

## Section V. Special Conditions of Contract

### Procurement of Real Estate Appraisal Services

## Special Conditions of Contract

<b>GCC Clause</b>	
<b>Error! Reference source not found.</b>	The Funding Source is The Government of the Philippines (GoP)
<b>6.2Error! Reference source not found.</b>	<p><i><b>NOTE:</b> It is essential that Consultants that advise PROCURING ENTITIES on the privatization of state owned enterprises or other assets (or on related problems), be prohibited from “switching sides” upon completion of their obligations and then either appearing as purchaser of these enterprises/assets or advising potential purchasers in this context. In these situations, the following provision must be used:</i></p> <p>For a period of two years after the expiration of this Contract, the Consultant shall not engage, and shall cause its Personnel as well as their Subconsultants and its Personnel not to engage, in the activity of a purchaser (directly or indirectly) of the assets on which they advised the Procuring Entity under this Contract nor in the activity of an adviser (directly or indirectly) of potential purchasers of such assets. The Consultant also agree that their affiliates shall be disqualified for the same period of time from engaging in the said activities.</p>
<b>Error! Reference source not found.</b>	<p>The Member in Charge is <i>[name of member, address, and other necessary contact information]</i>.</p> <p><i><b>NOTE:</b> If the Consultant consists only of one entity, state “Not applicable”.</i></p>
<b>Error! Reference source not found.</b>	<p><i>If there is a resident project manager, state here:</i></p> <p>The person designated as resident project manager in Appendix III shall serve in that capacity, as specified in <b>GCC Clause Error! Reference source not found.</b></p> <p><i>If there is no such manager, state: Not Applicable.</i></p>
<b>Error! Reference source not found.</b>	<p><i>Select one and delete the other.</i></p> <p><i>If the Funding Source is the GoP, maintain the GCC Clause and state here: No further instructions.</i></p> <p><i>If the Funding Source is WB, state the following:</i></p> <p>The terms and conditions of this Contract, including the scope of the Services may be modified during contract implementation as between Parties; provided, however, that each Party shall give due consideration to any proposal for modification made by the other Party. Such modifications shall become effective upon the execution of a written agreement between the Parties.</p>
<b>Error! Reference</b>	<p>The Authorized Representatives are as follows:</p> <p>For the Procuring Entity: _____</p> <p>For the Consultant: _____</p>

<b>source not found.</b>	<b>NOTE:</b> Name of authorized representative to be filled out by winning consultant prior to contract signing.
<b>Error! Reference source not found.</b>	The addresses are: Procuring Entity: <i>[insert name of Procuring Entity]</i> Attention: <i>[insert name of the Procuring Entity's authorized representative]</i> Address: _____ Facsimile: _____ Email Address: _____  Consultants: <i>[insert name of the Consultant]</i> Attention: <i>[insert name of the Consultant's authorized representative]</i> Address: _____ Facsimile: _____ Email Address: _____ <b>NOTE:</b> Contact details to be filled out by winning consultant prior to contract signing.
<b>Error! Reference source not found.</b>	Notice shall be deemed to be effective as follows: (a) in the case of personal delivery or registered mail, on delivery; (b) in the case of facsimiles, within <i>[insert hours]</i> following confirmed transmission; or (c) in the case of telegrams, within <i>[insert hours]</i> following confirmed transmission.
<b>Error! Reference source not found.</b>	<i>State here Consultant's account where payment may be made.</i> <b>NOTE:</b> Details of account to be filled out by winning consultant prior to contract signing.
19	<i>Select one, delete the other.</i> <i>If the Funding Source is GoP, maintain the ITB Clause and state here:</i> No further instructions. <i>If the Funding Source is a foreign government/foreign or international financing institution: Payment shall be made in [insert currency].</i>
<b>Error! Reference source not found.</b>	<i>Select one delete the other.</i> <i>If the Funding Source is GoP, state here "No additional provision." or, if the Consultant is a joint venture, "All partners to the joint venture shall be jointly and severally liable to the Procuring Entity."</i> <i>If the Funding Source is WB, select one and delete the other.</i> The Consultant's liability shall be that defined under the Applicable Law. Or <b>NOTE:</b> <i>If the Parties wish to limit or to partially exclude the Consultant's liability to the Procuring Entity, they should note that, to be acceptable, any limitation of the Consultant's liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Procuring Entity, and (b) the Consultant's ability to pay compensation using their own assets and</i>

