

General Terms and Conditions
for
Japanese Grant

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Japan International Cooperation Agency (JICA)

General Terms and Conditions for Japanese Grant
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General Terms and Conditions for Japanese Grant

Article I

Introduction

Section 1.01. Introduction

The purpose of these General Terms and Conditions for Japanese Grant (hereinafter referred to as “the GTC”) is to set forth the terms and conditions generally applicable to a grant extended by the Japan International Cooperation Agency (hereinafter referred to as “the Grant”), which consists of the grant agreement (hereinafter referred to as “the G/A”) concluded between Japan International Cooperation Agency (hereinafter referred to as “JICA”) and the government of the recipient country or the authority on behalf of the government of recipient country (hereinafter referred to as “the Recipient”).

Section 1.02. Inconsistency with Grant Agreement

If any provision of the GTC is inconsistent with any provision of the G/A, such provision of the G/A shall prevail.

Section 1.03. Headings

The headings of Articles and Sections herein are inserted for convenient reference only and shall not be interpreted to limit or otherwise affect the provisions of the GTC.

Article II

Procurement

Section 2.01. Procurement Procedure

The products and/or services necessary for the implementation of a project stipulated in the G/A (hereinafter referred to as “the Project”) shall be procured in accordance with the details for procurement stipulated in the G/A.

Section 2.02. Misconduct

- (1) The Recipient will take all measures necessary to prevent any offer, gift or payment of any consideration or benefit, which would be construed as a corrupt practice or fraudulent practice in a recipient country, from being made as an inducement or reward related to the award of the contracts funded with the Grant. JICA and the Recipient understand that when the corrupt practice or fraudulent practice above occurs, the Recipient shall refund to JICA the portion of the Grant equivalent to the amount spent in such corrupt practice or fraudulent practice, which is determined by JICA.
- (2) JICA may, in addition, exercise other remedies under the G/A. It is JICA’s policy to require that the Recipient, as well as bidders and contractors, under contracts funded with the Grant or

other Japanese Official Development Assistance (hereinafter referred to as “Japanese ODA”), shall observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Recipient understands that JICA may:

- (a) reject a proposal for the award of a contract if it determines that the bidder recommended for the award has engaged in corrupt practices or fraudulent practices in competing for the contract in question; and
 - (b) recognize a physical or juridical person as ineligible, for a period determined by JICA, to become a party to, to become a subcontractor under, or to be delegated any responsibilities under any contract funded with the Grant or other Japanese ODA, if JICA, at any time, determines that the person has engaged in corrupt practices or fraudulent practices in competing for, or in executing, another contract funded with the Grant or other Japanese ODA.
- (3) If JICA receives information related to suspected corrupt or fraudulent practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Grant, the Recipient shall provide JICA with such information as JICA may reasonably request, including information related to any concerned official of the government and/or public organizations of the Recipient’s country.
- (4) The Recipient shall not unfairly or unfavorably treat the person and/or company which provided the information related to suspected corrupt or fraudulent practices in the competition for, or in the execution of, contracts to be financed out of the proceeds of the Grant to JICA and/or the Recipient.

Section 2.03. Information to be Made Public

After a contract is concurred by JICA to be eligible for the Grant, JICA may publicize any information related to such contract, including information regarding the consultant and the bidders for the contract. Information regarding the consultant includes the name of the consultant who entered into contract, the contract date, the contract amount and the date of verification of the contract. Information regarding the bidders includes the ceiling price of the bid, the names of all the bidders and their bid prices, the name of the successful bidder concerning the award of contract, the name of the bidder who entered into the contract, the contract date, the contract amount and the date of verification of the contract. The Recipient shall describe the provisions and measures concerning the above information in the tender documents in order to ensure that the above information is publicized.

Article III

Disbursement

Section 3.01. Disbursement Procedure

The Grant shall be disbursed in Japanese Yen by JICA in accordance with the disbursement procedure stipulated in the G/A.

