



Government of Jamaica

CONTRACT FOR THE PROCUREMENT OF GOODS

**Procurement for the Supply of 509 Microsoft MS365
Licenses for one (1) year for the period January 12, 2025 –
January 11, 2026**

Between

PROCURING ENTITY

National Works Agency

*140 Maxfield Avenue,
Kingston 10*

And

SUPPLIER

Ref No. #: 410.01.2:19MTL

October 2024

PART 3 - Contract

Section VI. General Conditions of Contract

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Section VI. General Conditions of Contract

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “GoJ” means the Government of Jamaica.
- (b) “Contract” means the Contract Agreement entered into between the procuring entity and the supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (d) “Contract Price” means the price payable to the supplier as specified in the SCC subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract, as specified in GCC Clause 14.1
- (e) “Day” means calendar day.
- (f) “Completion” means the fulfillment of the related services by the supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “GCC” means the General Conditions of Contract.
- (h) “goods” means things of every kind and description, whether tangible or intangible, including commodities, agricultural crops, raw materials, products and equipment; matter in solid, liquid or gaseous form; and services incidental to the supply of such things that the supplier is required to supply to the procuring entity under the Contract.
- (i) “procuring entity” means the GoJ entity purchasing the goods and related services, as specified in the SCC.
- (j) “related services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the supplier under the Contract.
- (k) “SCC” means the Special Conditions of Contract.
- (l) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the goods to be supplied or execution of any part of the related services is subcontracted by the supplier.
- (m) “supplier” means a person, firm or entity that is registered in the Public Procurement Commission to participate in the procurement proceedings mentioned above.
- (n) “The Project Site,” where applicable, means the place named in the SCC.
- (o) “in writing” means a communication in hand or machine written type and includes messages by facsimile, e-mail and other electronic forms of communications with proof of receipt. “Electronic communications” means

the transfer of information using electronic or similar media and the recording of information using electronic media.

- (p) “Procurement Review Board” or “Review Board” means the body established in accordance with Section 50 of the Act.

2. Contract Documents

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Documents shall be read as a whole.

3. Fraud and Corruption

- 3.1 The Government of Jamaica requires that all parties involved in the procurement proceedings and execution of such contracts observe the highest standard of ethics.
- 3.2 For the purposes of this provision, offences of fraud and corruption are defined in Part VII of the Act and any other Act relating to corrupt activities in Jamaica.
- 3.3 A person who commits an offence under the Act or any other Act relating to corrupt activities in Jamaica shall
- (a) be liable for conviction under the provisions of the Act or any other Act relating to corrupt activities in Jamaica;
 - (b) have their bid rejected if it is determined that the bid or the bidder is not in compliance with the provisions of the Act, the regulations or any other Act relating to corrupt activities in Jamaica
 - (c) risk other sanctions provided for in the Act or the regulations.
- 3.4 Furthermore, the bidder takes account of the provision stated in Sub-Clause 34.1 (a) (iii) of the General Conditions of Contract.

4. Interpretation

- 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
 - (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.
- 4.3 Entire Agreement
- The Contract constitutes the entire agreement between the procuring entity and the supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Nonwaiver

- (a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver as specified in the **SCC**, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the supplier and the procuring entity, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the supplier.

6. Joint Venture, Consortium or Association

- 6.1 If the supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the procuring entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the procuring entity.

7. Eligibility

- 7.1 A supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through

manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

8. Notices

- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing and sent to the address specified in the SCC.
- 8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9. Governing Law

- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of Jamaica, unless otherwise specified in the SCC.

10. Settlement of Disputes

The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct negotiations any disagreement or dispute arising between them under or in connection with the contract.

If this negotiation is not successfully settled within fourteen (14) days after the date of initiation of negotiation or within such longer period as the parties may mutually agree, then the parties will jointly agree, within seven (7) days after the date of expiration of the period in which the parties should have successfully concluded their negotiations, to appoint a Mediator to assist in reaching an amicable resolution of the dispute. This procedure shall be private, confidential and without prejudice.