	<p><i>reasonably obtainable insurance coverage. The Consultant’s liability should not be limited to less than (i) the estimated total payments to the Consultant under the Contract for remuneration and reimbursables, or (ii) the proceeds the Consultant may be entitled to receive from any insurance they maintain to cover such liability, whichever of (i) or (ii) is higher. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Bank. Also, the Consultant’s liability should never be limited for loss or damage caused by the Consultant’s gross negligence or willful misconduct. Consequently the following provisions with respect to the Consultant’s liability, which the Parties could introduce here in the SCC:</i></p> <p>Limitation of the Consultant’s Liability towards the Procuring Entity are as follows:</p> <p>(a) Except in case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity’s property, shall not be liable to the Procuring Entity:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds (A) the total payments for professional fees and reimbursable expenditures made or expected to be made to the Consultants hereunder, or (B) the proceeds the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (A) or (B) is higher.</p> <p>(b) This limitation of liability shall not affect the Consultant’s liability, if any, for damage to third parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services.</p> <p><i>NOTE: Provisions to the effect that the Procuring Entity shall indemnify and hold harmless the Consultant against third party claims are not acceptable, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Procuring Entity.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p>The effectiveness conditions are the following:  <i>State “None” or List here any conditions of effectiveness of the Contract, e.g., approval of this Contract by the NEDA, DBM, WB, etc., Procuring Entity’s approval of Consultant’s bid for appointment of specified key staff members, effectiveness of Appropriations, Loans or Credits, receipt by Consultant of advance payment and by Procuring Entity of advance payment guarantee.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p>The time period shall be <i>[insert length of time]</i> or such other time period as the parties may agree in writing.  <i>NOTE: Fill out the time period, e.g., “four (4) months after the submission of the Consultant final report”</i></p>

<p><b>Error! Reference source not found.</b></p>	<p><i>Select one, delete the other:</i>  <i>If Funding Source is GoP:</i> Any and all disputes arising from the implementation of this contract shall be submitted to arbitration in the Philippines according to the provisions of Republic Acts 876 and 9285, as required in Section 59 of the IRR of RA 9184.  <i>If Funding Source is a foreign government/foreign or international financing institution, state the applicable arbitration procedures.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p>The drawings, specifications, designs, reports, other documents and software prepared by the Consultant for the Procuring Entity under this Contract that shall become and remain the property of the Procuring Entity are as follows:  <i>[List here documents and software, stating restrictions on future use if any.]</i></p>
<p>38.1<b>Error! Reference source not found.</b></p>	<p>The Consultant’s actions requiring the Procuring Entity’s prior approval are:  <i>[List here actions of the Consultant that require the Procuring Entity’s approval]</i></p>
<p><b>Error! Reference source not found.</b></p>	<p><i>Select one, delete the other.</i>  <i>If the Funding Source is GoP, maintain the GCC Clause and state here:</i> No further instructions.  <i>If the Funding Source is a foreign government/foreign or international financing institution, maintain the GCC Clause and state “No further instructions,” “No performance security is required”, or specify the acceptable form(s) with the corresponding amount(s) of the performance security.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p><i>Specify additional conditions, if any, that must be met prior to the release of the performance security, otherwise, state “No further instructions”.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p>The total ceiling amount in Philippine Pesos is <i>[insert amount]</i>.  <b>NOTE:</b> <i>The contract amount is to be filled out by the BAC Secretariat prior to contract signing.</i></p>
<p>52.2</p>	<p><i>Select one, delete the other.</i>  <i>If the Funding Source is GoP, maintain the ITB Clause and state here:</i> No further instructions.  <i>If the Funding Source is a foreign government/foreign or international financing institution: Payment shall be made in [insert currency].</i></p>
<p><b>Error! Reference source not found.</b></p>	<p><i>Select one, delete the other.</i>  <i>If the Funding Source is GoP, state here:</i> No additional instructions.</p>
<p>53.5(a)</p>	<p><i>Select one delete the other.</i>  No advance payment is allowed.  <i>Or</i></p>