Section 3.02. Adequacy of Documents

All documents or evidence required under the disbursement procedure stipulated in the

G/A must be adequate in form and substance satisfactory to JICA such that it can confirm that all parts of the Grant to be disbursed are to be used solely for the purpose specified in the G/A.

Section 3.03. Additional Documents

The Recipient shall provide JICA with any additional documents or evidence in support of the documents or evidence mentioned in the preceding Section which JICA may reasonably request.

Section 3.04. Conditions Precedent

JICA shall not be obligated to make any disbursement of the Grant unless all of the conditions set forth in each of the following items are satisfied at the time of making each disbursement. The satisfaction of such conditions shall be determined by JICA; provided, however, that JICA, at its discretion, may waive the satisfaction, in whole or part, of any one or more of such conditions:

- (a) The contracts stipulated in the G/A (except for the contracts which are to be executed or delivered after the relevant time of making such disbursement) shall have been duly executed and delivered by the respective parties thereto and shall remain effective on the relevant date;
- (b) No event has occurred that triggers JICA's remedies under Section 5.01. of the GTC; and
- (c) The Recipient shall have performed all of its obligations under the Exchange of Notes between the Government of Japan and the Government of recipient country concerning Japanese economic cooperation to be extended with a view to promoting the economic and social development of recipient country (hereinafter referred to as "the E/N") and the G/A that are to be performed on or before the time of making such disbursement, the Recipient has not breached any provision of the E/N or the G/A, and there is no threat that such breach may occur on or after the relevant disbursement.

Article IV

Refund

Section 4.01. Refund Procedure

- (1) JICA may, when it reasonably determines that any part of the Grant has been used for any purpose other than those stipulated in the G/A, request the Recipient to refund to JICA such part (hereinafter referred to as "the Refund") by issuing a written notice in Form No. 1 attached hereto, or in any other form that JICA deems appropriate.
- (2) The Recipient shall credit such amount of the Refund in Japanese Yen in accordance with the notice by JICA subject to the preceding paragraph.

Section 4.02. Non-Discrimination

Regarding payment of any Refund required under the G/A, the Recipient shall undertake not to treat debts to JICA less favorably than any other debts other than short-term debts.

Article V

Remedies; Failure to Exercise Rights; Non-Exemption; Administration

Section 5.01. Remedies of JICA

When any of the following items except for (b) and (c) shall occur and be continuing, JICA may by notice to the Recipient suspend the rights of the Recipient in whole or in part, and/or request the Recipient to fully implement the appropriate remedies satisfactory to JICA. For the purpose of this Section 5.01., the “Recipient-side Party” shall mean the Recipient or the executing agency stipulated in the G/A, if designated by the Recipient, to implement the Project on behalf of the Recipient. If any of the following items except for (b) and (c) shall have continued for a period of thirty (30) days from the date of such notice, or any of the following items (b) or (c) shall occur, JICA may terminate the disbursement of the Grant and the G/A immediately:

- (a) Default in the performance of any terms and conditions, covenant or agreement on the part of the Recipient-side Party under the G/A;
- (b) The Recipient-side Party shall, without the consent of JICA, have (i) assigned or transferred, in whole or in part, any of its obligations arising under the G/A; or (ii) sold, leased, transferred, assigned, or otherwise disposed of any property or assets financed wholly or in part out of the Grant, except with respect to transactions in the ordinary course of business which, in the opinion of JICA, (A) do not materially and adversely affect the ability of the Recipient-side Party to perform any of its obligations under the G/A or to achieve the objectives of the Project; and (B) do not materially and adversely affect the financial condition or operation of the Recipient-side Party;
- (c) The Recipient-side Party shall have ceased to exist in the same legal form as that prevailing as of the date of the G/A;
- (d) Any action shall have been taken for the dissolution, disestablishment, or suspension of operations of the Recipient-side Party;
- (e) In the opinion of JICA, the legal character, ownership or control of the Recipient-side Party shall have changed from that prevailing as of the date of the G/A so as to materially and adversely affect (i) the ability of the Recipient-side Party to perform any of its obligations under the G/A or to achieve the objectives of the Project; or (ii) the ability of the Recipient-side Party to perform any of its obligations arising under, or entered into pursuant to, the G/A, or to achieve the objectives of the Project; and
- (f) Any circumstance (including war, civil war, earthquake, flood, etc.) shall have arisen which makes it improbable, in the reasonable opinion of JICA, that the Project can be carried out or that the Recipient-side Party will be able to perform its obligations under the G/A.