If the parties fail to agree upon the appointment of a Mediator within the period, then, within seven (7) days of expiration of this period, the Procuring Entity shall request appointment of a Mediator and a date for Mediation by the Dispute Resolution Foundation of Jamaica. The Mediator shall not have the power to impose a settlement on the parties.

If the dispute is not resolved between the parties within seven (7) days after the Mediation by the Dispute Resolution Foundation of Jamaica, or after such longer period as the parties may mutually agree, the mediator shall advise the parties of the failure of the Mediation.

For the purposes of this clause, a negotiation is deemed to have been initiated as of the date of receipt of notice by one party of a request from the other party to negotiate the matter in dispute.

For the purposes of this clause, a Mediator is deemed to have been appointed as of the date of notice of such appointment being given to both parties.

In the event of the failure of the mediation between parties, the Mediator will record those verifiable facts that the parties have agreed. Subsequently the case will be handled by arbitration.

The parties agree to accept the award and/or decision of the Arbitrator as binding and irrevocable within the provisions of the Arbitration Act of Jamaica. The Mediator's role in the dispute resolution process shall cease upon appointment of the Arbitrator.

During the dispute resolution process, the contractor shall continue to perform the work in accordance with this contract. Failure to do so shall be considered a breach of contract.

The seat of the arbitration shall be Jamaica and disputes shall be settled in accordance with the Arbitration Act of Jamaica. Rules of procedure to be adopted shall be those published by the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976.

11. Scope of Supply

11.1 The goods and related services to be supplied shall be as specified in the Specification Compliance Sheets.

12. Delivery and Documents

12.1 Subject to GCC Sub-Clause 32.1, the Delivery of the goods and Completion of the related services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the supplier are specified in the SCC.

13. Supplier's Responsibilities

13.1 The supplier shall supply all the goods and related services included in the Scope of Supply in accordance with GCC Clause 11, Specification Compliance Sheets and the Delivery and Completion Schedule, as per GCC Clause 12.

14. Contract Price

14.1 Prices charged by the supplier for the goods supplied and the related services performed under the Contract shall not vary from the prices quoted by the supplier in its bid.

15. Terms of Payment

15.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.

15.2 The supplier's request for payment shall be made to the procuring entity in writing, accompanied by invoices describing, as appropriate, the goods delivered and related services performed, and by the documents submitted pursuant to GCC Clause 12 and upon fulfillment of all other obligations stipulated in the Contract.

15.3 Payments shall be made promptly by the procuring entity, but in no case later than thirty (30) days after submission of an invoice or request for payment by the supplier, and after the procuring entity has accepted it.

15.4 The currencies in which payments shall be made to the supplier under this Contract shall be those in which the bid price is expressed.

15.5 In the event that the procuring entity fails to pay the supplier any payment by its due date or within the period set forth in the SCC, the procuring entity shall pay to the supplier interest on the amount of such delayed payment at the rate shown

in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

16 Taxes and Duties

- 16.1 For goods manufactured outside Jamaica, the supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Jamaica.
- 16.2 For goods manufactured within Jamaica, the supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the procuring entity.
- 16.3 If any tax exemptions, reductions, allowances or privileges may be available to the supplier in Jamaica, the procuring entity shall use its best efforts to enable the supplier to benefit from any such tax savings to the maximum allowable extent.

17 Performance Security

- 17.1 If required as specified in the **SCC**, the supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 17.2 The proceeds of the performance security shall be payable to the procuring entity as compensation for any loss resulting from the supplier's failure to complete its obligations under the Contract.
- 17.3 As specified in the **SCC**, the performance security, if required, shall be denominated in the currency (ies) of the Contract, or in a freely convertible currency acceptable to the procuring entity; and shall be in one of the format stipulated by the procuring entity in the **SCC**, or in another format acceptable to the procuring entity.
- 17.4 The performance security shall be discharged by the procuring entity and returned to the supplier not later than twenty-eight (28) days following the date of Completion of the supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

18 Copyright

- 18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the procuring entity by the supplier herein shall remain vested in the supplier, or, if they are furnished to the procuring entity directly or through the supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

19. Confidential Information

- 19.1 The procuring entity and the supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the supplier may furnish to its Subcontractor such documents, data, and other information it receives from the procuring entity to the extent required for the Subcontractor to perform its work under the Contract,