	<p>The following provisions shall apply to the advance payment and the advance payment guarantee:</p> <p>(a) An advance payment of <i>[insert amount]</i> in Philippine peso shall be made within <i>[insert number]</i> days after the Effective Date. The advance payment shall be set off by the Procuring Entity in equal installments against the statements for the first <i>[insert number]</i> months of the Services until the advance payment has been fully set off.</p> <p>(b) The advance payment shall be made only upon the submission to and acceptance by the Procuring Entity of an irrevocable standby letter of credit issued by an entity acceptable to the agency and of an amount equivalent to the advance payment.</p>
<p><b>Error! Reference source not found.</b></p>	<p>The interest rate is: <i>[insert interest rate]</i>.  <b>NOTE:</b> For GoP funded projects, interest rate is zero.</p>
<p><b>Error! Reference source not found.</b></p>	<p><i>Select one, delete the other.</i></p> <p><i>If the Funding Source is the GoP, maintain the GCC Clause and state here:</i> No further instructions.</p> <p><i>If the Funding Source is the WB, state the following.</i></p> <p>The services of the Consultant may be expanded in that it may be asked to perform additional works not covered under the original agreement but deemed necessary by the Procuring Entity for the satisfactory completion of the project. This expansion of work must be covered by a variation order, which must have the prior approval of the HoPE or his duly authorized representative. The same rules apply for reductions in the services of the consultant. No variation order shall commence until after the approval of the variation order has been secured. The HoPE of his duly authorized representative shall act upon the request submitted by the end user unit for a variation order within ten (10) days from receipt of such request. The Consultant shall submit to the Procuring Entity an estimate which shall include the following:</p> <p>(a) an estimate of the impact (if any) of the variation on the current Staffing Schedule;</p> <p>(b) a detailed schedule for execution of the variation showing the resources to be employed and any significant milestones;</p> <p>(c) a detailed costing covering the total amount of the variations; and</p> <p>(d) a proposed revision of the schedule of payments, as applicable, pursuant to Appendices IV and/or V.</p> <p>No variation will be allowed that exceeds either individually or cumulatively an amount exceeding ten percent (10%) of the original contract price provided further that the Procuring Entity issues a Certificate of Availability of Funds covering the amount of the variation.</p>

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<b>GCC Clause</b>	
<b>Error! Reference source not found.</b>	The Funding Source is The Government of the Philippines (GoP)
<b>6.2Error! Reference source not found.</b>	<p><i><b>NOTE:</b> It is essential that Consultants that advise <b>PROCURING ENTITIES</b> on the privatization of state owned enterprises or other assets (or on related problems), be prohibited from “switching sides” upon completion of their obligations and then either appearing as purchaser of these enterprises/assets or advising potential purchasers in this context. In these situations, the following provision must be used:</i></p> <p>For a period of two years after the expiration of this Contract, the Consultant shall not engage, and shall cause its Personnel as well as their Subconsultants and its Personnel not to engage, in the activity of a purchaser (directly or indirectly) of the assets on which they advised the Procuring Entity under this Contract nor in the activity of an adviser (directly or indirectly) of potential purchasers of such assets. The Consultant also agree that their affiliates shall be disqualified for the same period of time from engaging in the said activities.</p>
<b>Error! Reference source not found.</b>	<p>The Member in Charge is <i>[name of member, address, and other necessary contact information]</i>.</p> <p><i><b>NOTE:</b> If the Consultant consists only of one entity, state “Not applicable”.</i></p>
<b>Error! Reference source not found.</b>	<p><i>If there is a resident project manager, state here:</i></p> <p>The person designated as resident project manager in Appendix III shall serve in that capacity, as specified in <b>GCC Clause Error! Reference source not found.</b></p> <p><i>If there is no such manager, state: Not Applicable.</i></p>
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<b>Error! Reference source not found.</b>	<p>The addresses are:  Procuring Entity: <i>[insert name of Procuring Entity]</i>  Attention: <i>[insert name of the Procuring Entity's authorized representative]</i>  Address: _____  Facsimile: _____  Email Address: _____</p> <p>Consultants: <i>[insert name of the Consultant]</i>  Attention: <i>[insert name of the Consultant's authorized representative]</i>  Address: _____  Facsimile: _____  Email Address: _____</p> <b>NOTE:</b> Contact details to be filled out by winning consultant prior to contract signing.
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	<p><i>reasonably obtainable insurance coverage. The Consultant's liability should not be limited to less than (i) the estimated total payments to the Consultant under the Contract for remuneration and reimbursables, or (ii) the proceeds the Consultant may be entitled to receive from any insurance they maintain to cover such liability, whichever of (i) or (ii) is higher. A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Bank. Also, the Consultant's liability should never be limited for loss or damage caused by the Consultant's gross negligence or willful misconduct. Consequently the following provisions with respect to the Consultant's liability, which the Parties could introduce here in the SCC:</i></p> <p>Limitation of the Consultant's Liability towards the Procuring Entity are as follows:</p> <p>(a) Except in case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity's property, shall not be liable to the Procuring Entity:</p> <p>(i) for any indirect or consequential loss or damage; and</p> <p>(ii) for any direct loss or damage that exceeds (A) the total payments for professional fees and reimbursable expenditures made or expected to be made to the Consultants hereunder, or (B) the proceeds the Consultants may be entitled to receive from any insurance maintained by the Consultants to cover such a liability, whichever of (A) or (B) is higher.</p> <p>(b) This limitation of liability shall not affect the Consultant's liability, if any, for damage to third parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services.</p> <p><b>NOTE:</b> Provisions to the effect that the Procuring Entity shall indemnify and hold harmless the Consultant against third party claims are not acceptable, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Procuring Entity.</p>
<p><b>Error! Reference source not found.</b></p>	<p>The effectiveness conditions are the following:  <i>State "None" or List here any conditions of effectiveness of the Contract, e.g., approval of this Contract by the NEDA, DBM, WB, etc., Procuring Entity's approval of Consultant's bid for appointment of specified key staff members, effectiveness of Appropriations, Loans or Credits, receipt by Consultant of advance payment and by Procuring Entity of advance payment guarantee.</i></p>
<p><b>Error! Reference source not found.</b></p>	<p>The time period shall be <i>[insert length of time]</i> or such other time period as the parties may agree in writing.  <b>NOTE:</b> <i>Fill out the time period, e.g., "four (4) months after the submission of the Consultant final report"</i></p>

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52.2	<i>Select one, delete the other.</i> <i>If the Funding Source is GoP, maintain the ITB Clause and state here:</i> No further instructions. <i>If the Funding Source is a foreign government/foreign or international financing institution: Payment shall be made in [insert currency].</i>
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53.5(a)	<i>Select one delete the other.</i> No advance payment is allowed. <i>Or</i>

	<p>The following provisions shall apply to the advance payment and the advance payment guarantee:</p> <p>(c) An advance payment of <i>[insert amount]</i> in Philippine peso shall be made within <i>[insert number]</i> days after the Effective Date. The advance payment shall be set off by the Procuring Entity in equal installments against the statements for the first <i>[insert number]</i> months of the Services until the advance payment has been fully set off.</p> <p>(d) The advance payment shall be made only upon the submission to and acceptance by the Procuring Entity of an irrevocable standby letter of credit issued by an entity acceptable to the agency and of an amount equivalent to the advance payment.</p>
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