Section 5.02. Failure to Exercise Rights

No failure or delay on the part of JICA in exercising any of its rights under the G/A shall be construed to be a waiver thereof, nor shall any single or partial exercise by JICA of any of its rights under the G/A impair JICA's further exercise of such right(s) or of any other right.

Section 5.03. Non-Exemption of Recipient from Obligations

All claims or disputes in connection with any contract shall be settled among the parties thereto, and no such claims or disputes shall exempt the Recipient from any obligation incurred under the G/A.

Section 5.04. Administration related to Grant Agreement

- (1) The Recipient shall carry out the Project, or cause it to be carried out, with all due diligence and efficiency, and in conformity with appropriate engineering, financial and environmental requirements and practices.
- (2) The Recipient shall at all times operate and maintain, or cause to be operated and maintained, any facilities relevant to the Project in conformity with appropriate engineering, financial and environmental requirements and practices, and promptly as needed, make or cause to be made all necessary repairs and renewals thereof.
- (3) The Recipient shall cause all products and/or services to be used solely for the implementation of the Project under the G/A.
- (4) The Recipient shall keep, or cause to be kept, books, accounts, records and documents adequate to identify products and/or services, to show the use made thereof in the Project, to record the progress of the Project, and to reflect, in accordance with sound and consistent accounting practices, the operations and financial situation of the Recipient or other beneficiaries of the Grant.
- (5) The Recipient shall enable, or take such steps as may be necessary to enable, JICA's representatives to visit any facilities and construction sites included in the Project and to examine products and/or services and any plant, installation, site, works, building, property, equipment, books, accounts, records and documents relevant to the performance of the obligations of the Recipient under the G/A.
- (6) The Recipient shall, in the interests of the sound administration of the Grant, furnish JICA with, or cause JICA to be furnished with, all such information on the status of the execution, completion and performance of the Project and on the operation and management of the Project and any facilities relevant to the Project, at such times, in such form and in such detail, as JICA may reasonably request. Such information may include information with respect to the procurement procedures, the financial and economic situation of the Recipient and its international balance of payments position.
- (7) The Recipient shall make sure that an ex-post procurement audit be carried out by independent auditors to be employed by JICA in order to ensure fairness and competitiveness of the procurement procedure, in cases where JICA considers such an audit to be necessary.
- (8) Should any circumstances arise which prevent, or threaten to prevent, the execution, completion and performance of the Project on schedule, or the operation and management of the Project and any facilities relevant to the Project, the Recipient shall promptly notify JICA of such circumstances.
- (9) The Recipient shall send, or cause to be sent, to JICA, promptly upon formulation, details of all plans which would result in any important modification of the Project, and these shall be subject to agreement with JICA and the Recipient.
- (10) Each party to the G/A shall, from time to time, as the other party thereto may reasonably request, afford the other party all reasonable opportunities for the exchange of views with JICA with regard to any and all matters relating to the G/A.

- (11) The Recipient shall carry out the Project with all due diligence to ensure that the safety of workers and the general public be maintained, thereby avoiding serious accidents.

Article VI

Arbitration

Section 6.01. Arbitral Tribunal

All disputes arising from the G/A which cannot be settled amicably between JICA and the Recipient shall be decided, finally and exclusively, by an arbitral tribunal (hereinafter referred to as the “Arbitral Tribunal”) as hereinafter provided.

Section 6.02. Parties to Arbitration

The parties to such arbitration shall be JICA on the one hand and the Recipient on the other.