- in which event the supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the supplier under GCC Clause 19.
- 19.2 The procuring entity shall not disclose information relating to the examination and evaluation of the bid other than the summary of the evaluation of the bid unless
- (a) disclosure of such information is necessary for the protection of the national interests of Jamaica; or
 - (b) non-disclosure of such information would be contrary to law; impede law enforcement; prejudice the legitimate commercial interests of a supplier, bidder or contractor; or impede fair competition;
 - (c) unless disclosure of that information is ordered by the Review Board or any court, and, in such case, subject to such conditions as may be specified in the order.
- 19.3 Except where information is provided or required to be published under or pursuant to a provision in this procurement process, a procuring entity shall treat applications to pre-qualify and bid in such a manner as to prevent or protect against the disclosure of their contents to competing suppliers or to any other person not authorized to have access to this information.
- 19.4 Nothing in this section shall be construed as limiting the application of any provision of any other law that restricts the disclosure of information.
- 19.5 The procuring entity shall not use such documents, data, and other information received from the supplier for any purposes unrelated to the contract. Similarly, the supplier shall not use such documents, data, and other information received from the procuring entity for any purpose other than the performance of the Contract.
- 19.6 The obligation of a party under GCC Sub-Clauses 19.1 and 19.2 above, however, shall not apply to information that:
- (a) the procuring entity or supplier need to share with GoJ or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;
 - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality under this Agreement.
- 19.7 The above provisions of GCC Clause 19 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 19.8 The provisions of GCC Clause 19 shall survive completion or termination of the Contract up to a period of twenty (20) years thereafter or whenever said information enters the public domain through no fault or action of either Party.

20. Subcontracting

20.1 The supplier shall notify the procuring entity in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

20.2 Subcontracts shall comply with the provisions of GCC Clauses 3, 7, 18 and 19.

21. Specifications and Standards

21.1 Technical Specifications and Drawings

- (a) The goods and related services supplied under this Contract shall conform to the technical specifications and standards mentioned in the Technical Requirements as appended to the Contract Agreement and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the goods' country of origin.
- (b) The supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the procuring entity, by giving a notice of such disclaimer to the procuring entity.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the procuring entity and shall be treated in accordance with GCC Clause 32.

22. Packing and Documents

22.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

22.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the procuring entity.

23. Insurance

23.1 Unless otherwise specified in the SCC, the goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the SCC.

24. Transportation and Related Services

- 24.1 Unless otherwise specified in the SCC, responsibility for arranging transportation of the goods shall be in accordance with the specified Incoterms.
- 24.2 The supplier may be required to provide any or all of the following related services, including additional services, if any, specified in **SCC**:
- (a) performance or supervision of on-site assembly and/or start-up of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this Contract; and
 - (e) training of the procuring entity's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 24.3 Prices charged by the supplier for incidental services, if not included in the Contract Price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

25. Inspections and Tests

- 25.1 The supplier shall at its own expense and at no cost to the procuring entity carry out all such tests and/or inspections of the goods and related services as are specified in the **SCC**.
- 25.2 The inspections and tests may be conducted on the premises of the supplier or its Subcontractor, at point of delivery, and/or at the goods' final destination, or in another place in Jamaica as specified in the **SCC**. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the procuring entity.
- 25.3 The procuring entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the procuring entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 25.4 Whenever the supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the procuring entity. The supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the procuring entity or its designated representative to attend the test and/or inspection.
- 25.5 The procuring entity may require the supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the goods comply with the technical specifications codes and standards under the Contract, provided that the supplier's

reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

- 25.6 The supplier shall provide the procuring entity with a report of the results of any such test and/or inspection.
- 25.7 The procuring entity may reject any goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The supplier shall either rectify or replace such rejected goods or parts thereof or make alterations necessary to meet the specifications at no cost to the procuring entity, and shall repeat the test and/or inspection, at no cost to the procuring entity, upon giving a notice pursuant to GCC Sub-Clause 25.4.
- 25.8 The supplier agrees that neither the execution of a test and/or inspection of the goods or any part thereof, nor the attendance by the procuring entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the supplier from any warranties or other obligations under the Contract.

26. Liquidated Damages

- 26.1 Except as provided under GCC Clause 31, if the supplier fails to deliver any or all of the goods by the Date(s) of delivery or perform the related services within the period specified in the Contract, the procuring entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed goods or unperformed related services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the procuring entity may terminate the Contract pursuant to GCC Clause 34.

27. Warranty

- 27.1 The supplier warrants that all the goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 27.2 Subject to GCC Sub-Clause 21.1(b), the supplier further warrants that the goods shall be free from defects arising from any act or omission of the supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 27.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 27.4 The procuring entity shall give notice to the supplier stating the nature of any such defects together with all available evidence thereof, promptly following the

discovery thereof. The procuring entity shall afford all reasonable opportunity for the supplier to inspect such defects.

- 27.5 Upon receipt of such notice, the supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective goods or parts thereof, at no cost to the procuring entity.
- 27.6 If having been notified, the supplier fails to remedy the defect within the period specified in the SCC, the procuring entity may proceed to take within a reasonable period such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the procuring entity may have against the supplier under the Contract.

28. Patent Indemnity

- 28.1 The supplier shall, subject to the procuring entity's compliance with GCC Sub-Clause 28.2, indemnify and hold harmless the procuring entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the procuring entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the goods by the supplier or the use of the goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the goods.

Such indemnity shall not cover any use of the goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the supplier, pursuant to the Contract.

- 28.2 If any proceedings are brought or any claim is made against the procuring entity arising out of the matters referred to in GCC Sub-Clause 28.1, the procuring entity shall promptly serve the supplier with notice thereof, and the supplier may at its own expense and, on behalf of the procuring entity, conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim. The supplier shall not bind the procuring entity to any agreement without its written approval.
- 28.3 If the supplier fails to notify the procuring entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the procuring entity shall be free to conduct the same on its own behalf.
- 28.4 The procuring entity shall, at the supplier's request, afford all available assistance to the supplier in conducting such proceedings or claim, and shall be reimbursed by the supplier for all reasonable expenses incurred in so doing.
- 28.5 The procuring entity shall indemnify and hold harmless the supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and

expenses of any nature, including attorney's fees and expenses, which the supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the procuring entity.

29. Limitation of Liability

29.1 Except in cases of criminal negligence or willful misconduct,

- (a) the supplier shall not be liable to the procuring entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay liquidated damages to the procuring entity;
- (b) the aggregate liability of the supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the procuring entity with respect to patent infringement; and
- (c) this limitation of liability shall not affect the Supplier's liability, if any damage to third parties is caused by the Supplier or any other person or firm acting on behalf of the Supplier in carrying out the obligations under the Contract.

30. Change in Laws and Regulations

30.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the part of Jamaica where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 14.

31. Force Majeure

- 31.1 Failure of either party to perform any obligation or exercise any right shall not be deemed a breach of contract or waiver of rights, if such failure is due to force majeure, but the time for performing such obligations or exercising such rights shall be extended for the duration of the period within which force majeure exists.
- 31.2 If either party is unable to perform its obligations hereunder as a result of force majeure, such party shall promptly notify the other party of the existence and cause thereof and both parties shall take such action as is reasonably within their

powers to remove or mitigate the effect of the said force majeure and to resume its duties under the contract herein, failing which either Party may terminate by giving thirty (30) days' notice of their intention to do so.

- 31.3 Force Majeure refers to an exceptional event or circumstance which is beyond a Party's control; which such Party could not reasonably have provided against before entering into the Contract: which, having arisen, such party could not reasonably have avoided or overcome; and which is not substantially attributable to the other Party.
- 31.4 Force Majeure includes but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- 31.5 Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

32. Change Orders and Contract Amendments

- 32.1 The procuring entity may at any time order the supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where goods to be furnished under the Contract are to be specifically manufactured for the procuring entity;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the related services to be provided by the supplier.
- 32.2 If any such change causes an increase or decrease in the cost of, or the time required for, the supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the supplier's receipt of the procuring entity's change order.
- 32.3 Prices to be charged by the supplier for any related services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 32.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

33. Extensions of Time

- 33.1 If at any time during performance of the Contract, the supplier or its Subcontractors should encounter conditions impeding timely delivery of the goods or completion of related services pursuant to GCC Clause 12, the supplier shall promptly notify the procuring entity in writing of the delay, its likely duration, and

its cause. As soon as practicable after receipt of the supplier's notice, the procuring entity shall evaluate the situation and may at its discretion extend the supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

- 33.2 Except in case of Force Majeure, as provided under GCC Clause 31, a delay by the supplier in the performance of its Delivery and Completion obligations shall render the supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 33.1.

34. Termination

34.1 Termination for Default

- (a) The procuring entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the supplier, may terminate the Contract in whole or in part:
 - (i) if the supplier fails to deliver any or all of the goods within the period specified in the Contract, or within any extension thereof granted by the procuring entity pursuant to GCC Clause 33;
 - (ii) if the supplier fails to perform any other obligation under the Contract; or
 - (iii) if the supplier, under the laws of Jamaica has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b) In the event the procuring entity terminates the Contract in whole or in part, pursuant to GCC Clause 34.1(a), the procuring entity may procure, upon such terms and in such manner as it deems appropriate, goods or related services similar to those undelivered or not performed, and the supplier shall be liable to the procuring entity for any additional costs for such similar goods or related services. However, the supplier shall continue performance of the Contract to the extent not terminated.

34.2 Termination for Insolvency.

- (a) The procuring entity may at any time terminate the Contract by giving notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the procuring entity

34.3 Termination for Convenience.

- (a) The procuring entity, by notice sent to the supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the procuring entity's convenience, the extent to which performance of the supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The goods that are complete and ready for shipment within twenty-eight (28) days after the supplier's receipt of notice of termination shall be accepted

by the procuring entity at the Contract terms and prices. For the remaining goods, the procuring entity may elect:

- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and related services and for materials and parts previously procured by the supplier.

35. Assignment

- 35.1 Neither the procuring entity nor the supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

36. Export Restriction

- 36.1 In case the conclusion of the contract is prevented by any export restrictions attributable to the procuring entity, to the country of the procuring entity or to the use of the products/goods or systems to be supplied in particular by sanctions arising from trade regulations from a country supplying those products/goods, systems or services, the supplier shall not be bound by its bid, always provided, however, that the supplier can demonstrate to the satisfaction of the procuring entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract.
- 36.2 Notwithstanding any obligation under the contract to complete all export formalities, any export restrictions attributable to the procuring entity, to the country of the procuring entity or to the use of the products/goods, systems or services to be supplied, in particular any export restrictions arising from trade regulations from a country supplying those products/goods, systems or services, that substantially impede the supplier from meeting its obligations under the contract shall release the supplier from the obligation to provide deliveries or services, always provided, however, that the supplier can demonstrate to the satisfaction of the procuring entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the delivery of the products/goods, systems or services under the terms of the contract.

Contract Agreement

THIS AGREEMENT is made on the _____ day of _____, 2024
BETWEEN

- 1) **NATIONAL WORKS AGENCY** an Executive Agency of the Ministry of Economic Growth and Job Creation established under and by virtue of the Executive Agencies Act and having its main office at 140 Maxfield Avenue, Kingston 10 in the parish of Saint Andrew (hereinafter called “the Procuring Entity”), and
- 2) **[Insert Supplier’s Name]** a company duly incorporated under the laws of Jamaica and having its registered office at **[Insert Supplier’s Address]** (hereinafter called “the Contractor”) of the other part:

WHEREAS the procuring entity invited a bid for certain goods and ancillary services, viz., **Procurement for the Supply of 509 Microsoft MS365 Licenses for one (1) year for the period January 12, 2025 - January 11, 2026** and has accepted a bid by the supplier for the supply of those goods and related services in the sum of **[Insert contract amount]** (hereinafter called “the Contract Price”) to be supplied within a period of **seven (7) days**.

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NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the procuring entity and the supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (e) The supplier’s bid and original Price Schedules
 - (f) The procuring entity’s Notification of Award

3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the procuring entity to the supplier as hereinafter mentioned, the supplier hereby covenants with the procuring entity to provide the goods and related services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The procuring entity hereby covenants to pay the supplier in consideration of the provision of the goods and related services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Jamaica on the day, month and year indicated above.

For and on behalf of the procuring entity

The Official Seal of the)

NATIONAL WORKS AGENCY)

was hereunto affixed)

by Everton. G. Hunter)

in the presence of:

Everton Hunter
Chief Executive Officer

Witness

For and on behalf of the supplier

The Common Seal of)

)

was hereunto affixed)

by)

in the presence of:

Witness

Section VII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Clause No	
GCC 1.1(i)	The procuring entity is: <i>National Works Agency</i>
GCC 1.1 (d)	Contract Price is:
GCC 1.1 (n)	The Project Site(s)/Final Destination(s) is/are: NWA Corporate Office, 140 Maxfield Avenue, Kingston 10
GCC 4.2 (b)	The version edition of Incoterms shall be Incoterms 2010 DDP
GCC 4.4	The Authorized Representative of the Procuring Entity is: NATIONAL WORKS AGENCY 140 Maxfield Avenue Kingston 10 Attention: Mr. Everton Hunter (Chief Executive Officer) The Authorized Representative of the Supplier is:
GCC 5.1	The language shall be: English
GCC 8.1	For <u>notices</u> , the procuring entity's address shall be: Mr. Everton Hunter Chief Executive Officer NATIONAL WORKS AGENCY 140 Maxfield Avenue Kingston 10 Jamaica
GCC 9.1	The governing law shall be the law of: Jamaica
GCC 12.1	Details of Shipping and other Documents to be furnished by the supplier are the Delivery Slips.

	The above documents shall be received by the procuring entity before arrival of the goods and, if not received, the supplier will be responsible for any consequent expenses.
GCC 14.1	Prices charged by the supplier for the goods supplied and the related services performed under the Contract is:
GCC 15.1	Provided that upon inspection of the goods pursuant to GCC 25 the Goods are found to be satisfactory and in compliance with "Appendix IV, specification compliance sheets," the procuring entity will make its best effort to provide payment of the Contract Price within THIRTY (30 Days) of delivery of the goods, subject to receipt and approval of the invoice by the procuring entity.
GCC 15.5	The payment-delay period after which the procuring entity shall pay interest to the supplier shall be 60 days of the contract price. The interest rate that shall be applied is 0.5%
GCC 17.1	A performance security <i>shall not be required</i>
GCC 17.3	If required, the performance security shall be in the form of <u>Not Applicable</u> If required, the Performance security shall be denominated in <u>Not Applicable</u>
GCC 17.4	Discharge of the performance security shall take place: <u>Not Applicable</u>
GCC 22.2	The packing, marking and documentation within and outside the packages shall be: <i>The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.</i> Not Applicable
GCC 23.1	The insurance coverage shall be as specified in the Incoterms. If not in accordance with Incoterms, insurance shall be as follows: <u>Commercial liability insurance</u> Not Applicable
GCC 24.1	Responsibility for transportation of the goods shall be as specified in the Incoterms. If not in accordance with Incoterms, responsibility for transportations shall be as follows: <u>Not Applicable</u>
GCC 25.1	The inspections and tests shall be: <u>Not Applicable</u>
GCC 25.2	The inspections and tests shall be conducted at: <i>NWA Corporate Office, 140 Maxfield Avenue, Kingston 10</i>

GCC 26.1	The liquidated damage shall be: 1% of the contract price per week
GCC 26.1	The maximum amount of liquidated damages shall be: 10% of the final contract price
GCC 27.3	The period of validity of the Warranty shall be: 365 days For purposes of the Warranty, the place(s) of final destination(s) shall be: <i>NWA Corporate Office, 140 Maxfield Avenue, Kingston 10</i>
GCC 27.5	The period for repair or replacement shall be: 120 days.

APPENDIX I

LETTER OF ACCEPTANCE

APPENDIX II

LETTER OF QUOTATION

APPENDIX III

PRICE SCHEDULE & DELIVERY SCHEDULE

APPENDIX IV

TECHNICAL SPECIFICATIONS