability shall be expressly detailed in the purchase order or specifications.)*

By virtue of this clause, the Authority may acquire estimated or variable amounts of one, several or all the lines of the construction work or service contracts at a fixed unit price as established in the price list when necessary to complete the entirety of the contract, as stated in the specifications. Consequently, only the estimated amounts for those items may be above or below the amount estimated if required to guarantee the full execution of the purpose of the contract.

To the contracts that include lines of estimated amounts, the following rules shall apply:

1. The specifications shall identify the specific items required for the execution of the construction works and services under the scope of this contract which are subject to this clause.

2. The unit price included in the price list or contract for those estimated amounts shall be fixed and may not be increased or adjusted while the contract is in force unless those items correspond to services or work subject to price adjustment clauses as established in the specifications.

3. In those cases, only an original purchase order or contract shall be issued, identifying the items subject to fixed quantities and those subject to estimated amounts. During the execution of the service or the execution of the construction work, the contract may be amended as needed to reflect the resulting increase or decrease in the execution of those items subject to estimated amounts.

4. The quantities in the items of construction work or service contracts subject to this clause are estimations and the Authority is not obliged to order them unless otherwise expressed or unless a minimum amount of those items has been identified within the list of prices which the Authority would be obliged to acquire.

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<sup>37</sup> Revoked by Art. 14 of Resolution No. ACP-AD-RM03-26 dated June 25, 2003 in force as of July 07, 2003. Amended by Art. 107 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.



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5. The final amount due by the Authority for the entire contract shall depend on the adjustment corresponding to the quantities which, once calculated at the fixed price included in the price list, are effectively received and accepted and/or executed at the Authority's satisfaction. The Contracting Officer must include the final amounts executed in the contract file.

**4.28.49. <sup>38</sup>REQUIREMENT FOR THE PRESENTATION OF A COMPETENCE CERTIFICATE. (For construction work or service contracts.)**

To get an order to move forward in the Contracting Officer of work and related items, the Contractor must submit to the Contracting Officers the competence certificate from the Technical Board of Engineering and Architecture accrediting it to provide the specific service required by contract within business days after the contract has been signed.

**4.28.50. <sup>39</sup>PERFORMANCE AND PAYMENT BOND. (For works contracts. In the case of contracts for goods and services when expressly required in the corresponding specifications).**

1. The Contractor must present the performance bond and the payment bond, complying with the provisions of clause 4.28.74 "Bonds" of this document, within a period of ten (10) business days following the perfection of the contract.

2. The performance bond guarantees the fulfillment of a contract or obligation to faithfully execute its object, and once it has been fulfilled, to correct any defects that may arise. The guarantee coverage will be (%) of the contract amount. (For work contracts, the coverage will not be less than fifty percent (50%) of the contract amount and for the acquisition of goods and provision of services, the coverage will be one hundred percent (100%) of the contract amount, except that the contracting officer establishes a lower coverage, according to a risk analysis study, which must be reviewed by the Finance Office and by the Legal Advisory Office, and be approved by the ACP Administrator). Its validity corresponds to the period of execution of the main contract, including any extension approved by the ACP, plus a term of one (1) year in the case of movable property to respond for redhibitory vices, such as workmanship failures, defective material or any Another vice or defect in the object of the contract, except for consumable movable goods that do not have special regulations, whose coverage will be six (6) months, and three (3) years to respond for defects in construction or reconstruction of work or real estate”.

3. The payment bond guarantees the payment to third parties for labor services, services rendered and supplies of goods used in the execution of the main contract. Its amount will correspond to fifty percent (50%) of the contract amount, when it is less than B/.1,000,000.00; Forty percent (40%) of the contract amount when it is greater than B/.1,000,000.00 and less than B/. 5,000,000.00; Forty percent (40%) of the contract amount when it is greater than

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<sup>38</sup> Amended by Art. 16 of Agreement No. 107 dated December 15, 2005. Amended by Art. 1 of Resolution No. ACP-AD-RM16 dated July 14, 2016. Amended by Art. 108 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 46 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

<sup>39</sup> Amended by Art. 16 of Agreement No. 107 dated December 15, 2005. Amended by Art. 1 of Resolution No. ACP-AD-RM16-20 dated July 14, 2016. Amended by Art. 109 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 47 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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B/.1,000,000.00 and less than B/. 5,000,000.00; and of B/. 2,500,000.00 when the amount of the contract exceeds B/. 5,000,000.00. Its period of validity will correspond to the period of execution of the main contract, including any extension approved by the ACP, plus a period of one hundred and eighty (180) days from the last publication, in a newspaper of national circulation, of the termination announcement of the work and its receipt to the satisfaction of the ACP.

4. For the purposes of the announcement referred to in the preceding article, the Contractor shall publish it within a period of thirty (30) days following the date of the resolution stating the final delivery of the work object of the contract. The announcement of the completion of the work will be published three (3) consecutive times on business days in a newspaper with national circulation.

**4.28.51. <sup>40</sup>CONSTRUCTION WORK GUARANTEE. (For construction work contracts.)**

1. The guarantee period shall begin as of the date in which the Authority issues the work completion acceptance.
2. The Contracting Officer may establish the guarantee period begins as of the date the Authority partially accepts the work, pursuant to the terms established in clause 4.28.57.
3. The Contractor shall be responsible for correcting the defects identified during the guarantee period.
4. The guarantee period shall last three (3) years as of the date the work is accepted to answer for contract work or property construction or reconstruction defects. Notwithstanding the foregoing, the guarantee for equipment and materials supplied shall only be in force during the first year of the guarantee to answer for redhibitory defects such as for defective labor, material or equipment, or any vice or defect in the purpose of the contract. In the case of paint jobs, the guarantee period shall last one (1) year as of the moment the work is accepted unless otherwise specified. The specifications may include different guarantee types and terms to those described herein, which shall be considered in addition to these ones.
5. Within the guarantee term, the Contractor must correct all defects and faults discovered in that period. The Contracting Officer shall immediately notify the Contractor in writing after the discovery of defects or faults.
6. The Contractor shall begin remedial work within ten (10) calendar days as of the date a notice of defect or fault is issued by the Authority and should dutifully conduct the work until completion and at the Authority's satisfaction. Said remedial work must include the redelivery of equipment and/or materials, and in no case shall the remedial work take over three (3) months counted as of the date of the notice. Nevertheless, upon mutually agreeing with the Contractor and depending on the complexity or nature of the remedy, the Contracting Officer may postpone

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<sup>40</sup> Amended by Art. 3 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016.

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the beginning of remedial work until the material or equipment can be taken out of service without damaging the Authority. Under no circumstances may the remedial work be postponed for over three (3) months after the date in which the defects or faults requiring remedy have been discovered.

7. The replacement pieces and components and repairs are subject to approval by the Contracting Officer. The Contractor shall cover, at his own expense, all remedial work charges, including all disassembling, transportation, reassembly and retesting necessary, as well as any repair or replacement of defective materials and/or equipment, and any disassembling or reassembly of materials and/or adjacent equipment in the cases where the Authority conducts, at its own expense, the disassembly and reassembly of materials and/or adjacent equipment not supplied by the Contractor that need to be disassembled to provide access to defective materials and/or equipment. Likewise, the remedial work conducted by the Contractor shall include the cost of cleaning, restoring and starting up any component, land, equipment or structure affected by the fault, repair or remedy.
8. If the Contractor were not to conduct the remedial work in the manner and within the time established, the Authority may conduct the work in the name and at the expense of the Contractor, who shall acknowledge and pay the costs thereof when required and his guarantors shall be liable for said payment.  
The provisions in this clause are in addition to any guarantee or insurance condition established by the manufacturer. Manufacturer guarantees or insurance conditions covering a period longer than the guarantee period herein established may not be modified or void by any requirement in this clause.

**4.28.52. <sup>41</sup>INSURANCE.** (For works and/or goods and services contracts, when expressly required in the tender documents)

The Contractor must present to the contracting officer, the policies or evidence of coverage or cover letters that meet the requirements indicated below in this clause, within the term determined by the contracting officer, and if any correction is required or adjustment of the same, the Contractor must deliver the corrections, endorsements, forms or any other documentation that is required, before starting the work on site. Evidence of coverage or cover letters must indicate that they are binding and are proof that the issuer of the document will respond to the Authority up to the coverage indicated.

The ACP will only accept vehicle civil liability and general civil liability policies that are accompanied by the corresponding forms, stamped by the ACP for this purpose (Form No. 1521, Vehicle Civil Liability Policy; Form No. 1522, General Civil Liability Policy). Any policy or evidence of coverage without being accompanied by the corresponding form or having been issued in forms not authorized by the ACP will be rejected outright,

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<sup>41</sup> Amended by Art. 61 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM10-97 dated May 13, 2010, in force as of June 13, 2010. Amended by Art. 5 of Resolution No. ACP-AD-RM15-23 dated August 20, 2015, in force as of September 07, 2015. Amended by Art. 2 of Resolution No. ACP-AD-RM16-20 dated July 14, 2016. Amended by Art. 1 of Resolution No. ACP-AD-RM-18-04 dated February 21, 2018. Amended by Art. 110 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 48 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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unless another form or mechanism is expressed within the specifications of the tender documents.

**a. For work contracts:**

i. Vehicle Civil Liability Policy: To cover property damage and / or personal injury including death, caused to ACP and / or its employees or to any third party, caused by the operation of any vehicle, whether owned, leased or used by the Contractor, its subcontractors , or any other contracted directly or indirectly by one of them.

(1) Coverage limits: The Contractors or its Subcontractors, as applicable, will maintain coverage to respond for the damages caused, with limits not less than:

(a) In the case of heavy equipment or vehicles weighing more than 8 tons that require vehicle registration and license plate issued by the Land Transportation Transit Authority (ATT) to circulate on public roads:

- (i) Personal injuries: B/.100,000.00 per person and B / .300,000.00 per accident.
- (ii) Property damage: B/.100,000.00 per accident.

(b) In the case of vehicles that require vehicle registration and license plate issued by the Transit and Land Transport Authority (ATT) to circulate on public roads, weighing up to 8 tons or used mainly to transport passengers:

- (i) Personal injuries: B/.5,000.00 per person and B/.10, 000.00 per accident.
- (ii) Property damage: B/.5,000.00 per accident.

(2) For contracts where the Contractor requires the transportation of explosives by land, the policy must include coverage for the transportation of explosives.

(3) The policy must mention that it may not be canceled or modified without written notification from the insurer to the ACP contracting officer with no less than thirty (30) days in advance, in accordance with the provisions of paragraph 6 of this clause.

ii. Third Party Liability Insurance Policy: To cover property damage, personal injury, including death, in addition to damages caused to the ACP and / or its employees or to any third party, due to activities carried out by the Contractor, Subcontractors, or any other contracted directly or indirectly by one of them during the performance of the contract. This policy must also cover the following risks:

- Damage caused to cables, pipes and / or other underground or aerial installations.
- Cross-liability
- Premises and operations
- Damages caused by the use of mobile equipment, including forklifts, for the execution of its operations, when this type of equipment is used in the contract. Mobile equipment is defined as a land vehicle (including any machinery or devices connected to it), whether self-propelled or not:
  - that does not require registration as a motor vehicle or license plate, or
  - that is kept exclusively for use on land owned or leased to the Insured,

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including immediately adjoining roads, or

- designed for use primarily off public highways and roads, or
- designed and maintained for the sole purpose of providing mobility to certain equipment, which is an integral part and is permanently connected to such vehicle.

(1) Coverage limits: The Contractor will maintain a sufficient limit to respond for property damage, bodily injury and damages caused-including death, not less than B/.300, 000.00 of a single limit combined in the annual aggregate.

(2) Other terms and conditions of the insurance: The policy must indicate the following:

(a) The ACP is an additional insured and the insurer waives its right to subrogate itself against the ACP for any claim it may have in relation to the contract.

(b) The ACP can claim directly to the insurer for those claims misdirected by third parties, which, according to the contract, are the responsibility of the Contractor.

(c) The ACP and its employees maintain their right to claim as third parties. Therefore, the designation of the ACP as additional insured does not prevent the ACP or its employees from making claims to this policy, for damages, injuries and / or damages that the Contractor, Subcontractor or any other contracted directly or indirectly by one of these, may cause.

**b. For contracts involving dredging operations:**

In addition to the Vehicle Civil Liability policy indicated in paragraph “a”, the Contractor must submit the following:

i. Third Party Liability Policy: To cover property damage, personal injury, including death, in addition to damages caused to the ACP and / or its employees or any third party, due to the activities carried out by the Contractor, Subcontractors, or any other direct contractor or indirectly by one of these during the execution of the ground operations that are the object of the contract.

The policy must cover the following risks:

- Specialized operations: To cover damages, injuries, costs and / or expenses incurred during the execution of specialized operations, including, but not limited to, dredging operations, pile foundations, well drilling, installation of cables or pipes, maintenance o removal, substance sampling, debris disposal, material incineration or disposal operations.
- Drilling and blasting operations: To cover damages, injuries, costs and / or expenses incurred as a result of drilling and blasting operations, substance sampling or production operations, including transportation, storage and use of explosives.
- Detonation or explosion of unexploded munitions, despite the low probability of finding them.

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- Pollution: To cover damages, injuries, costs and / or expenses incurred by contamination resulting from the execution of the contracted operations, whether to the atmosphere, water or land resources, which includes, but is not limited to, those caused by the construction of dikes, hydrocarbon spills, and / or solvent and paint residues.
- Damages caused to cables, pipes and / or other underground and aerial installations.
- Civil cross liability
- Premises and operations
- Damages caused by the use of mobile equipment, including forklifts, for the execution of its operations, when this type of equipment is used in the contract. Mobile equipment is defined as a land vehicle (including any machinery or devices connected to it), whether self-propelled or not.
- that does not require registration as a motor vehicle or license plate, or
- that is kept exclusively for use on land owned or leased to the Insured, including immediately adjoining roads, or
- designed for use primarily off public highways and roads, or
- designed and maintained for the sole purpose of providing mobility to certain equipment, which is an integral part and is permanently connected to such vehicle.

(1) Coverage limits: The Contractor will maintain a sufficient limit to respond for property damage, bodily injury and damages caused -including death, not less than ten percent (10%) of the value of the combined single limit contract per occurrence.

(2) Other terms and conditions: The policy must indicate the following:

- (a) The ACP is an additional insured and the insurer waives its right to subrogate itself against the ACP for any claim it may have in relation to the contract.
- (b) The ACP may claim directly to the insurer for those claims misdirected by third parties, which, according to the contract, are the responsibility of the Contractor.
- (c) The ACP and its employees maintain their right to claim as third parties. Therefore, the designation of the ACP as additional insured does not prevent the ACP or its employees from making claims to this policy, for damages, injuries and / or damages that the Contractor, Subcontractor or any other contracted directly or indirectly by one of these, may cause.

ii. Maritime Operations Civil Liability or Protection and Indemnity (P&I) Policy: When the scope of work requires the use of floating equipment, the insurance must cover all risks usually associated with maritime operations. The Contractor must have a Maritime Operations Civil Liability or P&I policy that covers the

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following:

- Salvage operations: To cover property damage, personal injury, costs and / or expenses resulting from salvage operations, including refloating.
- Collision and debris removal: To cover property damage, personal injury, costs and / or expenses incurred as a result of collision and / or removal of debris or scrap from floating equipment used during operations.
- Pollution: To cover damages, injuries, costs and / or expenses incurred by pollution resulting from the execution of the contracted operations, whether to the atmosphere, water resources or land.

(1) Coverage limits: The Contractor shall maintain sufficient limits to cover property damage, bodily injury and damage caused - including death, not less than one hundred percent (100%) of the market value of the floating equipment used for the performance of the single limit contract combined per occurrence.

(2) Other terms and conditions: The policy must indicate the following:

- (a) The ACP is an additional insured and the insurer waives its right to subrogate itself against the ACP for any claim it may have in relation to the contract.
- (b) The ACP may claim directly to the insurer or the P&I Club for those claims misdirected by third parties, which, according to the contract, are the responsibility of the Contractor.
- (c) The ACP and its employees maintain their right to claim as third parties. Therefore, the designation of the ACP as additional insured does not prevent the ACP or its employees from making claims to this policy, for damages, injuries and / or damages that the Contractor, Subcontractor or any other contracted directly or indirectly by one of these, may cause.

iii. Hull and engine policy: To cover the physical damage caused to the floating equipment used for the execution of the contracted works.

(1) Coverage limits: By the market value of the floating equipment.

(2) Other terms and conditions of the insurance: The policy must indicate the following:

(a) The ACP is an additional insured and the insurer waives its right to subrogate itself against the ACP for any claim it may have in relation to the contract.

(b) The ACP can claim directly to the insurer for those claims misdirected by third parties, which according to the contract are the responsibility of the Contractor.

1. The validity of the insurance policies will be from the start date of the works, indicated in the order to proceed, including any extension approved by the ACP, until the delivery of contracted goods and services, without limiting obligations and responsibilities.

2. The Contractor shall acquire and maintain the General Civil Liability policies (for

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dredging operations contracts), Maritime Operations Civil Liability or Protection and Indemnity (P&I), and / or Hull and Machinery, in accordance with the provisions of this clause:

- a. In the case of insurance and / or reinsurance companies legally established in the Republic of Panama and authorized by the Superintendency of Insurance and Reinsurance of the Republic of Panama to underwrite insurance business in the corresponding branches.
  - b. In the case of insurance companies, reinsurance companies and / or international P&I Clubs that have, at the time of underwriting the policies, a long-term credit rating of no less than A.M. Best "A-", Standard & Poors (S&P) "A-", Moody's Investor's Service "A3" or Fitch Ratings "A-", or the rating that the ACP in its sole and absolute discretion requires.
3. The contractor shall substitute, at its own cost, the policies issued by insurers and / or reinsurers that no longer meet any of the requirements described herein.
  4. Document stating and including a direct action clause in favor of the ACP (Cut-Through Clause), in case of using reinsurance in the underwriting of policies, where the reinsurers commit to the reinsured that in the event of if the latter does not comply with its contractual obligations to the ACP, the reinsurers will pay the original insured the portion that corresponds to pay the reinsured in case of any loss, representing the responsibility of the reinsurers with respect to the reinsured under the terms of the policy, less the premium owed to reinsurers, if any. The statement of charges will specify the application of this requirement, if any, and will provide the model of direct action clause (Cut Through Clause) in favor of the ACP.
  5. The policies will indicate that they cannot be canceled or modified without written notification from the insurer to the ACP contracting officer at least thirty (30) days in advance. The insurer must obtain acknowledgment of receipt from the contracting officer for the notification to be considered valid.
  6. The documentation related to the policies that must be presented to the ACP consists of, but is not limited to, the General Conditions, the Particular Conditions and all their endorsements, if any. In the case of the Maritime Cargo policy, in addition to the above, the standard Clause of the International Institute (International Institute Cargo Clauses) must be presented.
  7. The ACP reserves the right to acquire, at the Contractor's expense, any of the policies in this clause indicated, if the latter fails to obtain or maintain the contractual insurance requirements. The ACP will deduct the premiums and other direct and indirect costs of acquisition, brokerage and administration of



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the policies incurred by the ACP.

8. Each company, as long as it has policies or bonds in favor of the ACP, must annually publish on its website a copy of its audited financial statements that include its notes within ten (10) business days from the date of issue. You can deliver them electronically or via a link to a website.

9. Notwithstanding the provisions of the preceding paragraphs, the ACP will not accept and reject any insurance policy issued by an insurer and / or reinsurer that:

- a. Is prevented by disqualification or penalty from contracting with the ACP in accordance with the applicable ACP regulations, or
- b. Is disqualified by the Panamanian State to contract with State entities or with State-owned companies, or
- c. Is disabled by your country of origin in the case of insurers incorporated outside of Panama; or
- d. It is in a process of regularization, of taking administrative or operational control, judicially intervened, or of forced liquidation, or prevented or limited to do its business as ordered by a competent authority in the Republic of Panama or in its country of origin in the case of insurers incorporated outside the national territory; or
- e. Is in breach of any of its contractual obligations as an insurer, reinsurer or surety with the ACP, even when and while it is in a dispute process or litigation with the ACP.

10. El contratista deberá reemplazar, a su costo, dentro de un plazo de treinta (30) días cale The contractor must replace, at its cost, within a period of thirty (30) calendar days, all insurance policies already accepted by the ACP, and that have been issued by insurance and / or reinsurance companies that:

- a. Is prevented by disqualification or sanction to contract with the ACP in accordance with the rules applicable by the ACP, by the Panamanian State or by the country of origin in the case of insurers incorporated outside the national territory, while such disqualification lasts; or
- b. It is in a process of regularization, of taking administrative or operational control, or of forced liquidation, as ordered by a competent authority in the Republic of Panama or in its country of origin in the case of insurers incorporated outside the national territory; or is in breach of its obligations as an insurer or surety with the ACP, with the Panamanian State, and / or in its country of origin (in the case of insurers incorporated outside the national territory); and even when it is in a dispute process.

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**c. For construction work contracts:**

i. Vehicular Civil Liability Policy: To cover damages to property and/or personal injuries, including death, caused to the ACP and/or its employees or to any third party by the operation of any vehicle whatsoever, either owned, leased or used by the Contractor, its subcontractors or any other party directly or indirectly hired by any of them.

(1) Coverage limits: The Contractor or its subcontractors, as applicable, shall keep coverage to answer to damages caused with limits that may not be below:

(a) For heavy equipment or vehicles over 8 tons in weight

Requiring vehicle registration and plates issued by the Land Transport Transit Authority (ATT) to circulate on public roads.

(i) Personal injuries: B/.100,000.00 per person and B/.300,000.00 per accident.

(ii) Damages to property: B/.100,000.00 per accident.

(b) In the case of vehicles requiring vehicle registration and plates issued by the Land Transport Transit Authority (ATT) to circulate in public roads, weighing 8 tons and mainly used to transport passengers:

(i) Personal injuries: B/.5,000.00 per person and B/.10,000.00 per accident.

(ii) Damages to property: B/.5,000.00 per accident.

(2) For contracts where the Contractor is required to transport explosives by land, the policy must include coverage for the transportation of explosives.

(3) The policy must mention it cannot be canceled or modified without written notice issued by the insurance company to the ACP's Contracting Officer at least thirty (30) days in advance, pursuant to the provisions of section 6 of this clause.

ii. General Civil Liability Policy: To cover damages to property, personal injuries, including death, in addition to personal damages caused to the ACP and/or its employees or to any third party by activities conducted by the Contractor, its subcontractors or any other party directly or indirectly hired by any of them during the execution of the contract. Additionally, this policy must cover the following damages:

▪ Damages caused to cables, pipes and/or other underground or overhead installations.

▪ Cross-liability

▪ Lots and operations

▪ Damages caused by the use of mobile equipment, including forklifts, to perform operations when the contract uses that type of equipment. Mobile equipment is defined as a land vehicle (including any machinery or fixtures connected thereto), with or without its own propulsion:

○ that does not require registration as a motor vehicle or plates, or

○ that is solely kept for use in the land owned or leased by the Insured,

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including in immediately adjoining roads, or

- designed to be mainly used outside of highways and public roads, or
- designed and kept for the single purpose of moving certain equipment which is integral and permanently connected to said vehicle.

(1) Coverage limits: The Contractor shall have a limit sufficient to respond to the damages to property, body injuries and personal damages caused, including death, that is not below a B/.300,000.00 single limit combined in the annual installment.

(2) Other insurance terms and conditions: The policy must include that:

(a) The ACP is an additional insured party and the insurance company waives its right to subrogation against the ACP for any claim arising in connection to the contract.

(b) The ACP may file a direct claim against the insurance company for any misguided claim filed by third parties for which, pursuant to the contract, the Contractor is liable.

(c) The ACP and its employees hold the right to file claims against third parties. Hence, appointing the ACP as an additional insured party does not prevent it or its employees from submitting claims against this policy for damages, injuries and/or personal damages caused by the Contractor, Subcontractor or by any other party directly or indirectly hired by them.

**d. For contracts involving dredging operations:**

In addition to the Vehicular Civil Liability Policy mentioned in section “a”, the Contractor must submit:

i. General Civil Liability Policy: To cover damages to property, personal injuries, including death, in addition to personal damages caused to the ACP and/or its employees or to any third party by activities conducted by the Contractor, its subcontractors or any other party directly or indirectly hired by any of them during the execution of the contract on land within the scope of the contract.

This policy must cover the following damages:

- Specialized operations: To cover damages, injuries, costs and/or expenses incurred during the execution of specialized operations, including, but not limited to, dredging operations, pile foundation operations, installation of cables or pipes, maintenance or removal, substance sampling, debris storage, material burning or disposal operations.
- Perforation and blasting operations: To cover damages, injuries, costs and/or expenses incurred resulting from perforation and blasting operations, substance sampling or production operations, including the transportation, storage and use of explosives.
- Detonation or explosion of undetonated ammunition despite the low

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probability of encountering them.

- Pollution: To cover damages, injuries, costs and/or expenses incurred by pollution resulting from the execution of hired operations, either to the atmosphere, water or land resources, including, but not limited to pollution caused by the construction of levees, by hydrocarbon spills and/or spills from solvents and paint.
- Damages caused to cables, pipes and/or other underground or overhead installations.
- Cross-liability
- Lots and operations
- Damages caused by the use of mobile equipment, including forklifts, to perform operations when the contract uses that type of equipment. Mobile equipment is defined as a land vehicle (including any machinery or fixtures connected thereto), with or without its own propulsion:
  - that does not require registration as a motor vehicle or plates, or
  - that is solely kept for use in the land owned or leased by the Insured, including in immediately adjoining roads, or
  - designed to be mainly used outside of highways and public roads, or
  - designed and kept for the single purpose of moving certain equipment which is integral and permanently connected to said vehicle.

(3) Coverage limits: The Contractor shall have a limit sufficient to respond to the damages to property, body injuries and personal damages caused, including death, that is not below ten percent (10%) of the single limit contract combined by incidence.

(4) Other terms and conditions: The policy must include that:

- (a) The ACP is an additional insured party and the insurance company waives its right to subrogation against the ACP for any claim arising in connection to the contract.
- (b) The ACP may file a direct claim against the insurance company for any misguided claim filed by third parties for which, pursuant to the contract, the Contractor is liable.
- (c) The ACP and its employees hold the right to file claims against third parties. Hence, appointing the ACP as an additional insured party does not prevent it or its employees from submitting claims against this policy for personal damages, injuries and/or personal damages caused by the Contractor, Subcontractor or by any other party directly or indirectly hired by them.

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ii. Civil Liability Policy for Maritime Operations or for Protection and Indemnity (P&I): When the scope of the work requires using floating equipment, the insurance must cover all risks usually associated to maritime operations. The Contractor must have a Civil Liability Policy for Maritime Operations or for P&I covering:

- Salvage operations: To cover damages to property, personal injuries, costs and/or expenses resulting from the salvage operations, including refloating.
- Collision and debris removal: To cover damages to property, personal injuries, costs and/or expenses incurred as a result of a collision and/or debris or scrap removal from the floating equipment used during operations.
- Pollution: To cover damages to property, personal injuries, costs and/or expenses incurred due to pollution resulting from executing the hired operations, either in the atmosphere or water or land resources.

(3) Coverage limits: The Contractor shall have a limit sufficient to respond to the damages to property, body injuries and personal damages caused, including death, that is not below a hundred percent (100%) of the market value of the floating equipment used to execute the single limit contract combined by incidence.

(4) Other terms and conditions: The policy must include that:

- (a) The ACP is an additional insured party and the insurance company waives its right to subrogation against the ACP for any claim arising in connection to the contract.
- (b) The ACP may file a direct claim against the insurance company or the P&I Club for any misguided claim filed by third parties for which, pursuant to the contract, the Contractor is liable.
- (c) The ACP and its employees hold the right to file claims against third parties. Hence, appointing the ACP as an additional insured party does not prevent it or its employees from submitting claims against this policy for damages, injuries and/or personal damages caused by the Contractor, Subcontractor or by any other party directly or indirectly hired by them.

iii. Hull and Machinery Insurance: To cover physical damages to the floating equipment used to execute the work hired.

(1) Coverage limits: For the market value of the floating equipment.

(2) Other insurance terms and conditions: The policy must include that:

(a) The ACP is an additional insured party and the insurance company waives its right to subrogation against the ACP for any claim arising in connection to the contract.

(b) The ACP may file a direct claim against the insurance company for any misguided

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claim filed by third parties for which, pursuant to the contract, the Contractor is liable.

11. The insurance policies shall be valid as of the date work is initiated mentioned in the order to proceed, including any extension authorized by the ACP, until the date the goods and services hired are delivered, including the obligations and responsibilities.

12. The Contractor must acquire and maintain the General Civil Liability Policy (for dredging operation contracts), Civil Liability Policy for Maritime Operations or Protection and Indemnity (P&I) and/or the Hull and Machinery Policy, as provided in this clause:

a. In the case of insurance companies and/or reinsurers legally incorporated in the Republic of Panama and authorized by the Insurance and Reinsurance Superintendency of the Republic of Panama to conduct insurance business in the relevant industries.

b. For insurance, reinsurance and/or international P&I Clubs that have, at the time the policy is signed, a long-term credit rating equal or above A.M. Best "A-", Standard & Poors (S&P) "A-", Moody's Investor's Service "A3" or Fitch Ratings "A-", or the rating required by the ACP at its full and sole discretion.

13. The Contractor must substitute, at his expense, policies issued by insurers and/or reinsurers that no longer comply with the requirement herein described.

14. Document stating and including a direct action clause (Cut-Through Clause) in favor of the ACP in case reinsurance is used when signing the policies, in which the reinsurer undertakes that if the reinsured does not meet its contractual obligations to the ACP, the reinsurers shall pay to the originally insured party the portion the reinsured ought to pay in the event of any loss for which the reinsurers are liable to the reinsured under the policy terms, minus the premium owed to the reinsurers if any. The specifications shall detail how to implement this requirement, if needed, and provide a template for the direct action clause (Cut Through Clause) in favor of the ACP.

15. The policies must mention they cannot be canceled or modified without written notice issued by the insurance company to the ACP's Contracting Officer at least thirty (30) days in advance. For the notice to be deemed valid, the insurer must obtain an acknowledgment of receipt from the Contracting Officer.

16. The documents pertaining to the policies to be submitted to the ACP shall be made up of, among others, the General Conditions, the Specific Conditions and all their riders if any. In addition to the foregoing, the International Institute Cargo Clauses must be submitted for the Maritime Load policy.

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17. The ACP holds the right to acquire, at the Contractor's expense, any of the policies contained in this clause if the Contractor fails to obtain or comply with the insurance requirements of the contract. The ACP shall deduct premiums and other direct and indirect expenses incurred by the ACP for policy acquisition, brokerage and management.

18. Any company holding policies or guarantees in favor of the ACP must annually publish a copy of its audited financial records in its website, including notes, within ten (10) business days as of the issuance date. These records may be delivered electronically or through a website link.

19. Notwithstanding the foregoing, the ACP shall not accept and shall reject any insurance policy issued by an insurer and/or reinsurer that:

- a. Pursuant to the applicable regulations of the ACP, has been suspended or penalized and cannot enter into contracts with the ACP; or
- b. Has been suspended by the Panamanian State from entering into contracts with State agencies or State-owned companies; or
- c. Has been suspended in its country of origin in the case of companies incorporated outside of Panama; or
- d. Is undergoing a regularization or administrative or operation control takeover process, legally put under administration, under forced liquidation, or prevented or limited from conducting business as ordered by a relevant authority in the Republic of Panama or in its country of origin in the case of insurance companies incorporated outside the national territory; or
- e. Is in breach of any of its contractual obligations to the ACP as an insurer, reinsurer or guarantor, even when and while it is under dispute or litigation with the ACP.

20. The Contractor must replace, at his expense and within thirty (30) calendar days, all insurance policies approved by the ACP and issued by insurance and/or reinsurance companies that:

- a. Pursuant to the applicable regulations of the ACP, the Panamanian State or of the country of origin (if the insurer was incorporated outside the national territory) are suspended or penalized and cannot enter into contracts with the ACP while the suspension holds; or
- b. Are undergoing a regularization or administrative or operation control takeover process, or are under forced liquidation as ordered by a relevant authority in the Republic of Panama or in its country of origin in the case of insurance companies incorporated outside the national territory; or are in breach of any of their contractual obligations to the ACP, the Panamanian State and/or in their country of origin (if the insurer was incorporated outside the national territory) as an insurer or guarantor, even when involved in litigation.

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**4.28.53. <sup>42</sup>FINE OR FINANCIAL PENALTY FOR DELAYS IN THE EXECUTION OF THE CONSTRUCTION WORK. (For construction work contracts.)**

1. The Contractor shall pay the Authority the sum specified in the contract as a fine for each calendar day of delay in the execution of the construction work as of the day after the term to complete the construction work and/or a stage or part of the work, as specified in the contract. This is notwithstanding the Authority's right to terminate the contract for reasons attributable to the Contractor pursuant to the provisions of 4.28.63, and to the right to claim damages caused by said delay.

2. If the Authority decides not to administratively terminate the contract for causes attributable to the Contractor and allows him to continue executing work after the term end (including after the extensions), the fine or financial penalty to be paid by the Contractor shall be calculated based on the daily fee mentioned in the previous paragraph 1 until the work has finally been accepted by the Authority.

3. Whenever the contract is administratively terminated for reasons attributable to the Contractor (including any extension granted), the Contracting Officer shall notify the guarantor company and execute the contract compliance guarantee, either by having the Guarantor pay the guarantee or undertake all Contractor rights and obligations and continue executing the contract. If the Guarantor undertakes all Contractor rights and obligations and continues executing the contract, the fine mentioned in the previous paragraph 1 shall still accrue until the work has been finally accepted by the Authority.

4. Exceptionally, and pursuant to the provisions of section 2, clause (Construction Work Accepted), if the Contracting Officer were to partially accept the construction work, the fine or financial penalty incurred due to work execution delay shall no longer apply as of the partial acceptance date defined by the Contracting Officer.

**4.28.54. <sup>43</sup>MODIFICATIONS. (For construction work contracts.)**

1. Only the Contracting Officer is authorized to modify the contract without rendering it void and without the need to notify the guarantor. These modifications must be within the scope of the contract and be, as the Contracting Officer understands, necessary or convenient for the proper fulfillment of the contract purpose, and include, but are not limited to:
  - a. Modifications to specifications, including drawings and designs;
  - b. Modifications to the work method;
  - c. Modifications to the facilities, equipment, materials, and/or services provided by the Authority in the contract; and
  - d. Speed-up orders in the method of work.
2. Contract modifications must be made in writing. Likewise, no additional work shall be conducted without prior written authorization issued by the Contracting

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<sup>42</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM15-08 dated March 18, 2015. Amended by Art. 1 of Resolution No. ACP-AD-RM10-97 (dated May 13, 2010), in force as of June 13, 2010. Amended by Art. 111 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>43</sup> Amended by Art. 62 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 112 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.



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Officer.

3. When the Contractor believes the Authority has conducted or is about to conduct a modification that is not included in the contract, or when he has received an order, instruction, interpretation or decision by the Contracting Officer which he believes is a change in the contract, he shall immediately notify the Contracting Officer of this in writing.
4. No modifications may be made to avoid the competitive procurement process. Modifications shall be limited to the scope of the contract.
5. The Contracting Officer may unilaterally modify the contract, which shall require compulsory compliance, notwithstanding the relevant claim the Contractor may submit pursuant to the provisions of clause 4.28.13, Administrative Procedures for Claims.
6. All contract modifications that increase or decrease the value or term thereof shall be compensated at a reasonable price based on market conditions, and shall be made effective when in writing. The contract amount may not be increased above fifteen percent (15%) of the original contract amount unless through previous approval by the Board of Directors or for estimated quantity contracts.
7. When variations in work entail an increase in the contract amount, the Contractor shall submit all riders necessary for fulfillment and payment guarantees.

**4.28.55. <sup>44</sup>SUBMISSION OF PROPOSALS – MODIFICATIONS TO THE CONTRACT. (For construction work contracts.)**

1. For proposals related to contract modifications, the Contractor must submit a proposal together with a detailed price breakdown when requested by the Contracting Officer. The breakdown must be detailed to allow for an analysis of the cost of materials, labor, equipment, subcontracts and profit margin, covering all work aspects of the modification to either eliminate, add or change work from the original construction work. Any item listed as a subcontract must be broken down in the same manner. Likewise, all extension requests must be supported. The proposals, along with the price breakdowns and the justification for the extension, must be submitted in the dates indicated by the Contracting Officer.
2. For the purposes of additional work or contract modifications made either by the Contractor or Subcontractors, the Authority shall recognize fifteen percent (15%) of general expenses and profit over the total for direct costs agreed upon.
3. If the modification agreed includes an extension or shortening of the contract term established, the Authority shall not recognize any additional compensation for indirect expenses due to the extension of work.

**4.28.56. <sup>45</sup>QUALITY CONTROL AND CONTRACT INSPECTION. (For construction work contracts.)**

1. The Contractor must keep a proper inspection and quality control system to guarantee that work is executed as provided in the contract. The Contractor must keep full inspection and quality control records which shall be available at all times to be reviewed by the Authority. Nevertheless, the Authority may keep a quality

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<sup>44</sup> Amended by Art. 113 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>45</sup> Amended by Art. 2 of Resolution No. ACP-AD-RM05-08 dated March 18, 2015. Amended by Art. 4 of Resolution No. ACP-AD-RM16-24 dated August 02, 2016. Amended by Art. 114 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

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control assurance and/or control system of its own for oversight. All work shall be subject to inspections and testing conducted by the Authority in all places and at all times during the execution of the work and before its acceptance to guarantee strict compliance with the contract terms and conditions.

2. Technical inspections conducted by the Authority in construction work contracts are a requirement for the acceptance and payment of work. Construction work contracts are inspected by the Authority's construction work inspection unit. The Contracting Officer may appoint one or several Inspectors to oversee true compliance with the obligations undertaken by the Contractor. The Inspectors shall be empowered to inspect all work conducted in the work site, as well as all work, materials and equipment supplied. These inspections shall extend to all or part of the work and to the preparation and manufacturing of materials to be provided. The Contractor shall provide the Contracting Officer all inventories of amounts and costs, work schedules, reports, invoices, receipt guides, records and other data required by the Authority pertaining to the work executed, equipment and the materials supplied or to be supplied under this contract. Said Inspector shall inform the Contracting Officer about the progress of the work, the way it is executed and the quality of the materials supplied by the Contractor executing the work, and shall call his attention to any fault, non-compliance or breach detected. That the Inspector does not tell the Contractor about any defect in the work in time shall not be an excuse for the acceptance or approval of said defect. The Inspector may request any test deemed necessary to know if the work was duly executed and complies with the contract requirements.
3. The inspection or lack thereof by the Authority does not excuse the Contractor from its obligation to execute the construction work in strict compliance with the requirements of the specifications, and shall neither constitute nor imply an acceptance of work, nor shall it affect the rights of the Authority once the work is accepted. Additionally, the inspection conducted by the Authority shall not excuse the Contractor from providing appropriate quality control measures or from liability for damages or materials lost prior to the acceptance by the Authority.
4. The Inspector is not authorized to change any of the terms and conditions of the contract without written authorization by the Contracting Officer. Consequently, indications made by the Inspector to the Contractor that do not comply with the specifications do not bind the Contracting Officer or the Authority, nor do they excuse the Contractor from dutifully complying with this contract.
5. The Contractor must supply all materials and/or equipment necessary to execute the construction work from the contract, except for those listed in the specifications as to be supplied by the Authority. The quality of materials, equipment and labor shall comply with the demands of the contract. Materials and equipment used in the construction work must be new, recently manufactured and tested.
6. The Contractor must provide all facilities, labor, equipment and materials required to conduct all inspections and tests reasonably requested by the Contracting Officer which may be conducted in a timely, safe and convenient fashion by both

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parties and without them implying an additional cost for the Authority. The Contractor must notify the Contracting Officer of the time, place and date of operations that require inspection or testing pursuant to the bid specifications within no more than ten (10) business days of the event if within the Republic of Panama, or thirty (30) business days if the event is to be conducted abroad. The Authority may charge the Contractor an additional fee for inspections and tests incurred when the Contractor is not ready at the time specified for the inspection or test, or when those inspections or tests must be repeated for being rejected beforehand due to mistakes by the Contractor. The Contractor shall have no right whatsoever to compensation for tests conducted and/or failed, or for materials and/or equipment rejected as a result of them failing a test. The Authority must conduct all inspections and tests so as not to unduly delay work. All tests shall be conducted as described in the specifications and within the authorized working hours. The absence of the Authority from the tests or inspections shall not excuse the Contractor from the responsibility of supplying materials and/or equipment that comply with the contract requirements.

7. The Contractor must replace or correct, at no additional cost, any work the Authority deems as non-compliant with contract requirements, even after having approved it.
8. If the Contractor does not diligently replace or correct the work rejected, the Authority may:
  - a. Replace or correct the work through its own means or through a third party at the Contractor's expense.
  - b. Administratively terminate the contract for reasons attributable to the Contractor.
9. If the Authority decides to investigate finished work and finds it to have been executed based on the contract plans and specifications, expenses incurred by the Contractor for said investigation shall be borne by the Authority through an adjustment in the contract amount. Additionally, the Authority shall authorize a contract extension if relevant.
10. Unless otherwise specified in the contract, the Authority may accept all work required under this contract or any part thereof which the Contracting Officer determines is fit to be accepted separately, as soon as possible once work and the inspection thereof have been completed. The acceptance must be final and conclusive, except for redhibitory defects, fraud and/or for the rights of the Authority under any guarantee. The time taken to remedy defective work shall be counted as a delay in the completion of the work. The Authority shall not grant an extension to complete works due to said delay.

**4.28.57. <sup>46</sup>CONSTRUCTION WORK ACCEPTANCE** *(For construction work contracts.)*

1. The Authority shall only accept works compliant with contract specifications, terms and conditions.
2. The Contracting Officer may partially accept the construction work or stage and/or parts thereof if the progress in the execution allows for the Authority to satisfactorily use it despite the outstanding contract compliances or requirements whose finalization

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<sup>46</sup> Amended by Art. 2 of Resolution No. ACP-AD-RM05-08 dated March 18, 2015. Amended by Art. 4 of Resolution No. AD- AD-RM16-24 dated August 02, 2016.

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at a later stage does not hinder use.

3. The partial acceptance of work or of a stage or portion thereof shall suspend, until the date the Contractor undertakes to the final delivery, the accrual of a fine or financial penalty that might have been caused by a delay in the construction execution. If the Contractor were not to complete and/or fully deliver the construction work on the date agreed upon, the Authority shall apply the fine as of the following day after the date agreed upon for the final delivery until the date the work is finally delivered at the Authority's satisfaction.

4. In contracts where the delivery of the construction work is provided in stages and/or completion goals, the partial acceptance issued shall only suspend the fine for the stage or target for which it was issued.

**4.28.58. ANTICIPATED USE AND POSSESSION OF THE CONSTRUCTION WORK.** *(For construction work contracts.)*

1. The Authority is empowered to take possession or make anticipated use of any portion of the work that is fully or partially completed. Before taking possession or making anticipated use of any part of the work, the Contracting Officer must supply the Contractor with a list of outstanding work to complete the construction work or part of the work the Authority intends to make an anticipated use of.
2. That any specific work is not included in the list drafted by the Contracting Officer does not excuse the Contractor from fulfilling the contract terms and conditions. The anticipated use of the work by the Authority shall not be construed as an acceptance of the work under the terms of the contract.
3. The Contractor shall not be liable for damages or losses in the part of the work when it is being used or possessed by the Authority.

**4.28.59. <sup>47</sup>PAYMENTS TO CONTRACTORS.** *(For construction work contracts.)*

1. The Authority undertakes to pay the price of the contract for works, goods and services received and acceptance in accordance with the contract terms and conditions. Payments shall be disbursed in Balboas or United States Dollars.

2. Monthly partial payments may be made based on construction work progress. For these purposes, the twentieth (20th) day of each month shall be considered the cutoff day and, for the purposes of this clause, that shall be the last day covered by the monthly payment. Within seven (7) calendar days as of the cutoff date, the Contractor shall draft and submit to the Contracting Officer a preliminary report of work conducted up to the cutoff date, and the inspector shall have eight (8) business days to review and approve or reject said report.

3. The Contractor must include the following with the preliminary report:

- a. A list of work conducted, listing the amount executed (if applicable), and the total sum.
- b. A list of work conducted by subcontractors, listing the amount executed.

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<sup>47</sup> . Amended by Art. 39 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 63 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM10-94 dated May 14, 2010, in force as of May 29, 2010. Amended by Art. 115 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018 in force as of October 11, 2018. Amended by Art. 12 of Resolution No. ACP-AD-RM18- 52 dated December 3, 2018 in force as of December 5, 2018 and Art. 5 of Resolution No. ACP-AD-RM19-21 dated April 5, 2019. Amended by Art. 15 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

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- c. A list of work (listing the amount executed) previously paid for as per the contract.
  - d. Any other information requested by the Contracting Officer.
4. Once the report is approved, the Contractor shall submit a monthly progress invoice for the amount agreed upon to the Central Invoice Reception Office of the ACP located on building 710, Balboa, together with all other documents mentioned in clause 4.28.5 of these presents.
5. The full invoice submitted by the Contractor, domiciled in the Republic of Panama, must comply with all national legal provisions in force requiring:
- a. Contractor name;
  - b. Taxpayer Identification Number or RUC;
  - c. Taxpayer verification number or DV;
  - d. Taxpayer's address;
  - e. Correlative numbering;
  - f. Date of operation or invoice;
  - g. Purchase order or contract number;
  - h. Payment conditions agreed upon, and
  - i. Amount and description of the product or service sold, unit price and total.
  - j. The lower margin of printed versions of invoices, as well as of other documents authorized by the DGI, must contain the information of the printing company, its RUC number, the printing date and the numbering of each invoice book.
6. If discrepancies arise with the invoice, the Contracting Officer shall notify the Contractor to take relevant remedial actions.
7. If no discrepancies arise with the invoice, the Authority shall draft the documents necessary to process the payment and send them to the Accounts Payable Section of the Accounting Division of the Authority.
8. The Authority may also disburse payments for the partial delivery of any part of the contract holding a separate price in the price list provided that part has been accepted by the Authority and complies with contract requirements.
9. If the Contracting Officer determines that the construction work progress is unsatisfactory, he may withhold up to ten percent (10%) of each amount approved. The amount withheld shall be returned once the work (or part of the work, whenever that has been determined) has been completed to the Authority's satisfaction. Amounts withheld do not accrue interests. If the construction work is substantially completed, the Contracting Officer may withhold any amount he sees fit to protect the Authority. If the work is hired in stages, the withholding shall be done for each stage and returned each time the stage is completed to the Authority's satisfaction.
10. As specified in the contract, for each account approved, the Contracting Officer may discount any sum owed to the Authority by the Contractor due to a fine.

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11. The cost of performance and payment guarantees may be reimbursed to the Contractor once he submits evidence of full payment to the Contracting Officer. This payment shall not be an addition to the contract price. The payment made to the Contractor for guarantees shall be deducted from monthly payments owed to the Contractor for work completion at fifteen percent (15%) per account unless the last outstanding deduction corresponds to a lower percentage, in which case the outstanding percentage shall be deducted. In the event the last contract account is submitted and approved, the outstanding sum for the payment of guarantees shall be deducted from that total.

12. Partial payments shall be made after thirty (30) calendar days as of the moment the Contractor delivers the monthly progress invoice at the Central Invoice Reception Office from the Authority. After that term, the Contractor shall be entitled to the payment of interests if the delay was caused by the Authority.

13. The Authority shall pay moratory interests calculated at 3-month LIBOR until the date when the check due is sent to the Contractor or until an electronic fund transfer is made to the Contractor's bank account.

**4.28.60. <sup>48</sup>PAYMENTS TO CONTRACTORS - SUPPLIES AND CONSTRUCTION WORK PROGRESS**  
*(For construction work contracts.)*

1. The Authority undertakes to pay the price of the contract for works, goods and services received and acceptance in accordance with the contract terms and conditions. Payments shall be disbursed in Balboas or United States Dollars.

2. Supply: For the purposes of this clause, it comprises all materials and equipment specifically included in the Price List.

3. Supply Payment Method: The Authority shall make partial payments for the supply of materials and/or equipment specifically included in the Price List and pursuant to the specification requirements. The Contracting Officer shall pay up to 80% of the maximum value of materials and/or equipment based on the value indicated in the item of the Price List or the corresponding commercial invoice, whichever value is lower. The payment shall be made once the Authority has conducted the inspection and acceptance of materials placed in the worksite. Out of the remaining amount from the price list item, 50% shall be paid when the materials and/or equipment are installed and accepted and 50% by the end, after the construction work is finally accepted by the Authority. To request payments for supplies, the Contractor shall submit a copy of the corresponding commercial invoice to the Contracting Officer.

4. Method of payment for construction progress: Monthly partial payments may be made based on construction work progress. For these purposes, the twentieth (20th) day of each month shall be considered the cut off day and, for the purposes of this

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<sup>48</sup> Amended by Art. 40 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 64 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM10-107 dated July 15, 2010, in force as of July 26, 2010, its publication date. Amended by Art. 116 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018 in force as of October 11, 2018. Amended by Art. 13 of Resolution No. ACP-AD-RM18-52 dated December 3, 2018 in force as of December 5, 2018 and confirmed by Art. 5 of Resolution No. ACP-AD-RM19-21 dated April 5, 2019. Amended by Art. 16 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

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clause, that shall be the last day covered by the monthly payment. Within seven (7) calendar days as of the cutoff date, the Contractor shall draft and submit to the Contracting Officer a preliminary report of work conducted up to the cutoff date, and the inspector shall have eight (8) business days to review and approve or reject said report.

5. The Contractor must include the following with the preliminary report:

- a. A list of materials and/or equipment supplied;
- b. The original commercial invoice for the materials and/or equipment;
- c. A list of work conducted, listing the amount executed (if applicable), and the total sum;
- d. A list of work conducted by subcontractors, listing the amount executed;
- e. A list of work (listing the amount executed) previously paid for as per the contract;
- f. Any other information requested by the Contracting Officer.

6. All material and/or equipment for which the Authority has disbursed a payment is owned by the Authority even if possessed by the Contractor, and the Contractor shall be directly and fully responsible for their due conservation and maintenance, and shall not use them for any purpose other than the purpose established in the contract. It is provided that the Contractor undertakes all risks for the loss, corrosion, damage or damage to materials and/or equipment supplied, either paid by the Authority or not, until the time the work is finally delivered and accepted.

7. The full invoice submitted by the Contractor, domiciled in the Republic of Panama, must comply with all national legal provisions in force requiring:

- a. Contractor name;
- b. Taxpayer Identification Number or RUC;
- c. Taxpayer verification number or DV;
- d. Taxpayer's address;
- e. Correlative numbering;
- f. Date of operation or invoice;
- g. Purchase order or contract number;
- h. Payment conditions agreed upon, and
- i. Amount and description of the product or service sold, unit price and total.
- j. The lower margin of printed versions of invoices, as well as of other documents authorized by the DGI must contain the information of the printing company, its RUC number, the printing date and the numbering of each invoice book.

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8. If discrepancies arise with the invoice, the Contracting Officer shall notify the Contractor to take relevant remedial actions.

9. If no discrepancies arise with the invoice, the Authority shall draft the documents necessary to process the payment and send them to the Accounts Payable Section of the Accounting Division of the Authority.

10. The Authority may also disburse payments for the partial delivery of any part of the contract holding a separate price in the price list provided that part has been accepted by the Authority and complies with contract requirements.

11. If the Contracting Officer determines that the construction work progress is unsatisfactory, he may withhold up to ten percent (10%) of each amount approved. The amount withheld shall be returned once the work (or part of the work, whenever that has been determined) has been completed to the Authority's satisfaction. Amounts withheld do not accrue interests. If the work is hired in stages, the withholding shall be done for each stage and return each time the stage is completed to the Authority's satisfaction.

12. As specified in the contract, for each account approved, the Contracting Officer may discount any sum owed to the Authority by the Contractor due to a fine.

13. The cost of performance and payment guarantees may be reimbursed to the Contractor once he submits evidence of full payment to the Contracting Officer. This payment shall not be an addition to the contract price. The payment made to the Contractor for guarantees shall be deducted from monthly payments owed to the Contractor for work completion at fifteen percent (15%) per account unless the last outstanding deduction corresponds to a lower percentage, in which case the outstanding percentage shall be deducted. In the event the last contract account is submitted and approved, the outstanding sum for the payment of guarantees shall be deducted from that total.

14. Partial payment certifications should not be construed as an approval or acceptance of work conducted up to that moment, nor do they excuse the Contractor for its contractual responsibilities.

15. Partial payments shall be made thirty (30) calendar days after the date the invoice duly approved by the Authority is submitted. After that term, the Contractor shall be entitled to the payment of interests if the delay was caused by the Authority.

16. The Authority shall pay moratory interests calculated at 3-month LIBOR until the date when the check due is sent to the Contractor or until an electronic fund transfer is made to the Contractor's bank account.



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**4.28.61** <sup>49</sup>**FINAL PAYMENT** (*For construction work contracts.*).

1. The final payment constitutes the full cancellation of payments for the execution of the contract, including all additional work. After verifying all contract requirements have been fulfilled, the Authority shall issue a final acceptance letter stating the date the contract object has been accepted. Once the final acceptance letter has been issued, the Contractor shall submit: (i) the final invoice, if not submitted already; (ii) valid certificates of good standing issued by the relevant taxation agency (National Revenue Service of the Ministry of Economy and Finance) and by the Social Security Fund (CSS) if these certificates apply, and (iii) a waive to the right to file claims or the detail of any claim as per Clause 4.28.13.
2. If the contract called for guarantees in favor of third parties (for example, payment guarantee, etc.), a record should be submitted proving the work finalization notice has been published three (3) consecutive times in a national newspaper; the publication records should be original.
3. If discrepancies arise with the final invoice, the Contracting Officer shall notify the Contractor to take relevant remedial actions.
4. If no discrepancies arise with the final invoice, the Authority shall draft the documents necessary to process the payment and send them to the Accounts Payable Section of the Accounting Division of the Authority.
5. If the Contractor does not submit the required invoice and/or certificates of good standing (National and CFF), or does not request payments during the five (5) years following the date in which the Authority satisfactorily received the work, good or service for which the contract was celebrated, the Authority shall deem the payment obligation prescribed and delete it from its accounting records.

**4.28.62.** <sup>50</sup>**AMOUNTS OWED TO THE AUTHORITY.**

The Authority may deduct from the partial payments any outstanding debt the Contractor has with the Authority. The Contracting Officer may compensate sums owed to the Contractor for sums owed to the Authority.

**4.28.63.** <sup>51</sup>**ADMINISTRATIVE CONTRACT TERMINATION FOR CAUSES ATTRIBUTABLE TO THE CONTRACTOR.**

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<sup>49</sup> Amended by Art. 65 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 5 of Resolution No. ACP-AD-RM15-23 dated August 20, 2015, in force as of September 07, 2015. Amended by Art. 116 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018 in force as of October 11, 2018. Amended by Art. 49 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February, 2021.

<sup>50</sup> Amended by Art. 35 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006 in force as of February 25, 2006. Amended by Art. 66 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 3 of Resolution No. ACP-AD-RM15-08 dated March 18, 2015. Amended by Art. 118 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018 in force as of October 11, 2018. Amended by Art. 50 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

<sup>51</sup> Amended by Art. 35 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006 in force as of February 25, 2006. Amended by Art. 66 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 3 of Resolution No. ACP-AD-RM15-08 dated March 18, 2015. Amended by Art. 119 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018 in force as of October 11, 2018. Amended by Art. 17 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020. Amended by Art. 51 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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1. The Authority may fully or partially terminate the contract execution for causes attributable to the Contractor.
2. The causes for administrative termination are:
  - a. Breach of contractual obligations;
  - b. Having made false statements or representations at the time of submitting a proposal.
  - c. For the Authority to know or discover, after the contract has been awarded, that there were grounds for disqualifying the Contractor for any of the reasons from sections 1, 2 and 3, article 43 of the Contracting Officer Code.
  - d. Being convicted, after the Authority has awarded the contract, for the crimes of Money Laundering, Terrorism and Terrorism Funding, Embezzlement, Public Corruption Offenses, Fraud in Public Procurement, Exercise of Undue Influence, Document Counterfeiting in General and International Bribery in Panama or in any other country in the world.
  - e. Being included, after the Authority has awarded a contract, within a list of companies and individuals unauthorized to be hired in projects funded by the World Bank or in any other list selected by the Board of Directors in a timely manner.
  - f. The death of the Contractor, the permanent physical disability from the Contractor, or the dissolution of the Contractor if it is a legal person, when these actions lead to the termination of the contractual relationship pursuant to the terms of the contract;
  - g. The Contractor's bankruptcy or arrangement with creditors, or its insolvency proceedings or suspension or defaulting, without a bankruptcy having been declared.
  - h. Any clear proof that a breach of contractual term shall take place.
3. Prior to the resolution notice, the Contracting Officer must communicate to the Contractor, the guarantor (when a guarantee has been demanded in the contract) and the assignee (when contract payment assignment has been accepted pursuant to clause 4.28.19) of the intention to terminate the contract in writing, mentioning the causes for the termination, and a term within which the Contractor must remedy the facts or omissions leading to the breach, delay or resistance to comply with instructions received. If the Contractor does not submit, at the satisfaction of the Contracting Officer, the formulas to correct, repair, remedy, fix or solve the situation appropriately, or does not comply with the formulas agreed upon, the Contracting Officer may terminate the contract.

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4. A termination resolved by the Contracting Officer, through which the contract is terminated due to causes attributable to the Contractor shall be notified by sending the Contractor and guarantor (when a guarantee was demanded in the contract) and the assignee (when contract payment assignment has been accepted pursuant to clause 4.28.19) a copy of the termination via email.

5. Once notified of the termination, the Contractor must:

- a. Suspend all work conducted by itself or its Subcontractors;
- b. Continue executing the part of the contract that has not been solved;
- c. Insure and protect the goods of the Authority.
- d. Keep all equipment and material in the site where the contract was being executed until the Contracting Officer authorizes their removal.

6. The guarantor (when a guarantee was demanded in the contract) shall have thirty (30) calendar days as of the notice of breach is issued to pay for the fulfillment guarantee or substitute the Contractor in his rights and obligations.

7. If the Contracting Officer terminates the contract for causes attributable to the Contractor, the Authority shall suspend the payment owed or pending in favor of the Contractor or assigned pursuant to clause 4.28.19. If the Guarantor (when a guarantee was demanded in the contract) fulfilled the obligations undertaken by the Contractor based on the fulfillment guarantee, either by paying the guarantee or executing the obligations guaranteed, the Guarantor shall assume all of its rights and obligations, including, among others, compensations, deferred payments, percentages withheld and credits owed to the Contractor by the Authority at the time the Contract was terminated or that ought to be paid after based on the provisions of the contract. The Authority shall make the payments owed to the Contractor to the Guarantor only after the Guarantor has paid the amount of the guarantee or, in the even the Guarantor decides to continue executing the contract assuming all rights and obligations of the Contractor, once the contract purpose has been fulfilled at the Authority's satisfaction. Notwithstanding the foregoing, and before making the payment to the guarantor, the Contracting Officer may directly discount amounts owed to the Authority by the Contractor for any concept whatsoever, including, among others, for any damages caused.

8. When the contract is terminated for causes attributable to the Contractor, if the guarantor decides to continue executing the contract, payments to the guarantor shall be made pursuant to the provisions of the relevant Payment Clauses.

9. If the Contracting Officer terminates the contract for causes attributable to the Contractor, and if no guarantee has been demanded, the Authority shall not be responsible for paying the Contractor any amount owed until having calculated and deducted: (i) the fines or financial penalties applicable pursuant to clause 4.28.53; (ii) the costs of contract termination; (iii) damages caused, and (iv) any other expense made by the Authority. In these cases, the Contractor shall only be entitled to receive the resulting sums after the abovementioned deductions are made.

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If the money owed to the Contractor after the aforementioned deductions are done were not enough to cover all obligations owed to Authority, these shall be deemed amounts owed and, as such, due and recoverable.

10. The Contractor may lodge an appeal to the contract termination before the Head of the Procurements Office. The appeal must be lodged and solved pursuant to the provisions of section 5 et. seq. of clause 4.28.13, Administrative Procedures for Claims.

**4.28.64. <sup>52</sup>FORCE MAJEURE OR FORTUITOUS EVENTS.**

Force majeure or fortuitous event means any event or circumstance that prevents or stops the Authority or the Contractor from complying with one or more contractual obligations provided that who alleges these causes proves:

- a) that the impediment is beyond reasonable control;
- b) that it could not have been reasonably anticipated at the time the contract was signed;
- c) that the effects of the impediment could not reasonably have been avoided or overcome by the affected party, and
- d) that there is a causal connection between said circumstance and the breach of obligations.

As long as the causes are not attributable to any of the parties, examples of these causes are, among others: wars, acts of terrorism, sabotage, hostility, invasion, acts from foreign enemies, fires, explosions, epidemics, pandemics, strikes (conducted by persons other than the Contractor's staff or the subcontractor's staff), quarantines, floods and unusual climate events such as earthquakes, hurricanes or typhoons.

The party invoking and proving that a force majeure or fortuitous event has taken place as per this clause shall be excused from its duty to fulfill its obligations pursuant to the Contract, from any liability for damages, including from the payment of indemnity or compensations, and from complying with any contractual penalty for breach of contract (including fines, penalties or contract termination for causes attributable to the Contractor, if it were he invoking the cause) from the moment in which the impediment causes the inability to comply as long as the other party is notified at the most on the next business day after the moment in which the invoking party is affected by said circumstance. If the notice is not given within that term, the waiver of responsibility shall be made effective as of the moment the notification has been effectively given to the party.

When the effect of the impediment or fact invoked is temporary, the consequences mentioned shall only apply while the impediment invoked prevents the affected party

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<sup>52</sup> Amended by Art. 67 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM09-35 dated September 09, 2009. Amended by Art. 18 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

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from complying with its contractual obligations.

Consequently, if the party invoking a force majeure or fortuitous event is the Contractor, the party may request an extension of the term to fulfill the contract. In these cases, the term of the extension shall be proportional to the delay caused to the Contractor by the event.

When the impediment invoked makes it impossible for either of the parties to fulfill the contract or causes a situation that makes it inconvenient to extend the term, the affected party may ask the other party for bilateral contract termination. In such cases, both parties may agree about the manner and effects or consequences of said termination for both parties.

Costs incurred by the force majeure or fortuitous event shall always be borne by the party suffering them.

**4.28.65.** <sup>53</sup>**CONSTRUCTION WORK EXECUTION SCHEDULE** (*For construction work contracts.*)

1. Within ten (10) business days as of the date the contract is awarded, and unless otherwise mentioned in the specifications, the Contractor must draft and submit a work schedule for approval by the Contracting Officer. The schedule must show the type, duration, order and critical route for all activities inherent to the contract (including the procurement of materials, plant and equipment) and their start and end dates. The schedule must be submitted as a bar diagram that properly showcases the progress percentage in any date during the execution period. The Contractor shall consult the Contracting Officer about the detail of activities in the work schedule. If the Contractor does not submit the work schedule within the term established, or if said schedule is not submitted in the way and with the details required, the Contracting Officer may withhold payments due for work progress until the Contractor submits the required schedule.
2. The Contractor shall use the work schedule to record actual progress by the end of the month and keep a copy of the work schedule visible in its offices located on the worksite. Additionally, the Contractor shall send the Contracting Officer the updated work schedule by the end of each month.
3. The Contracting Officer shall use the approved work schedule as an official record to determine if the Contractor is executing work at the necessary speed and proper diligence to guarantee completion within the term specified in the contract. If the Contracting Officer estimates the Contractor is behind with regards to the approved work schedule, the Contractor must take all necessary measures to recover from that delay, including taking measures that may be required by the Contracting Officer and at no additional cost for the Authority. Under these circumstances, the Contracting Officer may demand the Contractor to increase its staff, the number of workdays, work overtime, increase the amount of equipment and/or to make any corrections

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<sup>53</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM10-110 dated July 15, 2010, in force as of July 26, 2010, its publication date. Amended by Art. 120 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 52 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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deemed necessary to ensure the completion of work within the term specified in the contract. The Contractor shall submit a supplemental work schedule showing how the previously approved progress level will be recovered.

**4.28.66. CONSTRUCTION WORK LAYOUT** *(For construction work contracts.)*

1. The Contractor shall be responsible for precisely and properly reorganizing work based on checkpoints, baselines and suggestions provided by the Authority in the contract plans or during work execution.
2. The Contractor must supply, at its own cost, all instruments, tools, materials, workforces, stakes, platforms, transportation and labor required to precisely reorganize work. The Contractor is responsible for executing work on lines and elevations pointed out in the plans or indicated in writing by the Contracting Officer. The Contractor is also responsible for keeping and preserving all checkpoints or references established by the Authority until the Contracting Officer has authorized their removal.
3. The Contracting Officer may deduct from payments due to the Contractor the cost of replacing points or signs used as a reference for the Authority if said points or signs are destroyed, deteriorated or removed by the Contractor's negligence before the Authority authorizes their removal.

**4.28.67** <sup>54</sup>**IMPORT TAX AND GOODS AND SERVICES TAX (ITBMS).** *(For construction work contracts.)*

The price offered must include all import taxes and goods and services tax at the rate in force at the time the payment obligation for the particular tax is generated, which must be paid to the Ministry of Economy and Finance for all materials and/or equipment included or used in this contract. The specifications must include the specific materials and/or equipment to be delivered for the Authority and which, as such, shall be exempt from taxes or fees pursuant to the Law.

**4.28.68.** <sup>55</sup>**JOINT VENTURES, ASSOCIATIONS OR CONSORTIUMS.** *(Its applicability shall be expressly detailed in the purchase order or specifications.)*

1. Two or more natural or legal entities may submit the same proposal jointly through joint ventures, associations, or consortium (hereinafter, Consortium) for the awarding, signing and execution of a Contract, answering jointly and severally for each and every obligation derived from the proposal submitted and the Contract awarded. The Consortium members shall be equally responsible for actions, events and omissions occurring during the development of the proposal and the Contract.

2. If the proposal is jointly submitted by two or more people or companies like a Consortium, as described in the previous section 1, the proposal or proposal submission form in the case of construction work contracts must expressly state that

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<sup>54</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM10-110 dated July 15, 2010, in force as of July 26, 2010, its publication date. Amended by Art. 121 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>55</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM09-55 dated December 07, 2009, in force as of January 07, 2010. Amended by Art. 122 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 19 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.

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the proposal is being submitted by a Consortium, and include the name of the Consortium, as well as the name and general information for each natural and/or legal entities who are a part of the Consortium.

3. The experience, performance record, documents provided by each Consortium member or any other information required to comply with the requirements established in the bid specifications shall be assessed, analyzed and considered jointly to determine the fulfillment thereof, or as defined by the specifications.

4. When the proposal is presented by a Consortium, the Bidder must also include a written agreement by virtue of which the Consortium is constituted; it must be duly signed by all Consortium members, duly notarized and legalized or apostilled, as applicable.

Neither agreements of intent to create a consortium conditioned by the awarding of the Contract nor agreements of any other kind that do not prove, together with provisions, the clear, firm establishment of an agreement at the time the proposals are submitted shall be valid.

Any Consortium agreement must contain, at the minimum:

- (1) Consortium name and name of each natural or legal entities (members) who make it up, as well as their domiciles;
- (2) Appointment of one of the Consortium members as the Consortium authorized representative (leader) with legal capacity to commit on behalf of all Consortium members and/or negotiate in the name and stead of the Consortium, as required;
- (3) Appointment of one (1) natural entity authorized to act in the name and stead of the leader as a Consortium representative, and who shall have all legal powers necessary to legally represent the Consortium, powers which must be clearly stated within the Consortium agreement;
- (4) The participation percentage held by each Consortium member;
- (5) The relationship between the participation percentage and the decision-making voting processes of the Consortium;
- (6) A resolution expressly establishing in a literal manner that each and every Consortium member is jointly and severally liable before the Panama Canal Authority (ACP);
- (7) A description of the roles and responsibilities to be borne by every Consortium member in and during the contract execution if the contract is awarded to them;
- (8) A resolution within the Consortium agreement expressly establishing that the assignment of the rights and obligations of one or more Consortium members must be previously reviewed and authorized by the ACP Contracting Officer, as should be any change to be conducted in the Consortium agreement after the proposal is submitted.

Pursuant to the provisions of article 43 of the Contracting Officer Code from the Panama Canal Authority, the Authority shall reject all proposals submitted by a consortium that includes a natural or legal entity who is not authorized to enter into agreements with the Authority. This rejection cannot be contested.

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**4.28.69. <sup>56</sup>INSTRUCTIONS TO COMPLETE FORM NO. 1530 IN THE CASE OF A CONSTRUCTION WORK CONTRACT THROUGH A CONSORTIUM** (*Only when the participation of Consortium has been expressly included in the corresponding bid specifications.*)

1. Space No. 20A "BIDDER'S NAME AND ADDRESS": Include:
  - a) Consortium name and domicile in Panama.
  - b) If the Consortium has not yet established domicile, the domicile of its Leader in Panama must be included.
  - c) Name of all Consortium members.
2. Space No. 20B "RUC and DV": Include the Consortium's RUC number. If the Consortium does not yet have a RUC number, the space must be kept blank.
3. Space No. 20C "EMPLOYER NUMBER": Include the Consortium's Employer Number. If the Consortium does not yet have an Employer Number, the space must be kept blank.
4. Form No. 1530 shall be signed by the Bidder's duly authorized representative submitting the proposal. For a bidder established outside of the Republic of Panama, if Form No. 1530 is signed outside of the Republic of Panama, the signature must be apostilled pursuant to the Hague Convention dated October 5, [sic] 1631 that eliminates the legalization requirements for foreign public documents, or legalized by a Consular Clerk from the Republic of Panama.

**4.28.70. <sup>57</sup>PROPOSAL FORM.** (*For construction work contracts.*)

1. The bidders shall submit their price proposals using Form No. 1530, Tender/Construction Work Contracts that is included in the First Part of these specifications.
2. The price proposal shall be submitted in one (1) closed envelope which must contain the Proposal Guarantee and any other information expressly requested in the specifications.
3. The bidder must complete the information required in the proposal form spaces, in two original sets. If spaces 19, 20A, 20D, 20F, 20I, 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21K and 21L are kept blank, the proposal shall not be considered. All sets must be directly signed by the legal representative of the legal entity or by the person formally authorized by the Board of Directors of the company or legal entity.
4. The proposal may be rejected if the form is not duly or fully completed.

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<sup>56</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM09-55 dated December 07, 2009, in force as of January 07, 2010. Amended by Art. 123 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 3 of Resolution No. ACP-AD-RM-19-59 dated August 26, 2019, in force as of September 04, 2019.

<sup>57</sup> Amended by Art. 68 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 124 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 20 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.



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5. The closed envelope containing the proposal must indicate:
  - a. The tender number;
  - b. The tender name;
  - c. Date and time set for the submittal of proposals;
  - d. Place set for the submittal of proposals

**4.28.71. <sup>58</sup>AMENDMENTS. (For construction work contracts.)**

1. If the specifications are amended, all specification terms and conditions that have not been modified or changed shall remain unaltered and in force.
2. The bidders shall acknowledge receipt of the amendments of the specifications before the time, date and place where the proposals are opened in one of the following ways:
  - a. By completing the form in each amendment, signing it and including it in the proposal envelope;
  - b. Identify the amendment number and date in the spaces provided in the proposal form (see space #18 of the form.)
  - c. Through a letter that mentions the tender and the amendment numbers and is included in the proposal envelope.
3. The Contracting Officer may outright reject a proposal if the bidder has not acknowledged receipt of the amendment(s) issued in any of the ways mentioned in the previous subheading.

**4.28.72. <sup>59</sup>CONSULTATIONS.**

1. Bidders who wish to get explanations, clarifications or information about the specifications, details, plants, etc., shall request them in writing with enough anticipation as to allow for answers to be distributed among all participants. Any communication between the bidders and the Authority not included in the specifications through a formal amendment shall not be part of the contract nor shall it bind the Authority.
2. Bidders may send questions in writing pertaining to the specifications, details and plans to the address included in the specifications.

**4.28.73. <sup>60</sup>PROPOSAL BOND. (For construction work contracts. For goods and services contracts when expressly required in the specifications.)**

1. The ACP shall establish applicable criteria or limits for the granting of proposal

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<sup>58</sup> Amended by Art. 68 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 125 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 43 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

<sup>59</sup> Amended by Art. 68 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 126 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>60</sup> Amended by Art. 1 of Resolution No. ACP-AD-RM10-97 dated May 13, 2010, in force as of June 13, 2010. Amended by Art. 3 of Resolution No. ACP-AD-RM16-20 dated July 14, 2016. Amended by Art. 127 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 54 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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bonds. Limits and criteria shall be defined by the Authority's Finances Office.

2. Unless otherwise stated, the bidders must jointly submit a proposal bond with the proposal, which cannot be smaller than ten percent (10%) of the total value of the proposal.

3. This proposal bond shall be valid for no less than ninety (90) calendar days as of the date established for the reception of proposals in the corresponding tender except for cases in which, due to the amount or act complexity, the Contracting Officer establishes a different term.

4. The proposal bond may be of the following kinds:

- Bond
- Irrevocable letter of credit

5. If the proposal bond submitted is a bond, it must comply with the provisions of clause 4.28.74, "Bonds", of these specifications.

6. If the proposal bond submitted is an irrevocable letter of credit, it must be issued by an "Acceptable Financial Institution".

7. An "Acceptable Financial Institution" is any financial entity legally established in the Republic of Panama with a general license issued by the Banks Superintendency of the Republic of Panama.

8. Acceptable Financial Institutions may issue irrevocable letters of credit for up to a limit of ten (10%) percent of the most recent capital published by the Banks Superintendency of the Republic of Panama. Those Acceptable Financial Institutions subsidiary to foreign companies may issue letters of credit for up to a limit of ten (10%) percent of the last audited capital from its parent company, for which documents proving said value must be submitted.

9. Acceptable Financial Institutions with an "Acceptable Financial Rating for Letters of Credit" may issue letters of credit for up to a limit of thirty (30%) percent of the last capital published by the Banks Superintendency of the Republic of Panama and, in the case of offices from foreign companies, the last capital audited from its parent company, for which documents proving said value must be submitted.

10. "Acceptable Financial Rating for Letters of Credit" is the minimum long-term credit rating that a financial institution submitting a letter of credit must have and which must be, at the minimum from: "A-" from Standard & Poors (S&P), or "A3" from Moody's Investor's Service or "A-" from Fitch Ratings. If more than one long-term credit rating is held, the most recent rating shall be taken into account.

11. The proposal shall be outright rejected if not accompanied by the corresponding proposal guarantee or if the proposal bond submitted does not comply with the

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requirements established in this clause.

12. Notwithstanding the provisions of the previous sections, the ACP shall not accept and shall outright reject any irrevocable letter of credit issued by an “Acceptable

Financial Institution” that: (i) has been suspended or sanction by the ACP or suspended by the State, pursuant to applicable regulations, while said suspension holds, or (ii) that is undergoing a regularization or administrative or operation control takeover process, or under forced liquidation as ordered by the Banks Superintendency of the Republic of Panama.

13. If the ACP has admitted an irrevocable letter of credit issued by an “Acceptable Financial Institution” and this financial institution were to be suspended or penalized by the ACP or the State at a later date, or were to be undergoing a regularization or administrative or operation control takeover process, or under forced liquidation as ordered by the Banks Superintendency of the Republic of Panama, the ACP shall demand the Contractor to replace the bond within thirty (30) calendar days as of the moment the ACP formally notifies the Contractor of the situation unless the ACP’s interests are affected, in which case the Contracting Officer shall determine the most convenient action to safeguard the ACP’s best interests.

**4.28.74**

<sup>61</sup>**BONDS** *(For construction work and/or goods and services contracts when expressly required in the specifications.)*

1. The ACP shall establish applicable criteria or limits for the granting of bonds.
2. The ACP shall establish applicable criteria or limits that bonds and bond issuers must comply with, and shall only approve and accept bonds when issued by an “Acceptable Insurer and/or Reinsurer”.
3. “Acceptable Insurer and/or Reinsurer” is any insurance and/or reinsurance company legally incorporated in the Republic of Panama and authorized by the Insurance and Reinsurance Superintendency of the Republic of Panama to conduct insurance business in the relevant industries that:
  - a. Has adjusted technical reserves of no less than ten million balboas (B/.10,000,000.00) as per the most recent quarterly report published by the Insurance and Reinsurance Superintendency of the Republic of Panama; and
  - b. Is an “Acceptable Insurer and/or Reinsurer” to the ACP, pursuant to the policies established.

<sup>61</sup> Amended by Art. 69 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 1 of Resolution No. ACP-AD-RM-10-97 dated May 13, 2010, in force as of June 13, 2010. Amended by Art. 5 of Resolution No. ACP-AD-RM15-23 dated August 20, 2015, in force as of September 07, 2015. Amended by Art. 4 of Resolution No. ACP-AD-RM16-20 dated July 14, 2016. Amended by Art. 1 of Resolution No. ACP-AD-RM18-04 dated February 21, 2018. Amended by Art. 128 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 14 of Resolution No. ACP-AD-RM18-52 dated December 03, 2018, in force as of December 05, 2018. Amended by Art. 5 of Resolution No. AD- AD-RM-20-12 dated March 03, 2020. Amended by Art. 55 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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4. Acceptable Insurers and/or Reinsurers may issue bonds up to a maximum of ten percent (10%) of the most recent adjusted technical reserves published by the Insurance and Reinsurance Superintendency of the Republic of Panama in the quarterly report in force during the period in which the bond is issued.

5. Acceptable Insurers and/or Reinsurers may only issue bonds for the ACP for up to fifty percent (50%) of their most recent adjusted technical reserves published by the Insurance and Reinsurance Superintendency of the Republic of Panama in the quarterly report in force during the period in which the bond is issued.

6. Acceptable Insurers and/or Reinsurers may only issue bonds for the ACP using co-guarantors, subject to up to five (5) co-guarantors per bond who have the same requirements, rights and obligations, but are responsible for up to the individually subscribed amount. They must appoint a leader co-guarantor representing them while the bond is in force, both in the presentation as well as during the execution of the contract term.

7. Acceptable Insurers and/or Reinsurers may issue bonds for the ACP using reinsurance in cases where bonds exceed the maximum limit established for bonds in section 4 of this clause. Acceptable Insurers and/or Reinsurers accepted by the ACP for the reinsurance must have a long-term international credit rating that is not below "A-" from A.M. Best, "A-" from Standard & Poors (S&P), or "A3" from Moody's Investor's Service or "A-" from Fitch Ratings. If more than one long-term credit rating is held, the most recent rating shall be taken into account. The reinsurance structure must be approved by the ACP based on the procedures indicated in section 8 of this clause. In these cases, "Acceptable Insurers and/or Reinsurers" shall directly withhold, per bond, a minimum of five percent (5%) of their most recent adjusted technical reserves published by the Insurance and Reinsurance Superintendency of the Republic of Panama in the quarterly report in force during the period in which the bond is issued.

8. Prior to the Contractor submitting the bond to the Contracting Officer, the ACP shall approve the reinsurance structure from the Insurance and/or Reinsurance Company. To comply with this requirement, the Insurance and/or Reinsurance Company shall send a formal letter with the reinsurance structure to the Insurance, Risks and Controls Units of the Finance Vice Presidency of the ACP at least five (5) business days prior to the last day available to deliver the bond, together with the following documents certifying:

- a. The tender or contract title and number;
- b. The amount the Acceptable Insurance and/or Reinsurance Company for the ACP must withhold, and a formal letter sent including the reinsurance structure and required documents;
- c. Maximum amount each Insurance and/or Reinsurance Company may withhold

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per bond type and per each company's corporate name. In case of a co-guarantor, maximum amount subscribed by the co-guarantor per bond type and each co-guarantor's corporate name.

d. The most recent long-term credit rating of the insurance and/or reinsurance companies subscribing part of the bond, name of the rating company and number assigned by it, if applicable.

e. Document stating and including a direct action clause (Cut-Through Clause) in favor of the ACP where the reinsurer undertakes that if the reinsured does not meet its contractual obligations to the ACP, the reinsurers shall pay to the originally insured party the portion the reinsured ought to pay in the event of any loss for which the reinsurers are liable to the reinsured under the policy terms, minus the premium owed to the reinsurers if any. The ACP's bid specifications shall detail how this requirement is applied.

9. No reinsurance structures made up by insurers and reinsurers who participate or are a part of the same holding company, business and/or corporation; and/or who have leader executives, members in the boards of directors, and stakeholders in common with effective control or parent or subsidiary companies in common shall be approved. Acceptable insurers and/or reinsurers shall neither include in their application the identity of the company or bidder for which the reinsurance structure review and acceptance are being requested and the exact bond amount proposed, nor shall they reveal them to the ACP or to any of its employees in any other instance prior to the selection of the Contractor.

10. Once the ACP has issued a formal acceptance of the reinsurance structure, and for the bonds used as reinsurance to be accepted, the bidder or Contractor must submit the following documents together with the guarantee in the tender:

a. A letter issued by the ACP approving the reinsurance structure from the Acceptable Insurance and/or Reinsurance company and indicating the tender or contract name and number; the amount withheld by it in each bond; the name of each insurance or reinsurance company used, and the amount subscribed by each;

b. A letter from each insurance or reinsurance company used to issue each guarantee indicating the tender or contract name and number: the amount subscribed by each upon issuing the bonds; and the RUC, Legal Representative Name, Physical Address and email of the person responsible for the subscription;

c. Cut-Through Agreement or Endorsement by the ACP where the reinsurer and the reinsured party agree that, in the event the reinsured party runs into insolvency or financial problems, or fails to pay and/or does not fulfill its obligations to the ACP, the party shall notify the reinsurer who shall pay the

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original bonded party the portion due by the reinsured party in the event of any loss for which the reinsurer is liable to the reinsured party under policy terms, minus the premium owed to the reinsurers if any. The contract shall specify how this requirement is applied;

d. The reinsurance structure authorization note issued by the Insurance and Finances Section of the Authority addressed to the insurer.

11. Notwithstanding the foregoing, the ACP shall not accept and shall reject any bond issued by an “Acceptable Insurer and/or Reinsurer” that:

a. Pursuant to the applicable regulations of the ACP, the Panamanian State or of the country of origin (if the insurer was incorporated outside the national territory) are suspended or penalized and cannot enter into contracts with the ACP while the suspension holds; or

B. Is undergoing a regularization or administrative or operation control takeover process or under forced liquidation as ordered by a relevant authority in the Republic of Panama or in its country of origin in the case of insurance companies incorporated outside the national territory; or

c. Is fulfilling its obligations to the insurer or guarantor before the ACP, the Panamanian State and/or in its country of origin (for insurer companies incorporated outside the national territory); and when in a litigation process.

12. When the ACP has admitted bonds from an “Acceptable Insurer and/or Reinsurer Company” that later incurs in any of the situations mentioned the previous paragraph 11, the ACP shall be entitled to demand the Contractor replace the bond within thirty (30) calendar days as of the date the ACP formally notifies the Contractor of the situation unless the ACP’s interests are affected, in which case the Contracting Officer shall determine the most convenient action to safeguard the ACP’s best interests.

13. The ACP shall only accept bonds submitted in forms drafted by the ACP for those purposes (Form No. 1525, Proposal Bond; Form 1526, Compliance Bond; Form 1534, Advanced Payment Bond, and Form No. 1527, Payment Bond). Any bond issued in forms that were not authorized by the ACP shall be firmly rejected.

**4.28.75. OFFICIAL CURRENCY.**

Only prices offered in Balboas (B/.) or United States Dollars (US\$) shall be considered for the contract award.

**4.28.76. ECONOMIC AND FINANCIAL INFORMATION ABOUT THE PANAMA CANAL AUTHORITY.**

The Panama Canal Authority is included in the Dun & Bradstreet list under number D&B D-U-N-S: 85-367.3143. Information is available only for D&B subscribers. See the following D&B website: <http://www.dnb.com>.

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**4.28.77.**      <sup>62</sup>**PAYMENTS** (*Goods and Services.*)

1. The Authority shall issue payments thirty (30) calendar days after the full invoice is submitted and the contract purpose fulfilled.
2. For Contractors domiciled in the Republic of Panama, invoices shall be submitted in the Central Invoice Reception Office of the ACP located on building 710, Balboa, together with all other documents mentioned in clause 4.28.5 of these presents.
3. In the case of foreign Contractors domiciled outside the Republic of Panama, invoices must be virtually submitted accessing the self-service platform “Suppliers Portal” in <https://apps.pancanal.com/pcpay/>, where the invoice must be uploaded in PDF format.
4. The thirty (30) calendar days period for the payment shall start as of the moment the last of the following happens:
  - a. Delivery of the object of the contract to the Authority.
  - b. Full invoice submitted.
  - c. Simplified declaration and related documents, if applicable, submitted to the Authority. See section 8, clause 4.28.6, “Import Taxes and Goods and Services Taxes (ITBMS) Exemption”.

During this term, the Authority shall conduct a technical inspection to determine its acceptance unless the contract provides another term for inspection and acceptance, in which case the payment shall be fulfilled once that term is due. Lack of acceptance by the Authority shall be notified to the Contractor in writing within the registration period and shall cause the payment process to be interrupted. The term shall not be reinitiated until the Contractor has corrected the deficiencies indicated and the Authority has accepted the object of the contract, notwithstanding the Authority’s power to terminate the contract for causes attributable to the Contractor.

5. After thirty days, the Contractor shall be entitled to the payment of interests if the delay was caused by the Authority. The Authority shall pay delinquency interests calculated at three-month LIBOR until the date the payment is made to the Contractor through an electronic fund transfer in the Contractor’s bank account and, exceptionally, through check. The payment must include the fees withheld from the Contractor and any outstanding amount.

6. If the Contractor does not submit the required invoice and/or certificates of good standing (National and CFF), or does not request payments during the five (5) years following the date in which the Authority satisfactorily received the work, good or service for which the contract was celebrated, the Authority shall deem the payment

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<sup>62</sup> Amended by Art. 129 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 6 of Resolution No. ACP-AD-RM-20-12 dated March 03, 2020. Amended by Art. 21 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020. Amended by Art. 56 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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obligation prescribed and delete it from its accounting records.

7. The invoice submitted by the Contractor, domiciled in the Republic of Panama, must comply with all national legal provisions in force requiring:

- a. Contractor name;
- b. Taxpayer Identification Number or RUC;
- c. Taxpayer verification number or DV;
- d. Taxpayer's address;
- e. Correlative numbering;
- f. Date of operation or invoice;
- g. Purchase order or contract number;
- h. Payment conditions agreed upon, and
- i. Amount and description of the product or service sold, unit price and total.
- j. The lower margin of printed versions of invoices, as well as of other documents authorized by the DGI, must contain the information of the printing company, its RUC number, the printing date and the numbering of each invoice book.

8. The invoice from a foreign Contractor (domiciled outside the Republic of Panama) must contain the following information:

- a. Contractor name;
- b. Invoice date;
- c. Purchase order or contract number;
- d. Payment conditions agreed upon, and
- e. Amount and description of the product or service sold, unit price and total.

Invoices connected to the contracts for service provision must include a breakdown identifying the amount owed for services provided in Panama which shall be subject to tax withholdings (see Clause 4.28.3.)

**4.28.78** <sup>63</sup>**INFORMATION REQUESTS TO BIDDERS**

Upon request from the Authority, during the bid evaluation process, all bidders must complete and submit Form No. 840 and the information required to create or update their records. Not submitting the form and/or the requested information within the period established by the Authority may lead to the proposal not being considered. This term may not exceed the proposal validity period.

**4.28.79** <sup>64</sup>**REPEATED NON-COMPLIANCE AND OWN ACTIONS**

That the Panama Canal Authority allows once or several times (i) the non-compliance by the Contractor of the obligations undertaken pursuant to the Contractor or a compliance that is imperfect or different from that undertaken; or (ii) that it does not insist on the exact compliance with the obligations undertaken; or (iii) that it does not exercise its contractual or legal rights against the Contractor on time; or (iv)

<sup>63</sup> Amended by Art. 130 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>64</sup> Amended by Art. 42 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 136 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 22 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.



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that its actions may be interpreted by the Contractor as a tacit acceptance or a change or amendment to the contract terms without there being a formal, written document issued by the Contracting Officer and explicitly stating it is an amendment to the contract terms shall not be construed and shall not equate to an amendment of these presents, or to an acceptance of the Contractor's acts, nor shall this be an impediment for the Panama Canal Authority to demand the future dutiful and specific compliance of the Contractor's obligations or for it to exercise the contractual rights it holds or to apply the relevant rules or legal regulations.

**4.28.80** <sup>65</sup>**DEROGATED.**

**4.28.81.** <sup>66</sup>**PRICE DETERMINATION WHEN RENEWALS ARE INCLUDED.**

For specifications including renewals, the Authority shall determine the lowest price based on the sum of the initial prices for goods and services and on those subject to renewals.

**4.28.82.** <sup>67</sup>**OFFICIAL PRICE DETERMINATION IN AGREEMENTS BASED ON PRICE LISTS WHEN RENEWALS ARE INCLUDED.**

For specifications for agreements based on price lists including renewals, the Authority shall determine the official price based on the lowest price per item or per item combination (if applicable) resulting from the sum of the initial period for the item (or items, if applicable) and their renewal periods.

**4.28.83** **IDENTICAL PROPOSALS.**

When identical proposals are received, the Contracting Officer must select the proposal from the bidder holding local representation or presence. In all other cases, the proposal shall be selected randomly before two witnesses, and this shall be registered in the summary chart.

**4.28.84** <sup>68</sup>**ADMINISTRATIVE COST OF CONTRACTING BY LINE-ITEM OR COMBINATION OF LINE ITEMS.**

As an assessment criterion, the Contracting Officer shall consider the administrative cost incurred by the Authority for the administration of each contract and apply this amount to the lowest price in tenders by line or combination of lines to select the proposal with the lowest price. The administrative cost shall be:

1. B/.250.00 for contracts of up to B/.10,000.00, except for Contracting Officer realized by the Inventory and Warehousing Administration Section;

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<sup>65</sup> Amended by Art. 43 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 137 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>66</sup> Amended by Art. 43 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 138 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>67</sup> Amended by Art. 44 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 2 of Resolution No. ACP-AD-RM11-52 dated September 29, 2011, in force as of October 19, 2011. Amended by Art. 139 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018.

<sup>68</sup> Amended by Art. 44 of Resolution No. ACP-AD-RM06-06 dated February 10, 2006, in force as of February 25, 2006. Amended by Art. 2 of Resolution No. ACP-AD-RM11-52 dated September 29, 2011, in force as of October 19, 2011. Amended by Art. 140 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 57 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021

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2. B/.500.00 for contracts of up to B/.100,000.00 (goods and services) and all Contracting Officer realized by the Inventory and Warehousing Administration Section;
3. B/.1,500.00 for contracts between B/. 10,000.01 and B/. 100,000.00 (construction work);
4. B/.2,000.00 for contracts over B/.100,000.00. (goods and services.)
5. B/.10,000.00 for contracts over B/.100,000.00 (construction work.)
6. B/.4,500.00 for corporate contracts and agreements based on a price list (ALP).

**4.28.85 PRIOR MEETINGS.**

Based on the complexity of the procurement, the Contracting Officer may hold prior meetings for the approval of the specifications. (*The Contracting Officer shall define the method: written, oral, virtual or with the physical presence of the interested parties, date and time for the meetings.*)

**4.28.86 <sup>69</sup>DEROGATED.**

**4.28.87 <sup>70</sup>DISQUALIFICATION OF BIDDERS.**

Pursuant to the provisions of articles 44 and 45 of the Authority's Contracting Officer Code, contracts entered into by the Authority shall be awarded to qualified bidders.

When a bidder ought to be disqualified for any of the reasons contained in article 45 of the Authority's Contracting Officer Code, the circumstance shall be recorded in the Award Resolution.

The Authority's decision to disqualify a bidder for any of the reasons contained in article 45 of the Authority's Contracting Officer Code may be subject to protest pursuant to the provisions of clause 4.28.88.

**4.28.88 <sup>71</sup>PROTESTS RELATED TO THE SELECTION OF CONTRACTORS.**

Protests are legal challenges made during the Contractor's selection process against the bid specifications, the bidder disqualification, or the rejection of the prequalification request or of the bidder when deemed related to a person without capacity to enter into agreements with the Authority pursuant to the provisions of Article 43 of the Code; or against the awarding of the contract.

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<sup>69</sup> Amended by Art. 72 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008.

<sup>70</sup> Amended by Art. 73 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 141 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 23 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020. Amended by Art. 58 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

<sup>71</sup> Amended by Art. 11 of Resolution No. ACP-AD-RM09-03 dated February 09, 2009, in force as of March 11, 2009. Amended by Art. 1 of Resolution No. ACP-AD-RM12-20 dated June 20, 2012, in force as of July 02, 2012. Amended by Art. 24 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020. Amended by Art. 59 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021 in force as of February 03, 2021. Amended by Art. 4 of Resolution No. ACP-AD-RM21-43 dated April 27, 2021, in force as of May 04, 2021.

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1. For the protest to be admitted, it must be submitted before the Head of the Procurements Office via an email sent to [ACP-Protestas@pancanal.com](mailto:ACP-Protestas@pancanal.com) within the terms established as per the Code. Protests must be accompanied by documentary evidence deemed relevant, and shall be resolved by the Head of the Procurements Office within thirty (30) calendar days as of the date the protest is filed.
2. The protest must clearly state it is a protest, challenge or claim against the bid specifications, the bidder disqualification, the prequalification request rejection, the bidder rejection when deemed related to a person without capacity to enter into agreements with the Authority pursuant to the provisions of Article 43 of the Code; or against the awarding of the contract; the general information from the complainant; the tender or contract number; the act protested; the impact or damage caused to the complainant; the request for correction and the copies of relevant documents.
3. The protest against the bid specifications does not require a monetary protest guarantee and shall be submitted before the proposal submission deadline unless when another deadline has been expressly established in the bid specifications, in which case protests may only be submitted based on and within the term established in the bid specifications. When a prequalification process is conducted prior to Contractor selection, only prequalified bidders may file a protest against the relevant bid specifications.
4. Protests against the disqualification of the bidder, the rejection of the bidder when deemed related to a person without capacity to enter into agreements with the Authority or against the awarding of contracts shall be filed within three (3) business days as of the date the term to publish the legal notice for the awarding of the contract on the Internet is over. The term shall begin on the business day after the day the legal notice is published.
5. For protests against the disqualification of the bidder, the rejection of the bidder when deemed related to a person without capacity to enter into agreements with the Authority or against the awarding of contracts over B/.10,000.00 to be admitted, and to answer for expenses and damages caused by the proceedings, they shall include a monetary guarantee (certified check) in favor of the Panama Canal Authority amounting to five percent (5%) of the proposal amount (when the protest is against the disqualification of the bidder or the rejection of the bidder when deemed related to a person without capacity) or for the amount of the contract awarded (when the protest is against the awarding of contracts) without exceeding the amount of B/.100,000.00. The original monetary guarantees must be submitted to the Head of the Procurements Office located in building 710, in Balboa. When the protest is considered baseless, the resolution issued by the Head of the Procurements Office may order the guarantee be executed in favor of the Authority.
6. The bidder or Contractor shall be entitled to request a copy of Form 1531, Award Resolution Stating Grounds, to file a protest pursuant to this clause.
7. No complaint or resource is admissible against the rejection of a proposal submitted by a bidder directly incurring in any of the grounds for illegibility to enter into contracts with the Authority described in article 43 of the Code. Nevertheless, duly filed protests shall be admitted when the proposal rejection is directed at a “related party” of a person directly incurring in any of the grounds described in article

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43 of the Code. In these cases, the party related to a person who cannot enter into contracts with the Authority must accompany the protest with all documents deemed convenient to prove no such connection exists including, at the least, the following:

- (i) Sworn Statement issued before a Notary from Related Party. (Form 1583.)
- (ii) Original certificate issued by an “Authorized Firm of Public Accountants” for Related Parties (Form 1584.) A Notary Public must authenticate the signature on that document.

The Authority shall only accept certificates issued by “Authorized Firms of Public Accountants.” For the purposes of the foregoing, “Authorized Firms of Public Accountants” are accountant firms who comply with some of the following requirements, depending on whether local or international firms:

For local firms:

They should be:

- (i) Any public accountant firm authorized to operate within the Republic of Panama who is associated or holds a representation agreement with one of the top 100 firms published the immediately preceding year by *Accounting Today* or *Accountancy Age*; or
- (ii) Firms that prove (through notes, certificates or letters) that their audited financial statements have been accepted by at least 2 banks or insurance companies legally authorized to operate in the Republic of Panama; or
- (iii) Firms that prove they ascribe to the Authorized Public Accountant Quality Control Revision Program organized and managed by the Quality Control Alliance of Panama (ALCAPA) and that they have been subject to a quality control review in the last three (3) years without receiving an adverse result.

For the purposes of proving the firm ascribed to the Authorized Public Accountant Quality Control Revision Program, an authenticated copy of the last quality control review report issued by the Authorized Public Accountant Quality Control Revision Program must be provided. For international firms:

Any international authorized public accountants firm whose name appears in the top 100 firms list published the immediately preceding year to the date of certification by: *Accounting Today* or *Accountancy Age*.

If the certification is issued abroad, it must be issued before a notary and legalized in the Consulate of the Republic of Panama or certified through an apostille issued in accordance with the Hague Convention dated October 5, 1961, that eliminates the legalization requirements for foreign public documents.

8. The admitted protest shall suspend the Contractor selection process or the contract execution while the protest is being resolved unless the suspension damages the Authority.

9. The protest resolution issued by the Head of the Procurements Office runs the course of the administrative proceedings.

**4.28.89. <sup>72</sup>REQUIREMENT FOR A LOCAL PRESENCE ON CONTRACTS FOR THE SUPPLY OF EXPLOSIVES, AMMUNITIONS AND RELATED ITEMS.**

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<sup>72</sup> Amended by Art. 12 of Resolution No. ACP-AD-RM09-03 dated February 09, 2009, in force as of March 11, 2009. Amended by Art. 1 of Resolution No. ACP-AD-RM14-08 dated April 10, 2014, in force as of April 16, 2014. Amended by Art. 5 of Resolution No. ACP-AD-RM-15-23 dated August 20, 2015, in force as of September 07, 2015.

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To participate in contracts for the supply of explosives, ammunitions and related items, the bidder must certify local presence and submit, together with the proposal, all Ministry of the Interior permits authorizing it to carry out activities for the import, sales, use, mixing, manufacturing and transportation of explosives, as is the case, before complying with all other specific tender requirements. The bidder is excused from this requirement when the delivery is on Gatun lake.

**4.28.90. <sup>73</sup>PROPOSED TERM, CONDITION, AND PLACE OF DELIVERY.**

1. When the bid specifications authorize the bidder to choose the delivery term, the bidder shall include the proposed delivery term (Incoterms<sup>®</sup>2010) in the proposal: CIP Miami, CIP Panama, DAP Panama or DDP Panama. Additionally, for CIP Miami, the shipment weight shall be detailed in pounds unless this information is required to be itemized.

Shipment weight: \_\_\_\_\_ pounds.

**CIP MIAMI:** (“Carriage and Insurance Paid To”). The seller must deliver the goods to the hired transportation company or to the first carrier when there are multiple transportation companies in the spot of the convened location, on the date and within the period agreed upon. Convened location: 8530 NW 72 Street, Miami, FL 33166-2300; Postal Box: P.O. Box 527948, Miami, FL 33152-7948, limited to packages of up to 70 pounds and 108 inches, and larger sizes.

**CIP PANAMÁ:** (“Carriage and Insurance Paid To”). The seller must deliver the goods to the hired transportation company or to the first carrier when there are multiple transportation companies in the spot of the convened location, on the date and within the period agreed upon. Location convened: as established in the bid specifications, in the facilities of the administrative unit of the Canal Authority, Republic of Panama.

**DAP PANAMA:** (“Delivered at Place”). The seller must place the merchandise at the buyer’s disposal or at the disposal of someone else appointed by him on the transport used and not unloaded at the time of arriving to the agreed destination on the date or within the convened delivery period. Destination convened: as established in the bid specifications, in the facilities of the administrative unit of the Canal Authority, Republic of Panama. Pursuant to article 43 of the Organic Law of the Panama Canal Authority, all goods included in the contract, consigned to the Authority and identified in the contract as such, and all services are exempt from the payment of all national or municipal fees, taxes, rights, rates, charges or contributions. The Contractor shall be responsible for the proceedings and for submitting a simplified declaration as part of the delivery of the goods object of the contract entrusted to the Authority.

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<sup>73</sup> Amended by Art. 5 of Resolution No. ACP-AD-RM14-07 dated April 04, 2014, in force as of April 15, 2014. Amended by Art. 142 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 1 of Resolution No. ACP- AD- RM 19- 44 Wednesday, July 17, 2019 in force as of July 26, 2019. Amended by Art. 59 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021 in force as of February 03, 2021.

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**DDP PANAMÁ:** (“Delivered duty paid”).

The seller must place the merchandise at the buyer’s disposal or at the disposal of someone else appointed by him on the transport used and not unloaded at the time of arriving at the agreed destination on the date or within the convened delivery period. Destination convened: as established in the bid specifications, in the facilities of the administrative unit of the Canal Authority, Republic of Panama.

2. Independently from the delivery term selected by the ACP in the purchase order or contract award, the invoice payment process shall be initiated after the goods have been received and accepted in the facilities of the administrative unit of the ACP in the Republic of Panama. The transit time for CIP Miami deliveries to Panama is 2 days.

3. In Contractor selection processes for public tenders based on the lowest price and during the bid proposal opening or hearing, whoever presides the tender shall outright reject proposals that do not include the information required in section 1 for the CIP Miami terms.

4. In the Contractor selection processes, the Contracting Officer shall award the contract based on the lowest price resulting from the application of math formulas contemplating the costs related to the different delivery locations proposed by the bidder and the equivalent price delivered in the facilities of the administrative unit of the ACP in the Republic of Panama. For the comparison process, CIP Panama and DAP Panama terms are equivalent.

CIP MIAMI to DAP PANAMA: To convert the CIP Miami price to DAP Panama, the following formula shall be used:

$DAP = [CIPM + (S \times CIPM)] + (FM \times PLB)$   $DAP = 1.01CIPM + 1.00PLB$  Where:

DAP = Price DAP Panama  
S = Insurance = 1% of CIPM  
CIPM = CIP Miami Price  
FM = Freight and Handling to the facilities of the administrative units = B/.1.00 per pound  
PLB = Weight of the package in pounds.

**4.28.91. <sup>74</sup>CONTRACT ASSIGNMENT.**

The Authority reserves the unilateral right to authorize or reject the request for contract assignment made by the Contractor. Consequently, the Contractor has no right to contract assignments and cannot demand them of or make a claim for them to the Authority.

In all cases and to consider the Contractor’s request to assign the contract, the Authority may ask the Contractor to provide any document deemed suitable to carry

<sup>74</sup> Amended by Art. 72 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 60 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 3, 2021.

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out an evaluation in addition to previously complying with the formalities of the code, the contract and with the conditions provided in the bid specifications.

1. By assigning the contract, the Contractor (assignor) assigns the rights and obligations established in the contract to a third party (assignee.)

2. To request the contract's assignment, the Contractor (assignor) must submit the following documents:

a. Letter signed by the legal representative of the assignor or by a person appointed by him requesting the Contracting Officer to assign the contract and including the contract description (number, amount, object and date awarded) and assignee's name.

b. The assignment contract signed by the legal representatives of the assignor and the assignee or by individuals appointed by them, and the due notarization of the signatures. This contract must mention that the assignee has accepted full responsibility for the execution of the contract pursuant to the terms and conditions therein provided.

c. Minutes from the assignor's and assignee's Boards of Directors respectively authorizing and accepting the contract assignment.

d. All documents necessary for the Contracting Officer to corroborate that the assignee meets all requirements and criteria applied for the awarding of the contract to the assignor, as well as the conditions and guarantees demanded by the Contractor.

e. Certificates from the Public Registry (or equivalent certificate for foreign companies) from the assignor and the assignee.

f. Authorization and endorsement from the insurance company or contract guarantor agency, as well as from any insurance policy the Contractor must have as part of the procurement requirements.

g. Copy of the identification cards or passports of the legal representative or person authorized to sign for the assignor and the assignee.

h. For foreign companies, all documents must be duly legalized or apostilled and translated into the language of the contract, either Spanish or English.

All contract assignments authorized by the Authority shall be documented through the issuance of a resolution stating grounds and contract amendment that the Legal Services Office must review.

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**4.28.92 <sup>75</sup>RULES OF CONDUCT.**

To avoid real or apparent conflicts of interest pertaining to former officials and former employees of the Panama Canal Authority, the following rules of conduct are established:

1. Pursuant to article 32 of Agreement 11, dated May 6, 1999 and its subsequent amendments, through which the Ethics and Conducts Code of the Panama Canal Authority is created, the following rules of conduct are established:

- a. No person, organization or group may be represented concerning any contract or matter in particular in which the person directly participated, personally and substantially, while working in the organization. This prohibition prevents the former employee to communicate, appear, participate in meetings, or represent in any way whatsoever another natural or legal entity, company, organization of any nature or group before the ACP concerning any contract or matter in which the former employee may have directly, personally and substantially participated by virtue of the position held in the Authority.

For these purposes, “Direct, personal and substantial participation” is the participation of the former employee elicited while he was working in the organization and in which a decision was made pertaining to the contract or matter; or an approval, disapproval, recommendation or advise related to the contract or matter was provided; or an investigation pertaining to the contract or matter was conducted; or contacts were established with companies, bidders, suppliers and documents, proposals and programs were assessed engaging in any way whatsoever in interactions that provided him with knowledge on the matter before or after the contract, or goods or services were received, or the performance of the Contractor was assessed or inspected.

- b. For a period of two years after leaving the position, the former employee may not represent another person before the Authority concerning any matter that was pending under his supervision during his last year in the position. A “matter that was pending under his supervision” is any matter that was assigned to the former employee or to a person supervised by the former employee, including projects or contracts being processed under his responsibility during the last year of service with the ACP.
- c. As not to influence the Authority, for two years after leaving the Authority, the Manager, Deputy Manager, General Auditor and the heads of the main offices shall be impeded from representing anyone concerning any pending matter or of substantial interest to the Authority.

2. Pursuant to article 18 of Agreement 24, dated October 4, 1999 and its subsequent amendments, through which the Procurements Code of the Panama Canal Authority is created, the following rules of conduct are established:

- a. Former employees from the Authority who had a key role in the organization’s procurements processes may not partake in the selection of

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<sup>75</sup> Amended by Art. 73 of Resolution No. ACP-AD-RM08-11 dated April 18, 2008, in force as of May 18, 2008. Amended by Art. 141 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 25 of Resolution No. ACP-AD-RM20-33 dated May 21, 2020, in force as of June 09, 2020.



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Contractors for a period of two (2) years as of the date they stopped working for the Authority. This restriction involves former employees whose main role was to recommend, assess or select procurements specialists or specialist supervisors and procurements managers in the hiring processes, or to act as purchase agents in any other way.

- b. Former employees from the Authority who participated in a specific hiring process may not represent the Contractor before the Authority in any matter related to that process for at least three (3) years as of the date they stopped working for the Authority. The former employee shall not participate, transact, act or represent the Contractor before the ACP in any matter related to the contract in which he participated until the aforementioned three-year (3) period.
3. Authority officials and employees who must deal with a former official or former employee who is under any of the previously described conditions, are obliged to inform the former official or former employee, as well as the person, company, organization or group represented that, pursuant to this contractual clause, it is neither possible nor viable to interact or conduct activities with the former official or former employee in question. The official or employee experiencing or learning about an incident involving the non-compliance of any of the aforementioned rules of conduct must immediately inform this to a direct supervisor, manager or immediate superior.
4. Non-compliance with any of the aforementioned rules of conduct shall be construed as intentional non-compliance of a contractual obligation to the Authority which, notwithstanding the criminal and civil actions that may be due, may lead, both for the former official or former employee, or for the company this former official or former employee represents, to the disqualification process established in Chapter XVI of the Procurements Code.

**4.28.93 <sup>76</sup>FLOATING EQUIPMENT PURCHASE AND SALE CONTRACT.**

As part of the compliance with the contract, the Contractor undertakes to send the Panama Canal Authority (ACP) all documents pertaining to the transfer of the goods included in this contract, as well as to complete and submit Form 1056 (AJ) "PURCHASE AND SALE CONTRACT (PANAMA)." Foreign documents must be duly authenticated, either through Apostille or through consular services, at the expense of the Contractor.

**4.28.94 <sup>77</sup>COMPLIANCE WITH THE GLOBAL COMPACT OF THE UNITED NATIONS.**

The Panama Canal Authority, as a signatory of the Global Compact of the United Nations, and in recognition of this ethical commitment initiative, includes as an integral part of its strategies and operations the protection and promotion of the Compact principles among its suppliers and Contractors, which are:

- Principle 1 - Businesses should protect internationally proclaimed human rights within its scope of influence.

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<sup>76</sup> Amended by Art. 11 of Resolution No. ACP-AD-RM09-03 dated February 09, 2009, in force as of March 11, 2009. Amended by Art. 1 of Resolution No. ACP-AD-RM12-20 dated June 20, 2012, in force as of July 02, 2012.

<sup>77</sup> Amended by Art. 12 of Resolution No. ACP-AD-RM09-03 dated February 09, 2009, in force as of March 11, 2009. Amended by Art. 1 of Resolution No. ACP-AD-RM14-08 dated April 10, 2014, in force as of April 16, 2014. Amended by Art. 5 of Resolution No. ACP-AD-RM-15-23 dated August 20, 2015, in force as of September 07, 2015.

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- Principle 2 - Businesses should make sure that they are not complicit in human rights abuses.
- Principle 3 - Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.
- Principle 4 - Businesses should uphold the elimination of all forms of forced and compulsory labor.
- Principle 5 - Businesses should uphold the effective abolition of child labor.
- Principle 6 - Businesses should uphold the elimination of discrimination in respect of employment and occupation.
- Principle 7 - Businesses should support a precautionary approach to environmental challenges.
- Principle 8 - Businesses should undertake initiatives to promote greater environmental responsibility.
- Principle 9 - Businesses should encourage the development and diffusion of environmentally friendly technologies.
- Principle 10 - Businesses should work against corruption in all its forms, including extortion and bribery.

Upon submitting a proposal, the bidder or Contractor certifies that during its contractual relationship with the Authority it does not incur and will not incur in violations to the Universal Declarations and Conventions protected under the ten Global Compact principles mentioned in this clause.

### **4.28.95. <sup>78</sup>ETHICAL AND CONDUCT RULES FOR BIDDERS, SUPPLIERS AND CONTRACTORS.**

The Authority is committed to being a role model for excellence, integrity and transparency in its work; consequently, its business model is based on transparent, ethical business values and practices.

Based on the foregoing, all Authority bidders, providers and Contractors are obliged to comply with the Ethics and Conduct Principles for Bidders, Suppliers and Contractors approved and published in <https://micanaldepanama.com/wp-content/uploads/2019/07/principio-de-etica.pdf>

Pursuant to clause 4.28.63, non-compliance with any of the aforementioned ethical and conduct principles shall be construed as a fault by any Bidder during the Contractor selection process, and as intentional non-compliance of contractual obligations owed to the Authority from the Contractor or Supplier, and may result in the termination of the contractual relationship with ACP and in the subsequent disqualification of the company.

### **4.28.96. <sup>79</sup>USE OF REGISTERED TRADEMARKS OF THE PANAMA CANAL AUTHORITY BY CONTRACTORS.**

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<sup>78</sup> Amended by Art. 5 of Resolution No. ACP-AD-RM14-07 dated April 04, 2014, in force as of April 15, 2014. Amended by Art. 142 of Resolution No. ACP-AD-RM18-44 dated October 11, 2018, in force as of October 11, 2018. Amended by Art. 1 of Resolution No. ACP-AD-RM 19-44 Wednesday, July 17, 2019 in force as of July 26, 2019.

<sup>79</sup> Amended by Art. 2 of Resolution No. ACP-AD-RM16-03 dated March 14, 2016, in force as of March 21, 2016. Amended by Art. 61 of Resolution No. ACP-AD-RM21-11 dated January 21, 2021, in force as of February 03, 2021.

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The Panama Canal Authority owes the brand and design “Canal de Panamá”, “Panama Canal”, “Autoridad del Canal de Panamá”, as well as other names, brands and denominations which are duly registered and covered by laws on Industrial Property in force.

Contractors must bear in mind that the existence of a contractual relationship with the Panama Canal Authority does not entail they are authorized to use its name or any of its brands.

The use of the name “Canal de Panamá” or of any brand, logo, design or denomination referring to them without prior, written consent from the Panama Canal Authority is strictly forbidden. The relevant Contracting Officer shall procure the authorization from the Communications and Corporate Image Office, who shall be in charge of making a decision.

Additionally, Contractors must bear in mind that the Panama Canal Authority does not endorse the quality of any product, good or service whatsoever provided to it by virtue of a contractual relationship, so the aforementioned prohibition includes any publicity shared through any means of communication whatsoever and referred to the Panama Canal or to the Panama Canal Authority or to any of its trademarks without consent.

The Panama Canal Authority reserves the right to exercise all legal actions deemed convenient in the event any of the provisions herein contained are breached.

Furthermore, and notwithstanding the foregoing, all goods delivered to the Panama Canal Authority by virtue of a goods supply contract, may not permanently bear the name or logo of the supplier on them unless they are goods to be included in construction work or unless this has been expressly requested by the Panama Canal Authority or unless they bear the manufacturer's name. The administrative unit that must receive the goods shall verify this situation at the time of receiving the goods and notifying the Contracting Officer if that were necessary for him to determine their acceptance.

#### **4.28.97. <sup>80</sup>COMPLIANCE WITH STANDARDS.**

Notwithstanding all other obligations provided for in the contract, the national or foreign Contractor located in the Republic of Panama is obliged to comply with the Constitution and applicable laws of the Republic of Panama, including the national legislation in force applicable to matters of health, safety and occupational hygiene.

Contractors outside the Republic of Panama shall comply with all laws applicable in their countries of origin or in the countries where they carry out the activity related to the execution of this contract.

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<sup>80</sup> Added by Art. 3 of Resolution No. ACP-AD-RM20-40 dated June 30, 2020.

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The Contractor shall be solely responsible for any non-compliance of said rules, and for obtaining and keeping all licenses, permits and authorizations required to carry out the activities necessary to the execution of this contract valid.

Any full or partial contract non-compliance or any faulty execution resulting from the non-compliance of the aforementioned rules shall be attributable to the Contractor.

**4.28.98. <sup>81</sup>COMPLIANCE WITH NATIONAL STANDARDS RELATED TO COVID-19 (Transitory.)**

In addition to the provisions of clause 4-28-97 and while the national state of emergency decreed by relevant authorities as a result of the COVID-19 pandemic lasts, all Contractors must comply with all rules, protocols and other resolutions specific to this disease issued by competent health authorities, and with other specific obligations established by the ACP.

Both the Contractor as well as its employees and subcontractors undertake to hold the ACP, its employees, managers and officials harmless and free of liability from claims of any nature whatsoever arising if they are to become infected with COVID-19 as a result of executing their contractual obligations.

**4.28.99. <sup>82</sup>COMPLIANCE WITH SPECIAL STANDARDS RELATED TO COVID-19 (Transitory.)**

1. In all cases where the Contractor's or subcontractor's staff needs to be in contact with ACP employees to execute the Contract, either in the ACP facilities or offices or not, and while the national state of emergency decreed by relevant authorities as a result of the COVID-19 pandemic lasts, the Contractor shall:

a) Submit an occupational health plan contemplating the COVID-19 control regulations pursuant to the regulations of the national legislation, for which the form of the security plan for COVID-19 prevention for Panama Canal Authority Contractors shall be supplied; or submit the return-to-work protocol for the COVID-19 pandemic, as per the orders from the Ministry of Health (MINSa). The plan must be delivered to inform the ACP Security Official prior to the initiation of work contracted.

b) Provide training about protocols to avoid spreading COVID-10 to its staff and that of the subcontractor(s) both in the Contractor's facilities as well as during the execution of work, and/or about the Security Plan for COVID-19 prevention. Prior to initiating the work hired, the Contractor must submit to the Contracting Officer a list of attendees who participated in the training provided.

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<sup>81</sup> Added by Art. 3 of Resolution No. ACP-AD-RM20-40 dated June 30, 2020.

<sup>82</sup> Added by Art. 3 of Resolution No. ACP-AD-RM20-40 dated June 30, 2020. Amended by Art. 1 of Resolution No. ACP-AD-RM21-67 dated August 09, 2021, in force as of August 16, 2021.

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c) Inform staff that, if any person is seen to have COVID-19-related symptoms within the ACP offices or facilities, the ACP project managers must report the situation to the ACP Crisis Management Center (CMC) calling number 168 or to 272-1987 or 272-1996.

d) Use a mask and submit to having their temperature taken.

e) Warn its staff that the ACP reserves the right to refuse entrance to any person showing COVID-19-related symptoms or who might be considered as putting the ACP facilities or staff at risk. Likewise, the Contracting Officer may suspend work based on the provisions of paragraph 8 of clause 4.28.15 if no signs of compliance with the health requirements herein contained are seen. A suspension ordered under those conditions shall not grant the Contractor any rights to make a claim for an extension or financial compensation.

2. When the Contractor's or subcontractor's staff, either national or foreign, must remain in the ACP's facilities or offices and in permanent, constant contact with ACP employees to execute the contract or in the ACP employee transport system, the Contractor must, additionally:

a) Submit objective evidence that the staff has satisfactorily taken an antigen test endorsed by the Gorgas Memorial Laboratory (ICGES) and got a negative result. The test is required even if the staff has been vaccinated against COVID-19. To comply with the foregoing, the Contractor must submit:

i) Form 7611 - Authorization to Manage Data from COVID-19 Tests individually signed by each of the Contractor's employees who is to enter ACP facilities to provide services and/or conduct work; the form authorizes the Contractor to receive and share copies of test results with the doctor appointed by the ACP.

Said authorization must include an authorization from each Contractor employee for the doctor appointed by the ACP to receive tests results and, when in doubt, verify information with the laboratory in charge of the tests to review them, determine the test result and whether the worker is fit to access ACP areas and facilities.

Additionally, the doctor appointed by the ACP must be authorized to inform the Contractor about the result so that the latter may take the measures established by the MINSA, as necessary.

The antigen test herein mentioned must be taken within the seven (7) calendar days prior to the date of submission before the ACP.

ii) Uncertified copy of the identity card of the Contractor's employee. Incomplete or outdated information and/or documentation, or missing from any of the documents listed above, will not be accepted.

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b) If the work contracted is to be intermittently conducted within the ACP offices or facilities, either in tiers or in interrupted periods leaving one or more months between one period and another, the Contractor must conduct the test again, at his expense, every time the Contracting Officer or the Representative of the Contracting Officer (ROC) requests it.

c) The Contractor must follow all health recommendations to avoid contagion among its staff, including the supply and use of face masks, hand washing, physical distancing and reporting to the health authorities, by calling 169, of any COVID-19-related symptom such as: respiratory distress, fever, cough, and weakness, among others.

d) If during the execution of the contract, any employee from the Contractor is placed under quarantine by the MINSAs, either because the employee is COVID-19 positive or because of a close contact with a COVID-19 positive case, the Contractor must submit a certificate of quarantine compliance issued by the MINSAs to the Contracting Officer to have it reviewed by the ACP doctor prior to returning to the ACP areas or facilities.

3. When meetings must be held between ACP staff and Contractors or suppliers, the following temporary measures must be taken:

a) No visits/tours and meetings shall be held under than strictly necessary.

b) Necessary meetings shall be held virtually using the apps available and considering the recommendations on information security from the ACP.

c) Exceptionally, when face to face meetings, homologations or site visits are required in the cases of civil works tenders or of any other tender that so requires, the guidelines established by the MINSAs pertaining to the number of people in the premises, the mandatory use of face masks, physical distancing and other health requirements shall be followed. In those cases, only a maximum of participants may be allowed.