Section 6.03. Arbitrators

- (1) The Arbitral Tribunal shall consist of three (3) arbitrators appointed as follows: a first arbitrator shall be appointed by JICA, a second arbitrator by the Recipient and a third arbitrator (hereinafter referred to as the “Umpire”) shall be appointed by agreement of the parties or, if they are unable to agree, by an appropriate organ for the settlement of international disputes. If either party shall fail to appoint an arbitrator, that arbitrator shall be appointed by the Umpire.
- (2) When any arbitrator appointed pursuant to the preceding paragraph shall resign, die or otherwise become unable to act as an arbitrator, a successor shall be appointed without delay in the same manner as herein prescribed for the appointment of the original arbitrator and such successor shall have all the powers and duties of the original arbitrator.
- (3) No person who has a personal or direct financial interest in the matter(s) submitted for arbitration shall be appointed as an arbitrator. The Umpire shall settle all disputes which may arise under this paragraph.
- (4) The Umpire shall not be a person of the same nationality as either of the parties to arbitration.
- (5) Any and all arbitrators appointed in accordance with the provisions hereof shall be bound by the provisions of this Article and shall arbitrate in accordance therewith.

Section 6.04. Arbitration Proceedings

- (1) Arbitration proceedings shall be conducted in the English language and shall be instituted by sending a written request for arbitration by one party to the other. Such request shall contain a statement setting forth the nature of dispute and the relief sought and/or the solution desired or proposed. Within forty (40) days from sending the request, each party shall notify the other of the full name, occupation, address, career and nationality of the arbitrator appointed by it.
- (2) If, within sixty (60) days from sending such request, the parties have not agreed upon the appointment of the Umpire, JICA shall request an appropriate organ for the settlement of international disputes to appoint the Umpire, as provided for in Section 6.03., paragraph (1).
- (3) The place of meeting of the Arbitral Tribunal shall be determined by agreement between the parties, or, if they are unable to agree, by the Umpire.

Within thirty (30) days from the later date of either the appointment of the Umpire or the appointment of an arbitrator by the Umpire as provided for in Section 6.03., paragraph (1), as the case may be, the Umpire shall notify the parties concerned of the place, date and time of the first sitting of the Arbitral Tribunal. The places, dates and times of the second and subsequent sittings of the Arbitral Tribunal shall be fixed by the Arbitral Tribunal.

- (4) The Arbitral Tribunal may, at any stage of the arbitration proceedings, request the parties to present such witnesses, documents, etc., as are considered necessary. The Arbitral Tribunal shall decide all questions relating to its competence and shall determine its procedure. The parties shall, in any case, be afforded an oral hearing in a sitting of the Arbitral Tribunal.

Section 6.05. Arbitral Award

- (1) The Arbitral Tribunal shall make the arbitral award (hereinafter referred to as “the Award”) within one hundred and twenty (120) days from the date of the first sitting of the Arbitral Tribunal, provided, however, that the Arbitral Tribunal may extend this period if it considers it necessary.
- (2) The Award and all other matters requiring decisions by the Arbitral Tribunal shall be decided by majority vote and shall be final and binding upon the parties, and each party shall abide by, and comply with the Award. Any arbitrator who disagrees with the majority may append his views on the Award to the documents issued by the Arbitral Tribunal.
- (3) A copy of the Award documents, signed by all three arbitrators, shall be sent without delay to each party.
- (4) The Award shall not be made public without the consent of the parties.

Section 6.06. Costs of Arbitral Tribunal

- (1) The costs of the Arbitral Tribunal shall consist of the followings:
 - (a) Remuneration of the arbitrators and any other persons whose services may be required in the course of the arbitration proceedings;
 - (b) Expenditures incurred by the Arbitral Tribunal, including the expenditures incurred in connection with the notice provided for in Section 6.04.; and
 - (c) Any expenses paid by the parties and deemed by the Arbitral Tribunal to be costs of the Arbitral Tribunal.
- (2) The amount of the remuneration of an arbitrator other than the Umpire shall be fixed by the party which appoints that arbitrator. The amount of the remuneration of the Umpire shall be fixed by an agreement between both parties, or if they fail to agree, by the Arbitral Tribunal.
- (3) The Arbitral Tribunal may, before it commences its activities, collect equal sums from both parties in such amounts as may be considered necessary to cover its costs. The costs of the Arbitral Tribunal provided for in paragraph (1) above shall finally be borne by one or both parties according to the terms of the Award.

Section 6.07. Dissolution of Arbitral Tribunal

The Arbitral Tribunal shall not be considered dissolved until the signed copies of the Award documents provided for in Section 6.05., paragraph (3) shall have been dispatched to the parties and the costs of the Arbitral Tribunal paid in full.

Section 6.08. Enforcement of Award

If within thirty (30) days from sending the Award documents to the parties, the Award shall not have been complied with, a party may require judgment upon the Award or institute proceedings for enforcement of the Award against the party with obligations to it under the Award in any court of competent jurisdiction. However, no other interference, legal or otherwise, with the enforcement of the Award shall be attempted.

Article VII

Miscellaneous

Section 7.01. Interpretation and Applicable Laws

The G/A shall be interpreted in accordance with the provisions of the E/N. The validity, interpretation and performance of the G/A shall be governed by the laws and regulations of Japan.

Section 7.02. Taxes and Expenses

- (1) The Recipient and/or other beneficiaries of the Grant shall pay all taxes, charges and other expenses imposed upon JICA within the country of the Recipient in connection with the G/A and its implementation.
- (2) The Recipient shall pay, or cause to be paid, all banking charges and/or fees for disbursement of the Grant or payment of Refund under the G/A.

Section 7.03. Notices and Requests

- (1) Any notice or request required to be given or made, or which one or both parties have the right to give or make under the G/A shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall have been delivered by hand, received by mail or registered mail to the party to which it is to be given or made at such party's address specified in the G/A or at such other address as that party shall have designated by notice to the party giving the notice or making the request.
- (2) When a party (or the executing agency, if designated by the Recipient) changes its address or name to be used for the purpose of a notice or request under the preceding paragraph, the party (which shall be the Recipient in the case of the executing agency's change of address or name) shall immediately notify the new address or name to the other party in writing.

Section 7.04. Execution

The G/A shall be executed in duplicate and each copy shall be considered to be an original.

Section 7.05. Language

The G/A shall be written in the language that may be designated therein whereas all the documents given or made under the G/A shall be:

- (a) in English; or
- (b) designated language accompanied by an English translation. In such case, JICA may rely solely on the English translation and the English translation shall prevail, if there is

any discrepancy between the original and the English translation unless JICA specifically accepts the English translation for reference purposes only.

Section 7.06. Amendment

Any amendment to the G/A shall be set out in a written agreement between JICA and the Recipient within the scope of the E/N. The amendment to the G/A shall become effective on the date of signature of such written agreement by JICA and the Recipient.

Section 7.07. Consultation

JICA and the Recipient shall consult with each other in respect of any matter that may arise from or in connection with the G/A.

Section 7.08. Waiver of Sovereign Immunity

With respect to any legal proceedings for the enforcement of the G/A, the Recipient shall irrevocably waive (i) any and all of its privileges and sovereign immunities from and against any lawsuit and enforcement of arbitral award and (ii) any and all privileges and sovereign immunities on any of its properties from and against any attachment, enforcement and any other legal proceedings, both of which it may be entitled to as a legal defense under any applicable international or domestic law.

Article XIII

Effectiveness of Grant Agreement

Section 8.01. Effective Date

The G/A shall enter into force on the date of signature of the G/A by JICA and the Recipient, provided that the E/N is in force.

Date:

Ref. No.:

(Name and address of the Recipient)

Attention:

Ladies and Gentlemen:

NOTICE CONCERNING REFUND

Due Date at Tokyo, Japan:

Refund Due: ¥

We would like to inform you that the above amount as specified in the attached sheet(s) will be due and payable on _____.

We would appreciate it if, after confirming the amount, you would credit the checked amount to the following account by 12 noon on the due date, Tokyo time.

Account No.: _____

Name of Beneficiary: _____

Beneficiary's Bank: _____

Very truly yours,

(Authorized Signature)

Encl: